

**IN THE COURT OF THE CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS, SAVANUR.**

PRESENT : **MARUTHI.K.**

B.A.LL.B.

Civil Judge and JMFC, Savanur.

ORIGINAL SUIT NO. 31/2018

Dated this 7th day of January, 2022

PLAINTIFF: Sharanappa S/o Shambanna Shilavantar,
Age : 35 years, Occ : Agriculture,
R/o Kalival village, Tq : Savanur,
Dist : Haveri,

Vs

DEFENDANT: Ishwarappa S/o Mallikarjunappa Shilavantar,
Age : 38 years, Occ : Agriculture,
R/o Kalival village, Tq : Savanur,
Dist : Haveri,

IA No.I

Applicant: Sharanappa S/o Shambanna Shilavantar.
(plaintiff)

Vs

Opponent : Ishwarappa S/o Mallikarjunappa Shilavantar.
(defendant)

ORDER ON I.A.No.I

The plaintiff has filed this application under order 39 Rules 1 and 2 of CPC praying to grant temporary injunction against the defendant, restraining the defendant from alienating the suit property till disposal of suit on merits.

2. Along with application plaintiff has filed affidavit reiterating the entire plaint averments. In affidavit it is stated that suit property was allotted to the share of father of plaintiff in an oral partition on 20.09.1971. Father of plaintiff was in possession and enjoyment of land to the extent 5 acres 21 guntas. After death of father of plaintiff, plaintiff is in possession and enjoyment by growing crops in suit property. Defendant is not having any manner of right title and interest in respect of suit property. In order to cause fraud the defendant with an ill-motive by creating documents got entered name of his in-law by name Sharavva W/o Rachappa Lakkundi towards southern side to the extent of 2 acres 28 guntas in Sy.No.45/3 which is part and parcel of Sy NO.45/1+2+3A measuring 4 acres 37 guntas. Thereafter defendant got entered his name in respect of suit property without any registered documents. Suit property was allotted to the share of father of plaintiff in an oral partition. At that time 3 acres 20 guntas of land in Sy No.45/1+2+3/B allotted to the share of Sharavva W/o Rachappa Lakkundi. According to oral partition mutation was accepted. Though above said property was allotted to Sharavva W/o Rachappa Lakkundi she got entered her name to the suit property against law. In order to cause wrongful loss to the plaintiff, defendant created documents and thereby trying to alienate suit property. If present application is allowed no harm or legal injury will be caused defendant. On the other hand plaintiff will be put to irreparable loss. Hence, prayed to grant ex-parte TI against defendant.

3. On service of suit summons defendant appeared through his counsel and filed objections to the present application denying each and every averments specifically. It is the objection of defendant that the property in Sy.No.45/1+2+3A at Kalival village totally measures 5 acres 21 gunta out of that 24 gunta phot karab remaining cultivable land is 4 acres 37 guntas which is not at all standing the name of plaintiff. Plaintiff is not in possession and enjoyment over the suit property as on the date of suit. Plaintiff is not the owner in possession of the suit property. The property in Sy.No.45/1+2+3A measuring 4 acres 37 guntas as claimed by plaintiff is not at all in existence. Plaintiff has pleaded false averments in affidavit. Plaintiff has shown the measurement of Sy.No. 45 which was existed prior to 17 years from the date of filing suit and obtained ex-parte temporary injunction against defendant by suppressing material facts. The father of plaintiff by a varadi dated 05.12.1983 got entered the name of his sister by name Sharavva W/o Rachappa Lakkundi to the extent of 2 acres 28 guntas in Sy.No.45/1+2+3A and said property is now numbered as Sy.No.45/3 measuring 2 acres 28 guntas. Her name was appeared in RTC extract for a period of 16 years then she relinquished her right in said property in favour of defendant. As such defendant became absolute owner in possession of said property. His name is appeared since 1999 till 2018. On 18.01.2018 he sold said property for an amount of Rs.3,50,000/- to one Basavannevva W/o Basavaraj Shilavantar through registered sale deed. Since purchased Basavannevva Shilavantar is in possession and enjoyment over the property sold

by defendant. Plaintiff is not having prima-facie case in his favour. The relief sought by the plaintiff became infructuous. Hence. Plaintiff is not entitle to claim interim relief. Hence, prayed to dismiss application with cost.

4. Heard arguments of defendant counsel on present application. Counsel for plaintiff files written arguments. Perused plaint, affidavit, documents and written arguments at this stage.

5. The following points arise for my determination.

POINTS

1. Whether plaintiff has made out prima-facie case in his favour?
2. Whether balance of convenience lies in favour of plaintiff ?
3. Whether plaintiff suffer irreparable injury and legal damage if application is not allowed?
4. What order?

6. My answers to the above points are as hereunder:

Point No.1 : In the Affirmative.

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 settled principles of law that, a party seeking relief of ad-interim injunction has to make out the

prima-facie case. The Prima-facie case is a case, which involves serious question of law and facts required to be tried in the suit. The party needs not to prove his case to the hilt. Further such party should also prove that, balance of convenience leans in his favour and that he would further suffer irreparable loss & hardship if the application is not decided in his favour. The court should also take into the account of equitable circumstances while granting or refusing ad-interim injunction..

8. In support of the claim, the plaintiff has produced mutation and RTC extracts pertaining to suit property. On perusal of first two documents they reveals that 4 acres 37 gunta in Sy.No.45/1+2+3A was stood in the name of Shambanna S/o Channabasappa Shilavantar from the year 1972-73 to 1981-82 i.e., the father of plaintiff. Third document is the ME No.1596 wherein it discloses that on 20.09.1971 there was a oral partition between family members in that partition 4 acres 37 guntas towards northern side and 4 acres 16 gunta in Sy.No.45/1+2+3A and 44/1+2+3/B1 was allotted to the share of Shambanna S/o Channabasasppa Shilavantar. Forth document discloses that Sy.No.45/3 measuring 2 acres 28 gunta was stood in the name of defendant in the year 2017-18. Fifth document discloses that 2 acres 9 guntas of land in Sy.No.45/1 was stood in the joint name of plaintiff and his brother for the year 2017-18.

9. Plaintiff has filed present suit seeking declaration that he is is the absolute owner of suit property to the extent of 5 acres 21

guntas and the documents created by defendant with respect to Sy.No.45/3 measuring 2 acre 28 guntas is not binding on plaintiff and for consequential relief of permanent injunction. Per contra the defendant has filed written statement denying entire plaint averments. It is the specific contention of the defendant that in the year 1983 i.e., on 05.12.1983 the father of plaintiff got entered name of his sister by name Sharavva W/o Rachappa Lakkundi in the revenue record by relinquishing his right to the extent of land measuring 2 acres 28 guntas in Sy.No. 45/1+2+3A, said extent of land is continued as Sy.No.45/3. Since 1983 name of Sharavva W/o of Rachappa Lakkundi was continued up to 1999. Then said Sharavva relinquished her right in favour of defendant who is the daughter's son of Sharavva. Since 1999 upto 2018 name of defendant was continued to the extent of 2 acres 28 guntas in Sy.No.45/3. On 18-01-2018 defendant sold said extent of land for valuable consideration of Rs.3,50,000/- in favour of Basavannevva W/o Basavaraj Shilavantar through registered sale deed. Since purchase Basavannevva W/o Basavaraj Shilavantar is in lawful possession and enjoyment over the land sold by defendant. It is further contention of defendant that plaintiff is not the only son of Shambanna Shilavantar. His father died leaving behind Nagavva, Somashekhar and plaintiff as his legal heirs. As such plaintiff is not entitled to claim declaration to the entire property measuring 5 acres 21 gunta in Sy.No. 45/1+2+3A .

10. From the rival contention it can be ascertained that there is prima-facie case in this suit to go on with trial. Plaintiff claiming

absolute ownership to the entire extent of land in Sy.No.45/1+2+3A measuring 5 acres 21 guntas. Whereas defendant also claiming his lawful title with respect to 2 acres 28 guntas of land in Sy.No.45/3. While considering an application for interim orders or interim injunctions, the court must prima-facie satisfy itself that a triable case is prima-facie made out by the party approaching the court. Each case has to be considered on the facts of the said case and merely for the reasons that a suit cannot be thrown away at the inception level on the ground of technicalities, it does not give a right to a party to seek any interim orders in such suits unless the party prima-facie satisfies with regard to the maintainability of the suit. In the present case on hand from the rival contention as stated above there is a prima-facie case which needs to be tried in this suit. At the time of arguments counsel for defendant brought to the notice of this court that plaintiff has described schedule of suit property in plaint para No.2 to the extent of 5 acres 21 guntas including karab land of 24 guntas in Sy.No.45/1+2+3A and boundaries is stated to the entire extent. Further plaintiff has claiming 2 acres 28 guntas in Sy.No.45/3 as suit property but he has not stated the boundaries to the said extent in plaint and also pointed out to the court that plaintiff has sought interim relief to the extent of 4 acres 37 guntas in Sy.No.45/1+2+3A and suit property is not at all standing in the name of plaintiff as alleged in plaint. Hence, there is a contradiction in the pleadings and documents placed by the plaintiff. Hence, prayed to dismiss present application on these grounds. The plaintiff has to prove whether he had sought

interim relief to the extent of 4 acres 37 guntas as claimed in application or 2 acres 28 guntas in Sy.No.45/3 as claimed in plaint by reliable and convincing documentary evidence. The documents produced by the plaintiff does discloses that entire property of 4 acres 37 guntas in Sy.No. 45/1+2+3A is not standing in the name of plaintiff as on the date of suit. But, they discloses that 2 acres 9 guntas of land in Sy.No.45/1 is standing in the joint name of plaintiff and his brother and 2 acres 28 guntas was stood in the name of defendant in the year 2017-18. Hence, plaintiff at this stage made out prima-facie case in this suit. Accordingly, I answered point No.1 **in the Affirmative.**

11. POINT NO.2 & 3 :- Since these two points are interlinked with each other hence in order to avoid repetition the same are taken together for consideration. Plaintiff has filed this suit on 18.01.2018 and has sought interim injunction against the defendant restraining him from alienating 4 acres 37 guntas in Sy.No.45/1+2+3A. Then arguments was heard on same day and case is posted for orders on 20.01.2018. But, as per version of defendant he sold 2 acres 28 guntas of land in Sy.No.45/3 on 18.01.2018 i.e., before passing interim orders on IA No.1. Therefore the relief sought through interim application became infructuous. Hence, plaintiff is not entitled for any relief sought in present application. In order to substantiate the same counsel for defendant produced copy of sale deed along with list. Wherein it discloses that defendant sold 2 acres 28 guntas of land in Sy.No.45/3 on 18.01.2018 i.e., on the date of filing present suit.

If there is any violation of temporary injunction, plaintiff is at liberty to take steps against defendant in accordance with order 39 Rule 2 (A) of CPC. But, whereas in this case there is no temporary injunction passed by this court on 18.01.2018. Hence, question of disobedience or breach of injunction does not arise. When subject matter of the suit was alienated as on the date of suit, the plaintiff is not entitled to the interim relief as prayed in application. Though the present application is not tenable in the eye of law but the principle of lis-pendence is attracted as provided under Transfer of Property Act. Though plaintiff made out prima-facie case but failed to make out balance of convenience and irreparable loss in his favour in the event of refusal of injunction in his favour. When such being the case the question of considering the balance of convenience and the irreparable loss and injury does not arise at all. Accordingly, I answered the **point No.2 and 3 in the Negative.**

12. POINT NO.4 :- In the result, I proceed to pass the following.

: ORDER :

I.A.No.I filed by the plaintiff U/o.39

Rule 1 & 2 of CPC is hereby rejected.

No order as to cost.

(Dictated to the Stenographer directly on Computer, corrected and initialed by me and then pronounced in the open court on this day of 7th day of January 2022.)

(SRI. MARUTHI.K)
Civil Judge and JMFC,
Savanur.

