



**IN THE COURT OF CIVIL JUDGE & JMFC., AT: AFZALPUR.**

**PRESENT**

**Sri. KESHA.VA.K**, B.A. LL.B.,  
C/c Civil Judge & JMFC.,  
AFZALPUR.

**Dated this 26<sup>th</sup> day of August -2023**

**O. S. No.136/2022**

**Plaintiffs:** The President Afzalpur taluka Bramhan Samaj  
Vikas Trust (Reg.)

***(By Sri. S.K.P Advocate)***

**V/s**

**Defendant:** Laxmiputra @ Putrappa & another

***(By Sri. R.H.B Advocate for D-1)***

***(By Sri. S.B.H Advocate for D-2)***

**PARTIES IN I.A.NO.I**

**Applicant:** The President Afzalpur taluka Bramhan Samaj  
Vikas Trust (Reg.)

**V/s**

**Opponents:** Laxmiputra @ Putrappa & another

**ORDERS ON APPLICATION UNDER ORDER XXXIX  
RULE 1 AND 2 OF C.P.C.**

The plaintiff has filed the above said application seeking to grant ad-interim temporary injunction order against the defendant No.1, his men, servant or any person claiming through or under him from interfering in to peaceful possession and enjoyment of plaintiff over the suit schedule property i.e., Kalyan Mantap roofed by Tin over the said property until till disposal of this suit.

**Description of the suit property:**

The suit property is a Kalyan Mantap roofed by tin bearing panchayat No.5-1-114 measuring 110 x110, bounded by East: CC road, West: Open park and Ghattarga road, North: 3 feet



lane and south C:Road situated at Ghattarga

Road Afzalur (hereinafter called suit property).

**2. Briefly, the plaintiff's case is as follows:-**

In the annexed affidavit it is stated that, the deponent namely Anandrao son of Sureshrao Almelkar who is President of Afzalpur taluka Bramhan Samaj Vikas Trust and it was registered accordance with law and thereby he represents on its behalf, hence he acquainted with the facts and circumstances of the above said case. As such it is stated that the description of the suit schedule property is a Kalyan Mantap roofed by Tin and its Panchayat bearing No.5-1-114 measuring 110 x 110, it has been established for the purpose of welfare of the said community. Since it has been formed and registered under the presidentship of late Vasantrao son of Ramkrishnarao Patil, consisting with nine members as office bearers on 16<sup>th</sup> June 1989 under the provision of Registration Act, and functioning it till today. Such being the matter the defendant No.1 is completely stranger and not at all concerned either on the suit schedule property or with the trust in any manner, the defendant No.2 is an authority i.e., Town Panchayat of Afzalpur, it not been taken any action against the defendant No.1 in respect of fake documents and entry which created in the name of deceased father of defendant No.1. It is stated that earlier one Sri Vinayakrao son of Yogeshwarrao was the owner of land bearing Sy.No.399 situated at Afzalur and the portion of land measuring to an extent of 2 acres got converted from agricultural property to non agricultural purpose, after its conversion he has sold portion of the property in favour of plaintiff's trust and same has been registered in favour of Vasantrao Patil who the then the President of said Brahman Samaj Vikas trust Afzalpur. Since in which the land lord has been formed the layout and erected the plots numbering as 5-1-114 to 5-1-146 and he has obtained approved plan from the concerned authority, thereafter mutation also entered in the relevant revenue documents. Subsequently said trust has been obtained permission for making



construction and developed with one hall, rooms with roof in tin, since then the said hall with rooms being used for the community functions and also obtained water, electricity supply, now the property is being in use of plaintiff trust and enjoying the same as absolute owner in possession of the same as on this date without any interference of any third person including the defendants. Now all of sudden the defendant No.1 is nothing to do with the suit schedule property with an ill-intention entered into the peaceful possession and enjoyment of the deponent trust and threatened the manager of the said Kalyan Mantap and he has subjected that will break open the doors the said Kalyan Mantap and dispossess plaintiff trust, again he has been came over the suit schedule property with same Gunda elements and tried to interfere with the possession of the plaintiff trust. Thereafter without any alternative remedy members of the said trust stopped the illegally activities of defendant No.1 with the help of some neighbors and elderly persons of the town. Under such circumstances the plaintiff has made out prima-facie case and balance of convenience also lies in its favour if the injunction order granted in its favour no loss or harm will be caused to the defendants, on the other hand the plaintiff will be put to great hardship and irreparable loss if the instant application is not allowed. Hence, it is prayed that kindly be pleased to allow the same.

3. On the other hand in response of summons, the defendant No.1 has appeared through his counsel and filed written statement, same treated as objection to the instant application, in which it is contended that the plaintiff has filed this false suit by assigning false reasons for which suit itself is not at all maintainable either in law or on facts, because the reasons behind that the property bearing No.5-1-114 had been given by Vinayakrao son of Yogeshwarrao, Deshapnade to his father by name Parappa son of Shivappa Baloorgi and his father's name shown in DCB Registrar since 1994-95 to till today as to which the defendant No.1 and his father have been in possession since from 1994-95 till today without



any obstructions. In this regard the defendant No.2 has issued khata certificate in favour of his father. Therefore the defendant No.1 has paid tax to the concerned Town Panchayat regularly based on the said documents. Since the plaintiff's trust has been filed this suit only to the extent of perpetual injunction without seeking declaration, ownership and possession. The plaintiff's trust has not in a possession over the said property and not having any title rights over the same, since from 1993-1994 till today. Moreover the plaintiff has failed to mention proper suit market value for the purpose of pecuniary jurisdiction and not been sought declaration of ownership and possession in relation to said property, now the suit property market value exceeds more than 30 lakhs, on that point itself this court not having jurisdiction to try this suit. Moreover entire plaint nowhere it is discloses the cause of action for the suit with these reasons the suit of the plaintiffs does not survive for consideration, when such being so instant application filed by the plaintiff also does not survive for consideration, for which same is liable to rejected.

4. Heard both arguments, perused the documents available on record.

5. In view of above the following points that would arise for my consideration on I.A.No.I are as follows:-

1. Whether, at this stage the plaintiff has made out a *prima facie* case lies in its favour?
2. Whether the plaintiff proves the balance of convenience lies in its favour?
3. Whether the plaintiff proves that in event of not allowing I.A.No.I, the members of trust will be put to irreparable loss and injury?
4. What Order?

6. My answers to the above points is as follows:-

- |            |   |                                        |
|------------|---|----------------------------------------|
| Point No.1 | : | In the <b>Affirmative</b>              |
| Point No.2 | : | In the <b>Affirmative</b>              |
| Point No.3 | : | In the <b>Affirmative</b>              |
| Point No.4 | : | As per final order for the following:- |

**REASONS**

7. **Points No.1 to 3**:-These three points are taken up together for common discussion in order to avoid repetition of facts.

8. In order to establish prima-facie reasons the plaintiff has produced documents in support of above said oral testimonials which pleaded in the annexed affidavit, among them copy of endorsement dated:02-01-2023 which issued by Purasabe Afzalpur, copy of rights transfer certificate which issued by Mandal Panchayat Afzalpur dated: 07-12-1994, copy of trust deed dated: 12-02-1989, copy of N.A order dated: 12-12-1989, certified copy of sale deed, copy of application which made to the Panchayat dated: 01-12-1989, copy of affidavit of Vinayakrao, copy of Layout plan, copy of Mandal Panchayat proceedings dated:15-11-1989, Letter of approval of plots, copy of mutation deed dated: 07-12-1989, copy of construction permission, copy of application for water supply dated:15-02-1992, copy of tax paid receipts, copy of encumbrance, copy of resolution. By virtue of all these documents learned counsel for the plaintiff rendered arguments in which he has drawn attention of this court that the plaintiff's trust is absolute owner and having exclusive possession over the suit schedule property past from four decades and it has been acquired through registered instrument for valuable sale consideration, since then the plaintiff trust has been in actual possession and enjoyment over the said property by obtaining all necessary permissions from the concerned authorities and for being make use of said portion for the purpose of community welfare, this fact even well aware to the defendant No.1, even if with intending to kncook of the said valuable property colluded with the revenue officers of Purasabe Afzalpur and created the documents by saying that it has been given from original owner to this father, therefore the defendant No.1 is made blunder mistake and hence he is liable to punish, further it is contended that the defendant No.1 has came over to the suit schedule property with



Gunda elements and threatened the manager of said Kalayan Mantap and frequently opposed any improvements held in the said property by the said trust. It is argued that as per trust deed dated:12-02-1989 formed trust with the instance and President-ship of Vasanthrao son of Ramakrishna Patil under the name and the style of Afzalpur taluka Bramhan Samaja Vikas trust, before that all the necessary permission have been taken from the concerned authorities in order to run the said trust, even if the defendant No.1 intentionally and deliberately with an intending to knock of the said property frequently interfered and made Gunda elements, obstructed all functions which held in the said trust, further it is added that as per above said documents it is clear that property bearing No..5-1-114 is belongs to said trust, for which in order to protect the rights of the said members this court may extend the discretionary relief of ad-interim temporary injunction order against the defendant No.1 only.

9. On the other hand defendant No.1 also relied upon the documents dated: 02-01-2023 and right transfer certificate dated: 07-12-1994 and in addition to that rendered arguments and completely relied on these two documents by saying that the suit schedule property has been originally belongs to Vasanthrao and he has applied on application to the concerned authority seeking N.A. after its conversion he has given the suit schedule property to the father of defendant No.1 namely Parappa Baloorgi, since then he has been in possession and enjoyment over the same, after his demise the defendant No.1 put in possession over the same, further it is contended that the said Bramhan Samaj trust has filed this false suit without having any valid documents and without getting any necessary permission illegally trying to started construction work over the defendant No.1's property for which he has opposed to do so, hence the plaintiff trust has filed the false suit and dragged him to the court. As per the document dated:02-01-2023 that itself clearly



shows that the defendant No.1 and his father being lawful owners to the said property and they have been in possession, as to which the Mandal Panchayat Afzalpur has issued right transfer certificate dated: 07-12-1994 in which also it is clearly mentioned that since from 1994 till today the 1<sup>st</sup> defendants father and after his demise the defendant No.1 have been in lawful possession, therefore the defendant's counsel submitted that herein the defendant No.1 is produced valid documents to the suit schedule property as to show the defendant No.1 is owner, however application filed by the plaintiff kindly be pleased to reject because since from 1994 till today the defendant No.1 and his family members have been in possession in property bearing No.5-1-114 measuring to an extent of 110 x 110 feet. For all these reasons it is prayed that kindly be pleased to reject the above said application.

10. In view of above said reasons herein on careful perusal of documents available on record, herein it is going to shows that according to trust deed dated:12-02-1989 undoubtedly formed said trust with the assistance and Presidentship of Vasanathrao son of Ramakrishan Patil, but nowhere it is found that where the said trust has been exactly situated and functioning its activities, as per order dated:12-01-1989 land bearing Sy.No.399 measuring to an extent 2 acres of land converted from residential purpose by the Tahasildar of Afzalpur. According to sale deed dated: 25-07-1989 the original owner namely Vinayakrao son Yogeshwara had been executed sale deed in favour of Brahmana Vikas trust for valuable sale consideration amount of Rs.20,000/-in which the measurement reads as below:

ಸರ್ವೆ.ನಂ. 399 ಕ್ಷೇತ್ರ 15 ಎಕರೆ 21 ಗುಂಟೆ, ಆಕಾರ 9.81 ಪೈಸೆ ಇದರ ಪೈಕಿ ಕೃಷಿಯೇತರ ಭೂಮಿಯ ಕ್ಷೇತ್ರ 2 ಎಕರೆ 00 ಗುಂಟೆ (ಮದ್ದೆ ಭಾಗದ್ದು) ಇದನ್ನು ನಾನು ಸಂಘಕ್ಕೆ ನಗದು ಹಣ 20,000/- ರೂ (ಕೇವಲ ಇಪ್ಪತ್ತು ಸಾವಿರ ರೂಪಾಯಿಗಳು ಮಾತ್ರ)ಗಳಿಗೆ ಖುಷಿ ಖರೀದಿಯಾಗಿ ಕೊಟ್ಟಿರುತ್ತೇನೆ. ಸದರಿ ಕೃಷಿಯೇತರ ಭೂಮಿಯ ಚರ್ತುಸ ಸೀಮೆಗಳು ಈ ಕೆಳಗಿನಂತೆ ಇರುತ್ತದೆ.



ಪೂರ್ವಕ್ಕೆ ಃ ಸರ್ವೆ ನಂ.400  
 ಪಶ್ಚಿಮಕ್ಕೆ ಅಫಜಲಪೂರ ಧತ್ತರಗಾ ರಸ್ತೆ  
 ಉತ್ತರಕ್ಕೆ ಮಾಲಕರ ಉಳಿದ ಭೂಮಿ  
 ಧಕ್ಷಿಣಕ್ಕೆ ಮಾಲಕರ ಉಳಿದ ಭೂಮಿ

As far as remaining documents are concerned according to proposed residential layout, property bearing No.5-1-114 clearly visible in the said plan but no name mentioned in the said proposed plan, as per Mandal Panchayat letter dated:15-11-1989 proceedings also initiated in which also nowhere it is found that the said trust has been existing and functioning in the property bearing No.5-1-114, according to rights transfer certificate dated:07-12-1989 said Vinayakrao son of Yogeshwara has executed and transfered rights in relation to 110 x 110, 5-1-114, 35, 45 5-11-5, 5-1-146, so far as construction permission dated:22-04-1991 which issued by Mandal Panchayat Afzalpur bearing No.5-1-114 in favour Vasantrao son of Ramakrishan Patil, subsequently paid tax to the said authority and also got permission about electricity and water supply.

11. Based on the above said reasons herein it is going to shows that the suit schedule property bearing No.5-1-114 which was purchased by the then President of above said trust after its purchase obtained construction permission and other necessary permission so as to run that trust, but according to photographs it is clearly visible that there is a tin shed existing somewhere, however after the considering the contents of these documents and arguments rendered from the both sides at this stage it is taken into note that the plaintiff has made out prima-faice reasons to the extent that undoubtedly said trust has been established in the year 1989 thereafter its activities have been run since from its establishment, in this regard there is no dispute even from the defendant side, according to case of defendants that, the defendant No.1 has also having exclusive possession over the said property bearing



No.5-1-114 and he has relied upon the above said documents dated: 02-01-2023 and 07-12-1994 if the contents of these documents suppose existing then the question will arise before this court that where the said trust has been existing and so far run its activities that aspect has to be taken into consideration and think over on that in this regard the defendant No.1's counsel has failed made out any reasons so as to disbelieve the version of plaintiff. As far as possession is concerned according to above said documents and arguments directly and impliedly it is going to shows that plaintiff's trust run its all activities in the said property, when such being the matter all of sudden if the defendant No.1 going to stop those activities in the said property in future definitely they will put to trouble. Therefore, the plaintiff has made out prima-faice case and balance of convenience lies in its favour if the instant application is not allowed definitely its members will be put to trouble, rest of the reasons which canvassed during the course of arguments and documents produced from both side will have to be considered after full-pledged trial, whether those things have been existing or not existing until and unless herein it is necessary to protect the rights of the plaintiffs trust over the suit schedule property, otherwise it will leads in justice to the plaintiff's trust, hence I answer point No.1 to 3 in the Affirmative.

12. **Point No.4:-** In view of the findings on points No.1 to 3, I proceed to pass the following:-

**ORDER**

Application filed by the plaintiff under Order XXXIX Rules 1 and 2 of C.P.C. is hereby allowed.

Consequently, the defendant No.1 is hereby restrained from interfering into the suit schedule property in any manner, whatsoever until further orders.



Further it is also directed that the plaintiff's trust cannot put any further construction in the said property until further orders.

*(Dictated to the Stenographer, transcribed revised, corrected by me, signed and then pronounced in open court on this the 26<sup>th</sup> Day of August - 2023)*

**(KESHAVA.K)**  
**C/c Civil Judge, AFZALPUR.**