

IN THE COURT OF THE CIVIL JUDGE & JMFC
AT AFZALPUR

Present :-

Sri. Ashoka .T

B.A., L.L.B.,

Civil Judge & J.M.F.C., Afzalpur

O.S.No.69/2019

Dated this the 11th day of November 2019

Vijayakumar & others

-Plaintiffs

V/S.

Ahmed Patel

-Defendant

I.A.No.I

Vijayakumar S/o Kotu Rathod
age:26 years, Occ:Agriculture
and others

all are R/o village balurgi(Heeru Naik Tanda)
Tq: Afzalpur, Dist:Kalaburagi.,

.... Applicants/plaintiffs

(By Sri. B.R.B., Advocate)

V/S

Ahmed Patel S/o Syed Fhariddab
Age:40 years, Occ:Agriculture
R/o Village Balurgi, Tq:Afzalpur,
Dist:Kalaburagi.

...Opponent/defendant.

(By Sri. W.A.I., Advocate)

ORDER ON IA No.1 FILED
U/O.XXXIX Rule-1 and 2 of CPC

This order arises out of I.A.No.1 filed by plaintiffs under Order-XXXIX Rule-1 and 2 of CPC for grant of temporary injunction against defendant, in support of which plaintiff No.1 filed affidavit stating that contents of the plaint to be read as part and parcel of this affidavit and that on the basis of his possession since 1982, he has been in possession of the suit property and due to wrong entries, in the ROR of the suit land the defendant is trying to interfere with the peaceful possession of the suit property of the plaintiff. It is contended that in plaint that earlier Sy.No.356/1 was in toto measuring 16-acres 17-guntas in the year 1963-64 and continued till 1981-82 and it was standing in the name of Syed Fharidinsab S/o Syed Badshaha and another Syed Fhatru Patel who are the

brothers interse. Syed Fharidinsab is in fact the father of the defendant and also about 05-acres of land towards East in Sy.No.356/3, is the Heeru Naik Tanda residential area since last two centuries. In the said 05-acres 60 houses are built in the land. The land available for cultivation is only 11-acres 07-guntas and were in its possession and later on, father of plaintiff No.3 to 5 Heeru alone started cultivating the land and in the year 1982. Said Heer purchased entire land from Syed Fharidinsab and his brother Fhatru Patel. Since then the plaintiffs are in uninterrupted, peaceful possession and enjoyment of the suit land. The real problem is due to wrong entries in the ROR and Sy.No.356/1 is made as Sy.No.356/1A measuring 08-acres 8 1/2-guntas in the name of Syed Fharidinsab and Sy.No.356/Aa measuring 08-acres 8 1/2 -guntas in the name of father of plaintiff No.3 Heeru and the entire land should

have been mutated in the name of Heeru father of plaintiff No.3 to 5 and the possession of entire extent was handed over of Heeru by father of defendant. In the year 1993 the said Heeru died the plaintiff No.3 being the eldest and Karta of the family, the land bearing Sy.No.356/Aa came to be mutated to his name and legal heirs of Heeru and his brother Bheemu are made parties as there are having interest in the suit property and others legal heirs have relinquished their rights.

2. In the year 2003-04 Sy.No.356/1A and Sy.No.356/1Aa merged as Sy.No.356/1, hence name of father of plaintiffs No.3 to 5, name of defendant appeared in one and the same ROR. In the year 2011-12 an extent of 08-acres 03-guntas standing in the name Syed Fharidinsab was mutated in the name of his son Ahmed Patel and the said land came to be re-number

as Sy.No.356/3 and name of father of plaintiffs No.3 to 5 continued as pattedar in Sy.No.356/1. The plaintiffs as on today are in possession of the land to an extent of 11-acres 07-guntas and defendant is trying to interfere in the suit land to the extent of 03-acres 03-guntas.

3. The defendant filed written statement and also memo adopting written statement to treat as objection to the I.A.No.1 and contended that the defendant is the absolute owner and possessor of the suit property and the plaintiffs are not at all concerned in any way with the suit property and the plaintiffs are trying to interfere in the peaceful possession and enjoyment of the suit property by taking advantage that the plaintiff is serving CRPF and the plaintiffs have no locus standi to file such as false and frivolous case without any piece of evidence and that the suit property is not at all sold to the plaintiffs and

they are mislead the court and the measurement of suit property shown in para column No.3 of the plaint is 08-acres 03-guntas hence the defendant has prayed to dismiss the above I.A.

4. Heard on I.A.No.1. On perusal materials on record the following points arise for consideration.

1. Whether plaintiffs prove that they have got prima facie case?

2. Whether plaintiffs prove that balance of convenience lie in their favour?

3. Whether plaintiffs prove that irreparable loss and hardship will be caused to them, if the injunction is not granted?

4. What order or decree?

5. After hearing on the I.A.No.I and considering the materials available before court, I answer points No.1 to 4 as follows...

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

6. **Point No.1** : The specific contention of the plaintiff is that on the basis of his possession since 1982, he has been in possession of the suit property and due to wrong entries, in the ROR of the suit land the defendant is trying to interfere with the peaceful possession of the suit property of the plaintiff. It is contended that in plaint that earlier Sy.No.356/1 was in toto measuring 16-acres 17-guntas in the year 1963-64 and continued till 1981-82 and it was standing in the name of Syed Fharidinsab S/o

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plaintiff No.3 Heeru and the entire land should have been mutated in the name of Heeru father of plaintiff No.3 to 5 and the possession of entire extent was handed over of Heeru by father of defendant. In the year 1993 the said Heeru died the plaintiff No.3 being the eldest and Karta of the family, the land bearing Sy.No.356/Aa came to be mutated to his name and legal heirs of Heeru and his brother Bheemu are made parties as there are having interest in the suit property and others legal heirs have relinquished their rights.

7. In the year 2003-04 Sy.No.356/1A and Sy.No.356/1Aa merged as Sy.No.356/1, hence name of father of plaintiffs No.3 to 5, name of defendant appeared in one and the same ROR. In the year 2011-12 an extent of 08-acres 03-guntas standing in the name Syed Fharidinsab was mutated in the name of his son Ahmed

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8. The defendant filed written statement and also memo adopting written statement to treat as objection to the I.A.No.1 and contended that the defendant is the absolute owner and possessor of the suit property and the plaintiffs are not at all concerned in any way with the suit property and the plaintiffs are trying to interfere in the peaceful possession and enjoyment of the suit property by taking advantage that the plaintiff is serving CRPF and the plaintiffs have no locus standi to file such as false and frivolous case without any piece of evidence and that the suit

property is not at all sold to the plaintiffs and they are misled the court and the measurement of suit property shown in para column No.3 of the plaint is 08-acres 03-guntas.

9. The plaintiffs have contended that they are the owners of the suit land and there are in peaceful possession and enjoyment of the suit property and the defendants is trying to interfere with peaceful possession and enjoyment of the suit property and also the defendant is trying to disposes the plaintiffs.
10. A perusal of ROR for the year 2011-12, 2012-13, 2013-14, 2014-15. 2015-16, 2016-17, 2017-18, 2018-19, 2019-2020 the documents produced by the plaintiff goes to show name of the defendant in column No.9 and also 12 in respect of 08-acres 03-guntas in Sy.No.356/3 situated at Balurgi village, taluka Afzalpur. And the said document further discloses that the defendant

has been cultivating the suit land. The plaintiff has not produced any other document to show that the said documents are false and not genuine. The contention of the plaintiffs that they are the owner of the suit property and they are in possession of the same is to be tried and thereafter a conclusion that can be arrived at. Prima-facie the documents disclose name of the defendant in the suit property and description of measurement of the suit property differs in schedule and plaint. The contention of the defendant is a question of fact which can be decided on completion of evidence of both parties. The entries of the ROR have got presumptive value until they are rebutted. Hence it is held that the material produced by the plaintiffs do not disclose perima-facie case and the balance of convenience lies in favour of defendant and if at all an order of injunction is granted in favour of plaintiffs there are chances

of injury to the defendant. Hence I answer point No.1 to 3 In the '**Negative**'.

11. **Point No.4:** In view of the above discussion, I proceed to pass the following:

ORDER

Interim Application No.1 filed under Order-XXXIX Rule-1 and 2 of CPC by plaintiff is hereby dismissed and an order Status-quo order is vacated.

For compliance under Sec.89 of C.P.C.

(Dictated to the stenographer, transcribed by him, corrected by me, then pronounced in the open court on this the 11th day of November 2019)

(Ashoka .T)
Civil Judge & JMFC, Afzalpur