

IN THE COURT OF THE Addl. CIVIL JUDGE, AND
JUDICIAL MAGISTRATE FIRST CLASS AT HONNALI.

PRESENT : Smt. Archana K. Unnithan, B.E., L.L.B.

C/C Addl. Civil Judge and JMFC., Honnali

OS No.280/2021

Dated this day of 31st January 2022

PLAINTIFF		DEFENDANT
1. Khaleel S/o Shabbir Ahmad, 42 years, agriculturist, R/o: Govinakovi village, Honnali taluk and 2 others (Rep. By Sri. GSK., Advocate)	V/S	1. Nazeer sab S/o Imamsab, 77 years, R/o: Malebennur village, Harihara taluk and 10 others. (D1 to 9 Rep. By Sri. HGS ,Advocate, D10 and 11 Rep. By Sri. SNP ,Advocate)

Parties to I.A. No.1

Applicant		Opponent
1. Khaleel S/o Shabbir Ahmad, 42 years, agriculturist, R/o: Govinakovi village, Honnali taluk and 2 others	V/S	9. Srinivasa P S/o Ram rao, 49 years, R/o: Hunasehalli village, Honnali taluk.

Orders on I.A. No. 1

The plaintiffs have filed this IA. no.1 U/o 39 Rule 1 and 2 of CPC seeking the relief of injunction as against the defendants to restrain the defendant no.9 from alienating the suit schedule property till disposal of the suit.

2. Along with the IA , the plaintiff has filed affidavit stating that, suit schedule property was purchased by his grand father in the year 13-04-1996 . From the date of purchase they are in peaceful possession and enjoyment of the suit schedule property . It is his case that, the revenue entries were mutated in the name of his grand father same was standing in the name of Peersab S/o Modin sab. However, in the year 2018-19 the defendant no.1 fraudulently changed the khata in his name without knowledge of plaintiffs by colluding with revenue officials. However, it is their case that, the possession of the property still continues with the plaintiff .

3. Further it is alleged that, on strength of revenue entries , the defendant no.1 has created document styled as sale deed and kept on selling the property to different persons name. It is the case of plaintiff that, if the same is not stopped , the plaintiff will be put great hardship . It is his case that, the defendant no.9 would sell the property without having possession of the same merely by documents and cause great hardship to the plaintiff's . Hence, prays to allow the IA.

4. The defendant no.9 has filed objections to the IA no.1 and denied all the averments of plaint. It is the case of defendant that, plaintiff has created a false document to knock of the property of defendant . It is the case of defendant no.9

that, he is bonafide purchaser of suit schedule property . Further contended that, the plaintiffs have no document to show that, they are the purchaser of the suit land. On the other hand, defendants have sale deed standing in his name and revenue entries mutated in his name. Hence, prays to reject the IA.

5. Heard both the sides and perused the document produced.

6. The following points arises for the consideration of this court

- 1. Whether the plaintiff has made out prima facie case?*
- 2. Whether the balance of convenience lies in favour of plaintiff?*
- 3. Whether plaintiff put irreparable loss and injury ?*
- 4. What order?*

7. My findings to the above points are 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 order for the following:

REASONS

8.Point no.1 to 3 : Since, the facts are inter connected.

In order to avoid repetition of facts point no.1 to 3 are taken up together for consideration.

9. It is the case of the plaintiff that , the suit schedule property belongs to the ancestor of plaintiff . It is their case that, defendants colluded with revenue officials and created document styled as sale deed, it is alleged that, the very next day of sale the revenue entries were mutated in the name of defendants.

10. Learned counsel for plaintiff vehemently argued that, the defendants have created the document only with an intention to oust the plaintiffs possession of suit schedule property . It is the apprehension of plaintiff that, if temporary injunction is not granted defendant no.9 would alienate property of plaintiff in favour of 3rd party , thereby delay the trial .

11. It is the case of defendant that, suit schedule property belonged to ancestor of defendant , from whom it was purchased by defendant no.8 and later defendant no. 8 sold it to defendant no.9.

12. Learned counsel for plaintiff vehemently argued that, plaintiffs are in possession of suit schedule property , if the temporary injunction is not granted , it is likely that, defendant no.9 would execute sale deed in favour of 3rd parties, thereby

cause multiplicity of proceedings and great hardship to the plaintiff .

13. Learned counsel for defendant has filed objection and denied all the averments of plaintiff. It is his case that, 9th defendant is a bonafide purchaser . Learned counsel for defendant has filed his written argument and stated that, defendants gave notice to plaintiff and defendants before deleting name of plaintiff in RTC. However, plaintiff never attended Assistant Commissioner office, on basis of deleting the entry in RTC. Hence, defendant is absolute owner. It is argued that, plaintiff has no document to produced his title.

14. Having perused the pleadings and document placed on record. It is the observed that, the plaintiffs grand father had purchased the suit schedule property and they were in possession of suit schedule property . It is the case of defendants that, when Assistant Commissioner issued notice before deleting name of plaintiff , they did not turn up. Hence, no right to seek injunction. It is only case of plaintiff that, defendant is creating document without having physical possession of land and apprehended that, if defendant no.9 sells his land to another it would lead to multiplicity of proceedings .

15. Whether suit schedule property was ancestral property of defendant or not and whether the sale deed

obtained in favour of defendant no.9 is a valid sale deed or not needs to be decided by full dress of trial. It is observed that, the speed in which the sale deed were executed and revenue entries were effected definitely gives rise for suspicion. If the injunction is not granted it is likely that, plaintiffs will have to end up arraying further parties in the event of sale by defendant no.9. Thereby, this court is of the opinion that, plaintiff has made out a prima-facie case, balance of convenience, irreparable loss and injury lies in favour of plaintiff. Hence, this court proceed to answer the **point no.1 to 3 in the affirmative.**

16. **Point no.4:** Hence, this court proceed to pass the following :

//ORDER//

The IA no.1 filed by the plaintiff is hereby allowed.

The defendant no.9 is hereby restrained from alienating or creating charge in manner over the suit schedule property till disposal of the suit.

No order as to cost.

(Smt. Archana K. Unnithan)

Prl. C.J. And JMFC, Honnali.

(Order pronounced in the open court, vide separate order)

//ORDER//

The IA no.1 filed by the plaintiff is hereby allowed.

The defendant no.9 is hereby restrained from alienating or creating charge in manner over the suit schedule property till disposal of the suit.

No order as to cost.

For plaintiff evidence .
call on: 22-04-2022.

(Smt. Archana K. Unnithan)

Addl. C.J. And JMFC,
Honnali.

