

KAKB210000402021



**IN THE COURT OF SENIOR CIVIL JUDGE AT ALAND,
KALABURAGI DISTRICT.**

:PRESENT:

SRI. S.M. ARUTAGI

B.com. LLB., (Spl)

SENIOR CIVIL JUDGE, ALAND.

O.S.No.11/2021

DATED THIS THE 02nd DAY OF JUNE 2023

Plaintiffs: Shahanaaz Banu W/o Syed Moula
(D/o Moulasab) & another,

V/s

Defendants: Saleema Begum W/o late Ameer Ali
& others,



PARTIES TO I.A.NO.VI

- Applicants/** 1. Saleema Begum,
Defendant W/o Late Ameer Ali,
No.1 to 5 Age: 53 Years,
Occ: Household & Agriculture.
2. Md. Shafiq,
S/o Late Ameer Ali,
Age: 39 Years,
Occ: Agriculture.
3. Md. Toufiq,
S/o Late Ameer Ali,
Age: 37 Years,
Occ: Agriculture.
4. Malan Begum,
D/o Late Ameer Ali,
Age: 34 Years,
Occ: Household.
5. Shabana Begum,
D/o Late Ameer Ali,
Age: 31 Years,
Occ: Household,

All are residing at
H.No.11/5024/17,
Galib Colony, MSK Mill,
Jeelanabad, Kalaburagi.

(D-1 to 5 by Sri. Syed Ishaq Hussaini
Advocate)



Vs.

Opponents/ 7. Azagar Ali,
Defendant S/o Babu Miyan Nadaf,
No.7 & 10 Age: 39 Years,
Occ: Not known,
Both are resident at
H.No.11-1041/120/16,
Idaga Road,
Near Suvi Gumbag,
Shaha Jeelani Compound,
Madina Colony,
MSK Mill, Kalaburagi.

10. Venkatesh,
S/o Ramchandra Amman,
Age: 50 Years,
Occ: Business,
R/o Rukkappa Jewelers,
4/1087, Saraf Bazar,
Kalaburagi.

(R-7 & 10 by Sri. P.V. Apte,
Advocate)

ORDER ON IA NO.VI FILED U/O XXXIX
RULE 1 & 2 R/W SECTION 151 OF CPC .

This is an application filed by the
applicant/defendant No.3 U/o., XXXIX Rule 1 and 2 R/w



Section 151 of CPC, seeking ad-interim temporary injunction against the defendant No.7 and 8 from interfering the peaceful possession and enjoyment of defendant No.1 to 5 till disposal of this suit.

2. In the affidavit annexed with the application, the applicant has stated that herself and defendant No.1, 2, 4 and 5 are the legal heirs of deceased Moulasab and he orally gifted the suit properties to his son by name Ameer Ali during the month of June 1997. Since the date, Ameer Ali was in possession and enjoyment of the suit properties and after his death, the defendant No.1 to 5 are in possession and enjoyment of the suit properties. It is averred that the defendant No.6 and 7 created false document and on the basis of false document, they mutated their names in the suit properties and thereafter, the defendant No.6 and 7 sold the suit properties under registered sale deed in favour of



defendant No.8 to 10. Therefore, the registered sale deed executed by the defendant No.6 and 7 in favour of defendant No.8 to 10 is not binding upon them.

3. It is further averred that on 18-02-2022 at about 5-15 pm., the defendant No.2 and 3 gone to the suit properties in order to see the crop of jowar standing in the land, at that time the defendant No.7 and 10 have come to the land along-with their inmates and assaulted them and due to which, the applicant and defendant No.2 admitted to Government Hospital, Kalaburagi, for treatment. Thereafter, they have been discharged. In this regard, they have given complaint to the concerned Police, but due to influence made by defendant No.7 and 8, the Police have not taken any complaint and the defendant No.7 and 10 are tried to dispossess them from the suit schedule properties without any right, title, interest over the suit properties.



4. It is further averred that when the defendant discharged from the Hospital after four days of her treatment, the defendant No.7 and 10 again came to the land and cut the jower crop about 20 bags and caused the loss to the defendant worth of Rs.90,000/- and also tried to interfere their possession once again. Hence, they have made out prima-facie case, balance of convenience tilt in their favour. If the application is not allowed, the they will put to great and irreparable loss. Hence, sought for allow the application.

5. On the other hand, the defendant No.10 has filed his detailed objection stating that the application is not maintainable under the law and facts. It is further contended that the suit has been filed by one Shahanaz Banu D/o Moula Sab for partition and separate possession and declaration that the sale deeds are null



and void. The defendant No.8 to 10 are bonafide purchasers of the suit properties under valid registered documents and in pursuance of the said sale deeds, their names have been recorded in the ROR and they are in lawful possession and enjoyment of the suit schedule properties. Though, the defendant No.3 has taken contention that the Moula Sab has gifted the property in favour of Ameer Ali in the year 1997 and since the date, the said Ameer Ali was in possession of the suit properties is a matter of trial.

6. On the other hand, in pursuance of registered sale deed, a mutation have been certified by the revenue authorities in the name of defendant No.10. Moreover, the defendant No.3 has made out counter claim and same has to be proved by producing cogent and relevant documents and until and unless to decide the sale deeds are null and void, the defendants cannot claim their



possession over the suit properties. The defendant No.8 and 10 are in possession and enjoyment of the suit property in pursuance of registered sale deeds. The defendant No.1 to 5 are not in possession and enjoyment of the suit properties as contended by them and also not made out any prima-facie case and no balance of convenience tilt in their favour and in order to grab the valuable property of defendant No.8 to 10, filed this false application. On these grounds prayed for dismissal of the application with costs.

7. Heard arguments on both side.

8. On the basis of application and objection, the

following points arise for my consideration:-

- 1) *Whether the defendant No.1 to 5 have made out prima-facie case in order to seek T.I. against the defendant No.7 and 10?*



2) *Whether the defendant No.1 to 5 prove that the balance of convenience tilt in their favour ?*

3) *To whom irreparable injury or loss will cause in allowing or rejecting the said application?*

4) *What order?*

9. My answers to the above points are as follows:-

Point No.1 : In the negative.

Point No.2 : In the negative.

Point No.3 : In favour of defendant
No.7 & 10.

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

REASONS

10. **Point No. 1 & 2:** Both these points are interlinked and hence, taken together for common discussion.

11. It is pertinent to note that the plaintiffs have filed this suit for partition and separate possession



against the defendants with respect to the suit schedule properties.

12. When the matter was posted for hearing on IA No.4 and 5, the defendant No.3 has filed this present application seeking add-interim temporary injunction against the defendant No.7 and 10 restraining them from interfering with peaceful possession and enjoyment of the suit schedule properties. After filing the suit by the plaintiffs, the defendant No.1 to 5 appeared through their counsel and also made their counter claim with respect to the suit schedule properties along-with their counter claim, the present application has been filed in order to seek temporary injunction against the defendant No.7 and 10. According to the defendant No.1 to 5, the original propositor Moula Sab was orally gifted the suit properties to his son Ameer Ali during the year 1997



and in pursuance of the said oral gift, the said Ameer Ali was in possession and enjoyment of the suit properties and after his death, the defendant No.1 to 5 succeeded the suit properties, but the defendant No.6 and 7 with fraudulent manner, created bogus mutations and sold the property in favour of defendant No.8 to 10 which are not binding upon them. Even, the defendant No.7 and 10 are interfered their peaceful possession and enjoyment of the suit schedule properties.

13. The defendant No.1 to 5 in order to substantiate their case, not produced any single scrap of documents before this court, however, the counsel for the defendant No.1 to 5 has furnished memo with Xerox copy of voter information, Xerox copy of RTC, ration cards and death certificate Babu Miya Alias. On perusal of the above documents and documents



produced by the plaintiffs and defendants, it is undisputed fact that as on the date of filing of the suit, the suit is stood in the name of defendant No.8 to 10. Moreover, it is specific plea taken by the defendants that the Moula Sab had orally gifted the suit property in favour of his son Ameer Ali during the year 1997 and after his death, the defendant No.1 to 5 have been succeeded the suit properties and in order to show the said oral gift of the property by Moula Sab in favour of Ameer Ali and in order to show that after the death of Ameer Ali, the defendant No.1 to 5 have been succeeded the suit properties, they have not produced any single scrap of documents before this court. Now the question arose before this court is that, whether the defendant No.6 and 7 colluded with each other and created bogus mutation and sold out the suit properties in favour of defendant No.8 to 10 is a matter of trial and until and



unless full fledged trial, this court cannot come to the conclusion that the defendant No.6 and 7 have created fraudulent mutations. At this juncture, I would like to rely upon decision reported in **(1995) 5 SCC 545 in the case of Gujarat Botting Co. Ltd. & Others V/s Coca Cola & Others**), the Supreme Court has held;-

“ 43. The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests- (I) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a



time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must



weigh one need against another and determine where the balance of convenience lies. [See: Wander Ltd. V. Antox India (P) Ltd. (SCC at pp.731-32)]. In order to protect the defendant while granting an interlocutory injunction in his favour the court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial.

14. Another decision reported in **1977(2)**

Kar.L.J.266 (in the case of Purna Investments Ltd

V/s Southern Steelmet & Alloys ltd others), this court

has held:-

“ 11. In the present case, we are at the stage of interlocutory orders and trial is yet to commence. Findings on matters such as mala fides, fraud and bad faith cannot, generally, be arrived at on mere affidavits. The matter has to



go for trial and I am, therefore, reluctant to take into account the merits of the case at this stage to come to a conclusion which detracts from what an assessment of the balance of convenience in the case suggests”

15. Another decision reported in **(2006) 8 SCC 367 (in the case of M.Gurudas & Others V/s Raranjan & Others)**, the Supreme Court has held that relevant factors to be considered for grant of temporary injunction, are existence of prima facie case, balance of convenience and irreparable loss and injury.

In the aforesaid judgment, the Supreme Court has held that finding on “ prima-facie case ” would be a finding of fact, However, while arriving at such a finding of fact, the court not only must arrive at conclusion that a case for trial has been made out but also other factors requisite for grant of injunction exist.



16. On perusal of the above cited decisions, their lordships have clearly held that while granting temporary injunction, the court shall to be considered about existence of prima-facie case, balance of convenience and irreparable loss and injury. The law is fairly well settled that an order of temporary injunction granted in favour of a party is a step in aid to the main relief.

17. Another decision reported in **(2006) 5 SCC 282 (in the case of Seema Arshad Zaheer and others V/s Municipal Corpn. Of Greater Mumbai and others)**, the Supreme Court has held:-

“ 30. The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff: (I) existence of a prima facie case as pleaded, necessitating protection of the plaintiffs



rights by issue of a temporary injunction; (ii) when the need for protection of the plaintiffs rights is compared with or weighed against the need for protection of the defendant's rights or likely infringement of the defendant's rights, the balance of convenience tilting in favour of plaintiff; and (iii) clear possibility of irreparable injury being caused to plaintiff if the temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiffs conduct is free from blame and he approaches the court with clean hands.”

18. On perusal of the above cited decisions, their lordship have clearly held that when the plaintiff has fails to establish the prima-facie case, the balance of convenience does not lie in favour of plaintiff and plaintiff has also failed to prove that he would be put to irreparable



loss and injury, then he is not entitled for any relief of temporary injunction against the defendant.

19. Another decision of Hon'ble Apex Court reported in ***AIR 2010 SC 296 in between Kashi Math Samsthan and another V/s Shrimad Sudhindra Thirtha Swamy and another***, his lordship has held that.

“If a party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if he has made out a case of balance of convenience and would suffer irreparable loss and injury if no injunction is granted”

20. On perusal of the above decision, his lordship has held that when the plaintiffs have fails to prove prima-facie case, then they have not entitled for any relief of temporary injunction. Though, they have made out case of balance of convenience and would suffer irreparable loss



and injury if no injunction is granted. In the instant case also, I have already held that the defendant No.8 to 10 have purchased the suit properties under the registered sale deeds and in pursuance of registered sale deeds, their names have been recorded in the revenue records and there is a presumption available to the defendant No.8 to 10 under section 133 of Karnataka Land Revenue Act. Now, it is relevant to mention the provision of **Sec 133 of Karnataka Land Revenue Act** it reads as thus;

Section 133 of the Act reads thus: “ 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 therefore.



21. On perusal of the above relevant to provision it is crystal clear that any entries in the revenue records made in the official performance of duties conferred on the revenue authorities are true. This presumption has to be drawn by the court without requiring any further evidence. Once the court draws the presumption, the burden of proof shifts on to the person who assails the correctness of the entries. Therefore, the documents available on records, it clearly goes to show the name of defendant No.8 to 10 in pursuance of the registered sale deeds. On the other hand, the defendant No.1 to 5 fails to establish that they are in possession and enjoyment of suit properties in pursuance of oral gift made by Moula Sab in favour Ameer Ali and after his death, they have been succeeded. Hence, the defendant No.1 to 5 have not made out any prima-facie case to allow their application as claimed in IA No.6.



22. It is pertinent to note that the defendants have filed their application under order 39 Rule 1 & 2 R/w Section 151 of CPC in a suit filed by the plaintiffs. Now, the question arose before this court is that whether the application is filed by the defendants is maintainable in a suit filed by the plaintiffs. At this juncture, I would like to rely upon a decision reported in **AIR 2015 Kar 13 (Full Bench), in a case between Smt. Shakunthamma & others V/s Smt. Kanthamma & others**, wherein their lordships have held that,

(A) CODE OF CIVIL PROCEDURE, 1908 – ORDER 39 RULE 1(A) – Application for Temporary injunction – HELD, both the plaintiff and the defendant can maintain an application under Order 39 Rule 1(a) of the Code for the reliefs set out in the said provision – Clause (a) of Order 39 Rule 1 of CPC provides that where in any suit it is proved by affidavit or otherwise,



that any property in dispute in a suit is in danger or being wasted, damaged or alienated “by any party” to the suit, or wrongfully sold in execution of a decree, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property. The reason is obvious. After institution of the suit, the plaintiff may act detrimental to the interest of the defendant in the subject matter of the suit by allowing it to be wasted or damaged or alienated and in such an event, the defendant can take recourse to making application under Order 39 Rule 1(a) CPC.

(B) CODE OF CIVIL PROCEDURE, 1908 – ORDER 39 RULE (1) (b) AND (c) – Application for Temporary Injunction -HELD, The defendant cannot maintain an application for the relief



available in Clauses (b) and (c) of Rule 1 of Order 39 – Such a relief is available only to the plaintiff and the defendant cannot maintain an application for the said reliefs in a suit filed by the plaintiff, irrespective of the fact that his right to such relief arises either from the same cause of action or a cause of action that arises subsequent to filing of the suit. However, it is open to the defendant to maintain a separate suit against the plaintiff and seek relief provided under Order 39 Rule 1(b) and (c) of the Code.

23. On perusal of the above cited decision, their lordships have held that the defendant cannot maintain an application for the relief available in clause (b) and (c) of Rule 1 of Order 39 and such a relief is available only to the plaintiff and the defendant cannot maintain an application for the said reliefs in a suit filed by the plaintiff, irrespective of the fact that his right to such relief arises



either from the same cause of action or a cause of action that arises subsequent to filing of the suit. However, it is open to the defendant to maintain a separate suit against the plaintiff and seek relief provided under Order 39 Rule 1(b) and (c) of the CPC.

24. In the instant case also, the defendants have claimed the temporary injunction against the defendant No.7 and 10 restraining them from interfering with the peaceful possession and enjoyment of the suit schedule Sy.No.44/6 measuring 03 Acres 03 Guntas and Sy.No.44/3 measuring 03 Acres 03 Guntas, both situated at Vaijapur village of Aland Taluka. In view of the principles laid down in the above decision, the application filed by the defendants itself is not maintainable against the defendant No.7 and 10. It is open to the defendants to maintain separate suit against the defendant No.7 and 10 and seek the relief provided under section 39 Rule 1 (b-c)



of the Code which has claimed in IA No.6. Hence, the application filed by the defendants under IA No.6 itself is not maintainable and therefore, they are not entitled for any relief claimed in IA No.6 against the defendant No.7 and 10. In view of the above discussion, the defendant No.1 to 5 have not made out any priam-facie case and no balance of convenience tilt in their favour. Accordingly, I answer **point No.1 and 2 in negative.**

25. **Point No.3:** As per the above said reasons, if the temporary injunction issued against the defendant No.7 and 10, definitely the defendant No.7 and 10 will be put to great and irreparable loss. On the other hand, no loss or hardship will be caused to the defendant No.1 to 5 if the temporary injunction is not granted in their favour. Accordingly, I answer this **point No.3 in favour of the defendant No.7 and 10.**



26. **Point No.4:-** For the above said reasons, I proceed to pass the following;

ORDER

Interim application No.VI filed by the defendant No.1 to 5 U/O., XXXIX Rule 1 and 2 R/w Section 151 of CPC, is hereby rejected with costs.

For compliance U/Sec.,89 of CPC.

(Dictated to the Stenographer, transcribed by her, then corrected by me and pronounced in the open court on this the 02nd day of June, 2023)

(S.M. ARUTAGI)
Senior Civil Judge,
Aland.