

IN THE COURT OF CIVIL JUDGE & JMFC., SHIGGAON.

: PRESENT:

MISS.NASRAT MUKHTAR AHMED KHAN, B.A. LLB, LL.M
CIVIL JUDGE & JMFC., SHIGGAON.

ORIGINAL SUIT No.132/2021

DATED ON THIS THE 8th DAY OF NOVEMBER-2022

- Plaintiff :**
1. Smt. Girjavva @ Dyamavva
W/o Veerupax Nagarhalli
Age: 49 years, Occ: House wife
R/o Koppa, Tq: Kundgol,
Dist: Dharwad
 2. Smt. Gouravva @ Roopa
W/o Kallappa Sadar
Age: 46 years, Occ: Household
R/o Bammigatti, Tq: Kalagatagi,
Dist: Dharwad
 3. Smt. Nagavva @ Nanda
W/o Prakash Budanur
Age: 42 years, Occ: Household
R/o Negalur, Tq & Dist: Haveri
 4. Smt. Kamalavva
W/o Hanumanthappa Panigatti
Age: 40 years, Occ: Household
R/o Sherewada, Tq: Hubballi
Dist: Dharwad

5. Sri. Gadigeppa @ Mudakappa
S/o Hanumantappa Panigatti
Age: 38 years, Occ: Agriculture
R/o Sherewada, Tq: Hubballi
Dist: Dharwada

[By Sri.K.S.P., Advocate]

V/s

Defendants: Sri.Kariyappa S/o Basappa Gunjal
Age: 66 years, Occ: Agriculture
R/o Kabanur,
Tq: Shiggaon, Dist: Haveri.

[By Sri.G.S.A., Advocate]

PARTIES TO I.A.No.I

Applicants : 1. Smt. Girjavva @ Dyamavva
(Plaintiffs) W/o Veerupax Nagarhalli
Age: 49 years, Occ: House wife
R/o Koppa, Tq: Kundgol,
Dist: Dharwad

2. Smt. Gouravva @ Roopa
W/o Kallappa Sadar
Age: 46 years, Occ: Household
R/o Bammigatti, Tq: Kalagatagi,
Dist: Dharwad

3. Smt. Nagavva @ Nanda
W/o Prakash Budanur

Age: 42 years, Occ: Household
R/o Negalur, Tq & Dist: Haveri

4. Smt. Kamalavva
W/o Hanumanthappa Panigatti
Age: 40 years, Occ: Household
R/o Sherewada, Tq: Hubballi
Dist: Dharwad

5. Sri. Gadigeppa @ Mudakappa
S/o Hanumantappa Panigatti
Age: 38 years, Occ: Agriculture
R/o Sherewada, Tq: Hubballi
Dist: Dharwada

V/s

Opponents : Sri.Kariyappa S/o Basappa Gunjal
(Defendants) Age: 66 years, Occ: Agriculture
R/o Kabanur,
Tq: Shiggaon, Dist: Haveri.

ORDER ON I. A. No.I

Plaintiffs have filed IA.No.I under Order XXXIX Rule 1 and 2 of CPC., praying this Court to restrain the defendant or persons claiming through him from obstructing the plaintiffs peaceful possession and enjoyment of the suit property till disposal of the suit on merits.

2. Plaintiff No.5 has filed an affidavit accompanying the said IA averring that, the suit property was owned and possessed by his mother and she died on 30.09.2014 at Sherewada village leaving behind her daughters i.e., plaintiff no.1 to 4 and himself and her elder brother Basavaraj. After her demise, they are in peaceful possession and enjoyment of the suit property without anybody's interruptions and further they have filed an application before the Tahasildar, Shiggaon to enter their names in the record of rights of the suit property as legal heirs of their mother and said application is pending for consideration before the Tahasildar, Shiggaon. In meanwhile the defendant has filed O.S.No144/2019 before this Court for specific performance of contract stating that, his mother Smt. Gangavva @ Kashavva had executed a document styled as Kabja Rahith Karidi Kararu Patra dated 27.04.2010 and the alleged document is created by defendant with the help of henchmen and the said document is got by fraud and coercion and it is the nominal document and on the said documents ,the defendant cannot acquire any right, title or interest over the suit property.

3. On 21.06.2021 at 4 pm when the plaintiffs were sowing soybean seeds in the suit property with the help of tractor at that time, the defendant along with his henchmen tried to

trespass the suit land and tried to obstruct the said sowing in the suit land by the plaintiff therefore, on 21.06.2021 the plaintiff and elders of the locality met the defendant and advised not to interfere in the peaceful possession and enjoyment of the suit property but, the defendant has refused and threatened that, he would damage the grown crops in future and hence, the plaintiffs are constrained to file this IA.

4. The defendant has filed memo to treat written statement as objection to IA No.I and denies the plaintiffs averments and contends that, in this regard O.S.No.144/2019 is filed and the relationship of plaintiff and defendant is explained and in O.S.No 19/2009 the deceased Smt. Gangavva had filed suit of partition against her brother seeking half share in the suit property and in the said suit, the defendant's son Sri. G.K.G, Advocate had appeared and compromised the matter between Gangavva and her brother Mallappa and accordingly compromise decree was passed and in the Utara of suit property thereafter, the name of Smt. Gangavva was entered. The defendant Kariyappa and his brother Mallappa are near brothers and Mallappa was acting as elder and deceased Gangavva and first plaintiff of this suit had approached the defendant and his brother Mallappa and executed registered sale agreement in favor of the defendant on say of his brother Mallappa for their family necessity and

also to get married the 3rd plaintiff. Thereafter, the defendant and his brother Mallappa were separated because of the differences and had filed O.S.No 20/2018 before Hon'ble Senior Civil Judge Court, Haveri and the compromise was entered therein and decree was passed accordingly and the said matter was brought to the notice of first plaintiff and Smt. Gangavva and they assured the defendant that, as the sale agreement was executed to his name they would execute the sale deed to the defendant only.

5. Thereafter on March 2014 the first plaintiff and Smt. Gangavva approached the present defendant's son GKG Gunjar Advocate and told that, they have executed sale agreement to his father and therefore they would correct the document and execute the sale deed to defendant and said that Gangavva is not keeping well and after she gets cured ,they would execute the same and that, they are in need of money and asked the defendant's son Sri. GKG, Advocate Rs.6 lakh and he has given the same to them but, no document was executed in this regard as they told that, they have executed registered sale agreement and further that, the deceased Gangavva is aunt of Sri. GKG counsel and till execution of the sale deed and returning of Rs.6 lakh possession of the suit property was given to him. The said

matter was not informed by first plaintiff and deceased Gangavva to other plaintiffs and in the year 2014 the defendant got to know about the death of Gangavva and after few months, the defendant approached the plaintiffs to execute the sale deed and they assured that, they would do the same, after correction of documents but, sale deed is not executed and hence, the defendant has filed O.S.No 144/2019 and the plaintiffs in the said case have filed their written statement in order to deprive the amount given and also the possession and hence, pray the Court to reject the said application.

6. Heard both and perused the materials on record.
7. On perusal of the materials on record, following points arise for my consideration :

POINTS

1. Whether the plaintiffs have made out prima-facie case ?
2. Whether the plaintiffs further show that the balance of convenience lies in their favour?

3. Whether the plaintiffs further show that irreparable injury will be caused to them if the said IA is not allowed?
4. What order ?

8. On perusal of materials on record and after hearing the arguments canvassed by both, my findings for the above points are hereunder:-

Points No.1 : In the Affirmative

Points No.2 : In the Affirmative

Points No.3 : In the Affirmative

*Point No.4 : As per final order
for the following:*

REASONS

9. Points No.1 to 3:- As these points are interlinked with each other they are taken together for common consideration.

It is the case of the plaintiffs that, the suit property is ancestral and undivided joint family property of plaintiffs and their elder brother Sri. Mallappa and it originally belonged to and owned by mother of plaintiffs i.e., Smt. Gangava @ Kashavva and she died on 30.09.2014 leaving behind plaintiffs and Mallappa @ Basavaraj as heirs to suit property

and after the death of plaintiffs mother Smt.Gangavva, the suit property was inherited by her legal heirs plaintiffs and Mallappa and plaintiffs are in peaceful possession and enjoyment of the suit property and they have given application before Tahasildar Shiggaon to make necessary changes in the record of rights of suit property as legal heirs of their mother and said application is pending for consideration. In the meanwhile defendant had filed O.S.No.144/2019 before Civil Judge Court Shiggaon against these plaintiffs and their brother Mallappa for Specific Performance of Contract that, the plaintiffs mother Smt. Gangavva @ Kashavva had executed "Kabja Rahit Kareedi Kararu Patra" dated 27.04.2010 and plaintiffs and their brother in said suit has filed written statement denying execution of alleged document styled as "Kabja Rahit Kareedi Kararu Patra" in favour of the defendant and said document is bogus and nominal one and on the said document , no right is acquired. On 21.06.2021 at 4 pm, plaintiffs were sowing soybean seeds in the suit property with help of tractor and defendant tried to trespass.

10. Per contra defendant has denied said averments and has not denied the fact that, the suit property belonged to Gangavva but, he contends that, said Gangavva and first

plaintiff for their family necessities and for marriage expenses of 3rd plaintiff, executed registered sale agreement to the defendant of the suit property and there was partition between defendant and his brother Mallappa in O.S.No.20/2013 and matter was compromised and was divided and same was brought to knowledge of Gangavva and 1st plaintiff and they told the defendant that, they would execute sale deed to the defendant only .Thereafter in the month of March 2014 Gangavva and first plaintiff met GKG counsel who is son of defendant and told him that, they would execute the sale deed to defendant after making right the documents and Gangavva was not keeping well then and they demanded Rs.6,00,000/-(Rs.6 lakh) from defendant's son GKG stating that it is necessary and took it and when he asked to write the documents pertaining to same, they told that, it is not necessary as they have executed registered sale agreement and as plaintiff is relative of Shri. GKG counsel he believed their words and they gave possession of suit property to Shri.GKG counsel till execution of sale deed and returning of 6 lakh to him.

11. On perusal of the contention of both the parties it appears that, plaintiffs are claiming to be in possession of suit property as legal heirs of Gangavva after her demise and

stating that, the suit property was originally belonging to Gangavva. The defendant has not denied the fact that, Gangavva was the owner of suit property and she died nor to the fact that , the plaintiffs are legal heirs and plaintiffs have produced RTC of suit property reflecting the name of Gangavva @ Kashavva for suit property. But, according to defendant, said Gangavva and first plaintiff for their family necessities have executed registered sale agreement to the defendant and thereafter have taken 6 lakh rupees from defendant's son Shri. GKG counsel and have given the possession of the suit property. Plaintiff in plaint has stated that, defendant has filed O.S.No.144/2019 against the plaintiff and Mallappa for Specific Performance of Contract that, plaintiffs mother Smt. Gangavva @ Kashavva had executed "Kabja Rahit Khareedi Kararu Patra dated 27.04.2010 and has produced plaint and written statement copy of O.S.No.144/2019 and sale agreement copy dated 27.04.2010. The said sale agreement copy dated 27.04.2010 produced by plaintiffs reflect sale agreement being executed to defendant of suit property by Gangavva and said sale agreement executed is without possession and plaintiff has said to have challenged said sale agreement to be sham in O.S.No.144/2019. Whether said sale agreement is sham document or not, requires enquiry and at this juncture it

cannot be decided and sale agreement dated 27.04.2010 though shows the execution of sale agreement pertaining to suit property to defendant, the same is given without possession and it is well known proposition of law that, sale agreement does not create any right in favor of proposed purchaser except for right to enforce the said agreement.

12. Further though it is contended in the objection/written statement that, plaintiff no.1 and Gangavva had taken Rs.6 lakh from defendant's son Shri GKG and has given possession of suit property it can be seen that, defendant has not produced any document at this juncture to show that, the possession of suit property was given to the defendant's son by Gangavva and 1st plaintiff by receiving Rs.6 lakh rupees. On the other hand it is seen that, the defendant has admitted that, the suit property was originally of Gangavva and has not specifically denied that, the plaintiffs are her legal heirs and as said sale agreement to defendant is without the possession it appears that, plaintiffs have prima facie shown their possession over the suit property and as defendant has denied said possession and asserts to be lying with defendant's son without backing of any document, the balance of convenience appears to be tilting more in favor of plaintiffs and hardship is also seen to be more caused to

plaintiffs than the defendant if said IA is not allowed. Hence, Point No.1 to 3 are answered in Affirmative.

13. Point No.4 :- In view of the discussion made above, I proceed to pass the following:

ORDER

I.A.No.I filed by the Plaintiffs under Order 39 Rule 1 and 2 of Civil Procedure Code is hereby allowed with cost of Rs.200/-.

The defendant or persons claiming through him is hereby temporarily restrained from obstructing the plaintiffs peaceful possession and enjoyment of suit property without due course of law till the disposal of suit.

**(NASRAT MUKHTAR AHMED KHAN)
CIVIL JUDGE & JMFC.,
SHIGGAON.**