

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC
AT CHANNAGIRI.**

**Present:- Sri.C.V.Sanath, B.Com.,LL.,B.
Senior Civil Judge and JMFC,
Channagiri.**

Dated : This the 9th day of February, 2017

O.S.No.62/2016

Between:

Sri. Girish. T.S. : **PLAINTIFF**
(By Sri. D.T.N., Adv.,)

And

Sri. T.H. Shivamurthyappa : **DEFENDANT**
(By Sri. Y.M.R., Adv.,)

IN IA No.I

Sri. Girish. T.S. : **Applicant/ Plaintiff**

V/S

Sri. T.H. Shivamurthyappa : **Opponent/ Defendant**

ORDERS ON IA No.I

This is an application filed by the plaintiff U/O. 39 Rule 1 & 2 of of C.P.C.

2. The brief averments of the affidavit filed in support of the application are as follows:-

That this suit is filed for the relief of declaration and possession of the Suit Schedule Property. One Channappa Sahukar had five sons Namely Murigeppa, Malleshappa, Rohithaksha, Janardhana and Nageshappa. The Plaintiff is the son of Janardhana. The dispute is with regard to Sy.No.153/7 measuring 5 acres 38 guntas, out of 6 acres 39 guntas which belongs to Rohithaksha. The said Rohithaksha got the Suit Schedule Property in a partition which took place between his brothers. The said Rohithaksha was living with his younger brother Janardhana and Plaintiff under one roof till his death. He was un-married and died intestate on 6/5/2005. After the death of Rohithaksha the Suit Schedule Property devolve upon Janardhana, as he was the only living brother, at the time of death of Rohithaksha all the other brothers of Rohithaksha was predeceased him. After the death of Rohithaksha, the father of the Plaintiff Janardhana was in possession and enjoyment of the Suit Schedule Properties. He was successfully resisting the interference of the defendants over the Suit Schedule Property till his death. The defendant is in no way concerned to the Suit Schedule Property even then he was making attempts to disposes the father of the Plaintiff from the Suit Schedule. It was successfully resisted by the father of the Plaintiff. After the death of the father of the Plaintiff, the defendant again started interfering with the possession of the Plaintiff over the Suit Schedule Property. The Plaintiff was unable to resist the illegal act of the defendant. In the 1st week of June, 2016 the defendant has dispossessed the Plaintiff from the Suit Schedule Property claiming that the revenue records of the Suit Schedule Properties stands in his name. On verification of the revenue records the Plaintiff came to know that the defendant colluding with revenue officials got the katha changed in his name. Though he has lodged the complaint before the police, they expressed their inability as the defendant is very strong in the locality with political power and money. Now the defendant is trying to sell the Suit Schedule Property. If the defendant sells the

Suit Schedule Property, the Plaintiff will suffer irreparable loss and injury. Hence this application.

3. The defendant filed memo to treat the written statement as objections to the application. In the written statement he has denied all the averments of the plaint. He contends that Sy.No.153 measuring 6 acres 38 guntas of Thyavanige village belongs to Rohithaksha. He has given the said land on Guthige to the defendant in 1992. Since then the defendant was in cultivation of the said land. The said Rohithaksha had expressed his will to sell the Suit Schedule Property and the defendant agreed to purchase the same at the rate of Rs.16,000/- per acre totally for Rs.1,08,000/- as consideration. Out of the said amount Rs.1,05,000/- was paid by the defendant to Rohithaksha in the presence of Dr.Nagaraj and Smt. Nagaraj, as per oral agreement. The possession of the property was already delivered in favor of the defendant as per the oral agreement of 1992. It was not a written agreement. On 2/7/2001 the said Rohithaksha had executed a sale agreement agreeing the sell suit land for Rs.16,000/- per acre. In the said document it was recited that during 1992 the sum of Rs.1,05,000/- was received and possession was handed over to the defendant. It was also agreed that the remaining Rs.3,000/- to be paid by the defendant at the time of the registration. At that time the land fell into Sarakari pada. Later it was restored. In the said agreement it was also stated that he would not execute the sale deed and after his death as per the sale agreement the defendant should get the katha and pahani. As per agreement the defendant had paid the balance of sale consideration of Rs.3,000/- to the Government while restoring the land into name of Rohithaksha. The defendant wanted to get the registered sale deed but in the mean time Rohithaksha died. The said Rohithaksha had filed O.S.307/2001 on the file of the Hon'ble Civil Judge,

Channagiri against the defendant and others on 14/01/2001. The said suit was dismissed on 19/4/2003. The Plaintiff and his brother channamalleshwara had filed the suit against defendant and others for the relief of declaration that the comprise in O.S.410/2006 dated 6/9/2010 is void abinitio and not binding on the plaintiffs. The said suit was got dismissed on 5/7/2013. One Jayadevappa the elder brother of Plaintiff had filed O.S.410/2006 against the defendant and others before the 3rd Additional Senior Civil Judge, Davanagere and the said suit was compromised. In the said compromise it was declared that the defendant is the absolute owner of the said land. As per the said decree katha and pahani was accepted in the name of defendant as per M.R.No.13/2011-12.

4. Heard the arguments. Perused records.
5. The Points that arise for my consideration are as follows:-

Point No. 1:- Whether the applicant/ plaintiff proves that he has made prima facie case?

Point No.2 :- Whether the applicant/ plaintiff proves that the balance of convenience tilts towards him?

Point No.3 :- Whether the applicant/ plaintiff proves that he will suffer irreparable loss and hardship if the application is not allowed?

Point No.4:- What Order?

6. I answer the above points as follows:-

Point No.1 :- **In the Affirmative**

Point No.2:- **In the Affirmative**

Point No.3:- **In the Affirmative**

Point No.4 :-As per the final orders for the following,

:: REASONS ::

7. **Point:-1 to 3:-** Since all the points are interrelated to each other I discuss them together to avoid repetition.

8. It is the case of the Plaintiff that the Suit Schedule Property originally belongs to Rohithaksha who is the elder uncle of Plaintiff. He died intestate and un-married. He was residing with the father of the plaintiff and the Plaintiff till his death. The father of the Plaintiff was the only surviving brother of the said Rohithaksha. Therefore after the death of Rohithaksha the Suit Schedule Properties was inherited by father of the Plaintiff. After the death of the father of the Plaintiff, the Plaintiff continued to be in possession and enjoyment of Suit Schedule Property. Till the death of father of the Plaintiff he was resisting the interference of defendant. After the death of the father of the Plaintiff, the defendant dispossessed the Plaintiffs. The defendant has got changed the katha of the property in collusion with revenue officials and now he is trying to alienate Suit Schedule Properties.

9. The defendants contends that the said Rohithaksha during his life time had given the Suit Schedule Property to the defendant on Guthige basis during 1992. He had agreed to sell the Suit Schedule Property for Rs.16,000/- per acre totally amounting Rs.1,08,000/- under an oral agreement. At that time the defendant had given Rs.1,05,000/- as a part of sale consideration in the presence of Dr.Nagaraj and Smt. Nagaraj. On 2-7-2001 the said Rohithaksha had executed the sale agreement agreeing to sell the Suit Schedule Property for Rs.16,000/- per acre. In the said agreement it was recited that during 1992 a sum of Rs.1,05,000/- was

received and possession was also delivered. The said land fell to Sarakari Pada. The defendant has paid the balance consideration of Rs.3,000/-. The said Rohithaksha get restored the land from sarakari pada. In the said agreement, it is recited that he would not execute the sale deed as per the agreement during his life time and after his death the defendant should get the katha and pahani of the said land into his name as per the sale agreement.

10. This application is filed for the Plaintiff to restrain the defendant from alienating Suit Schedule Property stating that the Suit Schedule Property originally belongs to his younger uncle Rohithaksha and after his death the father of the plaintiff being the only surviving brother inherited the property. Now the defendant is trying to alienate Suit Schedule Property by changing the katha into his name in collusion with the revenue officials. On the other hand the defendant contends that the said Rohithaksha had aggrieved to sell the Suit Schedule Property to the defendant by executing the sale agreement and receiving the sale consideration.

11. In this case the relationship between the parties is admitted. It is also admitted that the Suit Schedule Properties belongs to Rohithaksha. It is also admitted that the said Rohithaksha died un-married. Therefore the Plaintiff and the defendant who are the children of the brothers of Rohithaksha are entitled for the Suit Schedule Property after his death. Therefore at this stage it can be said that the Plaintiff is also having the share in the Suit Schedule Property.

12. The defendant contends that the said Rohithaksha had agreed the sell the Suit Schedule Property by executing the agreement of sale on 2/7/2001 and received the entire sale consideration. However the defendant has not produced

any such agreement of sale. Therefore it cannot be said that the said Rohithaksha had executed any sale agreement in favor of the defendant till it is proved by the defendant. Therefore it cannot be said that the Suit Schedule Property originally belongs to the defendant as per the agreement of the sale.

13. The defendant contends that as per compromise in O.S.410/2006 the Suit Schedule Property has fallen to the share of the defendant. Though he has produced the said compromise petition, wherein it was stated that in item No.1 of the said suit 1 acre 2 guntas and item No.2 of the said suit was declared to the properties of the defendant. But the defendant has produced only the compromise petition of the said suit. He has not produced the plaint and the compromise decree of the said suit. Without producing those documents it cannot be said the suit properties belongs to the defendant. It cannot be said Suit Schedule Properties of this suit are also involved in the said compromise petition and the said compromise petition was also accepted. It cannot be said Plaintiff of this suit was the party to the said suit. Therefore it cannot be said that the defendant has become the absolute owner of the Suit Schedule Property as per the compromise in O.S.410/2006.

14. The defendant has not produced any documents to show that he has become absolute owner of the Suit Schedule Properties after the death of Rohithaksha. Therefore it cannot be said that the defendant has become the owner of the Suit Schedule Property. Therefore it cannot be said that the defendant has become absolute owner of Suit Schedule Property.

15. Admittedly the Suit Schedule Property belongs to Rohithaksha and the Plaintiff and defendant are the relatives of the said Rohithaksha. The said Rohithaksha died un-married. The plaintiff and defendant being the children of the brothers of the said Rohithaksha, have rights over the Suit Schedule Property. Till the rights of Plaintiff and defendant are determined it is very much necessary to

keep the property intact. If the property is alienated it affects the rights of the parties and leads to multiplicity of the proceeding. Therefore the property must be kept intact without alienation. As the relationship is admitted, the Plaintiff has made out prima facie case. It can be said that the Plaintiff will suffer irreparable loss and injury if the application is not allowed. Hence I answer the above points the affirmative.

16. Point No. 4: For the above said reasons I proceed to pass the following order.

ORDER

**IA.No.I filed by the plaintiff U/O. 39 Rule
1 & 2 of of C.P.C. is here by allowed.**

**The defendant, his men, agents,
henchmen or any other persons acting under
him are here by restrained from alienating the
Suit Schedule Property till the disposal of the
suit.**

**In the facts and circumstances of the case
no order as to cost.**

(Dictated to the stenographer, transcribed by her. The transcript revised by me, and then pronounced in the open court on this the 9th day of February, 2017.)

**(C.V.SANATH)
Senior Civil Judge & JMFC,
Channagiri.**

