

KAHS510006412019



Presented on : 29-06-2019
Registered on : 29-06-2019
Decided on : 13-08-2025

IN THE COURT OF CIVIL JUDGE AND JMFC, BELUR

AT: BELUR

Present:

**Sri. Nagendra.,
B.A., LL.B.,**

Civil Judge & JMFC, Belur.

O.S.No.233/2019

Dated this, the 13th day of August, 2025.

Smt.Thimmamma
W/o.Late Ramaiah and others.

...Plaintiffs

-Versus-

Sri.Dharanegowda S.M.
S/o.Mullegowda and others

....Defendants

I.A. No.I

Smt.Thimmamma
W/o.Late Ramaiah and others.

...Applicant/ Plaintiffs

-Versus-

Sri.Dharanegowda S.M.
S/o.Mullegowda and another

...Opponents/Defendants

(By- **Sri. BSGS.**, Advocate for Plaintiffs)
(By- **Sri. CMC.**, Advocate for Defendants)

ORDERS ON I.A. No.I

The plaintiffs have filed IA.No.I under Order 39 Rule 1 and 2 of Code of Civil Procedure seeking injunction against the defendants restraining them from alienating, mortgaging and raising loan over the suit schedule property till disposal of the suit.

2. The defendants have filed written statement and same has been adopted as objection to IA No.I.

3. Heard learned counsel for the plaintiffs and defendants on IA No.I.

4. After perusal of the records of the case, the following points would emerge for my consideration:

1. Whether the plaintiffs have made out a prima-facie case?
2. Whether the balance of convenience is lies in favour of the plaintiffs?
3. Whether the plaintiffs would be put to untold hardship and irreparable loss if the temporary injunction is not granted?
4. What order?

5. My findings on the above points are as under:

Point No.1:In Affirmative,
Point No.2:In Affirmative,
Point No.3:In Affirmative,
Point No.4:As per final order
for the following:

REASONS

6. **Point No.1 and 2:** I have taken these two points together for my common discussion as they are inter-linked with each other in order to avoid repetition of the same.

7. In an affidavit appended to the application, the plaintiffs have contended that, their father T.R.Ramiah S/o.Mariyaiah has purchased the suit schedule property from the first defendant under registered sale deed, dated 09.05.1988. On the date of execution of sale deed, possession of the suit schedule property has been handed over to their father by the first defendant. After the death of their father they have inherited the suit schedule property and enjoying the same. The first defendant is very much know about the sale made by him to their father and handing over the possession of suit schedule property. They are enjoying the suit schedule property by growing Ragi, Maize, Potato and other commercial crops in their suit schedule property. When such being the case, the defendant No.2 has came near the suit schedule property and warned the plaintiffs not to came near the suit schedule property. Thereafter, they have verified the documents in the Tahasildar Office and then only they came to know that khatha of the suit schedule property was transferred in the name of second defendant. The defendants taking disadvantage of khatha was not transferred in their names by virtue of sale deed executed by the first defendant have got divided the suit schedule property under partition deed dated 25.02.2016. In the said partition the suit schedule property was fallen to the share of second defendant. The said partition deed is fraudulent one and therefore the said partition deed is not binding on the plaintiffs. The suit schedule property is the self acquired property of their father. They are the legal heirs of T.R.Ramaiah and therefore, they are the absolute owners of the suit schedule property. The defendant No.1 even though he has sold the suit schedule property in favour of their father, only with an intention

to snatch away valuable suit schedule property has got divided the said property and in the said partition the first defendant has allotted the suit land in favour of second defendant. The defendants have no manner of right and interest over the suit schedule property. When such being the case, the defendants are tried to trespassing upon the suit schedule property and also tried to destroy the crops grown in the suit land by allowing their cattle. Hence, the plaintiffs prays to allow the IA No.I.

8. Per contra, the defendants have filed written statement and same has been adopted as objection to the IA No.I. In the written statement, the defendants have denied the application averments in material aspects. It is contended that, the plaintiffs never in possession and enjoyment over the suit schedule property. The documents produced by the plaintiffs are forged and created documents. The plaintiffs have filed the present suit only with an intention to grab the property belongs to them. The plaintiffs have not approached the court with clean hand. The plaintiffs have filed the present suit by suppressing the material facts with an intention to snatch away the suit schedule property belongs to them. The suit schedule property is ancestral property and since time immemorial and even till today they are in possession and enjoyment over the suit schedule property. All the revenue documents are standing in their names and they are paying taxes to the concerned authority. They are enjoying the suit schedule properties by growing crops in the suit land. After the first defendant inherited the suit schedule property, on 25.02.2016 executed a registered partition deed and in the said partition, the suit schedule property has been allotted to the share of second defendant. Therefore, by virtue of the said partition deed all the

documents are standing in the name of second defendant. That they have raised the loan in the bank for the purpose of development of the suit schedule property. Except the defendants, plaintiff or any other persons have no right and interest over the suit schedule property. The first defendant has never sold the suit schedule property under registered sale deed. Hence, the defendants prays to dismiss the IA No.I.

9. In view of rival contentions put forth by both the parties, now let me see whether the plaintiffs have made out prima-facie case and balance of convenience for grant of temporary injunction as prayed in IA.No.I.

10. The plaintiffs in support of their case have produced certified copy of partition deed date 25.02.2016, death certificate, MR No.H7/2015-16, family leaving members certificate, MR No.122/88, encumbrance certificate, RTC bearing Sy.No.18/2, certified copy registered sale deed, dated 09.05.1988.

11. On the other hand, the defendants have produced RTC bearing Sy.No.18/2 from 1983 to 2001, RTC bearing Sy.No.18/2 from 2001 to 2018-19, MR No.H7/2015-16, details of loan borrowed from Canara Bank and partition deed dated 25.02.2016.

12. On perusal of the documents produced by the plaintiffs and defendants, it clearly discloses that, as per RTC bearing Sy.No.18/2 for the year 1983 to 2001, the suit schedule property was belongs to the first defendant. Thereafter on 09.05.1988, the first defendant has sold the suit schedule property under registered sale deed in favour of husband of first plaintiff and father of plaintiff No.2 to 6. Further, on going through the

registered sale deed, it clearly forth coming that on the date of execution of sale deed, the first defendant has handed over the possession of suit schedule property in favour of husband and father of plaintiffs. By virtue of the said sale deed, as per MR No.122/88-89, mutation has been mutated in the name of husband and father of plaintiffs.

13. The defendants contended that, they have not sold the suit schedule property to anybody under registered sale deed. The suit schedule property was ancestral property inherited by the first defendant. After having acquired the suit schedule property by way of inheritance, the defendant No.1 and 2 have partitioned the suit schedule property and in the said partition the suit schedule property is allotted to the share of second defendant. By virtue of the said partition mutation and RTC are transferred in the name of second defendant. As such, they are in possession and enjoyment over the suit schedule property.

14. The defendants in support of their case, have produced a partition deed dated 25.02.2016. On going through the said partition deed, the first and second defendant have partitioned the suit schedule property and in the said partition the suit schedule property is allotted to the share of second defendant. By virtue of the said partition, as per MR No.H7/2015-16, mutation has been mutated in the name of second defendant in respect of suit schedule property. By virtue of the said mutation, even the RTC of the suit schedule property is standing in the name of second defendant. But, question before the court is whether the first defendant has right and title over the suit schedule property to effect partition in between him and second defendant. Because on

perusal of registered sale deed, dated 09.05.1988 it clearly discloses that, the first defendant being the absolute owner of the suit schedule property has alienate the suit land in favour of husband and father of plaintiffs. On the date of execution of registered sale deed, the first defendant has handed over the possession of the suit schedule property. By virtue of the registered sale deed executed by the first defendant as per MR No.122/88-89 mutation has been accepted in the name of husband and father of plaintiffs. But, RTC was not changed in the name of husband and father of plaintiffs namely T.R. Ramaiah S/o.Mariyaiah. The first defendant taking disadvantage of RTC is not changed in the name of husband and father of plaintiffs and continued in his name he has effected the partition between him and second defendant. The first defendant has no right and interest over the suit schedule property to effect the partition. Because, the first defendant has executed the sale deed in favour of husband and father of plaintiffs. As such he has last right and title over the suit schedule property. Because the first defendant cannot effect partition in favour of second defendant better than he himself possesses. No one can confer a better title than what he himself has. Because the defendant No.1 himself has no right and title over the suit schedule property in view of execution of registered sale deed in favour of husband and father of plaintiffs. Therefore, the first defendant cannot confer better title than what he himself has.

15. Hon'ble Supreme Court in the judgment reported in **2023 SCC Online SC 1483 between the P.Kishor Kumar V/s. Vittal K.Patkar** has held that.

It is settled law that a vendor cannot transfer a title to the vendee better than what he himself possesses. The principle arising from the maxim nemo dat quod non habet, i.e., "no one can confer a better title than what he himself has".

16. I have gone through the above judgment. The principle led down in the above judgment is aptly applicable to the case on hand. In the case on hand, in the year 1988, the first defendant has executed the sale deed in favour of husband and father of plaintiffs. Accordingly, he loses all right and title over the suit schedule property. But, taking disadvantage of RTC continued in his name he has executed the partition deed in which the suit schedule property is allotted to the share of second defendant. No doubt the revenue entries have got presumptive value under Sec.133 of Karnataka Land Revenue Act 1964.

17. Sec.133 of Karnataka Land Revenue Act 1964 is reads as under:

133. Presumption regarding entries in the records. *An entry in the Record of Rights and a certified entry in the Register of Mutations or in the patta book shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.*

18. On going through the Sec.133 of Karnataka Land Revenue Act makes it abundantly clear that entries in the revenue records have got presumptive value until the contrary is proved. In the case on hand, no doubt, the entries in the RTC are presumed

to be true. But, the plaintiffs have rebutted the said presumption by producing the registered sale deed, dated 09.05.1988. Because in the year 1988 itself, the first defendant has executed the sale deed in favour of husband and father of plaintiffs. Therefore, the first defendant has loses his right and title over the suit schedule property. As such, the entries in the RTC of the suit schedule property have not presumed to be true. The first defendant without having any right and title over the suit schedule property has executed partition deed in which the suit schedule property is allotted to the share of second defendant. In the year 1988 itself possession of the suit schedule property has been handed over to the husband and father of plaintiffs. Therefore, the defendants cannot contended that they are in possession and enjoyment over the suit schedule property. Accordingly, the plaintiffs have made out prima facie case and balance of convenience. As such, the plaintiffs are entitled for the discretionary relief of temporary injunction as prayed in IA No.I. **Hence, points No.1 and 2 are answered in the Affirmative.**

19. **Point No.3:-** Upon perusal of the documents produced by the plaintiff, it clearly forth coming that on 09.05.1988 the first defendant has executed the registered sale deed in favour of husband and father of plaintiffs. On the date of sale the first defendant has handed over the possession of the suit schedule property in favour of husband and father of plaintiffs, accordingly the first defendant has loses right and title over the suit schedule property. The registered sale deed has got presumptive value under Sec.49 of Registration Act. The first defendant without having any right over the suit schedule property cannot confer better title to the second defendant. The presumption under

Sec.133 of Karnataka Land Revenue Act is not available to the defendants. Because the first defendant has executed the sale deed in favour of husband and father of plaintiffs. Therefore, the entry in the record of rights cannot be presumed to be true in the case on hand. Therefore, if the temporary injunction as prayed in the IA No.I is not granted, the plaintiffs will be put to untold hardship. On the other hand, if the temporary injunction is granted no loss or injustice will be caused to the defendants. **Hence, Point No.3 is answered in the Affirmative.**

20. Point No.4: For the forgoing reasons and discussions made supra, I proceed to pass the following:

ORDER

IA No.I filed by the plaintiffs under Order 39 Rule 1 and 2 of Code of Civil Procedure is hereby allowed.

The defendants are hereby restrained by way of temporary injunction from alienating, mortgaging and raising loan over the suit schedule property till disposal of the suit.

Under the facts and circumstances of the case, 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 **13th day of August, 2025**)*

(Sri. Nagendra)
Civil Judge and JMFC., Belur.