

**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE, HUBBALLI.**

PRESENT

SRI. NAGARAJAPPA A.K.,
B.Com.,LL.B.

PRINCIPAL SENIOR CIVIL JUDGE, HUBBALLI.

ORIGINAL SUIT No.389/2013

Dated this the 12th day of June, 2019.

PLAINTIFFS : Smt. Susheela W/o. Basavaraj
Hugar, Age: 40 years, Occ: Household
work, R/o. Hirehandigol, Taluk:
Gadag, District: Gadag, **and others.**

(By Sri M.B.Patil, Advocate)

V/S

DEFENDANTS : Shri Prakash S/o. Malleshappa Hugar,
Age: 38, Occ: Agriculture, R/o.
Sadarsofa, Akkasaligara Oni, Old
Hubballi, Taluk: Hubballi, District:
Dharwad, **and others.**

(Deft.No.1 to 17, 28, 30 to 33 – Ex-parte,
Deft.No.18 to 22, 24, 25 by Shri I.D.Jalagar,
Advocate,
Deft.No.123 by Shri A.V.Baligar, Advocate,
Deft.No.29, 34, 38 A to C, 35, 36, 61, 62, 74,
80, 16, 195 to 197 by C.K.,
Deft.No.42 by Shri S.S.Khateeb, Advocate)

PARTIES to I.A.No.27

APPLICANTS : Smt. Susheela W/o. Basavaraj
PLAINTIFFS Hugar, and others.

VERSUS

OPPONENTS : Shri Prakash S/o. Malleshappa
Hugar & others.

DEFENDANT No.42: Mallikarjun S/o. Kallanagouda
Marigoudra.

(By Shri S.S.Khateeb, Advocate)

ORDERS ON I.A.No.27

Plaintiffs have filed this I.A. under Order 39 Rule 1 and 2 of C.P.C. for seeking temporary injunction against the defendant No.42 restraining him from making any further construction in suit schedule item No.1 property till disposal of the suit.

2. Applicant/Plaintiff No.1 has filed affidavit along with the said I.A. stating that, she is the plaintiff No.1, on 03.04.2019 the defendant No.42 demolished the old building existing in the suit schedule item No.1 property and now started digging the foundation with cement column for construction of new building during the pendency of this suit with an intention to change the nature of the suit property. The construction of the defendant No.42 is illegal, unlawful and defendant No.42 has no right to continue with the construction in the suit

property with an intention to change the nature of the suit. If the temporary injunction is not granted, the plaintiffs will be put to irreparable loss and injury and hence, this application.

3. After service of notice, defendant No.42 filed objections against I.A. by taking contention that, I.A. filed by the plaintiffs is colluding with Shri Babu S/o. Sunkanna Bellary and said Babu S/o. Sunkanna Bellary had filed suit in O.S.No.61/2019 on the file of IV Additional Civil Judge, Hubballi for bare injunction relating to same property. Court had granted ex-parte temporary injunction against the defendant and then defendant filed written statement and after hearing the arguments on merits, the said Babu S. Bellary had filed a memo on 22.03.2019 seeking not pressing the suit. Accordingly, said suit came to be dismissed as not pressed and thus the plaintiffs have given up their grievance against the defendant once for all. Principle of estoppel operates against such grievance against the defendant. The plaintiffs claiming to be the owners in possession of the suit property and prayed relief is lacking the bonafides and this defendant cannot be vexed twice for the same reasons. There is no equity in favour of the plaintiffs in filing this I.A. Further, he has produced the relevant documents of O.S.No.61/2019 i.e.

copy of plaint, written statement, I.A.No.I, memos, order sheet and I.A. filed by Babu S. Bellary under Order 1 Rule 10(1) of C.P.C. and true copy of the objection filed by the defendant No.42 on 11.04.2019 etc. He has denied the I.A. affidavit averments. Plaintiffs have not made out prima facie case and balance of convenience is not in favour of the plaintiffs and no hardship whatsoever would be caused to the plaintiffs if the application is dismissed. On the other hand, if the temporary injunction is granted, the defendant No.42 will be liable to suffer untold hardship, which cannot be compensated in terms of money. Defendant No.42 is the absolute owner in possession of the suit property in respect of temporary injunction is sought for by the plaintiffs. The suit property is one of the residential plots among several plots formed by the ancestors of the plaintiffs. All these plots are 'Akram-Sakram' plots laid in R.S.No.39 situated at Ayodhya Gram of Hubballi Taluk and the suit plot is bearing No.7B comprised in R.S.No.39 of Ayodhya Gram. After purchasing the plot, this defendant has constructed a temporary house and was leaving with his family members by entering his name in the Municipal Records and he has paid Tax and in fact he had filed a separate application under Order 39 rule 10 of C.P.C. to call for documents of O.S.No.69/2019, which is already disposed

off. Since the temporary house constructed by the defendant No.42 became dilapidated, not suitable for inhabitation, hence, he took a rented house for his temporary stay and demolished the whole temporary structure situated in the said plot and started the construction work in the said 'Akram-Sakram' plot. Pits are dug in the said plot and columns are standing so as to build a house for the defendant No.42 to live with his family members. Now, with an intention to harass, the plaintiffs have filed this I.A. to cause monetary loss etc. Hence, he prayed for dismissal of I.A.

4. Heard the arguments and perused the materials placed on record. The following points that would arise for my consideration:

(1) Whether applicants/plaintiffs have made out a prima facie case?

(2) Whether the balance of convenience lies in favour of applicants/plaintiffs?

(3) Whether the plaintiffs prove that if temporary injunction is not granted they will be put to irreparable loss and injury than the defendant No.42?

(2) What order or decree?

5. My findings to the above points are 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

6. **POINT No.1:** It is true plaintiffs have filed this suit against the defendants for seeking partition and separate possession claiming 1/7th share each and also sought for declaration to declare that the sale deeds are illegal and not binding upon the plaintiffs and also for demolition of alleged illegal constructions made in the suit properties by defendant No.26 to 180 and 195, 196 and 197 in the suit schedule item No.1 property, by way of mandatory injunction and also sought for demolition of house constructed by the defendant No.181 to 194 in the suit schedule item No.3 to 6.

7. Now, when the case was posted for plaintiffs' evidence, at that time the above I.A. is filed by the plaintiffs for seeking temporary injunction against the defendant No.42 as prayed for I.A.No.27.

8. It is true plaintiffs are claiming their share in the suit properties as daughters of one Malleshappa and Smt. Devakka. Said Malleshappa is the son of Somappa Mallappa Hugar and said Somappa Mallappa Hugar is

the son of original propositus Mallappa Hugar. Said Mallappa Hugar had 04 sons, all are died leaving behind their legal heirs as per the genealogy produced by the plaintiffs. Now, the plaintiffs have sought for partition and separate possession against the defendant No.1 to 22 claiming that they are the members of joint family. Rest of the defendants in the present suit i.e. defendant No.23 to 197 are all not the members of the joint family of the plaintiffs, but they are illegal purchasers of the portion of the suit properties as pleaded in the plaint. It is also case of the plaintiffs that, defendant No.26 to 180 and 195 to 197 have illegally constructed the houses in the suit schedule item No.1 property and defendant No.181 to 194 have illegally constructed the houses by encroachment in suit schedule item No.3 to 6. Out of them, defendant No.42 is one among them. Now, defendant No.42 demolished the old structure and now started digging the foundation with an intention to construct new building in the suit property illegally without having any right, title and interest over the property.

9. On the contrary, defendant No.42, although has not filed his separate written statement, but he has filed a memo to adopt the written statement of defendant No.153, wherein, defendant No.153 has taken contention

that, himself and other defendants have purchased residential plots in the suit properties from the original owner and have constructed the residential houses for their residence purpose. The propositus of the family of the plaintiffs and the defendant No.1 to 22 by name Mallappa Hugar has made several residential plots in the suit land and has sold to various purchasers. Said purchasers have constructed the houses for their shelter, they have been in possession and enjoyment of the property since last more than 03 decades and possession of the said defendants is lawful etc. But, nowhere in the written statement pleaded the status of the defendant No.42. Whereas, in the objection filed by the defendant No.42 against I.A., he has contended that he is the absolute owner in occupation of the property, as the said residential temporary structure was in dilapidated condition, therefore he has demolished the same and started new construction etc.

10. It is true, in order to substantiate the contention of the plaintiffs they have produced number of documents as per Ex.P.1 to P.8 along with photographs about the started construction, foundation made by the defendant No.42 and it is not the case of the defendant No.42 that the suit property was not belongs to the original propositus of the plaintiffs' family, but, their

specific contention is that, since the original propositus has sold property to several persons and then they have also purchased the plots and made construction etc.

11. It is true that defendant No.42 has produced some documents i.e. Tax paid receipts and unregistered sale deed alleged to have executed by Mallappa Hugar and other 05 members in favour of Gurushiddappa Parappa Ayatti relating to plot No.B6, B7 out of Survey No.39. Another xerox copy of unregistered sale deed produced by the defendant No.42 i.e. executed by Gurushiddappa Parappa Ayatti in favour of the present defendant No.42. So, once it is clear at this stage that the defendant No.42 is claiming right, title and interest over the property on the basis of the unregistered alleged sale deed and even the vendor of the defendant No.42 also purchased the said property on the basis of the unregistered sale deed. Now, the plaintiffs have sought for declaration to declare that the said sale deeds are illegal, not binding upon the plaintiffs and also sought for demolition of illegal construction made by several defendants including the present defendant No.42.

12. When the plaintiffs have sought for partition and separate possession and seeking the relief of declaration and mandatory injunction to demolish the

alleged illegal constructions, defendant No.42 is claiming right, title and interest over the suit property on the basis of unregistered sale deed, even though plaintiffs have filed this I.A. when the defendant No.42 has started marking for construction of the building or started digging or the columns have been erected, and after considering the objections raised by the other side, this Court has passed an order of status-quo on 12.04.2019 considering the facts and documents produced by both parties. In spite of that, the defendant No.42 continued with the construction without stopping the further construction and without obeying the order of this Court as per the contention of the plaintiffs. It is true that the plaintiffs have produced some more photographs to show how the defendant No.42 continued with the construction even after order of status-quo. Now, he has made construction above the foundation. When the defendants have not denied that the suit property originally belongs to the plaintiffs' ancestors and defendant No.42 claiming right, title and interest on the basis of the unregistered sale deed, even though there was old structure in the said suit property and now after demolition started new construction, but, considering the facts and circumstances and considering the reliefs sought for by the plaintiffs and considering the order

passed by this Court that too from beginning of the starting construction of the building, that means at the time of making foundation or started foundation, in spite of that defendant No.42 continued with the construction though the plaintiffs have obtained order of status-quo, which shows said construction is against the order of the Court. Hence, considering the nature of the suit that too for demolition of the alleged illegal constructions made in the suit properties, not only the construction of the defendant No.42, and also construction made by other defendants and challenged the alleged sale deeds are to be declared as not binding upon the plaintiffs are all taken into consideration, I am of the considered opinion that, at this stage, the plaintiffs have made out a prima facie case. It is true defendant No.42 has cited a decision reported in **AIR 2008 Supreme Court 2291 (Between: Mandali Rangna & Others etc. Vs. T. Ramachandra & Others)**. When I have gone through the said decision in detail, the facts and circumstances of the case of said decision and the present case on hand are entirely different. Because, in the present case on hand, the plaintiffs have already filed suit for partition and separate possession as well as mandatory injunction and also declaration and during the pendency of the suit, even there was an order of status-quo, defendant No.42

continued the construction. Hence, the facts of the said decision and the facts of the present case on hand are different. Hence, defendant No.42 cannot take shelter under the said decision in any manner at this stage. Hence, I answer ***point No.1 in the affirmative.***

13. **POINT No.2 AND 3:** In view of the finding on above point No.1, plaintiffs have made out a prima facie case. If temporary injunction is not granted and if defendant No.42 continued with the construction and completed the construction, definitely it will cause more inconvenience and injustice to the plaintiffs and it amounts to permission to defendant No.42 to change the nature of the property or to permit him to violate the order passed by this Court and same is not permissible under law. When the defendant No.42 is residing in a separate rented house as contended by him, if he kept quiet till disposal of this suit without continuing with the construction, the matter would have different. But, he has continued the construction in spite of order of status-quo and moreover, the plaintiffs have sought for demolition of all the illegal constructions made by the defendant No.23 to 197. Admittedly, in the present suit already trial is commenced. The matter was posted for further chief examination of P.W.1. If both parties cooperate for the disposal of the suit without taking any

unnecessary adjournments the above suit will be disposed off on merits within a short period without any delay. When things stand thus, if the temporary injunction is granted, defendant No.42 will be put to irreparable loss and injury than the plaintiffs does not arise. Under such circumstances, if temporary injunction is not granted, it amounts to curtail of legal rights of the plaintiffs, same cannot be compensated in terms of money. On the other hand, if the order of injunction is passed till disposal of the suit, if any loss caused to the defendant No.42, the same can be compensated in terms of money and same can be recovered from the plaintiffs with interest as there is no bar as such. Hence, I answer point No.2 and 3 in the affirmative.

14. **Point No.4:** For the foregoing reasons and discussions and considering the findings on above points, I proceed to pass the following:

ORDER

I.A.No.27 filed by the applicants/plaintiffs under Order 39 Rule 1 and 2 of C.P.C. is hereby allowed.

Issue temporary injunction against the defendant No.42 not to make any further construction in the suit schedule item No.1

property in any manner till disposal of the
suit.

*(Dictated to the Stenographer, transcribed and computerized
by her, script corrected and then pronounced by me in the open
court on this the **12th day of June-2019**)*

(Nagarajappa A.K.)
Principal Senior Civil Judge,
Hubballi.
