

KAHS810021322022



Presented on : 10-11-2022
Registered on : 10-11-2022
Decided on : --
Duration :

**IN THE COURT OF
CIVIL JUDGE AND JMFC AT SAKALESHPURA, HASSAN
Presided Over by SUDEER
O.S./273/2022**

**IN THE COURT OF CIVIL JUDGE & JMFC,
AT SAKALESHPURA**

**Present: SRI.SUDEER, B.A.LL.M.
Civil Judge & JMFC,
Sakaleshpura.**

Dated this 24th Day of July 2023

O.S.No. 273/2022

1. H.R. Ashok **.....Plaintiff**

V/s

1. E.S. Tulasi & Another **.....Defendants**

I.A.No.II

1. H.R. Ashok,
S/o Late H.P. Revappagowda,
Aged about 62 years,
R/at : Hadiga Village,
Hanubalu Post & Hobli,
Sakaleshpura Taluk,
Hassan District. **....Plaintiff/Applicant**

V/s

1. E.S. Tulasi W/o K.M. Umesh,
Aged about 50 years,
2. K.M. Umesh S/o Mallappa,
Aged about 68 years,

Both are residing at
Hurudi Village & Post,
Hanubalu Hobli,
Sakaleshpura Taluk,
Hassan District.

.....Defendants/Opponents**=====****Plaintiff by Sri. S.V.S - Adv.****Defendants by Sri. I.E.P - Adv.****=====**

∴ ORDER ON I.A.No.II ∴

The learned counsel for plaintiff has filed I.A.No.II U/Order 39 Rule 1 and 2 CPC to restrain defendants and his agents, representatives & supporters from putting up further construction in the suit schedule property till pending disposal of suit.

2. The plaintiff has filed suit for relief of declaration & possession along with interim application. The said application is accompanied by the affidavit of the plaintiff stating that, the plaintiff is the owner of land in Sy.No.0/4 measuring 0.02Gs situated at Hadige Village, Hanubalu Hobli, Sakaleshpura Taluk. The plaintiff had acquired rights over the suit schedule property by virtue of compromise decree entered in the partition suit in O.S.No.10/2008 on the file of Hon'ble Senior Civil Judge & JMFC, Sakaleshpura. Based on compromise decree katha was mutated in the name of plaintiff vide M.R.No. 6/2009-10. It is further stated

that earlier plaintiff had filed suit for permanent injunction against defendant no.2 & other persons in O.S.No. 22/2016 on the file of the Additional Civil Judge & JMFC, Sakaleshpura. The said suit was decreed infavour of plaintiff. The defendants had preferred appeal in R.A.No. 25/2019 on the file of Hon'ble Senior Civil Judge & JMFC, Sakaleshpura. In the appeal decree passed in O.S.No. 22/2016 was set aside and allowed the appeal vide judgment dated 10/12/2021 holding that plaintiff is not in possession of the suit schedule property. It is further stated that taking advantage of the same defendant is illegally putting up construction in the suit schedule property. Hence this suit for declaration & possession. It is further stated that plaintiff has made prima facie case, balance of convenience lies in his favour. If IA is not allowed plaintiff will be put to irreparable loss and untold hardship. Accordingly, plaintiff prays to allow I.A.No.I.

3. The learned counsel for defendant has filed objections to I.A.No.II filed U/O 39 Rule 1 and 2 of CPC.

The suit of the plaintiff is false, vexatious and not tenable either in eyes of law or on facts. The averments made in plaint are not based on sound principles of law and are founded on misconceptions and instituted with the intention to mislead the Court. The defendant denied the entire averments given in the pleadings in toto. It is the contention of the defendants that they are owner and is in possession and enjoyment of the suit schedule property. The Kyamanahalli Grampanchayathi has issued E-Katha in the name of defendant no.1 and she is paying taxes. The suit schedule property is situated within the limits of grama tana and not in Sy.No.10/4 has claimed by the plaintiff. It is further contended that defendants obtaining license from the gramapanchayathi they are constructing building in the suit schedule property. It is further contended that plaintiff has not put forth how he has acquired rights

over the residential house property bearing Katha No. 54, E-Katha No. 151600800601620009. The plaintiff with wrongful intention to engulf the property of defendants has filed this false suit by suppressing true material facts. If the TI is granted this defendant will be put to irreparable loss and injury and same is not granted no prejudice will be caused to the plaintiff. Hence prays to dismiss the interim application with exemplary costs.

4. Heard arguments of learned respective counsels on I.A. The counsel for defendant also filed written note Perused the materials available on record.

5. Points that arise for consideration and determination are as under :-

:- P O I N T S :-

- 1. Whether applicant has made out a prima-facie case?**
- 2. Whether balance of convenience lies in favour of applicant?**

3. Whether irreparable loss will be caused to applicant if Temporary Injunction is not granted?

4. What Order?

6. This Court answers above said points 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 :-

7. Point No.1:- It is the specific contention of the plaintiff that he is the owner of land in Sy.No.10/4 measuring 0.02Gs situated at Hadige Village, Hanubalu Hobli, Sakaleshpura Taluk. The plaintiff had acquired rights over the suit schedule property by virtue of compromise decree entered in the partition suit in O.S.No.10/2008 on the file of Hon'ble Senior Civil Judge & JMFC, Sakaleshpura. Based on compromise decree katha was mutated in the name of plaintiff vide

M.R.No. 6/2009-10. It is further stated that earlier plaintiff had filed suit for permanent injunction against defendant no.2 & other persons in O.S.No. 22/2016 on the file of the Additional Civil Judge & JMFC, Sakaleshpura. The said suit was decreed infavour of plaintiff. The defendants had preferred appeal in R.A.No. 25/2019 on the file of Hon'ble Senior Civil Judge & JMFC, Sakaleshpura. In the appeal decree passed in O.S.No. 22/2016 was set aside and allowed the appeal vide judgment dated 10/12/2021 holding that plaintiff is not in possession of the suit schedule property. It is further stated that taking advantage of the same defendant is illegally putting up construction in the suit schedule property. Hence this suit for declaration & possession, along with interim application.

8. Per contra it is the contention of the defendant that defendants that they are owner and is in possession and enjoyment of the suit schedule property.

The Kyamanahalli Grampanchayathi has issued E-Katha in the name of defendant no.1 and she is paying taxes. The suit schedule property is situated within the limits of grama tana and not in Sy.No.10/4 as claimed by plaintiff. It is further contended that defendants obtaining license from the gramapanchayathi they are constructing building in the suit schedule property. It is further contended that plaintiff has not put forth how he has acquired rights over the residential house property bearing Katha No.54, E-Katha No. 151600800601620009. The plaintiff with wrongful intention to engulf the property of defendants has filed this false suit by suppressing true material facts. Hence prays to dismiss the interim application with costs.

9. Considering the pleading and documents on record. The plaintiff in support of his case he has produced RTC, Mutation Extract, Tax paid receipt,

order sheet in O.S. No.10/2008, judgment in O.S. No. 22/2016, Judgment in R.A.No. 25/2019.

10. On the contrary the defendant has produced sale deed, E-Katha, tax paid receipt & sketch.

11. On perusal of the plaint, written statement and other documents it shows that one round of litigation has ended up between the parties to the suit pertaining to suit schedule property. The suit filed by the plaintiff for relief of permanent against defendants in O.S.No. 22/2016 was decree infavour of plaintiff vide judgment dated 26/07/2019. The defendants had challenged the judgment & decree in R.A.No. 25/2019 before the Hon'ble Senior Civil Judge & JMFC, Sakaleshpura. In the appeal judgment & decree passed in O.S.No. 22/2016 was set aside holding that plaintiff was not in possession of the suit schedule property within the claimed boundaries. Now plaintiff has come up with this suit seeking relief of declaration & possession. The

rights of the parties have to be adjudicated after full fledge trial. Already court decree is infavour of defendants and it stands proved that they are in possession & enjoyment of the suit schedule property as of now. The contention of the defendant is that house property bearing Katha No.54, E-Katha No. 151600800601620009 does not come within Sy.No.10/4 as claimed by the plaintiff, both the properties are different. But plaintiff showing katha property standing in the name of defendant within Sy.No.10/4 had obtained ex-parte injunction. The boundaries to property in Sy.No.10/4 and boundaries to property in Katha No.54, E-Katha No. 151600800601620009 are totally different. The present suit is filed by the plaintiff for declaration & possession against the defendants and plaintiff has to establish his title over the suit schedule property and to prove the same plaintiff has to adduce oral and documentary evidence. At this stage court cannot hold mini trial.

The plaintiff concealing true facts has obtained ex-parte temporary injunction order. If the interim application is allowed and T.I. is granted the defendant will be put to irreparable loss and injury. In order to obtain temporary injunction plaintiff must approach the Court with clean hands. On perusal of the plaint averments and documents furnished by both parties it clearly shows that plaintiff has concealed the material facts. Accordingly plaintiff has failed to make out prima facie case for grant of temporary injunction order.

Accordingly Point No.1 is held in the Negative.

12. Point No.2 and 3: Since plaintiffs have failed to make out prima facie case the question of balance of convenience and irreparable loss and injury does not arise. **Accordingly Point No.2 and 3 are held in the Negative.**

13. Point No.4 : For the forgoing reasons and discussions made above and finding on the above points, I proceed to pass the following:

ORDER

**I.A No: II filed by the plaintiff
under Order 39 Rule 1 and 2 of
CPC is hereby rejected. Ex-parte
injunction order dated :
10/11/2022 is hereby vacated.**

There is no order to costs.

(Dictated to Stenographer directly on computer, after corrections pronounced by me in the open court on 24th Day of July 2023)

**(SUDEER)
Civil Judge and JMFC
Sakaleshpura.**