

**IN THE COURT OF PRL CIVIL JUDGE AND JMFC
AT GADAG**

Present:- Sri. Arun Chougule,
B.A.LL.B.[Hons.]

Prl. C.J. & JMFC., Gadag.

Dated this the 16th day of February- 2024

ORIGINAL SUIT NO.86/2019

PLAINTIFFS: Sri Hale Banashankari Devi of Betageri, Tq:Gadag
A trust registered under the provisions Bombay
Public Trust Act under No.A-1602(DWR)
represented by its trustees.

- 1) Shri. Rajendra S/o Fakirappa Baradwad,
Age: 65 Years, Occ:Retd. Employee,
R/o Mallarayan Katti Oni, Near Tenginkai Bazar,
Betageri, Tq:Dist:Gadag.
- 2) Shri. Basappa S/o Prabhanna Gutti,
Age: 66 Years, Occ:Pvt. Service,
R/o Hosagaradi Oni, Banasankari Road, Betageri.
- 3) Mahabaleshwarappa @ Mahabaleshwar S/o
Ayyappa Jujagar
(Dead)
- 4) Sadanand S/o Gurunathappa Honnalli,
(Dead)
- 5) Shri Rajakumar S/o Shyamanna Hattikal
Age: 46 Years, Occ:Advocate,
R/o Betageri Mallarayan Katti Oni,
Betageri, Tq:Dist:Gadag.

- 6) Vansantappa S/o Sankappa Nandaragi
(Dead)

(By Sri. S.S.S Advocate)

-V/S-

- DEFENDANTS** :-
- 1) Shri. Dhirendra Bheemarao Huilgol,
Age: 66 years, Occ:Agriculture,
R/o Burabure Plot, Panchaxari Nagar,
Gadag.
 - 2) Shri Shriranga Bheemarao Huilgol,
Age: 64 years, Occ:Business & Agriculture,
R/o K.V. Joshi, K.C.Rani Road,
Gadag.
 - 3) Shri. Shrinivas Bheemarao Huilgol,
Age: 62 years, Occ:Agriculture,
R/o Opposite Municipality, Gadag
 - 4) Venkatesh S/o Ramachandra Harlapur,
Age: 60 years, Occ:Business,
R/o Kustagi Chawl, Betageri.
 - 5) Ravindra S/o Ramachandra Harlapur,
Age: 58 Years, Occ:Business,
R/o Kustagi Chawl, Betageri.
 - 6) Raghunath S/o Ramachandra Harlapur,
Age: 56 Years, Occ:Business,
R/o Kustagi Chawl, Betageri.
 - 7) Shrinivas S/o Govind Harlapur,
Age: 54 Years, Occ:Business,
R/o Kustagi Chawl, Betageri.
 - 8) Vidya Dan Samiti Gadag,
by its President, Dhirendra Bheemarao Huilgol
Age: 66 years, Occ:Business,
K.C.Rani Road, Gadag

- 9) Sri Bistappa S/o Fakeerappa Dandin,
Age: 81 years, Occ:Business,
R/o Vidya Nagar, Masari, Gadag
- 10) Kanakadas Sikshana Samiti Gadag by its
president Sri Bistappa S/o Fakeerappa Dandin,
Age: 81 Years, Occ:Business,
R/o Vidya Nagar, Masari, Gadag
- 11) Smt. Shubhalaxami W/o Dheeranna Huilgol,
Age: 59 years, Occ:Business,
R/o Burabure Plot, Panchaxari Nagar,
Gadag.
- 12) Gangappa S/o Kalappa Badiger,
Age: 60 years
Occ:Business,
R/o Kantipete, Guledagudda, Tq:Badami.
- 13) Smt. Bhagavva @ Basawwa W/o Prakash
Sutar, Age: 58 years,
Occ:Business, R/o Kantipete Guledagudda,
Tq:Badami.
- 14) Shekhrappa @ Shekhar S/o Kalappa Badiger,
Age: 56 years, Occ:Business,
R/o Kantipete, Guledagudda, Tq:Badami.
- 15) Smt. Sulochana W/o Siddappa Kambar,
Age: 54 years, Occ:Business,
R/o Kaladagi, Tq:Hunagund,
Dist:Bagalkot.
- 16) Mohan S/o Dundappa Badiger,
(reported to be dead)
- 17) Smt. Vimala W/o Narayan Sutar,
Occ:Business, Age: 59 years
R/o Kaladagi, Tq:Hunagund, Dist:Bagalkot.

- 18) Shri Veerappa @ Veeranna S/o Dundappa
Badiger, Occ:Business, Age: 52 years,
R/o Kaladagi, Tq:Hunagund, Dist:Bagalkot
- 19) Tuljanasa S/o Lobosa Kabadi,
(deceased by his Lrs)
- 19(a) Smt. Kousalyabai W/o. Tulajanasa Kabadi
Age: 75 Years, Occ: Household
R/o. Hosagardi Oni, Opp. Old Banashankari
Temple Betageri-582102, Tq:Dist: Gadag.
- 19(b) Smt. Manjulabai W/o. Ramachandrasa
Kalaburgi,
Age: 54 Years, Occ: Household
R/o. Dasar Galli, Near Durgamma Temple,
Tq:Dist: Gadag.
- 19(c) Smt. Nagaratna @ Anita W/o. Anil Jaratarkar
Age: 49 Years, Occ: Household,
R/o. 927, Joshi Galli, Teacher Colony
Shapur. Belagavi.
- 19(d) Smt. Muktabai W/o. Parasurama Devale
Age: 46 Years, Occ: Household
R/o. Near Bus stand, Hanamasagar
Tq:Kustagi, Dist: Koppal.
- 19(e) Sri. Raghavendra S/o. Tulajanasa Kabadi
Age: 43 Years, Occ: Business
R/o. Hosagardi Oni, Opp. Old
Banashankari Temple Betageri,
Tq:Dist: Gadag.
- 20) Sri. Manjunath S/o Narayanasa Kabadi,
Age: 52 Years, Occ:Business,
R/o Hatalageri Road, Masari, Gadag.

- 21) Sri. Lobosa S/o Narayanasa Kabadi,
Age: 47 Years, Occ:Business,
R/o Hatalageri Road, Masari, Gadag.
- 22) Sri. Nagaraj S/o Narayanasa Kabadi,
Age: 42 Years, Occ:Business,
R/o Hatalageri Road, Masari, Gadag
- 23) Smt. Rajeshwaribai W/o Jaganath Ratan,
Age: 50 Years, Occ:Business,
R/o Aradika Apartment, 1st floor, H.No.103,
Near Seventh Day School, Bhavani Nagar,
Hubballi.
- 24) Smt. Subhadrabai W/o Arjunasa Kabadi,
Age: 67 Years, Occ:Business,
R/o Near Ambabhavani Temple, Kabadi Galli,
Betageri, Tq:Gadag.
- 25) Ramachandrsa @ Ramusa S/o Arjunasa
Kabadi, Age: 36 Years, Occ:Business,
R/o Hosagaradi Oni, Near Hale Banashankari
Temple, Betageri, Tq:Gadag.
- 26) Sri. Laxmansa S/o Arjunasa Kabadi,
Age: 32 Years, Occ:Business,
R/o Hosagaradi Oni, Near Hale Banashankari
Temple, Betageri, Tq:Gadag.
- 27) Smt. Bharatibai W/o Sanjusa Raibagi,
Age: 40 years, Occ:Business,
R/o Kaddi plot, Near Airtel Tower,
Kustagi Rod, Gajendragad, Tq:Ron, Dist:Gadag

28) Smt. Roopa @ Roopabai W/o Anilsa Megharaj,
Age: 38 Years, Occ:Business,
R/o Door No.2, Ganiger, D. Line,
Jumma Masjid Road cross, Near Mathad
Complex, III Floor, 10th Cross, Kabban Peth,
Bangalore-2.

**(D1 to 3, 8 &11-By Sri. S.A.K Advocate
D4 to 7, 12 to 14, 16,19 to 28-Ex parte
D9 & 10-By Sri S.R.G. Advocate
D15,17 & 18 By Sri. S.B.C Advocate
D19(a to e) By Sri. K.L.P Advocate)**

:: In IA.No.14:

Applicants/ plaintiff /s : Sri Hale Banashankari Devi of Betageri
Tq:Gadag, A trust represented by its trustees
1) Shri. Rajendra S/o Fakirappa Baradwad
and others
-V/s-

Opponent/ defendant/s:- 1) Shri. Dhirendra Bheemarao Huilgol
and others

i.	<i>Provision under which the application is filed</i>	Under Order 39 Rule 1 and 2 of CPC
ii.	<i>Relief sought for</i>	Temporary injunction
iii.	<i>The date on which the application is filed</i>	29-08-2023
iv.	<i>Number of the application</i>	14/2023
v.	<i>The date on which the objections are filed by different opponents</i>	16-09-2023
vi.	<i>The date on which the orders were passed on the said application.</i>	16-02-2024

ORDER ON I.A.NO.14 FILED BY THE PLAINTIFF
UNDER ORDER XXXIX RULE 1 AND 2 OF CPC

The plaintiff has filed the present application seeking temporary injunction restraining the defendants from alienating the suit properties by way of sale, mortgage, lease etc., including making any development works in the suit properties, till disposal of the suit.

2. The plaintiff No.1 being one of the trustees of the plaintiff trust has sworn to an affidavit in support of the application stating that, the suit properties are sub-divisions of CTS No.6698 of Gadag totally measuring 10 acres 20 guntas. That, the suit properties were earlier comprised in R.S.No.469 of Betageri owned by the plaintiff trust. It is stated that one Mudakappa @ Avinneppa was also joined as a trustee along with other 5 trustees as he was rendering service as Pujari of Sri.Halebanashankari Devi of Betageri. That, said Mudakappa died issueless on 03-06-1965, his brother Basappa has also died issueless on 10-04-1965 and his father's brother by name Nagappa Avanneppa Pattar has also died issueless on 25-10-1929. It is stated that, one Shankarappa claimed to be adopted son of said Nagappa. The said Shankarappa along with one Lobosa Kadi had filed miscellaneous petition No.72/1972 before the Honble District Court, Dharwad, wherein said Logosa claimed rights over western half portion of the suit property on the strength of sale deed dated 20-02-159 executed by said Shankarappa. The said petition came to be

disposed off by an order dated 27-06-1973 with observation that Mudakappa Pattar did not have any individual rights in the trust property. That, the defendant No.12 to 18 are claiming to be grandchildren of said Shankarappa. The said defendants are not residing either in Gadag or in any surrounding place and neither they nor Shanakarappa rendered services as Pujari at the temple. That, the defendant No.9 to 28 are claiming to be heirs of Lobosa Kadi, whose rights over the suit properties have already been decided in the miscellaneous petition No.72/1972 and nobody has challenged the said order.

3. It is stated the defendant No.9 to 11 are subsequent alienation in respect of eastern 2 acres 25 guntas of suit property now bearing C.T.S.No.6698/2, CTS No.6698/3 and CTS No.6698/4. That these alienation made are behind the back and without the knowledge of the present plaintiff trust and its trustees. These two sale deeds dated 22-12-2006 under registration No.4132 and 4133 in the office of Sub Registrar Gadag are created by taking undue advantage of illegal entries made in the city survey records. Those entries in the city survey records are much contrary to the order passed by the city survey officer/Tahashildar under earlier order dated 29-08-1974 passed in RTS/SR-23/1/1972. Those subsequent city survey entries and the deeds created on the basis of such illegal entries made in the names of defendant No.8 to 28 are void ab initio and they do not create any right, title or interest whatsoever over the suit properties. The sale deed dated 20-02-1959 in the name of Lobosa Hamposa

Kabadi in respect of western half portion of the suit properties and mortgage deed dated 10-02-1970 in the name of defendant No.19 Tulajanasa Lobosa Kabadi in respect of eastern half portion of the suit properties are void as they are created without consent of body of trustees and those alienations by way of sale or mortgage are not made with due permission of the competent authority/charity Commissioner as required u/s 36 of Bombay Public Trust Act 1950. That, Shankrappa Pattar or his heirs cannot alienate the suit properties or any portion thereof. That defendant No.12 to 18 are not the trustees. Law do not permit any single trustee to act, as there is a bar u/s 47 of Indian Trust Act 1882. Any such alienation is void and not binding upon trust.

4. It is stated that the Manager who was cultivating the suit land i.e., (1) Adivappa and (2) Nagappa S/ Avineppa Pattar have leased out the suit land under registered lease deeds under registration No.392/1919-20 and 391/1919-20 registered on 24-03-1920 in the names of (1) Narayan Vasudev Huilgol and (2) Shrinivas Subhaji Harlapur respectively under registered lease deed for the period of 99 years pending up to 24-03-2019. Thus, those two persons namely Narayan Vasudev Huilgol and Shrinivas Subhaji Harlapur were put in possession of the suit land as lessees. The original lessees namely Narayan Vasudev Huilgol and his son Bhimarao are now dead and the present defendant No.1 to 3 are the heirs to said original first lessee namely Narayan Vasudev Huilgol. That, another original lessee Shrinivas Subhaji Haralapur had two sons namely Ramachandra and

Govind. Those two sons are now dead. The defendant No.4 to 6 are the sons of Ramachjandra S/o Shrinivas Harlapur and the defendant No.7 is the son of Govind Shrinivas Harlapur. That, defendant No.4 to 7 represent the original second lessee Shrinivas Subhaji Harlapur. That, in those lease deeds the names of the lessees are shown in their individual capacity. There is no transfer of leasehold rights in favour of any institution under a registered deed. However, Vidyadan Samiti Gadag/defendant No.8 is claiming possession and enjoyment of the suit properties as lessee. Hence, the legal representatives of original lessees and said Vidyadan Samiti are made as party to this suit for possession.

5. That, the defendant No.1 to 8 or any person claiming through them have no right to continue in possession of the suit property after expiry of contractual period of lease. Thus, the right to possess the suit property by the defendant No.1 to 7 or defendant No.8 came to an end by the end and expiry of 23-03-2019. The right of possession in favour of the defendant No.1 to 8 is terminated by lapse of time. There is no necessity to terminate the lease. However, the plaintiffs have got issued notice dated 23-01-2019 to offer an opportunity to vacate and deliver vacant possession of the suit properties. The notices were sent to defendant No.1 to 8 and the person claiming possession through defendant No.8 i.e., the defendant No.9 to 11 also. The copies of said notice are issued to the other defendants also. The defendant No.1 to 3, 8 and 11 has given false reply dated 20-12-2019. That, the said notice is served upon

defendant No.4,5,9,10,12 to 14,19 to 22,24 to 27. They have failed to comply with the terms of notice and they have failed to reply. The other defendants have deliberately avoided the service of notice sent to their ordinary place of residence. That, the defendant No.1 to 11 have failed to vacate and deliver possession of the suit properties. Hence, this suit.

6. That, the plaintiffs have got *prima facie* case. The balance of hardship is in their favour. There is an infringement of their legal right. their rights will be in jeopardy, if the order of injunction is not issued. Hence, the plaintiffs pray to allow the application.

7. The defendant No.9 and 10 have filed objections contending that the plaintiffs have no *locus-standi* to file such application. That, the plaintiffs have filed false suit with an intention to harass the defendants. It is contended that the plaintiffs are not the owners and in possession of suit property at any point of time and the alleged plaintiff trust itself is not in existence. That, the contents of affidavit filed in support of application are nothing but extracted paragraphs from the plaint. That, the defendant No.9 and 10 are the owners of suit property bearing CTS No.6698/3 measuring 1 acre purchased from defendant No.12 to 14, who are the legal heirs of deceased Shankarappa Pattar, under registered sale deed dated 22-12-2006 for consideration of Rs.23,57,000/-. Accordingly, defendant No.9 and 10 have got entered their names to the records of the property and the said mutation has not been challenged by the plaintiffs till date. It is contended that, as the plaintiffs have no rights over the suit

properties, they cannot seek interim order restraining the defendants from alienating the suit properties or carrying out development works therein. On these grounds, defendants sought to dismiss the application with heavy costs.

8. The remaining defendants have not chosen to file objections to the application.

9. Heard arguments of counsel for both the parties.

10. After hearing the arguments and perusal of pleading and records, the following points arise for my consideration;

1. **Whether the plaintiffs have made out a prima-facie case?**
2. **Whether balance of convenience lies in favour of plaintiffs?**
3. **Whether irreparable loss will be caused to the plaintiffs if the temporary injunction as prayed is not granted?**
4. **What order?**

11. My findings on the above points are as under;

Point No.1 : In the Negative

Point No.2 : Does not survive for consideration

Point No.3 : Does not survive for consideration

Point No.4 : As per final order

for the following:-

REASONS

12. **POINT NO.1** : The plaintiffs have filed the suit seeking the relief of recovery of possession of suit properties from defendant No.1 to 11, for declaration that the sale deeds executed in favour of defendant No.9,10 and 11, and mortgage deed executed in favour of defendant No.19 are void ab initio, illegal and not binding upon the plaintiffs. The plaintiffs are also seeking to award mesne profits from the date of suit till delivery of possession.

13. Perusal of records show that, after completion of pleadings of the parties, this court has framed necessary issues and thereafter, the plaintiffs have got examined plaintiff No.1 as PW-1 and another witness on their behalf as Pw-2. After cross examination of PW-1 and 2 by the defendants, the plaintiffs have filed present application.

14. The plaintiffs sought two reliefs under the present application one seeking to restrain the defendants from alienating the suit properties and another seeking to restrain the defendants from making any development works in the suit properties. Thereafter, the plaintiffs filed a memo dated 21-09-2023 restricting their claim in the application to restrain the defendants from alienating the suit properties.

15. Perusal of records show that, as rightly contended by the defendant No.9 and 10 in their objections, the averments of affidavit filed in support of present application are nothing but replica of plaintiff averments. There is no clarity in the relief sought under the application as to whether the plaintiffs are seeking to restrain all the defendants or

only some of the defendants whose names are entered in the records of the suit properties. It is relevant to note that, there is no averment in the application or the supporting affidavit that any of the defendants are trying to alienate the suit properties. Further, Ex.P-6 is CTC Khata Extract shows that name of Shankarappa Pattar was mutated long back in the year 1956 and name of Lobosa Kabadhi was mutated long bank in 1959 as holders of the suit property. Now after laps of more than 5 decades, the plaintiffs have come up with suit disputing the entries made in the name of said Shanakarappa and Lobosa. As such, this court is of the opinion that, there is no *prima facie* case in favour of the plaintiffs. Hence, point No.1 is answered in the negative.

16. POINT No.2 and 3:- This court has come to the conclusion that, the plaintiffs have failed to prove that they have got a *prima facie* case in their favour. As such, questions of irreparable loss and balance of convenience do not survive for consideration. Hence, points under consideration are answered accordingly.

17. POINT NO.4: In view of the above discussion, the following:-

ORDER

I.A.No.14 filed by the plaintiffs under Order XXXIX Rule 1 and 2 of CPC is hereby dismissed.

No order as to costs.

(Dictated to the stenographer, transcribed and typed by her and after corrections, pronounced in the Open Court on this the 16th day of February-2024)