

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,  
SEDAM

**PRESENT:**

Sri SAGAR GURUGOUDA PATIL  
B.A., LL.B(Spl.)  
Senior Civil Judge & JMFC, Sedam

Dated: 05-08-2024.

**OS No.75/2018**

Plaintiff/s :  
Smt.Kashamma & others  
  
(Smt/Sri P.D., Advocate)

VS

Defendant/s :  
Nagappa and others  
  
(D.1(a & b),D.9 to 12 by Sri.B.S.S.Adv.)  
(D.2 by Sri.R.B.Advocate)  
(D.5 by Sri.R.I.Advocate)  
(D.7 by Sri.M.S.H/T.R.,Advocate)  
(D.4,6, 8 Exparte)

**RANK IN IA 10**

Eramma : Applicant/s/Deft.7

VS

Kashamma & others : Opponent/s/Pltfs

i.	Provision under which the application is filed	U/O 39 Rule 1 & 2 of CPC
ii	Relief sought for	Suit for partition and separate possession
iii	The date on which the application is filed	26-06-2024
iv	Number of application	One
v	The date on which the objections are filed by different opponents	12-07-2024
vi	The date on which the orders were passed on the said application	05-08-2024

**ORDERS ON IA 10**  
**Under Order 39 Rule 1 & 2 of CPC**

The defendant No.7/applicant has filed this application under Order 39 Rule 1 & 2 of CPC and sought to restrain the plaintiffs by way of temporary injunction from interfering into the peaceful possession and enjoyment of land measuring 2 acres in Sy.No.727/3 situated at Kodla village, Tq: Sedam till disposal of the suit.

2) The defendant No.7 has sworn to an affidavit in support of IA and stated that she is the owner and possessor of land measuring 2 acres in Sy.N.727/3 situated at Kodla village, Tq: Sedam. She purchased the same from its previous owner one Dyyvamma @ Devamma W/o late

Hashappa Honnanayak through sale deed dated 28.1.1990 a for valid consideration amount of Rs.6,600/- with the knowledge and consent of the said Hashappa who is grand father of the plaintiff, Nagappa S/o Hashappa-defendant No.1 and Bhimanna S/o Hashappa-father of the plaintiffs. The said land was mutated in the name of this defendant. This defendant is in possession and enjoyment of the said property. The plaintiffs are trying to interfere with possession of this defendant over the said property. Hence, prays to allow the IA.

3) The plaintiff has filed objections to IA No.10 and denied the contents of affidavit filed in support of IA No.10. The alleged sale deed is not registered. Therefore, there was no transfer of title. Therefore, the defendant NO.7 is not the owner and possessor of the said property. The application is not maintainable. Hence, prays to dismiss the IA.

4) On the basis of the above facts the following points arise for my consideration:

- 1) Whether the defendant No.7/applicant has made out prima facie case?
- 2) Whether the balance of convenience lies in favour of the defendant No.7/applicant?

- 3) What order?
- 5) Perused the records. Heard arguments.
- 6) My answer to the above points are as under:
  - 1) IN THE NEGATIVE
  - 2) IN THE NEGATIVE
  - 3) AS PER THE FINAL ORDER  
for the following:

### **REASONS**

7) **POINT No.1 & 2:** Since both these points are interconnected the same are taken together for common discussion.

8) The RTC extract of the land measuring 1 acre 30 guntas in Sy.No.727/3 shows that the said land is standing in the name of the defendant No.7. The defendant No.7 is claiming title to the said property on the basis of unregistered sale deed dated 28.01.1990 said to be executed by one Dyavamma, Hashappa, Nagappa and Bhimanna. The mutation register bearing MR No.43 shows that based on the said unregistered sale deed. The counsel for the plaintiff has argued that sale deed is required to be registered compulsorily U/s.17 of Indian Registration Act. But in this case the defendant No.7 is claiming title on the basis of

unregistered sale deed. The claim of the defendant No.7 is not tenable. Under the alleged unregistered sale deed no title was transferred in favour of defendant No.7. Therefore, based on only the revenue records interim injunction cannot be granted. The learned counsel for the defendant No.7 has argued that since the date of the sale deed the revenue records are standing in the name of defendant No.7 and since then she has been in possession and enjoyment of the said property.

9) It is settled law that sale deed is required to be registered compulsorily U/s.17 of Indian Registration Act. If the same is not registered then such deed is not admissible in evidence as per provisions of Section 49 of Indian Registration Act. Therefore, at this stage this court cannot hold that based on the unregistered sale deed the defendant No.7 acquired title to the said property. Coming to the revenue records, the validity and genuineness of the revenue records has to be decided only after the trial. Apart from this whether possession was handed over under the unregistered sale deed and whether possession can be handed under the unregistered sale deed has to be decided after full fledged trial. Therefore, at this stage it is very much difficult to decide that whether the defendant No.7 is in possession of the said property or not. Therefore, in the opinion of this court at this

stage the defendant No.7 has not made out prima facie case.

10) The defendant No.7 claiming possession over the said property based on unregistered sale deed. Therefore, it cannot be said that she is in possession of the said property. Under these circumstances if IA is allowed there is every likelihood that the defendant No.7 may under the guise of this order and may dispossess the plaintiff from the said property. Therefore, at this stage the balance of convenience lies in favour of the plaintiff.

11) The next question that arise for my consideration is that whether the defendant in a suit can maintain an application U/O 39 Rule 1 and 2 of CPC seeking to restrain the plaintiffs from interfering with his possession over the suit property. In this regard it is worth to refer the decision of the High Court of Karnataka in the case of Smt.Shakuntamma and others V/s Kantamma and others reported in AIR 2015 Kant.13, wherein Hon'ble High Court held as under:

*A careful reading of the aforesaid provisions discloses that the court is empowered to grant three types of orders under three different and distinct situations. Firstly when the property is in dispute is in danger of being wasted, damaged or alienated or wrongfully sold in execution of a decree, temporary*

*injunction to prevent the same can be granted. The second situation arises when the disputed property is under the threat of being removed or disposed off by the defendant with the intention of defrauding his creditors who include the plaintiff also. The third situation is when the defendant threatens to dispossess the plaintiff or otherwise causes injury to the plaintiff in respect of disputed property.*

*Clause (a) of Order XXXIX rule 1 of CPC provides that where any suit it is proved by affidavit or otherwise, that any property in dispute in a suit is in danger or being wasted, damaged or alienated "by any party" to the suit, or wrongfully sold in execution of a decree, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property. The reason is obvious. After institution of the suit, the plaintiff may act detrimental to the interest of the defendant in the subject matter of the suit by allowing it to be wasted or damaged or alienated and in such an event, the defendant can take recourse to making application U/O XXXIX Rule 1(a) CPC.*

*What Clause (b) of Order XXXIX Rule 1 of*

*CPC envisages is that a plaintiff can seek temporary injunction when there is a threat by the defendant to dispose of the property with a view to render the decree that may be passed in the suit unless or infructuous. Similarly, under Clause (c) of Order XXXIX rule 1 Cpc whenever the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may restrain dispossession of the plaintiff until the disposal of the suit or until further orders.*

*The Legislature has consciously used the words “any party to the suit” in Rule 1(a) of Order XXXIX CPC but the same is conspicuously missing in Clauses (b) and (c). However, the words “the defendant threatens” appearing in Clauses (b) and (c) of rule 1 of Order XXXIX Cpc make it clear that the court can grant an order of temporary injunction only in favour of the plaintiff because the Legislature has expressly not included the words “plaintiff threatens” and also not used the words “any party to the suit” in these clauses.*

12) In view of the above principle of law laid down by the Hon'ble High Court the defendant cannot maintain an

application seeking temporary injunction against the plaintiff restraining the plaintiff from interfering with possession of the defendant No.7. Therefore, it can be held that the present application filed by the defendant No.7 is not maintainable. When once the application itself is not maintainable the question of establishing prima facie case does not arise. Therefore, the balance of convenience do not lie in favour of the defendant No.7. Hence, I answer points 1 and 2 in the Negative.

13) **POINT No.3**: For the foregoing reasons, the following:

### **ORDER**

The application i.e., IA No.10 filed by the defendant No.7 under Order 39 Rule 1 & 2 of CPC is hereby dismissed.

(Dictated to the Stenographer directly on computer, the same revised, corrected and pronounced in the open court on this the 5<sup>th</sup> day of August 2024.)

(SAGAR GURUGOUDA PATIL)  
Senior Civil Judge & JMFC, Sedam.

