

IN THE COURT OF ADDL. SENIOR CIVIL JUDGE, GADAG.

PRESENT: Sri. Prakash Channappa Kurabett
B.SC., L.L.B. (Spl.)
Prl. Senior Civil Judge & CJM., Gadag.
C/c. Addl. Senior Civil Judge, Gadag.

O.S. No.14/2022

This the 2nd day of March 2023

PLAINTIFF:

Subhas S/o Nagendrasa Pawar,
Age : 40 years, Occ : Agriculture & Business,
R/o Bankers colony, Keshav nagar, Gadag,
Tq: Dist: Gadag.

(By Sri. VAC Adv.,)

-Vs-

DEFENDANTS :

1. Bapugouda S/o Basanagouda
Surappagoudra, Age : 65 years,
Occ : Agriculture, R/o Narayanpur,
Tq: Dist: Gadag.
2. Abdulrajak S/o Rajesab Danked
Age : 54 years, Occ : Agriculture,
R/o Taj Nagar, Hubli road, Gadag
Tq: Dist: Gadag.

**(D1 by Sri. AAH Adv.,
D2 by Sri. BMS Adv.,)**

PARTIES I.A. No.VI

APPLICANT:

Abdulrajik S/o Rajesab Danked

-Vs-

OPPONENT:

Subhas S/o Nagendrasa Pawar,

ORDERS ON I.A. No.VI

I.A. No.VI filed by the applicant/ defendant No.2 U/o. XIV Rule 6(1) (2) R/w. Sec. 151 of CPC with a prayer to frame additional issue and be treated the same as preliminary issues as under;

1. Whether the suit of the plaintiff is maintainable, on the ground that as on the date of the suit whether the present plaintiff has got any title, right over the property?
2. In the sub-joined affidavit filed along with the application, the defendant No.2 has sworn in the affidavit and contended that, he had filed his written statement by stating that, the defendant No.1 is the original owner of the suit property bearing R.S. No.286/2 and father of the plaintiff Nagendrasa Pawar is a mortgagee, his name has been appeared in column No.11 by creating charges over the suit property. But his name has been entered in column No.9 is totally wrong U/s. 58 of Transfer of Property Act. The defendant No.1 has produced the documents on 13.06.222 by stating that, the redemption of mortgage has been taken place between the defendant

No.1 and Nagendrasa Pawar on 28.08.2011 through relinquishment of mortgage and charges over the suit property.

3. Further contended that, on the strength of redemption deed and charges over the property has been clear and name of mortgagee has been deleted and name of defendant No.1 has been appeared in the suit property as per ME No.6172 dated 21.01.2002. Hence, the said Nagendrasa Pawar has not right over the suit property. Further contended that, the documents produced by the defendant No.1 are relevant documents to frame the preliminary issue. When the father of the plaintiff himself has executed relinquishment of mortgage by executing the redemption deed on 28.08.2001 and received Rs.50,000/- of the mortgage amount then the name of defendant No.1 has appeared in the RoR in respect of suit property and cleared off the said mortgage and same has been redeemed. Hence, the plaintiff has no locus-standi to file this suit. Hence, before touching the merit of the case on other issues, it is necessary to

frame preliminary issue and same has to hear and decide the case on said preliminary issues. Further contended that, the plaintiff has misguided the court by filing false version and got the exparte injunction granted by this court. Due to the said temporary injunction order, the defendant No.2 put to hardship. The plaintiff just to grab the money and blackmailing the defendants he has filed this suit. Hence, prayed to allow the application.

4. The defendant No.1 has filed memo stating that, he has no objection to allow I.A. No.VI.
5. On the other hand, the plaintiff has filed objections to the above said application and contended that, the application filed by the defendant No.2 is not maintainable. Further contended that, the plaintiff has filed this suit against the defendants for declaration and consequential relief of permanent injunction in respect of suit property. After filing the suit, the defendants were appeared and proceed with the case. Further contended that, the plaintiff is the owner and in possession of the suit property by virtue of Will which executed by his

father Nagendrasa Pawar in respect of suit property. The defendants No.1 and 2 are no way concerned to the said property. The defendant No.1 behind the back of the plaintiff, got mutated his name and transferred the same in favour of defendant No.2. Further contended that, the plaintiff's family is in possession of the suit property by virtue of document executed by defendant No.1 in favour of plaintiff father. After the death of father of plaintiff, the plaintiff was came in possession of the suit property. During the lifetime of father of plaintiff, he was executed Will in the year 1994 in favour of plaintiff in respect of suit property, after his death there is delay for entering the name of plaintiff.

6. Further contended that, suit of the plaintiff is maintainable, as since long time suit property is in possession and enjoyment of the plaintiff's family more then 20 years. The defendants have not taken any steps against the family of plaintiff. The question of raising preliminary issues will not come in this case, because the defendants have not challenged in respect of ownership

and possession of family of plaintiff in respect of suit property since more than 20 years. Hence, prayed to reject the application.

7. Upon considering the application, objection and other material available on record, the following points arises for my consideration.

POINTS

1. Whether I.A. No.VI filed by the applicant / defendant No.2 U/o. XIV Rule 6(1) (2) R/w. Sec. 151 of CPC is deserves to be allowed?
2. What order?

8. My answer to the above points is as under:

Point No.1 : In the affirmative

Point No.2 : As per final order,
for the following:

REASONS

9. **Point No.1:-** I.A. No.VI filed by the applicant/ defendant No.2 U/o. XIV Rule 6(1) (2) R/w. Sec. 151 of CPC with a prayer to frame additional issue and be treated the same as preliminary issues as under;

1. Whether the suit of the plaintiff is maintainable, on the ground that as one the date of the suit whether the present plaintiff has got any title, right over the property?
10. In the sub-joined affidavit filed along with the application, the defendant No.2 has sworn in the affidavit and contended that, he had filed his written statement by stating that, the defendant No.1 is the original owner of the suit property bearing R.S. No.286/2 and father of the plaintiff Nagendrasa Pawar is a mortgagee, his name has been appeared in column No.11 by creating charges over the suit property. But his name has been entered in column No.9 is totally wrong U/s. 58 of Transfer of Property Act. The defendant No.1 has produced the documents on 13.06.222 by stating that, the redemption of mortgage has been taken place between the defendant No.1 and Nagendrasa Pawar on 28.08.2011 through relinquishment of mortgage and charges over the suit property.
11. Further contended that, on the strength of redemption deed and charges over the property has been clear and

name of mortgagee has been deleted and name of defendant No.1 has been appeared in the suit property as per ME No.6172 dated 21.01.2002. Hence, the said Nagendrasa Pauer has not right over the suit property. Further contended that, the documents produced by the defendant No.1 are relevant documents to frame the preliminary issue. When the father of the plaintiff himself has executed relinquishment of mortgage by executing the redemption deed on 28.08.2001 and received Rs.50,000/- of the mortgage amount then the name of defendant No.1 has appeared in the RoR in respect of suit property and cleared off the said mortgage and same has been redeemed. Hence, the plaintiff has no locus-standi to file this suit. Hence, before touching the merit of the case on other issues, it is necessary to frame preliminary issue and same has to hear and decide the case on said preliminary issues. Further contended that, the plaintiff has misguided the court by filing false version and got the exparte injunction granted by this court. Due to the said temporary injunction order, the

defendant No.2 put to hardship. The plaintiff just to grab the money and blackmailing the defendants he has filed this suit. Hence, prayed to allow the application.

12. The defendant No.1 has filed memo stating that, he has no objection to allow I.A. No.VI.

13. On the other hand, the plaintiff has filed objections to the above said application and contended that, the application filed by the defendant No.2 is not maintainable. Further contended that, the plaintiff has filed this suit against the defendants for declaration and consequential relief of permanent injunction in respect of suit property. After filing the suit, the defendants were appeared and proceed with the case. Further contended that, the plaintiff is the owner and in possession of the suit property by virtue of Will which executed by his father Nagendrasa Pawar in respect of suit property. The defendants No.1 and 2 are no way concerned to the said property. The defendant No.1 behind the back of the plaintiff, got mutated his name and transferred the same in favour of defendant No.2. Further contended that, the

plaintiff's family is in possession of the suit property by virtue of document executed by defendant No.1 in favour of plaintiff father. After the death of father of plaintiff, the plaintiff was came in possession of the suit property. During the lifetime of father of plaintiff, he was executed Will in the year 1994 in favour of plaintiff in respect of suit property, after his death there is delay for entering the name of plaintiff.

14. Further contended that, suit of the plaintiff is maintainable, as since long time suit property is in possession and enjoyment of the plaintiff's family more then 20 years. The defendants have not taken any steps against the family of plaintiff. The question of raising preliminary issues will not come in this case, because the defendants have not challenged in respect of ownership and possession of family of plaintiff in respect of suit property since more than 20 years. Hence, prayed to reject the application.
15. That, upon being the careful going through the contents of affidavit filed along with the application and objections,

this court of the opinion that, the applicant/defendant No.2 has made out grounds to frame additional issue and same be treated as preliminary issues. Further it reveals that, the plaintiff has filed this suit against the defendants for the relief of declaration to declare that, he is the owner of suit property as per the Will executed by his father deceased Nagendrasa in favour of plaintiff on 23.03.1994 in respect of suit property bearing Sy. No.286/1 situated at Gadag and also for consequential relief of permanent injunction against the defendants restrain them from obstructing the peaceful possession and enjoyment of the plaintiff over the suit property. The plaintiff in the plaint he has stated that, the defendant No.1 mortgaged the suit property in favour of his father on 11.10.1990. The deceased Nagendrasa who is father of plaintiff had executed Will on 23.03.1994. But the defendant No.1 behind the back of the plaintiff got mutated his name, got executed sale deed in favour of defendant No.2 on 09.04.2015 illegally without having any right in respect of suit property.

16. On the contrary the defendants contended that, the plaintiff has created the alleged Will, his father not the owner in respect of suit property and in column No.11 other rights and encumbrances the name of the defendant No.1 has been appeared and it cannot be possible to enter the name of mortgagee as a owner in the property extract of immovable property and defendant No.2 is the bonafide purchaser of suit property.
17. The defendant in the affidavit he has stated that, the father of the plaintiff he himself executed relinquishment of mortgage by executing the redemption of deed on 28.08.2001 and received an amount of Rs.50,000/- and thereafter, the name of defendant No.1 has appeared in the RoR in respect of suit property. But the plaintiff in his objection taken contention that, the defendant No.1 behind the back of plaintiff has got entered his name in respect of suit property. To know the said facts, it is necessary to frame the additional issue regarding the maintainability of the suit and decide the matter on merit

and said issue is necessary to hear first before hearing the other issues.

18. From careful going through the application, affidavit filed along with the application, objections and plaint averments, this court of the considered the opinion that, the proposed preliminary issue is necessary to frame as sought for in the application. The plaintiff has filed this suit for the relief of declaration in respect of suit property. After filing of the suit the defendants have appeared before this court and filed the written statement. From the above pleadings of the defendants the said issue regarding the maintainability of the suit is necessary to frame in this case.

19. Further it is significant to mention to here that, this proposed issue has to be heard first before hearing the other issues, since the same is material issue to decide a justice between the parties. There is no issue framed earlier regarding maintainability of the suit. Hence, now it is just and necessary to frame the proposed issue and same is treated as preliminarily issue as sought for in the

application. Therefore, in view of the above reasons, **this**

Court hold point No.1 in the affirmative.

20. **Point No.2:-** In view of my above findings on point No.1, I proceed to pass the following:

ORDER

I.A. No.VI filed by the applicant/defendant No.2 U/o. XIV Rule 6(1) (2) R/w. Sec. 151 of CPC is hereby allowed.

Consequently, the proposed issue is framed as prayed in the application.

NOTE: This issue is to be treated as preliminary issue.

Call on for hearing on preliminary issue.

(Dictated to the stenographer, directly on computer, revised by me and then pronounced in the open court on this the 2nd day of March 2023)

(PRAKASH C. KURABETT)

**Prl. Senior Civil Judge & CJM., Gadag
C/c. Addl. Senior Civil Judge, Gadag.**