

IN THE COURT OF THE PRL.CIVIL JUDGE & JMFC HARIHARA

Present: SRI.MAHADEV KANATTI,
B.Com.LLB.(Spl),
Prl. Civil Judge & JMFC, Harihara

Original suit No.232/2023

Dated this the 12th day of October -2023

Sri H G JayadevappaPLAINTIFF/S

//Versus//

Smt.Kannamma and others.
.....DEFENDANT/S

PARTIES TO I.A.No.I

H.G. Jayadevappa S/o Late Mahadevappa
Aged about 80 years,
R/o: Huliginahole village, Yelehole Post
Malebennur Hobli, Harihara Taluk,
Davanagere District

..... APPLICANT/S

//Versus//

Smt Kannamma W/o late Bharamappa
Aged about 75 years and others

..... OPPONENTS

i.	Provision under which the application is filed	U/Order XXXIX Rule 1 and 2 R/w Sec.151 of CPC
ii.	Relief sought for	Temporary injunction
iii.	The date on which the application is filed	26-09-2023
iv.	Number of the application	I.A.No.I

v.	The date on which the objections are filed by different opponents	Plaintiff filed objections on 05-10-2023
Vi	The date on which the orders were passed on the said application	12.10.2023

ORDER ON I.A.No.I

The present interim application U/Order XXXIX Rule 1 and 2 of CPC., is filed by the plaintiff seeking temporary injunction against the defendant No.1, 3, 4, 7 to 9, 12 and 13 or anybody claiming through them restraining them from interfering into the peaceful possession and enjoyment of the plaintiff over the suit schedule property.

2. It is stated in the accompanying affidavit that, the suit schedule property bearing Sy.No.83 measuring 1 acre 7 guntas situated at Yalehole village of Harihara taluk. The suit schedule property originally Inam Land and was in occupation and enjoyment of one Govinda S/o Lakkappala Mylavva. The suit schedule property had been purchased by the plaintiff from the said Govindappa and his children Bharamappa, Hanumanthappa and Fakkirappa on 19.02.1972 under registered sale deed S.R.No.1724/1971-72 for consideration of Rs.3,500/- and on the same day they delivered the possession of the suit schedule property to the plaintiff. It is further stated that at the time of execution of the sale deed towards eastern side there is a boundary of Dulehole village. But presently there is a road, which connect to Holesirigere to Hulaginahole village. It is

further stated that the plaintiff is in the possession and enjoyment of the suit schedule property within the boundaries mentioned in the schedule. It is further stated that after the execution of the sale deed the mutation has been effected in the name of the plaintiff and khata has been transferred. But the name of the plaintiff is not entered in the record of rights of the suit schedule property. But same has been continued in the name of the ancestors of the defendants and after their death the name of the defendants entered in the record of rights.

3. It is further stated that, after purchase of the suit schedule property the plaintiff has improved the same and growing areca nut since 20 years. It is further stated that, there is a land in Sy.No.82/1 measuring 8 acre 13 guntas situated towards northern side of the suit schedule property which belong to the plaintiff. The plaintiff converted the same together with the suit schedule property as garden lands and grown areca nut. The said Sy.No.82/1 is the ancestral property of the plaintiff. It is further stated that there is a land in Sy.No.83 new Sy.No.83/2P measuring 1 acre 1 guntas purchased by the son of the plaintiff by name H.G.Rudresh which situated towards the southern side of the suit schedule property. The plaintiff has invested huge amount and got irrigated above said lands including the suit schedule property through pipelines from Tungabhadra River.

4. It is further stated in the affidavit that, after enactment of Karnataka Village Officers Abolition Act, the suit schedule property was vested with the Government as same was Inam land. However, the said Govindappa and his children were in possession and enjoyment of the suit schedule property and sold the same to the plaintiff and delivered the possession to him. The plaintiff in order to protect his right and possession in respect of the suit schedule property on the basis of the registered sale deed files an application to the Government through Bharamappa who is the son of Govindappa for re-granting the suit lands. Considering the application the Government has re-granted the lands in favour of Bharamappa, Fakkirappa and Hanumanthappa. Accordingly, their names continued in the record of rights.

5. At the time and after re-grant of suit schedule property to the ancestors of the defendants, the plaintiff is in possession and enjoyment of the same. The said Bharamappa, Fakkirappa and Hanumanthappa had knowledge about the registered sale deed, they never interfered with the possession and enjoyment of the plaintiff over the suit schedule property during their lifetime. It is further stated that after the death of the said Govindappa and their sons the defendants got changed the khata in their favour and on the basis of the said entry in the revenue records trying to interfere into the peaceful possession and enjoyment of the plaintiff over the suit

schedule property. The revenue entry standing in the name of the defendants of the defendants is recently came to the knowledge of the plaintiff, when the plaintiff intended to get divide his family properties among his sons and immediately he challenged the same before the Assistant Commissioner Davanagere in R.A.No.128/2023 and same is pending for adjudication. The defendants have questioned the very registered sale deed executed by their ancestors infavour of the plaintiff and possession thereof.

6. It is further stated that on 22.09.2023 the defendants came to the suit schedule property and tried to destroy iron fence which was put from East-West at the road side and also tried to plucking areca nuts. It is further stated in the affidavit that if the temporary injunction is not granted, the plaintiff will be put into greater hardship, on the other hand no prejudice or loss would be caused to the defendants if the application is allowed. Hence, the plaintiff filed the present suit along with the present I.A.

7. On the other hand, the defendants appeared through their counsel and filed written statement and also files memo adopting the contents of the written statement as objections to I.A.No.I. In the written statement the defendants have denied the title and possession of the plaintiff over the suit schedule property. But they have admitted that the suit schedule property is a Inam land and same has been regranted to them in the year 1987 from the Government. Accordingly their names entered in the

record of rights of the suit schedule property and they are in peaceful possession and enjoyment of the same. The defendants disputed the execution of the sale deed alleged to be executed by their ancestors in favour of the plaintiff in the year 1972 as alleged by the plaintiff. They have taken specific contention that the suit schedule property comes under the Karnataka Schedule Caste and Schedule Tribes (P.T.C.L) Act 1978. Hence, the suit of the plaintiff is not maintainable before this Court. It is further specific contention of the defendants that the ancestors of the defendants i.e. Bharamappa, Hanumanthappa and Fakkirappa were having village office of Talavarike and thereby enjoying 1 acre 20 guntas of land in Sy.No.83/P and 1 acre in Sy.No.33 of Yalehole village of Harihara Taluk and said lands were granted in favour of the said persons under Karnataka Village Offices Abolition Act by the Tahasildar Harihara on 17.05.1987. Accordingly, they are in peaceful possession and enjoyment of the same. The plaintiff is not at all in possession and enjoyment of the suit schedule property. The plaintiff falsely claiming the suit schedule property by suppressing the material facts in order to harass the defendants. On these grounds prayed to reject the present application.

8. Heard arguments of both the sides.
9. The following points arise for my consideration;
 1. Whether the plaintiff has made out prima-facie case ?

2. Whether plaintiff has made out the balance of convenience in his favour ?
3. Whether the plaintiff will be put to irreparable injury, if the temporary injunction as claimed by him refused?
4. What Order ?

10. My findings on the above points is as under:-

Point No.1: In the Affirmative

Point No.2: In the Affirmative

Point No.3: In the Affirmative

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

REASONS

11. Point No.1 :- In order to get the order of temporary injunction parties have to show that, prima- facie case is in their favour and balance of convenience lies in their favour. Further they have to show that in case of temporary injunction order as sought by is not granted, they will be put to heavy and irreparable loss, which cannot be compensated in terms of money. Before going to merits of the case, I would like to discuss what is the prima-facie case, balance of convenience and irreparable injury.

12. The prima-facie case: means the court must be satisfied with that the applicant has raised a bonafide disputes which needs investigation and the decision on merits and fact there is a probability of the applicant being entitle to the relief claimed by her. The burden is on the plaintiff to prove that, there is prima-facie case in her

favour. While determining whether the prima-facie case has been made out the relevant consideration is whether on evidence lead, it is possible to arrive at the conclusion in question and not whether what is the only conclusion which could be arrived on that evidence.

13. Balance of convenience: Before granting the injunction the court must be satisfied that, the hardship likely to be caused to the applicant, by refusing the injunction is greater than that likely to affect the opponent. If on weighing conflicting probabilities the court is of the opinion that, the balance of convenience is in favour of applicant it must grant the injunction.

14. Irreparable Injury: The applicant must satisfy the court that, she will suffer irreparable loss, injury if the injunction is refused as there is no other remedy by which she can be protected from consequences apprehending injury. The grant of injunction is an equitable relief and it can be exercised when judicial intervention is necessary to protect the applicant. And injunction can be regarded as irreparable where there is no pecuniary standard for measuring damages.

15. Keeping all these cardinal principles in mind, I have gone through the material placed on record. The plaintiff claiming to be the owner in possession of the suit schedule property on the strength of the registered sale deed which is alleged to be executed by the Govindappa and his sons in the year 1972. On the basis of the said sale deed the

mutation has been effected. Accordingly he is in possession and enjoyment of the same till today. It is further contention of the plaintiff that originally the suit schedule property is a Inam Land and after enactment of Karnataka Village Offices Abolition Act, the said land has been vested to government and same has been re-granted in the name of original holder of the land. But the possession of the suit schedule property has been continued as per the registered sale deed. Nominally the name of the defendants is continued in the record of rights. On the other hand the defendants have specifically denied the possession and ownership of the plaintiff over the suit schedule property and contended that they are owners in possession and enjoyment of the same. Hence, the plaintiff has to show his prima possession and enjoyment over the suit schedule property.

16. To substantiate his claim over the suit schedule property the plaintiff has produced original sale deed at document No.1. On perusal of the same the possession of the suit schedule property has been delivered to the plaintiff on the day of execution of the sale deed. The plaintiff has also produced the mutation register extract which also reveals that the mutation has been effected as per the sale deed dated: 19.2.1972 and also produced the encumbrance certificate for the year 1971-72 which also reveals the name of the plaintiff. But the defendants at the out set disputing execution of the sale deed by their

ancestors and it is their specific contention that the suit schedule property covered under the PTCL Act. Hence, the plaintiff neither owner nor in possession of the suit schedule property. Hence, there is a serious issue to be tried whether the plaintiffs came into the possession of the suit schedule property on the basis of the registered sale deed which is alleged to be executed by the ancestors of the plaintiff on 19.02.1972 and continued till date.

17. On the other hand the defendants have also produced documents i.e. certified copy of the grant certificate, mutation extract and also record of rights of the suit schedule property. During the course of the arguments the learned counsel for the defendants argued that the land granted to the ancestors of the plaintiff in the year 1987 by the Government in respect of two lands i.e. 33/P and 83/3 which measuring 1 acre and 1 acre 20 guntas respectively. He further argued that it is not the pleading or case of the plaintiff that, out of 1 acre 20 guntas of land their ancestors have sold to the extent of 1 acre 7 guntas i.e. alleged suit schedule property. Hence, there is a serious doubt regarding the genuineness of alleged sale deed and claim of the plaintiff over the suit schedule property is also doubtful.

18. On the other hand the counsel for the plaintiff also argued and submitted that how the plaintiff came to the possession of the suit schedule property i.e through a registered sale deed and there are other two properties

which are adjacent to the suit schedule property and he improved the same along with the suit schedule property and growing areca nut crops since 20 years by taking pipeline from Bhadra river and the plaintiff is in peaceful possession and enjoyment of the same.

19. On going through the pleadings and the documents produced by the both sides, at this stage the Court come to the conclusion that the plaintiff has established his possession over the suit schedule property. However, the execution of the sale deed as alleged by the plaintiff and disputed by the defendants requires full fledged trial.

20. The learned counsel for the plaintiff relied on several decisions of the Hon'ble High Court of Karnataka and Supreme Court in support of his arguments with regard to which are all the lands excluded from the perview of the PTCL Act and also relied the judgments what is the effect of the selling of the land by the original holder of the land by virtue of the hereditary offices. I have gone through the decision of the Hon'ble High Court in WP No.34440/2008 dated: 26.11.2020 in between Raju V/s State of Karnataka. In the said judgment his lordship by following the various earlier judgments of the Hon'ble High Court has held that by virtue of the hereditary offices or rights if, the land is granted to the SC or ST person same has excluded from the definition of granted land under PTCL Act. Further I have gone through the full bench decision of the out own hon'ble High Court reported in I.L.R. 1994 KAR 159 between

Sayyed Bashir Ahamed and others V/s State of Karnataka - in the said decision their lordship held that the alienation of service Inam land between 1.2.1963 and 7.8.1978 by holder or an authorised holder before regrant is not invalid, as he had a vested right to get re-grant and as there was no bar regarding alienation during that period, but the alienee will be a person with imperfect title entitled to continue in possession and when the land is regranted to the alienor , the title obtained by the alienor will enure to the benefit of the alienee. Further held that , the alienation of re-granted ' Service Inam land' during the period 1.2.1963 to 7.8.1978 is valid and permission for sale is only a formality. The plaintiff claiming his possession over the suit schedule property on the strength of the registered sale deed which alleged to be executed by the ancestors of the defendants in the year 1972. On going through the decision the contention taken by the defendant that the suit schedule property covers under PTCL Act hold no water and also alleged sale deed executed by the ancestor of the defendants is not invalid.

21. Any opinion on the merits of the case, it would prejudice the mind of the parties at this stage, without going to the merits of the case, this Court come to conclusion that the plaintiff has made out prima-facie case. Hence, the point No.1 is answered in the **Affirmative.**

22. Point No.2 and 3 : Mere prima-facie case is not sufficient to grant temporary Injunction. The plaintiff also to prove the balance of convenience lies in his favour and if the temporary injunction is not granted to him, he will put into greater hardship and irreparable loss would be caused to them rather than the defendants. The allegation of the plaintiff is that, the defendants are interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property. As stated supra, the execution of the sale deed as alleged by the plaintiff and disputed by the defendants requires full fledged trial, however, at this stage the plaintiff has established his lawful possession over the same. If the defendants are not restrained by way of temporary injunction from interfering with the suit schedule property, then the plaintiff would be put to irreparable loss and greater hardship rather than the defendants and balance of convenience also lies in his favor. Accordingly, I answered Point No.2 and 3 in the **Affirmative.**

23. Point No.4:- In view of the above discussion, I proceed to pass the following:

ORDER

The I.A.No.1 filed by the plaintiff U/Order XXXIX Rule 1 & 2 of CPC., is hereby allowed.

The defendant No.1, 3, 4, 7 to 9, 12 and 13 or anybody claiming through them

are hereby restrained from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property by way of temporary injunction till disposal of the suit.

(Directly dictated to the Stenographer, typed by her, corrected and signed by me, then order pronounced in the open court on this the 12th day of October, 2023)

Sd/-
(MAHADEV KANATTI)
Prl. Civil Judge & J.M.F.C,
Harihara.