

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C AT
CHINCHOLI**

PRESENT: SRI. VIJAYKUMAR S. JATLA

**B.Sc., LL.B.
Senior Civil Judge & JMFC, Chincholi.**

DATED THIS THE 09th DAY OF DECEMBER-2021.

O.S.No.23/2020

Plaintiff:

V. Raghavendra S/o V.Hussainappa, Age: 40 years, Occ: Agriculture, R/o Kallur Road, Tq: Chincholi, Dist: Kalaburagi. Now residing at H.No.1-7-3/1A Indira Nagar, Tandur K.V. Sangareddy, Telangana State.

(Plaintiff by Sri. J.H.G. Adv)

-Vs-

Defendants:

1. Lalithamma W/o Janardhanreddy, Age: 71 years, Occ: Agriculture, R/o Road Kallur, Tq:
2. Syed babu Hussain S/o Syed Khaja Hussain, Age: 85 years, Occ: Agriculture, R/o Road Kallur, Tq: Chincholi, Dist: Kalaburagi.
3. Laxmi W/o Tulajappa, Age: 55 years, Occ: Agriculture, R/o Road Kallur, Tq: Chincholi, Dist: Kalaburagi.
4. Mursheed Pasha S/o Syed Babu Hussain, Age: 65 years, Occ: Agriculture, R/o Road Kallur, Tq: Chincholi, Dist: Kalaburagi.

(Defendant No.1 by Sri. B.V.P. Adv)
(Defendant No.2 to 4 placed expate)

Order on IA-IV filed U/o 39 Rule 1 & 2 of CPC filed by the plaintiff.

The plaintiff has filed I.A.No.IV U/O 39 Rule 1 and 2 of CPC seeking for temporary injunction order restraining the defendant No.2 and 4 from stopping the mining in schedule "A" property without obtaining permission from the Government and the plaintiff.

2. Advocate for plaintiff contended that as land Sy.No.97/3/Aa/4 (old) and 97/3/Aa (new) totally measuring 10 acres 39 guntas situated at Somaliingadhalli, Tq: Chincholi. Out of 10 acres 39 guntas 6 acres of land sold by defendant No.1 in favour of defendant No.2 by executing registered sale deed bearing document No.880/1993-94 dated 31.3.1994. Out of 10 acres 39 guntas 01 acre 10 guntas has been sold by defendant No.2 in favour of husband of defendant No.3 by name late Tulajappa through registered sale deed bearing document No.86/2008-09 dated 11.4.2008. The said suit property at Sy.No.97/3 measuring 10 acres 39 guntas was granted in the name of father of plaintiff. Hence, the plaintiff is the owner and in possession of the said Sy.No.97/3 totally measuring 10 acres 39 guntas. The defendants have colluded with revenue officers have mutated their names in the suit properties illegally and

unauthorizedly in the revenue records. The Land Tribunal has granted the suit land in the name of father of plaintiff by way of tenants. After the death of his father, plaintiff is the owner and in possession of the suit property as per the order of Special Tahasildar Chincholi. Hence, this court may direct the Revenue officer to remove the name of defendants in Column No.9, 10 and 12 and insert the name of plaintiff in Sy.No.97/3 measuring 10 acres 39 guntas as per Land granted. The plaintiff told the defendants No.1 to 3 which were mutated in their names to mutate the name of plaintiff in respect of suit property as per law but the defendants failed to do so. Further the plaintiff has contended that the defendant No.2 and 4 illegally entered in suit land item No.A without the knowledge of plaintiff and started mining illegally with Tippers, Etachi and 2-30 persons without obtaining permission from the Government. By taking undue advantage of the absence of plaintiff, the defendant No.2 and 4 have interfered illegally in the peaceful possession and enjoyment of plaintiff over the suit property to remove the stone quarry in the suit property without obtaining any permission from the Government and by entering registered sale deed No.880/1993-94 dated 31.3.1994. The defendant No.2 and 4 with a malafide intention to grab the suit property of the plaintiff

by removing the stone quarry over the suit property. The plaintiff has made out prima facie case, balance of convenience lies in his favour and if the injunction is not granted, he will be put to irreparable loss which compensated in terms of money. If the injunction is granted, no prejudice or hardship will be caused to other side. Hence, he sought for allowing the application.

3. The defendant No.1 has not filed any objections to the above said application. Defendant No.2 to 4 though served, not appeared and hence they were placed exparte.

4. On the basis of the above pleadings and on hearing both sides, the following points arise for my consideration.

- 1) Whether the plaintiff has made out the prima-facie case against the defendant No.2 and 4?
- 2) Whether balance of convenience lies in favour plaintiff?
- 3) Whether irreparable loss cause to the plaintiff if the instant IA-IV is not allowed?
- 4) What order?

5. My findings on the above points are as under:

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 to 3:-To avoid repetition of facts and for the sake of convenience, point No.1 to 3 are discussed together. The case of the plaintiff is as discussed above. This is a suit for declaration of ownership and injunction in respect of suit properties. This I.A.No.IV is filed by the plaintiff restraining the defendants No.2 and 4 from stopping the mining in schedule "A" property without obtaining permission from the Government and the plaintiff. The defendant No.2 to 4 placed exparte.

7. In order to substantiate the case plaintiff the plaintiff furnished RTC extracts in respect of the suit schedule properties and Mutation Extract. Further furnished certified copy of the proceedings of the Land Tribunal Chincholi, certified copy of the Form No.10, Notice, certified copy of the Order of Land Tribunal Chincholi dated 9.9.1987, certified copy of the Sale Deed dated 31.3.1994 executed by defendant No.1 in favour of defendant No.2 to an extent of 6 acres in Sy.No.97/3/A totally measuring 10 acres 39 guntas and certified copy of the Sale Deed dated 11.4.2008 executed by defendant No.2 in favour of husband of

the defendant No.3 in respect of land bearing Sy.No.97/3/A measuring 1 acre 10 guntas out of 6 acres. Further furnished one photograph and CD. The plaintiff contended that father of the plaintiff was granted the suit schedule A property and same was not mutated in his name. Further contended that the defendant No.1 having no rights sold suit property to the defendant No.2 and in turn defendant No.2 sold part of the property to the husband of defendant No.3. Further contended that the defendant No.2 and 4 are illegally mining in the suit schedule property. Hence sought for restraining the defendant No.2 and 4.

8. This suit is for declaration of ownership and injunction in respect of the suit schedule properties whereas the sale deed dated 31.3.1994 and 11.4.2008 discloses that the defendant No.2 is the owner of the land bearing Sy.No.97/3/A measuring 10 acres 39 guntas. The plaintiff is claiming the same on the basis of grant but the sale deeds, RTC and mutation extracts reveals that the defendant No.1 is the owner of the suit schedule properties. The question of illegality in entering into the RTC and the sale deeds can be ascertained through the full fledged trial. The question of ownership of plaintiff or defendant No.1 can be ascertained through the oral and documentary evidence. At this

point of time plaintiff failed to establish the prima facie case against the defendants. As there is no prima facie case hence the balance of convenience will not be with the plaintiff. No harm will cause to the plaintiff on account of non granting of temporary injunction as prayed for. In the light of above reasons I answer Point No.1 to 3 in the Negative.

9. Point No.4:- As I have answered point No. 1 to 3 in Negative, for the foregoing reasons, I proceed to pass the following:

ORDER

IA No.IV filed U/o. 39 Rule 1 & 2 of CPC

filed by the plaintiff is hereby rejected.

(Dictated to the Stenographer directly on computer and computerized by him, corrected and then pronounced by me, in the open Court on this the **09th day of December-2021**, at Chincholi)

Senior Civil Judge & JMFC,
Chincholi.