

IN THE COURT OF CIVIL JUDGE, CHITTAPUR.

Before : **Sri K.S.Rotter**, B.Com. LL.B (Spl),
Civil Judge, Chittapur.

Dated: this 1st Day of February 2016.

O S No.71/2015

1. Ramachandra, S/o. Late Hemla Rathod,
Age: 60 years, Occ: Agricluture,
2. Chandibai, W/o. Ramchandra Rathod,
Age: 54 years, Occ: Agriculture,
Both R/o. Bhali Nayak Tanda, Bapu Nagar,
Nalwar, Tq: Chittapur.

(By Sri. G.R. Vaishnav, Advcoate)

Plaintiffs.....

// Vs //

1. Valu, S/o. Late Ramu Rathod,
Age: 45 years, Occ: Agriculture,
2. Suresh, S/o. Late Ramu Rathod,
Age: 40 years, Occ: Agriculture,
3. Mahesh, S/o. Late Ramu Rathod,
Age:28 years, Occ: Agriculture,
D1 to D3 R/o. Ramu Naik Tanda, Bapu Nagar,
Nalwar, Tq: Chittapur.
4. Chandar, S/o. Late Ramu Rathod,
Age: 60 years, Occ: Agriculture,
5. Gobrya, S/o. Late Nama Nayak Rathod,
Age: 68 years, Occ: Agriculture,
6. Kubbay, S/o. Late Lachu Rathod,
Age:48 years, Occ: Agriculture,

7. Sunil, S/o. Chandar Rathod,
Age: 26 years, Occ: Agriculture,
D4 to D7 R/o. Bali Nayak Tanda, Bapu Nagar,
Nalwar, Tq: Chittapur.

(D1 to D3 & D6 By Sri. A.M.P., Advocate
D4, D5 & D7 Ex-parte)

Defendants.....

ORDERS ON I.A.NO.I

The plaintiffs have filed I A-I U/o.39 Rules-1 and 2 of C.P.C. praying therein for restraining the defendants from causing obstruction to the peaceful possession and enjoyment of suit property till disposal of suit.

2. In support of I A - I the plaintiff No.1 has filed his sworn affidavit explaining the reasons for the same and prayed for allowing I A No.I.
3. On the other hand the defendants No.1 to 3 and 6 have filed written statement and the same is adopted as objection to I.A - I and prayed for dismissal of I.A -I.
4. Heard both the sides.
5. The points which arise for my consideration are as below :-
 1. *Whether the plaintiffs have made out prima-facie case as per IA-I ?*
 2. *Whether balance of convenience leans in favour of the plaintiffs?*

3. *Whether the plaintiffs will be put to irreparable loss and injury if TI order is not granted?*

4. *What order?*

6. My findings on the above points are as under:-

Point No.1 : In affirmative

Point No.2 : In affirmative

Point No.3 : In affirmative

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

REASONS

7. **Points No.1 to 3** : I take all these points for common consideration, because they are inter-linked each other.

8. This suit is filed by the plaintiffs for the relief of permanent injunction against the defendants. It is the case of the plaintiffs that, they are the absolute owners in possession of the suit land bearing Sy.No.322/3 (old Sy.No.569/3) measuring 6 acres 11 guntas situated at Bapu Nagar Tanda in Chittapur Taluka. Further plaintiffs contended that, suit property is their ancestral property and originally suit property belonging to one Hemla Nayak and after his death the wife of the said Hemla Nayak by name Mangli Bai has succeeded the suit property. Thereafter, the Mangli Bai and her daughter Chandi Bai have equally divided by the suit property and mutation was effect in

the name Mangli Bai to the extent of 3 acres 6 guntas and in the name of Chandi Bai to the extent of 3 acres 5 guntas. It is stated that, thereafter the said Mangli Bai and her daughter Chandi Bai were enjoyed the suit property without any obstruction. Further plaintiffs contended that, now the Mangli Bai, W/o. Hemla i.e. mother of plaintiff No.1 Ramachandra is expired living behind plaintiff No.1 and his wife Chandi Bai as her legal heirs. Therefore, the present plaintiff No.1 and 2 stated that, they are in possession and enjoyment of the suit property as absolute owners. Further plaintiffs specifically contended that, defendants are no way concerned to the suit property. But, they are illegally and by unauthorized way interfering in the peaceful possession and enjoyment of the suit property. In this regard, plaintiffs have filed complaint before the police station against the defendants but, it was of no use. The police have directed the plaintiffs to approach the Civil Court as the matter is in Civil Nature. Hence, plaintiffs have filed this suit for the permanent injunction. The plaintiffs stated that they have got prima-facie case, balance of convenience lies in their favour, if T.I. is not granted they will be put to irreparable loss and hardship. Hence, plaintiffs prayed for T.I. against defendants.

9. On the other hand, the defendants No.1 to 3 and 6 have appeared through their counsel and filed written statement. But, defendants No.4, 5 and 7 remained absent and placed ex-parte. The defendants No.1 to 3 and 6 have adopted their written statement as objection to I.A.No.1. The defendants in their written statement contended that, suit of the plaintiffs is false and not maintainable. The defendants admitted the description of suit property but the defendants denied the family pedigree given by the plaintiffs in para No.3 of the plaint and contended that, the plaintiffs have not made sons and daughters of 1st wife of Hemla Nayak as parties to the suit. Hence, suit is not maintainable due to non-joinder of necessary parties. Further defendants denied that, originally suit property belonging to Hemla Nayak and after his death his wife Mangli Bai has succeeded. Further defendants denied that, the wife of Hemla Nayak and Chandi Bai have equally divided the suit property. The defendants specifically contended that, suit property is belonging to one Tukaram, S/o. Hemla Nayak and after his death the suit property was mutated in the name of Mangli Bai and Chandi Bai in the year 1986 without any basis. Further defendants stated that, the plaintiff No.1 is not concerned to the suit property and his name is not appeared in the ownership column of ROR. The defendants also denied that,

plaintiffs are the owner in possession of the suit property. Further defendants stated that, the plaintiffs have not produced any legal heir certificate of deceased Mangli Bai and filed this false suit. The defendants specifically contended that, in the year 1986 the Mangli Bai has sold out the suit property to the father of defendant No.1 for Rs.35,000/- and executed a stamp paper of Rs.20/- and for the said agreement the plaintiff No.1 was also witness. It is stated that, the father of defendant No.1 has purchased the suit property and thereafter, defendants No.1 to 3 are in possession of suit property. Further it is stated that, the defendant No.6 is also purchased the suit property to the extent of 2 acres from plaintiff No.1 in the year 1998 for consideration amount of Rs.61,000/- per acre and paid total amount of Rs.1,22,000/-. At that time, the plaintiff has handed over the possession of the sold out property to the extent of 2 acres to the defendant No.6. Therefore the defendants contended that, plaintiffs are not in possession of the suit property but the plaintiffs have filed false suit with an intention to grab the suit property of defendants No.1 to 3 and 6. Hence, the defendants contended that, the plaintiff has neither prima-facie case, nor balance of convenience lies in his favour. Hence, prayed for dismissal of I A.

10. The advocate for the plaintiffs vehemently canvassed his argument and contended that, plaintiffs are the absolute owner and in possession of the suit land as on date of suit. It is also contended that, the plaintiffs are in possession and enjoyment of the suit property since their ancestors. Now, the defendants without having any right, interest over the suit land causing obstruction to the plaintiffs for their peaceful possession and enjoyment of the suit land. It is stated that, if T.I. is not granted, the plaintiffs will be put to irreparable loss and hardship, which cannot be compensated in terms of money. Hence, the advocate for plaintiffs prayed for allowing I A No.I.

11. On the other hand, the advocate for defendants contended that, the plaintiffs are not in possession of the suit property. It is argued with force that, the deceased Mangli Bai has sold out the suit property to the father of defendant No.1 and executed an agreement on stamp paper by receiving Rs.35,000/-. It is also contended that, the defendant No.6 also purchased the suit property to the extent of 2 acres from plaintiff No.1 for Rs.1,22,000/- in the year 1998. Further it is contended that, on the date of sale itself, the plaintiffs has handed over the possession of the suit land to the defendant-6. It is stated that, the defendants are in possession and enjoyment of the suit

property since the date of sale agreement. Now the plaintiffs with an intention to dupe the sale consideration as well as the suit land of defendants have filed this false suit. Accordingly they prayed for dismissal of I A.

12. I have perused the pleadings and documents produced by both the parties. In this case, the plaintiffs contended that, they are in absolute possession and owner of the suit property. In support of their contentions the plaintiffs have produced ROR extract pertaining to the suit property since from 1963 to till today. On perusal of the same, it is observed that, originally one Hemla Nayak was the owner of the suit property. Thereafter, the names of Mangli Bai and Chandi Bai were entered to the suit property to the extent of 3 acres 6 guntas and 3 acres 5 guntas respectively. Now, the name of present plaintiff No.1 is also entered in the ownership and possession column to the extent of 3 acres 6 guntas as his mother Mangli Bai was expired. So these documents clearly shows that plaintiffs are owners in possession of suit property. On the other hand, the defendants contended that, the deceased Mangli Bai has sold out the suit property to the father of defendant No.1 and executed on a stamp paper and also contended that the plaintiff No.1 has sold out suit property to

the extent of 2 acres to the present defendant No.6. But the defendants have not produced the said agreement of sale in this case. In this case, the defendants stated that, father of defendant No.1 has purchased the suit property from one Mangli Bai in the year 1986 but the said Mangli Bai is now expired and till today the defendants have not entered their names as per the said sale. Another interesting thing is that, the defendants stated that, defendant No.6 has purchased the lands to the extent of 2 acres in the year 1998 from plaintiff No.1 but the documents produced on hand shows that, the name of plaintiff No.1 is mutated to the suit land recently in the year 2015. Therefore, the question of plaintiff No.1 selling the suit property does not arise at all. Moreover, at this stage, the defendants have not produced any single document for showing that they are in lawful possession and enjoyment of the suit property. They are also not produced any agreement of sale before this court in support of their contention. Such being the case, I am of the opinion that, the plaintiffs who are owners of the suit property is every right to protect their possession from the 3rd persons. The documents which are produced before this court clearly shows that, the plaintiffs are in possession of the suit land. From perusal of the documents produced by the plaintiffs, I am of the opinion that, the plaintiffs appears to be

in possession and enjoyment of the suit property. The conduct of the defendants further shows that they are trying to cause obstructions. Hence I am of the opinion that the plaintiffs have made out prima-facie case for grant of temporary injunction, the balance of convenience also leans in favour of the plaintiffs and they will be put to irreparable loss and injury if TI is not granted. Therefore, I answer points No.1 to 3 in affirmative

13. **Point No.4** : For the foregoing reasons, I proceed to pass the following :-

ORDER

I A-1 filed by the plaintiffs U/O.39 Rules-1 and 2 of CPC is allowed.

The defendants are hereby restrained by way of temporary injunction from causing obstruction to the peaceful possession and enjoyment of plaintiffs over the suit land Sy.No.322/3 (old Sy.No.569/3) total measuring 6 acres 11 guntas of village Bapu Nagar, Tq: Chittapur in any manner pending disposal of the suit.

No order as to costs.

(Dictated to the stenographer directly on laptop, typed by him corrected by me and then pronounced in open court on this 1st day of February 2016)

**(K.S. Rotter),
Civil Judge, Chittapur**