

IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC.,
AT Honnali .

Dated on this 23rd day of June, 2023.

PRESENT:

Sri MANJUNATHA R. B.A.L. LL.B.,
Prl. Civil Judge & JMFC.,
Honnali.

O.S. No.79/2021

PLAINTIFF : Sri. K. Shivaramappa and another.
V/S
DEFENDANT : Smt. Rami Bai.

PARTIES ON I.A.No.I

Applicant Sri. K. Shivaramappa and another.
V/S
Opponent Smt. Rami Bai.

ORDER ON IA No.I

The plaintiffs have filed an application Under Order XXXIX Rule 1 and 2 of CPC., seeking an order of temporary injunction restrain the defendants, their agents or servants or anybody on their behalf causing any interference to their peaceful possession and enjoyment over the suit schedule property until pending disposal of the suit.

2. The reasons ventilated in the affidavit annexed to the application are that originally the land in old Sy.No.40, new Sy.No.77 measuring 4 acres, situated at Dasarahatti village, Belagutti Hobli, Nyamathi taluk belonged to government. Later said land was granted to Chandya Naik S/o Meetya naik @ Lachanaik vide order in DD 30/55-56 and SA.Chi.No.198 to 204 by the then Tahsildar. On the strength of the said grant the revenue records were mutated in the name of said Chandya Naik as per MR No. 1/55-56 and he being owner in possession and enjoyment of the suit schedule property sold the same in-favour of Hanumanthappa S/o Rangappa under registered sale deed dated 03-09-1965 and delivered its possession to him. Since from the date of purchase till his death said Hanumathappa was in possession and enjoyment of the suit schedule property. After his demise plaintiffs are in possession and enjoyment of the suit schedule property. The column No.12(2) of RTC extract clearly discloses that Hanumanthappa was cultivator of the suit schedule property up to the year 1999-2000. The plaintiffs are personally cultivating the suit schedule property by growing maize crop. On the strength of the sale deed khata is not mutated in the name of Hanumanthappa. The plaintiffs being legal heirs of deceased Hanumanthappa preferred an appeal before Assistant Commissioner for effect of khata into their names and same is pending for consideration.

3. Further it is stated that the defendant has no manner of right, title or interest over the suit schedule property and she is

very well known the possession of plaintiffs over the suit schedule property as well as sale transaction between Chandya Naik and Hanumanthappa. But the defendant by suppressing the sale transactions, got mutated her name in the revenue records vide MR No.27/19-20. On 24-01-2021 the plaintiffs were working in the suit schedule property at that time on the guise of the revenue entires the defendant tried to interfere into the plaintiffs peaceful possession and enjoyment of the suit schedule property and also tried to dispossess them from the suit schedule property. Though the plaintiffs resisted the illegal acts of the defendant with the help of neighbors and made them return back. While returning the defendant openly shouted that, she will come again with more men and money and dispossess them from suit schedule property. The defendant is powerful and influential person in the locality and she has got men and money at her command. The plaintiffs are innocent and law abiding persons and they are unable to resist the illegal and high handed acts of the defendants without the aid of this court. The plaintiffs have got prima-facie case and balance convenience is also lies in their favour. If the application is allowed no prejudice or hardship would be caused to the other side. On the other hand great hardship and injustice would be caused to the plaintiffs. Hence, prays to allow the application.

4. In pursuance of service of summons the defendant has appeared before this court through her counsel and adopted the averments made in the written statement as objection to IA No.1 by filing memo. Hence prays to dismiss the application.

5. Heard arguments on both sides.

6. Perused the case materials placed on record.

7. After going through the application, affidavit and written statement and documents relied by the parties, the following points arise for my consideration:-

8. Now, the points that arise for consideration are as follows:

1. Whether plaintiffs have made out prima-facie case for grant of Temporary Injunction as sought for ?
2. Whether balance of convenience lies in their favour?
3. Whether the plaintiffs will be put to irreparable loss and hardship, if I.A. is not allowed?
4. What order?

9. Point No.1 to 3 : I have taken these points together for my discussion. The plaintiffs have knocked the doors of this justice seeking for the reliefs of declaration and consequential relief of permanent injunction in respect of the suit schedule property. Through this instant application the plaintiffs are seeking an order of temporary injunction against the defendant restraining her and her agents from interfering into their possession and enjoyment of the suit schedule property. This

court has gone through the pleadings of the rival parties as well as documents relied by them and also arguments canvased by the both counsels. The plaintiffs have strongly contended that originally suit schedule property was govt land and same was granted to Chandya Naik vide order in DD.30/55-56, grant certificate No. 198 to 204 by the then Tahsildar. As per the grant the revenue records were mutated in his name vide MR.No.1/55-56. The said Chandya Naik being the absolute owner in possession and enjoyment of the suit schedule property sold the same infavour of Hanumanthappa under the registered sale deed dated 03-09-1965 and delivered its possession. The said Hanumanthappa is none other than the father of first plaintiff and brother of second plaintiff. As per the sale deed name of said Hanumappa was entered in column No.12(2) of RTC upto the year 1999-2000. After death of Hanumanthappa the plaintiffs being his legal heirs cultivating the suit schedule property by growing maize crop. The defendant very well known about sale transaction and inspite of that by suppressing the true facts she got changed the revenue records of the suit schedule property in her name and based on the said revenue records she is causing interference to the possession of the plaintiffs over the suit schedule property.

10. Per contra, the defendant in her written statement she has admitted that originally suit schedule property was govt land and same was granted to Chandya Naik by the then Tahsildar and as per the grant the revenue records mutated in his name. Further she has denied the sale transaction between

Chandya Naik and Hanumanthappa and delivery of possession to said Hanumanthappa. According her Chandya Naik has not sold the suit schedule property to Hanumanthappa and alleged sale deed is concocted one. Further the defendant seriously disputing the possession of the plaintiffs over the suit schedule property. According to defendant originally suit schedule property belonged to Chandya Naik and after his demise the defendant has got mutation being the wife of Rupla Naika i.e. son of Chandya Naik by way of succession. The khata has been mutated in the name of defendant vide MR No. 27/19-20. At the time of entering of mutation the revenue authorities have followed all the procedure, then entered her name in the revenue records. The plaintiffs have questioned the revenue entries by preferring appeal before the Assistant Commissioner Court. In order to create the documents the plaintiffs have filed this suit. The defendant being an absolute owner in possession and enjoyment of the suit schedule property by growing maize and other crops. The plaintiffs without having possession over the suit schedule property filed this suit only for the purpose of grabbing the property. The plaintiffs have not produced any documents to establish their possession over the suit schedule property as on the date of suit. The defendant being an absolute owner developed the suit schedule property by availing loan from the financial institutions. As per the grant condition Chandya Naik has no right to alienate the suit schedule property under the registered sale deed dated 03-09-1965. On that ground sale deed is not a valid document and it created one. As per the sale deed Hanumanthappa has not changed the revenue

records in his name. The revenue documents produced by the plaintiff establish right and possession of defendant over suit schedule property. Hence, the plaintiff is not entitle to get relief as prayed in the application.

11. I have carefully gone through the documents produced by both the parties. The plaintiffs have relied the mutation register extract vide MR.No.1/1955-56. As per the said document the land in Sy.No. 40 measures 4 acres and same was granted to Chandya Naik. As per the mutation the revenue records mutated in the name of said Chandya Naik in respect of the above said land from 1964-65 to 1965-66. Further the plaintiffs produced the certified copy of the sale deed dated 03-09-1965. As per the said document Chandya Naik sold the suit schedule property to Hanumanthappa i.e. father of plaintiff No.1. Further the plaintiffs have produced the RTC extracts for the year 1969-70 to 1999-2000 and said documents clearly reveals that as per the sale deed the revenue records of the suit schedule property was not mutated in the name of Hanumanthappa. But his name has been shown in the column No12(2) of RTC till the year 1999-2000. Further the plaintiffs have produced the RTC extract of the suit schedule property for the year 2019-20 and said document is standing in the name of defendant. As per the said document the defendant is in possession and enjoyment of the suit schedule property by growing maize.

12. The plaintiffs are claiming their title and possession over the suit schedule property on the basis of the sale deed

obtained by the father of first plaintiff and brother of second plaintiff. The plaintiffs claiming that as per the sale deed Hanumanthappa was in possession and enjoyment of the suit schedule property and after his demise the plaintiffs are in possession and enjoyment of the suit schedule property. Off course at present the revenue records of the suit schedule property is standing in the name defendant. The said document prima-facie shows the possession of defendant over the suit schedule property. The plaintiffs by producing the photographs they are claiming their possession over the suit schedule property as on the date of institution of suit. The plaintiffs are claiming their title and possession over the suit schedule property on the strength of the sale deed dated 03-09-1965. But the defendant is seriously disputing the sale deed as well as possession of the plaintiffs. The defendant claiming title and possession over the suit schedule property on the strength of inheritance. But as per the sale deed dated 03-09-1965 Chandya Naik lost his title over the suit schedule property. Whether the said Chandya Naik has got right to alienate the suit schedule property or not is to be adjudged only after full pledged trial and not at this prima-facie case. The plaintiffs have questioned the revenue records of the defendant by preferring an appeal before the Assistant Commissioner Court and same is pending for adjudication. At this stage it appears that, the case of the defendant is also doubtful. Whether the plaintiffs are in peaceful possession and enjoyment of the suit schedule property or defendant is in possession and enjoyment of the suit property is to be ascertained only after full fledged trial. When both the

parties are claiming exclusive possession over the suit schedule property, it is better on the part of the Court to preserve the property by ordering status-quo with regard to the nature of the suit property, till disposal of the suit. Therefore, I decline to express any opinion regarding merits of the application. In my opinion it is a fit case to direct both parties to maintain status-quo with regard to nature and possession of the property until disposal of the suit and both parties are directed to co-operate with the court to dispose of the matter expeditiously. Hence, I proceed to pass the following :

:ORDER :

Both the parties are directed to maintain status-quo with regard to nature and possession of the suit property till disposal of the suit.

The parties are directed to assist the court to dispose of the suit expeditiously.

Accordingly I.A.No.1 is disposed off.

(Dictated to the stenographer directly on computer, typed by her , corrected and then pronounced by me in the open court on this day of 23rd June 2023)

(Manjunatha R.)
Prl. Civil Judge & JMFC.,
Honnali.

Order pronounced in the open court vide separate order)

ORDER

Call on:

(Manjunatha R.)

C/C Addl. Civil Judge and

JMFC.,

Honnali.