

IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC, AT
ARSIKERE.

PRESENT BEFORE

Sri. Santosh Srivatsava., B.A.L, L.L.B
Prl.Civil Judge and JMFC.,
Arasikere.

O.S.No.706/2018

Dated : 10th July 2019.

Plaintiff : Channabasappa S/o Sannamarulappa,
66 Years, R/o No.127,
Kadalamage Village,
Kanakatte Hobli, Arasikere Taluk.
(By.Sri.P.V., Advocate.)

V/S

Defendants : 1. Basappa S/o Sannamarulappa,
70 Years,
2. Devaraju S/o Basappa,
44 Years,
3. Gangadhara S/o Basappa,
38 Years,
4. Naveena S/o Nanjappa,
30 Years,
5. Lokesh S/o Shivashankarappa,
46 Years,
All are R/o Kadalamage Village,
Kanakatte Hobli, Arasikere Taluk.
(D1 to D5 By Sri.N.K.K, Advocate)

ORDER ON APPLICATION FILED BY THE PLAINTIFF

UNDER ORDER 39 RULE 1 AND 2 OF CPC

AND

ORDER ON APPLICATION FILED BY The DEFENDANT

UNDER ORDER 39 RULE 4 OF CPC.

“A” SECTION

1. The plaintiff has filed the suit for permanent injunction in respect of suit schedule property.

2. The plaintiff has filed I.A under Order 39 rule 1 and 2 of CPC., praying this court to restrain the defendant from interfering and disturbing the peaceful possession of the suit schedule property.

3. The plaintiff in the affidavit states that the contents of the plaint shall be read as part and parcel of this affidavit. The plaintiff avers that he is the owner of the suit schedule property and got this property by way of grant in the year 1994-95 and since then he is in possession and enjoyment of suit schedule property. It is further averred that 1st defendant is the brother of the plaintiff and then defendant no.2 and 3 are the sons of 1st defendant and defendant no.4 is the son of plaintiff's brother i.e., Nanjappa and 5th defendant is relative

of the plaintiff and in this manner itself is a self acquired property of this plaintiff.

4. It is further submitted that the defendants are no right or whatsoever in nature in the schedule property and in spite of this when plaintiff son went to Bangalore the defendant tried to disposed of this plaintiff from the suit schedule property and further defendant beat the plaintiff and aggrieved by the same. He lodged the complaint before concerned Police Station. Further submits that in the affidavit that defendants are powerful men in the locality. Hence it is just and necessary to restrain the defendant from the schedule property. Hence the application.

5. The defendant filed objection stating that the suit schedule property is joint family properties and it was granted for the benefit of the whole family not exclusively for the plaintiff. After receiving the grant there was partition in the schedule property between plaintiff and his brother and the same was agreed before Panchayath on 10-10-1999. In this manner 10 guntas fallen to Basappa 10½ guntas fallen to Nanjappa who is the father of 4th defendant and Marulappa got 5 guntas who is the father of plaintiff. The plaintiff got 15 guntas in this manner palu patti was executed. The plaintiff in spite of having this knowledge has filed the present suit to

knock of the entire property and he is liable to get only 15 guntas in the suit schedule property only and in this manner since 1999 and since 20 years plaintiff and his brothers are residing according to the partition made and the 5th defendant is no were concerned to the suit schedule property. Hence prays to reject the application.

“B” SECTION

6. The defendant has filed I.A under order 39 rule 4 of CPC praying this Court to vacate the exparte Order passed by this Court. Their bone of contention is suit schedule property is not exclusively belongs to plaintiff but and it was by way of grant only came in the name of plaintiff only. The suit schedule property got partition in the year 1999 and since then they are residing separately, the plaintiff is not in possession of the suit schedule property as on the date of filing suit and plaintiff has knowledge of partition and only 15 guntas belonged to him. In spite of having knowledge about the partition he has brought the suit just to knock of the suit schedule property entirely to him.

7. The plaintiff has filed the objection to IA and states that the application is not maintainable either in law or in facts to and he has sworn to the false affidavit. The plaintiff further submits that if the application for vacating exparte

order is allowed then the irreparable injury will be caused to the defendant.

8. Heard from both sides and Perused the materials on records.

9. The following points which arose for my consideration are as follows ;

“A” SECTION : POINTS

1. Whether plaintiff got prima facie case which could proceed with the trial of suit?
2. Whether balance of convenience lies in his favour?
3. Whether he would suffer irreparable loss in the absence of orders?
4. What order?

“B” SECTION : POINTS

1. Whether defendant got prima facie case which could proceed with the trial of suit?
2. Whether balance of convenience lies in his favour?
3. Whether he would suffer irreparable loss in the absence of orders?
4. What order?

10. Answers of this Court to aforesaid points for (**"A"** **Section**) are as follows:

- Point No.1** : In the Negative.
Point No.2 : In the Negative.
Point No.3 : In the Negative.
Point No.4 : As per final order
for the following:-

11. Answers of this Court to aforesaid points for (**"B"** **Section**) 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 final order
for the following:-

"A" SECTION – REASONS

12. POINT No.1 :- The plaintiff to substantiate his contention has produced Pahani in respect of schedule property which stands in the name of plaintiff to the extent of 1 acre. He has also filed xerox copy of Mutation register and also filed copy of complaint given by him to Arasikere Rural Police Station. Wherein it can be seen that he had filed complaint that his father was man handled by the defendants in respect of dispute over the suit schedule property.

13. On the other hand the defendant has filed copy of partition deed alleged to have been executed in the year 1999. It is pertinent to mention here that the defendant has submitted the notarized copy and has not submitted original document. Had it been there was a partition in the year 1999 there would be mutation in the name of respective share holders which is missing in this case. So the document furnished by the defendant at this stage cannot be believed in toto.

14. Now coming back to the plaintiff averments the plaintiff to show that he has got this property by way of grant has not produced the Grant Certificate and only relying on Pahani patrike and tried to show that he is exclusive owner and possessor of the suit schedule property. The plaintiff in para no.2 has stated that the 1st defendant is the brother of the plaintiff and this defendant no.2 and 3 are the sons of 1st defendant and 4th defendant is the son of his father i.e., Nanjappa and 5th defendant is relative of the plaintiff. So on perusal of para no.2 of the plaint it can be construed that the 1st defendant is the brother of the plaintiff and defendant no.2 and 3 are the sons of 1st defendant. In this manner at this stage the question would arise that whether really the plaintiff got exclusive rights over the suit schedule property. Then to when the defendants has casted doubt over title of the suit

schedule property. In view of not producing the Grant Certificate and relying only upon Pahani patrike to show that as on the date of filing suit he is in possession of suit schedule property and the defendant being the brother of the plaintiff creates a doubt whether the plaintiff has exclusive rights over the suit schedule property. So at this stage the averments made by the plaintiff and defendant contentions are subject matter of trial which cannot be decided at this stage. The entries in the revenue records are not conclusive proof to show that he is exclusive owner and hold possession over the suit schedule property.

15. The plaintiff ought to have produced the Grant Certificate at this stage, so on perusal of the same the Court could come to the conclusion that at this stage as on the date of filing of suit he is in possession of suit schedule property which he has not submitted. The Court passed an exparte order keeping mind regarding entries in revenue records. But since the defendant has alleged that the suit schedule property came up in the name of plaintiff on behalf of joint family property and in view of averment by plaintiff that 1st defendant is the brother of plaintiff then in such being the case “a genuine doubt is created on title of the property of plaintiff and in such being the case it would be unjustified to make exparte order absolute. At this stage the Court would

like to place reliance on **Hon'ble Supreme Court Citation i.e., Civil Appeal No.8241/2009** *"Wherein the Hon'ble Supreme Court has observed that if the defendant dispute the title of the plaintiff or raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff then necessarily in those circumstances plaintiff cannot maintain a suit for bare injunction".*

Here in this case the plaintiff has admitted the defendant no.1 is his brother and the defendant has contended that the suit schedule property doesn't exclusively belonged to the plaintiff as there was a grant only in the name of him on behalf of joint family and there is already a partition. Hence in such being the case it would be unjustified to hold without conducting trial that he has exclusively possessory rights over the suit schedule property. Hence I answer Point no.1 in Negative.

16. POINT No.2 :- On perusal of the records of the case it can be construed that there is no balance of convenience lies in favour of plaintiff. The plaintiff has averred that the 1st defendant is the brother and the defendant has taken up the contention that the suit schedule property is a joint family property. So at this stage if the application is allowed then the defendant will be put a greater hardship. If at all at this stage

the plaintiff would come with a copy of Grant Certificate then by perusing the same the Court would go to a conclusion at this stage that he has exclusively possessory rights over suit schedule property which he has failed to submit. Hence balance of convenience doesn't lie in favour of plaintiff. Hence I answer Point no.2 in Negative.

17. POINT NO.3 :- The defendant contention is that there is a partition in the suit property and further contends that grant was issued in the name of plaintiff on behalf of joint family properties. In such being the case the plaintiff would have submitted the Grant Certificate which is not done and relied only upon Pahani patrike. Hence in such circumstances at this stage if the exparte order is continued and later if it is proved by the defendant that there was an partition in the joint family property much hardship will be caused to the defendant rather than the plaintiff. In view of not submitting requisite document at this stage, there cannot be said that there would be irreparable injury to the plaintiff in absence of the Order. Hence I answer Point no.3 in Negative.

“B” SECTION – REASONS

18. POINT No.1 :- The defendant has shown that there was a partition in the year 1999 between plaintiff and his brother and another member of joint family property. The

defendant has placed notarized copies of pahani pathrike along with hand written pahanies which shows that suit schedule property was earlier belonged to Government. Now the facts is that the plaintiff has averred that the 1st defendant is brother of him. In such being the case it creates doubts on genuineness of the title of the plaintiff over the suit schedule property. Hence I answer Point no.1 in Affirmative.

19. POINT NO.2 : The balance of convenience lies in favour of defendant. Because the plaintiff has not produced any Grant Certificate and plaintiff relied only upon the mutation entries which are not conclusive proof to determine his exclusive possessive rights as on the date of filing of suit. Hence I answer Point No.2 in Affirmative.

20. POINT NO.3 : The plaintiff has not produced any Grant Certificate in the absence of Grant Certificate, the Court cannot come to the conclusion that he has exclusive possessive rights over suit schedule property. The defendant has produced earlier Pahani Pathrike in respect of suit schedule property which earlier i.e., prior to the grant which is standing in the name of Government. If at all at this stage Grant Certificate would be produced by plaintiff then on perusal the contents of the Grant Certificate, the Court would form a opinion about the same whether the plaintiff has

exclusive possessory rights over the suit schedule property or it is granted in favour of plaintiff on behalf of joint family property. So all the matters are left upon for the trial and fare adjudication and this can only be decided after trail in this case. Hence I answer Point no.3 in Affirmative.

21. POINT No.4 in “A” and “B” Section :- In view of the above said reasons, I proceed to pass the following:-

// ORDER //

***The I.A. filed by the plaintiff
under Order 39 rule 1 and 2 of CPC.,
is hereby dismissed.***

***The IA filed under Order 39 Rule
4 of CPC is allowed.***

Exparte Order stands vacated.

(Dictated to the stenographer directly on computer, revised and corrected by me and then pronounced in the Open court on this 10th July 2019.)

(Sri.Santosh Srivatsava)
Prl. Civil Judge & J.M.F.C,
Arasikere.