

**IN THE COURT OF THE CIVIL JUDGE AND ADDITIONAL
J.M.F.C., AT TARIKERE**

Present : SMT.PAVITHRA.M.D, B.A., LL.B.,
Civil Judge & Addl. JMFC. Tarikere.

O.S.No.139/2020

Dated this 20th day of October 2020

Plaintiff : Ravi.L.Halli S/o Rudrappa.A,
Aged about 49 years,
Agriculturists
R/o Near Bus Stand,
Lingadahalli Village & Hobli,
Tarikere Taluk.
(Reptd. By : Sri.Avinash.T.J-Advocate)

V/s

Defendants: 1. Ghouse Peer,
S/o late Bashir Ahmed,
Aged about 42 years,
Agriculturist,
R/o Lakkinakoppa Village,
Kachikatte Post,
Shivamogga Taluk & District.

2. Sadiq Basha,
S/o late Umar Sab,
Aged about 47 years,
Agriculturist,
R/o Main Road,
Lingadahalli Village & Hobli,
Tarikere Taluk,
Chikkamagaluru District.
(Reptd. By : D1-Sri.D.Annappa Naika-Advocate)
D3-Sri.G.Vijaya Kumar-Advocate)

I.A.

Applicant in I.A/: Ravi.L.Halli
Plaintiff

-Vs-

Opponents in IA/: Ghouse Peer & Anr.
Defendants

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ORDERS ON IA

The plaintiff has filed this application U/Or.39 Rule 1 and 2 R/w Sec.151 of CPC seeking relief of temporary injunction against the 2nd defendant to restrain him from interfering or disturbing his peaceful possession and enjoyment over the suit schedule property.

2. It is averred in the affidavit annexed to the application that, the suit schedule property originally belongs to one Chandappa S/o Rudrappa and he sold the said property in favour of Basheer Ahamed S/o Hayath Peer Sab of Athimogge village through the registered sale deed dated 17.06.1979 and khatha of the suit schedule property is mutated in the name of the said Basheer Sab. That after his demise, khatha of the suit property was mutated in the name of his wife Smt.Hajima Bi @ Hajeemunnisa. Later,

Smt.Hajima Bi @ Hameemunnissa and her children Fayaz Ahamed, Nisar Ahamed, Nazeer Ahamed, Smt.Tahsina Banu and Ghouse Peer got partitioned the suit schedule property under the registered partition deed dated 03.08.2016. In the said partition, the suit schedule property was fell to the share of defendant No.1 and khatha of the suit property was mutated in his name. Thereafter, defendant No.1, his wife Smt.Gulab Banu, minor children, Vasim Akram, Nazeema Banu have sold the suit schedule property in favour of the plaintiff under the registered sale deed dated 15.11.2016 and khatha of the suit property is also mutated in the name of the plaintiff and thereby, the plaintiff became absolute owner of the suit schedule property and also put in possession of the said property. At the time of execution of the above said sale deed dated 15.11.2016, due to typographical mistake, the southern boundary was wrongly mentioned as Seethapurada Ganganna instead of Seethapurada Naganna. Hence, the 1st defendant has executed rectification sale deed dated 08.08.2017 to rectify the said mistake. The father of the 2nd defendant by name Umar Sab is the husband of Mahboob Bi and she is none other than sister of Basheer Ahamed. The

2nd defendant has no manner of right, title and interest over the suit schedule property, but he tried to trespass and interfere with his peaceful possession and enjoyment over the suit schedule property. With great difficulty, the illegal act of the 2nd defendant is resisted by the plaintiff. On complaint lodged by the plaintiff to Lingadahalli police, they advised that, the matter is civil in nature and also advised to take suitable action to Court of law. The 2nd defendant once again tried to trespass and interfere with his peaceful possession and enjoyment over the suit schedule property. Hence, this application for the relief as referred earlier.

3. The 2nd defendant has adopted the contents of his written statement as objection to IA.No.1. In his written statement the 2nd defendant has denied the entire plaint averments. He contended further that, he is the son of Umar Sab. Smt.Hajeema Bi @ Hajimunnisa W/o late Basheer Sab and her children have agreed to sold the suit schedule property in favour of the 2nd defendant's father by name Umar Sab on 01.05.1997 for sale consideration of ₹46,000/- and also received ₹44,000/- as earnest amount in the presence of

witness and agreed to receive the balance sale consideration of ₹2,000/- and to execute the registered sale deed whenever called upon by the father of the 2nd defendant. As on the date of agreement of sale itself, they handed over the possession of the suit schedule property in favour of the 2nd defendant's father by name Umar Sab. During his lifetime, the 2nd defendant's father Umar Sab has made several request to the wife and children of Basheer Sab to execute the registered sale deed, but they dragged on one or other reason. That after the demise of Umar Sab, the 2nd defendant is in possession over the suit schedule property and also growing potato, groundnut, jowar etc., Even the 2nd defendant also made several request to the wife and children of Basheer Sab to execute the registered sale deed and also issued legal notice through his counsel, but they have not come forward to execute the sale deed. Hence, the 2nd defendant and his sister have filed a suit for specific performance in OS.No.243/2016 on the file of this Court and the the 1st defendant and the plaintiff herein were impleaded as defendant No.5 and 6 in the said suit. The said suit is still pending for consideration. The 1st defendant, his mother and

brothers have got executed nominal partition deed. The 1st defendant herein has intentionally avoided the service of notice of implead application in OS.No.243/2016 and hence, the 2nd defendant herein has filed application for substitute service of notice by way of paper publication. Meanwhile, the 1st defendant herein has executed a nominal sale deed dated 15.11.2016 in favour of the plaintiff herein. Hence, the plaintiff herein is also impleaded as the 6th defendant in the said suit. Except the suit schedule property, the 2nd defendant has no other land to lead his life. The 1st defendant has not received any sale consideration amount from the plaintiff and they are not in possession of the suit schedule property. In order to obtain the possession of the suit schedule property, the 1st defendant has executed a nominal sale deed in favour of the plaintiff. In the month of June 2020, the plaintiff has executed an agreement of sale in favour of third person who is the resident of Kodcamp, Tarikere. Till today, the 1st defendant herein is remained absent in OS.No.243/2016. But in the present suit, he appeared through his counsel and also filed his written statement admitting the plaint averments. This fact shows

that, the plaintiff and the 1st defendant are colluded with each other. Hence, the 2nd defendant prayed to dismiss the suit as well as the application with cost.

4. On the strength of the application and the documents produced at the initial stage, the points which emerged for consideration of this Court are as follows:-

- 1) Whether the plaintiff has made out a prima facie case?
- 2) Whether the balance of convenience lies in favour of the plaintiff?
- 3) Whether the plaintiff will be put to great hardship and injury in case temporary injunction is not granted?
- 4) What order?

5. Heard the arguments canvassed by the counsel for the plaintiff and the 2nd defendant. Perused the materials available on record and now my findings on the above points are as follows:-

Point No.1 : In the Negative.
Point No.2 : In the Negative.
Point No.3 : In the Negative.
Point No.4 : As per the final order
for the following:

REASONS

6. **Points No.1 to 3:** Since these points are inter related to each other they are taken up together in order to avoid repetition of facts.

The plaintiff has instituted the present suit for declaration to declare that, he is the absolute owner of the suit schedule property on the basis of the registered sale deed dated 15.11.2016 and for the relief of permanent injunction to restrain the 2nd defendant from interfering with the peaceful possession and enjoyment over the suit schedule property.

7. It is the stand of the plaintiff that, he purchased the suit schedule property from the 1st defendant under the registered sale deed dated 03.08.2016 and the vendor of the plaintiff by name Ghouse Peer i.e., the 1st defendant acquired the suit schedule property under the registered partition deed dated 03.08.2016 effected between himself, his brothers and his mother by name Smt.Hajima Bi @ Hajimunnisa W/o Basheer Sab. It is further stand of the plaintiff that, the 2nd defendant having no manner of right, title and interest and possession over the suit schedule property, on 07.06.2020, he tried to interfere with his peaceful possession and enjoyment over the suit schedule property.

8. Per-contra, the 2nd defendant contended that, Smt.Hajimunnisa @ Hajima Bi W/o Basheer Sab and her children are agreed to sell the suit schedule property in favour of the 2nd defendant's father Umar Sab on 01.05.1997 for sale consideration of ₹46,000/- and also received ₹44,000/- as earnest amount in the presence of the witnesses and agreed to execute the sale deed whenever called by the the 2nd defendant's father Umar Sab. He contended further that, inspite of several request made by the 2nd defendant's father and the 2nd defendant, the above said Smt.Hajima Bi @ Hajimunnisa W/o late Basheer Sab and her children have not executed the registered sale deed in pursuance of the above said contract and hence, the 2nd defendant have filed the suit in OS.No.243/2016 on the file of this Court. In the said suit, the plaintiff and the 1st defendant herein were impleaded as defendant No.5 and 6. Either the plaintiff or the 1st defendant are in possession over the suit schedule property.

9. With this background, now I would like to analyze the documents produced by the both parties. The plaintiff has produced the records of rights and index of lands pertaining

to the land bearing Sy.No.70/1P. Admittedly, the Sy.No.70/1P is the old survey number of the suit schedule property. As per the said document, originally the suit schedule property belongs to one Rudrappa S/o Chandappa. The plaintiff also produced the certified copy of the registered sale deed dated 17.06.1979 under which, the above said P.R.Chandappa has sold the suit schedule property in favour of Basheer Sab S/o Hayath Peer Sab. The 2nd defendant in his written statement has specifically admitted that, originally the suit schedule property belongs to Chandappa and the said Chandappa has sold a suit schedule property in favour of Basheer Ahamed S/o Hayath Peer Sab. Wherefore, the record of rights, the index of lands and the certified copy of the sale deed dated 17.06.1979 doesn't warrants much discussion.

10. The plaintiff also produced a copy of partition deed dated 03.08.2016. Under the said partition deed, Smt.Hajima Bi @ Hajimunnisa and her children Khaleel, Fayaz Ahamed, Nisar Ahamed, Nazeer Ahamed, Smt.Tahsina Banu and Ghouse Peer have partitioned their family properties and in

the said partition, the suit schedule property is fell to the share of Sri.Ghouse Peer i.e., the 1st defendant herein. Based on the said partition deed, the name of the 1st defendant was entered in the revenue records pertaining to the suit schedule property. Towards this end, the plaintiff has produced the RTC extract and mutation register extract bearing MR.No.H.2/2016-17 dated 03.08.2016.

11. The plaintiff also produced a copy of the registered sale deed dated 15.11.2016. As recited in the said sale deed, the plaintiff has purchased the suit schedule property from the 1st defendant and his wife and children for sale consideration of ₹5,00,000/-. It is relevant to note here that, in the said sale deed it is specifically mentioned that, the possession of the suit property is handed over to the plaintiffs as on the date of sale deed itself. Let me consider the said fact at later stage of this order. In pursuance of the said sale deed, the name of the plaintiff is entered in the revenue records pertaining to the suit schedule property and as on the date of filing the suit, the suit schedule property stands in the name of the plaintiff. The plaintiff has produced the RTC

extract and mutation register extract to the above said effect. Further, as per a copy of the rectification deed dated 04.08.2017 to the above said sale deed, the southern boundary of the suit schedule property as mentioned in the sale deed dated 15.11.2016 is rectified as Seethapurada Naganna instead of Seethapurada Ganganna. Be that as it may.

12. The plaintiff also produced two affidavits of the parties by name Sri.Basavarajappa and Sri.Santhosh. The said Sri.Basavarajappa and Sri.Santhosh in their affidavits have specifically deposed that, the plaintiff has purchased the suit schedule property and from the date of the sale deed, he is in possession of the said land. They also stated that, they are neighboring land owners of the suit schedule property. Now a crucial point to be consider is, the value of the said affidavits at this initial stage. At this juncture it is relevant to reproduce the provision U/Or.19 Rule 1 and 2 of CPC which runs as hereunder:-

1. Power to order any point to be proved by affidavit.-Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness

may be read at the hearing, on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that either party bona fide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

2. Power to order attendance of deponent for cross-examination.-(1) Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent.

(2) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court, or the Court otherwise directs.

13. In view of the above said provision, in the absence of cross-examination of the deponents this Court is of the opinion that, it is not proper to accept the contents of the affidavits. Hence, the affidavits filed by the plaintiff will not help the case of the plaintiff and he has to establish his case independently. Further, the affidavits filed by the parties without giving an opportunity to cross-examine the deponents, the said affidavits cannot be treated as evidence in the law. Wherefore, I declined to accept the affidavits filed by the plaintiff at this initial stage.

14. The plaintiff has filed one marriage certificate stating that, the said marriage certificate pertains to the sister

of the 1st defendant. The said marriage certificate is in the language of Urdu which is unknown to this Court. Wherefore, in the absence of translated copy of the said marriage certificate, the said document cannot be appreciated at this stage.

15. On the other hand, the 2nd defendant also produced abundant documents in support of his case. He has produced the certified copies of the order sheet, plaint and the written statement filed in OS.No.243/2016. As it could be seen from the said case papers, the 2nd defendant along with 3 others has instituted a suit for specific performance of the contract dated 01.05.1997 which is set to be executed by Smt.Hajimunnisa @ Hajima Bi and her sons by name Khaleel Ahmed, Fayaz Ahamed and Nisar Ahamed. That after filing the said suit, the plaintiff and the 1st defendant herein are impleaded as defendant No.5 and 6. As per the order sheet of the suit in OS.No.243/2016, the 1st defendant herein has not entered his appearance in the said suit and the plaintiff herein ha filed his written statement on 10.07.2017 itself. So, one thing is clear that, the filing of the suit in

OS.No.243/2016 is within the knowledge of the plaintiff as on the date of filing the suit itself. The 2nd defendant also filed the certified copy of the agreement of sale dated 01.05.1997. The body of the said sale agreement reveals that, the sons of Basheer Sab by name Khaleel Ahamed, Fayaz Ahamed and Nisar Ahmed have executed an agreement of sale in favour of the 2nd defendant's father Umar Sab. Further, the said Khaleel Ahmed, Fayaz Ahamed and Nisar Ahmed have agreed to sell the suit schedule property for sale consideration of ₹46,000/- in favour of the above said Umar Sab and also received ₹44,000/- as earnest amount in the presence of the witnesses. Further under the said agreement, they agreed to execute the registered sale deed whenever called upon by the above said Umar Sab and also handed over the possession of the suit schedule property in favour of the said Umar Sab. It is relevant to note here that, as per the said agreement of sale, the 2nd defendant and his property is in possession of the suit property and as per the sale deed dated 15.11.2016 which is executed by the 1st defendant herein in favour of the plaintiff, the plaintiff is in possession of the suit schedule property. But at this stage,

no materials available on record to show that, when the 2nd defendant was removed from the possession of the suit property. In the absence of full fledged trial, it is not proper to conclude that, the possession of the suit schedule property is either with the plaintiff or the 2nd defendant. Wherefore, I leave the said issue intact. With this discussion, this Court is of the opinion that, the plaintiff failed to establish prima facie possession in his favour.

16. In the present suit, the plaintiff has not whispered a single sentence with regard to filing the suit in OS.No.243/2016 on the file of this Court. As adverted supra, in the year 2017 itself, the plaintiff has appeared in the said suit as defendant No.6 and also filed his written statement. The said conduct of the plaintiff is make it clear that, he suppressed a material fact before this Court. Injunction is an equitable remedy as well as it is governed by law. Therefore, equitable principles are of very much importance in granting or rejecting injunction. Equitable principle is that, he who seeks equity must come up with clean hands. The relief of temporary injunction is a discretionary and equitable. The

party who suppressed the material fact from the Court does not deserve to get any discretionary relief muchless an order of temporary injunction. In the present suit, the plaintiff has suppressed the material fact i.e., the suit in OS.No.243/2016 and his appearance in the said suit as defendant No.6. Wherefore, I declined to grant the discretionary relief of temporary injunction in favour of the plaintiff. Accordingly, I answer point No.1 to 3 in the Negative.

17. **Point No.4:** In view of the foregoing reasons and conclusion arrived at point No.1 to 3, the application filed by the plaintiff deserve to be dismissed. Hence, I proceeds to pass the following:

ORDER

I.A filed under Order 39 Rule 1 and 2 R/w
Sec.151 of C.P.C filed by the plaintiff is hereby
dismissed.

No order as to cost.

*(Direct Dictation given to the Stenographer, typed by him,
corrected by me and then pronounced in the open Court on this
the 20th day of October 2020.)*

Sd/-

**(PAVITHRA.M.D)
CIVIL JUDGE AND
ADDL.J.M.F.C., TARIKERE.**