

KAHS510005132023



Presented on : 21-04-2023
Registered on : 21-04-2023
I.A.No.III Decided on : 10-08-2023
Duration : 3 months, 20 days

**IN THE COURT OF
CIVIL JUDGE AND JMFC AT BELUR, HASSAN.**

Presided Over by PRASANNA KUMAR C.,_B.A.L.,LL.B.
Civil Judge and JMFC, Belur.

Dated this the 10th day of August, 2023

O.S./206/2023

Between:

Smt.Puttalakshamma,
W/o Sri.Balarama,
Aged about 50 years,
R/at: Nettekere Village, Kasaba Hobli,
Belur Taluk, Hassan District.

..Plaintiffs

(Shri H.C. Kiran Kumar, Advocate for Plaintiffs)

And:

- 1. Sri. Veeregowda S/o Subbegowda,**
57 years,
R/at: Nettekere Village, Kasaba Hobli,
Belur Taluk, Hassan District.

2. The Tahsildar,

Belur Taluk, Hassan District.

..Defendants

***(Defendant No.1 by Shri.Ningaraj, Advocate,
Defendant No.2 by learned AGP)***

PARTIES TO THE APPLICATION IA NO. III

Smt.Puttalakshamma

.. Plaintiff/Applicant

V/s

Sri.Veeregowda and another

..Defendants/Opponents

ORDERS ON I.A. No.III

This application is filed by the plaintiffs along with the main suit under Order 39 Rule 1 and 2 R/w section 151 of Civil Procedure Code seeking ad interim order of temporary injunction to restrain the defendants or anybody claiming under them from interfering with the possession and enjoyment of the plaintiff over the suit schedule property being agricultural property bearing Sy.No.90 measuring to an extent of 1 acre 36 guntas situated at Nettekere Village, Kasaba Hobli, Belur Taluk, Hassan District.

2. In the affidavit filed in support of the application as well as in the plaint, the plaintiff has contended that she is the absolute owner in title, interest and possession and enjoyment of the suit

schedule property having acquired the same through registered sale deed dated 22.04.1996 and khatha was effected in her name vide M.R.No.14/1995-96. Subsequently, the plaintiff has mortgaged the suit schedule property before the Schedule Caste and Schedule Tribe Development Corporation, Hassan for an amount of Rs.22,800/- for a period of 10 years. The plaintiff has repaid the entire amount and thus, the said Corporation has executed mortgage release deed dated 07.11.2005 and also issued loan clearance certificate. It is contended by the plaintiff that the suit property was originally belonging to one Shri.Basavaiah S/o Channabasavaiah and he had executed sale deed in favour of one Shri.S.Joshi S/o Rama Joshi. But the said Shri.Basavaiah had filed a suit in O.S. No.27/1994 against the said S.Joshi seeking the relief of declaration to declare that the sale deed dated 15.02.1960 is null and void. The said suit was allowed by this court vide judgment and decree by holding that the sale deed dated 15.02.1960 is null and void and declared that the said Basavaiah S/o Channabasavaiah is the absolute owner of the suit schedule property.

3. It is further contended by the plaintiff that, subsequently the said Basavaiah has executed sale deed in favour of the plaintiff for valuable consideration of Rs.22,800/-. After purchase of the suit schedule property, the plaintiff has been in physical possession and enjoyment of the suit schedule property by growing millet and other crops and also invested huge amount

for the development of the suit property. It is alleged by the plaintiff that the defendants are no way related to the suit property and they are strangers without having any manner of right, title or possession over the suit schedule property. In spite of that, they are using their money, muscle, official and political power in order to interfere with the possession of plaintiff towards northern side of the suit property with false and frivolous reasons without giving any notice during the first week of April 2023. When the same was questioned by the plaintiffs, the defendants have left the spot without giving any proper answer. Thereafter, the defendants are again continuously trying to interfere with the possession of plaintiff. As such, the plaintiff has approached the jurisdictional police. But the police have advised the plaintiff to approach Civil Court stating that the dispute is civil in nature. Hence, the plaintiff has filed this suit with instant application.

4. On service of notice/summons, the defendant No.1 has entered appearance through his counsel. The defendant No.2 is represented by the learned AGP. The defendant No.1 has filed his objection and adopted the same as objections to I.A.No.3, but the defendant No.2 did not choose to file her objections to I.A.No.3. The defendant No.1 in his written statement has denied the right, interest and possession of the plaintiff over the suit property as well as mode of acquisition by the plaintiff as narrated in the plaint. It is specifically contended by the

defendant No.1 that plaintiff is stranger to him and the defendant No.1 is not at all related to the present suit. In land bearing Sy.No.90 of Nettekere Village an extent of 34 acres of land including the suit schedule property is existing, but the plaintiff is not aware as to which is her land. Further, the plaintiff is claiming the land measuring 2 acres which is in the possession of father of defendant No.1.

5. It is further contended by the defendant No.1 that his father has been cultivating the land to an extent of 2 acres of Gomala in Sy. No.90/2 of Nettekere Village for 50 years. As such, the father of defendant No.1 has submitted application under Form No.53 to the Government. On the said application concerned Village Accountant and the Revenue Inspector have submitted their reports. As per the said report, the father of defendant No.1 has been in unauthorized cultivation of the property by growing maize and submitted report that the father of defendant No.1 is eligible for grant of the land. As such the said report is pending for consideration before the Taluk Office, Belur. It is also contended that the sketch of the said property is also standing in the name of father of defendant No.1 and also check list is also issued in the name of father of defendant No.1 by the Village Accountant and Revenue Inspector along with the report itself. But the plaintiff by concealing the said facts has filed this suit by making false claim of possession and alleged interference

by the defendants. The plaintiff has got misconceived the property belonging to the father of defendant No.1 as the suit property. Even though the property is in the name of father of defendant No.1, he has not been made as party to the present suit.

6. It is also contended by the defendant No.1 that during the year 2021, one Smt. Jayamma has also filed suit claiming her right and possession and the same is pending before this Court in O.S. No.176/2021. The defendant along with his father has been in possession of the suit schedule property for 50 years. Presently, the defendant No.1 along with his father are growing maize crop in the property. As such, except defendant No.1 and his father, no other person is having any right or interest or possession over the suit property. The plaintiff has not acquired any sort of right till today over the suit property. She has suppressed material facts and filed this suit only in order to make unlawful gain. Hence, the defendant No.1 has sought for dismissal of the suit and consequently, the instant application.

7. Basing on the application, affidavit, written statement of Defendant No.1 adopted as objections to the instant application, the following points would arise for consideration of this court.

POINTS

1. Whether the plaintiff has made out prima facie case?

2. Whether the balance of convenience lies in the favour of the Plaintiff?
 3. Whether the plaintiff will be put to irreparable loss and injury if the order of injunction as prayed for is not granted?
 4. What order?
8. Heard arguments of both sides. On the basis of Application, affidavit, written statement averments of defendant No.1 adopted as objection statement to the application, pleadings and also all the materials available on record, answer of this court to the above points is as under:

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:

REASONS

9. **Point No.1 to 3:** Since all these three points are interconnected and interlinked with each other they are taken up together for discussion in order to avoid repetition of facts.

9. This suit is filed by the plaintiff against the defendants seeking relief of permanent injunction to restrain the defendants from interfering with the possession of the plaintiff over the suit schedule property. The same relief is sought for in the instant application. It is the case of the plaintiff that she is the absolute owner and in possession of the suit schedule property having acquired the same through registered sale deed dated 22.04.1996 executed by Shri. Basavaiah S/o Channabasavaiah and accordingly, mutation was effected in her name. The plaintiff has produced RTC extract of Sy.No.90 measuring 1 acre 36 guntas wherein the name of plaintiff has been entered vide M.R.No.T4/2016-17. The plaintiff has produced the old RTC extract of Sy.No.90 for the year 1996-1997 wherein in column No.12 (2), the name of plaintiff is appearing. The plaintiff has also produced the mutation order in M.R.No.14/1995-96 wherein the name of plaintiff has been entered basing on the sale deed executed by Shri.Basavaiah. The plaintiff has also produced mutation order in M.R.No.14/1994-95 wherein the name of vendor of plaintiff by name Shri.Basavaiah was entered basing on decree in O.S. No.27/1994 wherein the earlier sale deed executed by Basavaiah in favour of S.Joshi dated 15.02.1960 was declared as null and void. Accordingly, the name of vendor of plaintiff was entered.

10. Thereafter, the plaintiff has produced the sale deed dated 22-04-1996 executed by said Shri.Basavaiah in her name. Subsequently, the plaintiff has mortgaged the suit property before the Karnataka Schedule Caste and Schedule Tribe Development Corporation Ltd., Hassan on 07.11.2005. Thereafter, the plaintiff has cleared the loan and accordingly, the same is reflected in encumbrance certificates produced by the plaintiff. The plaintiff has also produced the Hiduvali Certificate standing in the name of plaintiff in respect of suit property. The plaintiff has also produced the boundary certificate.

11. On the other hand, the defendant No.1 has contended that the plaintiff is stranger to him and stated that the father of defendant No.1 was under unauthorized cultivation of an extent of 2 acres of land in Sy.No.90 which is totally measuring 34 acres. The plaintiff is claiming the property of defendant No.1 and his father and claiming illegal right, interest and possession over the same which is not at all belonging to the plaintiff. The defendant No.1 has also produced certain documents. The defendant No.1 has produced the report of Revenue Inspector substantiating the claim of defendant No.1 that as per application submitted by father of defendant No.1 under Form No.53, the report was submitted stating that the father of defendant No.1 has been under unauthorized cultivation of 2 acres of land in Sy.No.90 by growing maize. Subsequently, the

same has been substantiated by the report of Village Accountant. The plaintiff has also produced the sketch showing the extent of 2 acres of land in Sy.No.90 by specifically marking the same.

12. On the other hand, the plaintiff has not produced the sketch of the suit property to show where the land of plaintiff is actually existing. No doubt, the plaintiff has produced so called title document i.e., sale deed purchased by her. But in the RTC extract for the year 2022-2023 in column No.11, there is restriction clause of permanent non alienation. The vendor of plaintiff Shri.Basavaiah admittedly had earlier sold the suit property in favor of one Shri.S.Joshi and subsequently challenged the same by filing a suit and this court had allowed the suit and declared that the said sale deed executed by vendor of plaintiff is null and void, but the plaintiff has not produced the judgment and decree for perusal of this court as to on what basis, this court had declared the sale deed executed in favour of Shri.S.Joshi as null and void, since in the RTC extract, there is permanent non alienation clause even though the property was purchased by the plaintiff through registered sale deed.

13. Further it is also clear that the plaintiff has mortgaged the suit property and subsequently cleared the loan and release deed was executed by Karnataka Schedule Caste and Schedule Tribe Corporation Ltd., Hassan. In so far as the dispute in this suit is concerned, the said deeds would not come to rescue the plaintiff

in establishing her prima facie possession over the suit property. As already mentioned above a suit in O.S.No.176/2021 is pending before this court in respect of the property to an extent of 2 acres 08 guntas filed by one Smt.Jayamma. As can be seen from the sketch of Sy.No.90 produced by both the parties, out of total extent of 34 acres, there is no any exact identification of the properties. The Revenue Officers ought to have surveyed the land properly in order to identify the properties of allottee persons who are in possession of the said property by preparing sketches. The plaintiff has submitted RTC extract of certain persons who are belonging to the family of defendant No.1 and said that their possession is clear and there is no dispute. However, in so far as present case is concerned, there are ambiguity in respect of possession of plaintiff over the suit property and also as to where the land measuring 1 acre 36 guntas is actually located in Sy.No.90 has to be identified and marked particularly, without which, it is not possible for this court to come to the proper conclusion as to the exact location of the suit property in Sy.No.90, even though the plaintiff has produced the sale deed and such other documents in support of her claim by describing boundarites. Therefore, prima facie there is clear dispute with regard to identification of the suit property itself.

14. Further the plaintiff herein and Smt.Jayamma who is plaintiff in O.S.No.176/2021 along with other persons have filed application to the Tahasildar on 29.03.2023 representing that they have obtained their properties in Sy.No.90 from the SC/ST Corporation and as such they are in possession. In spite of that the efforts are made to regularize/grant land in favour of defendant No.1 wherein the suit in O.S.No.171/20212 is pending for consideration. Even though the said Veeregowda i.e., the defendant No.1 herein is not in possession, the Revenue Officers are proceeding for grant of land of Sy.No.90. Hence, they have sought for not to grant any such land in his favour. The same shows that there are disputes with regard to possession of plaintiff over the suit property and also unauthorized occupation/cultivation of defendant No.1. In order to ascertain the same and also location of the suit property, there is need for holding full fledged trial.

15. Further, it is also open for both the parties to file necessary application for surveying their respective lands and show that properties claimed by the plaintiffs and defendant No.1 are not one and the same and they are separate properties which would also assist this court to come to proper conclusion on merits of this case. Therefore, balance of convenience at this juncture is not lying in favour of the plaintiff. At this stage, if the order of temporary injunction as prayed for by the plaintiff is

granted, it is the defendant who would be put to hardship, loss and injury and more particularly if such order is passed, the same may intervene in the revenue proceedings of the defendant No.2. Hence, the plaintiff has not established the ingredients to be considered by this court for passing order of equitable relief of temporary injunction. Further the plaintiff has also failed to establish that the suit property is in danger of being wasted by the acts of defendants. Therefore, the application deserves to be dismissed for having failed to establish the prime factors. Accordingly, this court answered Point Nos.1 to 3 in the **Negative.**

16. **Point No.4:** For the foregoing reasons and discussions made above, this court proceed to pass the following:

:: ORDER ::

- I.A.No.III filed by the plaintiff Under Order 39 Rule 1 and 2 read with section 151 of Civil Procedure Code is hereby dismissed.
- No order as to costs.

(Dictated to the stenographer, transcribed by her, transcription corrected by me and then pronounced in the open court, on this the 10th day of August, 2023)

**(Prasanna Kumar C.)
Civil Judge & JMFC, Belur.**

(Order on I.A. No.III signed and pronounced in the open court vide separate order)

:: ORDER ::

- I.A.No.III filed by the plaintiff Under Order 39 Rule 1 and 2 read with section 151 of Civil Procedure Code is hereby dismissed.
- No order as to costs.
- For **issues : 25-10-2023**

**(Prasanna Kumar C.)
Civil Judge & JMFC, Belur.**