

**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.108/2018

Date: On this the 16th day of January 2020

Plaintiffs:

Sri.Smt. Chandrabhaga & others

(By. Sri. SN.P, Advocate)

V/S.

Defendants:

Sri.Shankreppa & others

(D1 and D2 By Sri. S.S.P, Advocate)

ORDER ON I.A.NO.I Filed U/O-39

Rule-1 and 2 R/w 151 of C.P.C.

This order arises out of I.A.No.I filed by the plaintiff under Order-XXXIX Rule-1 and 2 R/w 151 of C.P.C. for grant ex-parte temporary injunction in respect of suit property, in support of which the plaintiff No.1 has filed an affidavit

stating that the plaintiffs are under apprehension that the defendants may alienate or sell the suit property as they have got the right in the suit property and also contended that the averments made in the plaint to read as part of parcel on the above I.A.

2. In plaint, the plaintiffs have contended that the suit property bearing Sy.No.562/a measuring 02-acres 15-guntas situated at Mannur village, taluka Afzalpur is the agriculture land and husband of plaintiff No.1 by name Veerabhadrappa S/o Gurupadappa Telli was the lawful owner for Sy.No.562/1 measuring 12-acres 11-guntas of Mannur village. The said Veerabhadrappa being illiterate has not noticed alteration of dimension of Sy.No.562/1 as 11-acres 36-guntas instead of 12-acres 11-guntas made by the revenue authorities. Land bearing Sy.No.562/2 of defendants was divided into two parts as Sy.No.562/2 measuring 02-acres 23-guntas and Sy.No.562/3 measuring 10-acres 03-guntas and at the time land of Veerabhadrappa was made short fall of 15-guntas without any reason and the ROR of land of Sy.No.562/1 for the year 1968-69 was shown with measurement 11-acres 36-guntas. The said description in the measurement is only on the on the paper but not in the physical possession.

3. The Sketch of Phodi map does not shows that any piece of land of Sy.No.562/3 and the phodi of Sy.No.562/2 must have within the area 12-acres 11-guntas, but total area of land the defendants family would have 12-acres 26-guntas. In the year 1968, husband of plaintiff No.1

Veerabhadrapappa had sold an extent of 03-acres on the eastern side to one Ningappa, the father of the defendants in the Sy.No.562/1 and specifically in the year 1970 said Veerabhadrapappa again sold an extent of 02-acres on the eastern side of Sy.No.562/1 to the same person. After sale of the suit properties, there must have been 06-acres 36-guntas in the middle of the said land. The defendants with ulterior motive have managed revenue entries in respect of Sy.No.562/1 and Sy.No.562/2 in the year 1973-74. In consequence of the changes in the revenue entries the ROR of sy.No.562/1 was renumbered as 562/2 was with renumbering as 562/a(2-3) made furthest measurement of 19-acres 26-guntas from 12-acres 11-guntas.

4. The said land of Veerabhadrapappa was shown to be remaining as 04-acres 36-guntas in Sy.No.562/1A and that too also been purchased by Ningappa again in the year 1974, from Veerabhadrapappa. Now, as on date both the lands Sy.No.562/A measuring 04-acres 36-guntas jointly standing in the name of both the defendants.

5. Said Veerabhadrapappa has sold only to an extent of 09-acres 36-guntas out of 12-acres 11-guntas and the land to an extent of 02-acre 15-guntas is still remaining to the plaintiffs family and the defendants family are in illegally possession are entire land of Veerabhadrapappa.

6. Said Veerabhadrapappa died leaving the plaintiffs as his legal heirs and thereafter the plaintiffs had been to Maharashtra for the their livelihood and they were under

the impression that Veerabhadrappa might have sold entire land to Ningappa. The plaintiffs recently came to know that the defendants are in illegal possession of the land of plaintiffs. An extent of 02-acres 15-guntas is in illegally occupation for more than 40 years. The defendants by colluding with revenue officials with managed to get fictitious entries in the revenue records. Though legal notice was issued to the defendants, they have not cared for the same. Hence the above application.

7. On receipt of suit summons defendants appeared through their counsel. The defendant No.1 and 2 have filed memo to treat the written statement as objection to the above I.A. In the written statement, it is contended that land bearing Sy.No.562/Aa was measuring 09-acres 36-guntas only but ROR was being shown 12-acres 11-guntas belonging into the family of plaintiffs and the said land was divided into several parts for convenience of cultivation. Veerabhadrappa the husband of plaintiff No.1 and father of plaintiffs No.2 to 5 have sold the said land into several pieces and at the time of said sale there is no form No.10 issued by the authority and the sale was made put on the portion which were then existing in Survey number and phodies sub divisions are not made. The said sale was made on the basis under Hoonda-gutta and the first sale was made in the year 1968-69 through document No.151/1968-69, dated 9.5.1968 to an extent of acres in favour of the father of the defendants showing an extent of land as 03-acres towards the eastern portion. Similarly in the year 1970 Shri Veerabhadrappa sold another portion towards

eastern side through sale-deed No.455/1970-71 dated 23.02.1970 and again remaining portion of 04-acres 36-guntas was sold out by him. Based on the said sale-deeds, the father of the defendants was put in possession of the entire portion to the an extent of 9-acres 36-guntas held by Veerabhadrapa and since then the family of defendants are in exclusive of possession of the entire land purchased by them.

8. It is further contention of the defendants that at the time of purchase of land whatever bunds were existing since 1969 have continued and the defendants is in possession to the extent of 09-acres 36-guntas since purchased by defendant No.1. The defendants are holding their portion of land in Sy.No.562 apart from the lands purchased by their father and there is no bunds now in existence after 1974. There are no strips of land in existence in entire Sy.No.562. The entire lands in possession of the defendants is one bing strip of land and the same is in exclusive possession of these defendants since more than 50 years. There is no proper description is required by the provision of order-VII Rule-3 of CPC and boundaries of the suit land is imaginary and the suit of for want of proper identification and therefore the suit liable to dismiss.

9. Heard learned counsel for the plaintiff as well as learned counsel for the defendants and perused the material placed on record.

10. Upon hearing arguments and on perusal of material placed on record, the following points arise for consideration:

1. Whether plaintiff has established prima facie case?
2. Whether balance of convenience lies in favour of plaintiff?
3. Whether irreparable loss or injury will be caused to the plaintiff, if temporary injunction is not granted?
4. What order?

11. My answers to the above points are as under:

Points NO.1 to 3: In the Negative.

Point NO.4: As per the final order, for the following:

REASONS

12. **Point No.1:** the specific contention of the plaintiffs is that the suit property bearing Sy.No.562/a measuring 02-acres 15-guntas situated at Mannur village, taluka Afzalpur is the agriculture land and husband of plaintiff No.1 by name Veerabhadrappa S/o Gurupadappa Telli was the lawful owner for Sy.No.562/1 measuring 12-acres 11-guntas of Mannur village. The said Veerabhadrappa being illiterate has not noticed alteration of dimension of Sy.No.562/1 as

11-acres 36-guntas instead of 12-acres 11-guntas made by the revenue authorities. Land bearing Sy.No.562/2 of defendants was divided into two parts as Sy.No.562/2 measuring 02-acres 23-guntas and Sy.No.562/3 measuring 10-acres 03-guntas and at the time land of Veerabhadrappa was made short fall of 15-guntas without any reason and the ROR of land of Sy.No.562/1 for the year 1968-69 was shown with measurement 11-acres 36-guntas. The said description in the measurement is only on the paper but not in the physical possession. The sketch of Phodi map does not shows that any piece of land of Sy.No.562/3 and the phodi of Sy.No.562/2 must have within the area 12-acres 11-guntas, but total area of land the defendants family would have 12-acres 26-guntas. In the year 1968, husband of plaintiff No.1 Veerabhadrappa had sold an extent of 03-acres on the eastern side to one Ningappa, the father of the defendants in the Sy.No.562/1 and specifically in the year 1970 said Veerabhadrappa again sold an extent of 02-acres on the eastern side of Sy.No.562/1 to the same person. After sale of the suit properties, there must have been 06-acres 36-guntas in the middle of the said land. The defendants with ulterior motive have managed revenue

entries in respect of Sy.No.562/1 and Sy.No.562/2 in the year 1973-74. In consequence of the changes in the revenue entries the ROR of sy.No.562/1 was renumbered as 562/2 was with renumbering as 562/a(2-3) made furthest measurement of 19-acres 26-guntas from 12-acres 11-guntas. The said land of Veerabhadrapappa was shown to be remaining as 04-acres 36-guntas in Sy.No.562/1A and that too also been purchased by Ningappa again in the year 1974, from Veerabhadrapappa. Now, as on date both the lands Sy.No.562/A measuring 04-acres 36-guntas jointly standing in the name of both the defendants. Said Veerabhadrapappa has sold only to an extent of 09-acres 36-guntas out of 12-acres 11-guntas and the land to an extent of 02-acre 15-guntas is still remaining to the plaintiffs family and the defendants family are in illegally possession are entire land of Veerabhadrapappa. Said Veerabhadrapappa died leaving the plaintiffs as his legal heirs and the plaintiffs recently came to know that the defendants are in illegal possession of the land of plaintiffs. An extent of 02-acres 15-guntas is in illegally occupation for more than 40 years.

13. The suit filed by the plaintiffs is for the relief of declaration and recovery of possession. The plaintiffs have claimed that they are the owners of the suit property, but the plaintiffs have not produced any title documents to establish that the husband of the plaintiff No.1 had acquired the suit land during his life time. The latest ROR produced in the case also shows the name of the defendant. The defendants have taken the contention that husband of plaintiff No.1 did not possess 12 acre 11 guntas, but ROR entries were there and there was no physical land available, in this background the case requires trial. The plaintiffs have admitted that the defendant is in illegal possession from the last 40 years, therefore, full pledged trial is required to be held in the case. Under such circumstances, the plaintiffs have failed to establish prima facie case. When plaintiffs have failed to establish prima facie case, the remaining two aspects, does not arise at all. Even otherwise, if the injunction is granted, it will cause convenience to defendants. Therefore, balance of convenience tilts in favour of defendants. If the injunction is granted hardship will be caused to the defendants. Therefore considering all these aspects of the case and

totality of the circumstances, irresistible conclusion is that, plaintiffs have failed to establish prima facie case. They have also failed to establish that irreparable loss or injury will be caused to them if injunction is not granted. Therefore, I answer the Points No.1 to 3 in the Negative.

14. POINT NO.4: For the foregoing reasons, I proceed to pass the following:

ORDER

Interim application No.1 filed by the plaintiffsU/O 39 Rule 1 and 2 of Code of Civil Procedure, 1908 is rejected.

(Dictated to the stenographer directly on computer, typed by him, corrected by me, then pronounced in the open court on this the 16th day of January 2020)

(ASHOKA.T)
Civil Judge and JMFC, Afzalpur

(Order pronounced in the open court vide
separate)

ORDER

**Interim application No.1 filed by the
plaintiffsU/O 39 Rule 1 and 2 of Code of
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**(ASHOKA.T)
Civil Judge and JMFC, Afzalpur**