

**IN THE COURT OF CIVIL JUDGE AND JMFC., JEWARGI
AT JEWARGI.**

**Present:- Sri.D.Ramesh, B.AL., LL.B.,
Civil Judge and JMFC, Jewargi.**

Dated : This the 01st day of July, 2022

O.S.No.73/2019

Between:

Abdul Razak : **Plaintiff**

(By Sri.B.B., Adv.,)

And

Chandrakanth and Another : **Defendants**

(By Sri.S.B.K., Adv.,)

I.A.No.1

Abdul Razak : **Applicant/Plaintiff**

S/o Late Ladle Sab Khazi,
Aged about : 39 years,
Occupation: Agriculture,
R/o Kolkur Village,
Tq: Jewargi, Dist: Kalaburagi.

V/s.

1. Chandrakanth : **Opponents/Defendants**

S/o Late Sharanappa,
Aged about : 50 years,
Occupation: Agriculture.

2. Laxmikanth
S/o Late Sharanappa,
Aged about : 52 years,
Occupation: Agriculture,

Both are R/o Laxmi Chowk Jewargi,
Tq: Jewargi, Dist: Kalaburagi.

ORDERS ON IA No.1

The plaintiff has filed the application U/o 39 rule 1 and 2 of CPC and prayed to restrain the defendants from interfering over the suit schedule property.

2. The brief averments of the affidavit are as follows;

That, the defendants without having any right, interest and title over the suit land are trying to interfere with plaintiff possession over the suit land stating that their father have purchased the suit land from the ancestors of plaintiff's vendor without their any deed of conveyance. The defendants are associated with some anti social elements may dispossess the plaintiff from the suit land. Hence without the order of injunction plaintiff cannot resist their illegal interference. Plaintiff has made the prima-facie of case for grant of interim exparte, Balance of convenience lies in his favour. If injunction is not granted he will be put to irreparable loss which cannot be compensated in terms

of money. On the other hand if, injunction is granted, there would be no harm or prejudice to other side. Hence, this application.

3. The defendant No.1 had filed the memo and sought permission to adopt the written statement as objection to I.A.No.1.

4. Heard both side and perused the record.

5. The following points arise for my consideration.

Point No. 1:- Whether the plaintiff has made out prima-facie case?

Point No.2:- Whether the plaintiff has made out balance of convenience lies in his favour?

Point No.3:- Whether the irreparable injury caused to the plaintiff, if the I.A is not allowed?

Point No.4:- What Order?

6. I answer the above points as follows:-

Point No.1 :- In the Affirmative.

Point No.2 :- In the Affirmative.

Point No.3 :- In the Affirmative.

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

REASONS

7. POINT NO.1 TO 3:- These points are interlinked to each other, hence they taken up together for common discussion to avoid the repetition of facts.

8. It is the case of the plaintiff that he has purchased the suit schedule property under the registered sale deed bearing No.5148/2018-19. Then his name has been entered in the revenue records. Since the date of purchase he is the absolute owner and in possession of the suit schedule property without any body interference muchless of defendants. On purchase of the suit land, the defendants filed objection before the Tahasildar Jewarg in RRT No.43/2018 stating that their father purchased the suit land from the ancestor of vendor of plaintiff but they did not produce any documents in this regard. Hence the Tahasildar considering the submission and documents available on record passed an order on 07-01-2019 to mutate the name of plaintiff in the ROR based on the registered sale deed. The said order has not been challenged before any competent court of law. On 10-07-2019 when the plaintiff along with his neighbors were doing agricultural work as he sown cotton crop in the suit land, the defendants and their henchmen came upon the suit land and started to obstruct him and his labors stating that they will not

allow him to take any crops thereby caused interference with the peaceful possession and enjoyment of the suit land. Hence this application.

9. It is the case of the defendants that one Jaitumbee W/o Mahiboobsab Khaji executed the agreement of sale in favour father of defendant in respect of land Sy.No.104 measuring 4 acres 04 guntas of Raddewadagi Village, Jewargi Taluk and her daughters namely Mumtajibegum and Shamshad Begum @ Baby W/o Abdul Ghani were signatories of the deed by way thumb impression made on the alleged deed in the presence of witnesses namely Basavantraya C. Patil Kolkaur, Modinbasha S/o Ladlesab Khaji Kolkur, Md.Mashaq S/o Dastagir Khaji Kolkur were also the witnesses of the deed. The consideration amount was fixed to Rs.1,64,000/- to the extent of 4 acres 04 guntas and out of the same Rs.1,60,000/- has been received in cash by Jaitumbee, Mumutaz Begum and Shamshad Begum as part consideration amount and put the father of defendant in possession of the property. The father of the plaintiff well known to the transaction and to take revenge he got created sale deed in favour of plaintiff in collusion with his vendor behind the back of defendants. The said sale deed is sham and bogus document.

10. To substantiate the case of plaintiff, he has produced original sale deed dated 05-11-2018, a Sketch, Form No.10, Akarband, True copy of the objections given by the defendant No.1 before the Tahasildar, orders dated 17-01-2019 passed by Tahasildar Jewargi, RTC and Mutation.

11. On the other hand to substantiate the case of the defendants, they have produced unregistered and unstamped alleged sale agreement. After production of the said sale agreement the defendants themselves filed application to send the document to the District Registrar for collecting payment of duty and penalty. Same was sent to DR. Hence learned District Registrar Kalaburagi has certified that the defendant No.1 had paid the duty and penalty on the alleged agreement for sale dated 16-05-2003.

12. The original sale deed dated 05-11-2018 executed by one Smt. Shamshadbegum W/o Abdul Ghani in favour of plaintiff makes it clear that the suit schedule property has been sold in favour of plaintiff for valuable consideration amount of Rs.3,70,000/- and delivered the possession of suit property in favour of plaintiff. Further the form No.10, Akarband, Order passed by the Tahasildar dated 17-01-2019, RTC and Mutation

made it clear that the plaintiff is in possession in the suit schedule property.

13. On the other hand the defendants have relied upon the unregistered and unstamped agreement dated 16-05-2003. Up course as discussed above they have paid duty and penalty before the District Registrar Kalaburagi after filing of the suit. The said document shows that Smt. Jaitumbi W/o Mahiboobsab has entered into an agreement for sale with Sharanappa S/o Chandrashekhar in respect of land bearing Sy.No.104 measuring 4 acres 4 guntas of Raddewadagi village. The said document also shows that the possession of the said property has been handed over in favour of Sharanappa.

14. The learned counsel for the defendants vehemently argued that the unregistered and unstamped agreement for sale could be looked into. In support of his submission he relied the judgment of the Hon'ble High Court of Karnataka in the case of M.Shivappa through Lrs and Others Vs. Varadamma and Others reported in 2022(2) KCCR 1174.

15. The only question before this court is, whether the unregistered and unstamped document could be looked into in a suit for bare injunction to prove the possession. I have carefully

gone through the judgment M.Shivappa through Lrs (Supra) relied by the learned counsel for defendants. Wherein Hon'ble High Court of Karnataka held that an unregistered sale deed could be get marked in a suit for specific performance. Admittedly this is not a suit for specific performance. This is a suit for bare injunction filed by a purchaser against the alleged prospective purchaser of the suit property from the vendor of the plaintiff. At this juncture it is profitable to refer the judgment reported in (2018) 7 SCC 639 Ameer Minhaj Vs. Dierdre Elizabeth Issar and Others, wherein Hon'ble Apex Court held that "if agreement is registered then only his possession to be protected." It is well settled law that as per section 17-(1A) of the Registration Act 1908 if a suit is specific performance the document is to be looked into even it is not registered, if possession is delivered but in injunction suit shall not be looked into. Even possession is delivered not requires to be registered, but party intended to take shelter on section 53A of T.P.Act it is to be registered.

16. I also relied the judgment reported in AIR 2009 MAD 110 R Palanisubramanian Vs. Tran Medica (India) Ltd, wherein Hon'ble court held that "part performance as contemplated U/Sec. 53A of Transfer Of Property Act, the court will have to find whether the document was registered or not. If such a document

was not registered then the benefit of section 53A of Transfer Of Property Act cannot be claimed by the prospective purchase of the property.”

17. As per the above said authority it is well settled law, if a person wanted to take shelter U/Sec. 53A of the T.P.Act the document should be registered, and an on unregistered document cannot take shelter U/sec.53A of T.P.Act. Therefore the document produced by the defendants which is unregistered and unstamped could not be looked into even they have paid duty and penalty. Though the section 49 of Registration Act provides that the said document could be looked into for collateral purpose. But it is well settled law that in a suit for specific performance unregistered documents can be looked into, but in respect of possession it cannot be looked into. As discussed above the documents furnished by the plaintiff are registered documents and revenue documents, they made it clear that the plaintiff is in possession and enjoyment of the suit schedule property. Hence at this stage prima-facie shows that the plaintiff is in possession and enjoyment of the suit schedule property. When the plaintiff proved his possession, his possession should be protected. If he has been disposed from the suit property it will leads multiplicity of proceedings and the plaintiff will be put

hardship which cannot be compensated in terms of money. Therefore balance of convenience also lies in favour of the plaintiff. Accordingly, I answer the Point No.1 to 3 are in the Affirmative.

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

ORDER

The I.A.No.1 filed by the plaintiff under Order 39 Rule 1 and 2 of C.P.C is hereby allowed.

Consequently the defendants or any person claiming through them are hereby restrained from interfering into peaceful possession and enjoyment of the plaintiff over the suit schedule property by way of temporary injunction till further orders.

In the facts and circumstances of the case no order as to cost.

(Dictated to the Stenographer directly on Computer corrected and then pronounced by me in the open court on the 1st day of July-2022.)

**(D.RAMESH)
Civil Judge & JMFC,
Jewargi.**