

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: 20-11-2024.

OS No.87/2022

Plaintiff/s :
Mogalappa S/o Nagappa Kurubur
(Smt/Sri N.R, Advocate)

VS

Defendant/s :
Bugappa S/o Ramappa and Another
(D.1 & 2, Smt/Sri S.K.D., Advocate)

RANK IN IA 1

Mogalappa S/o Nagappa : Applicant/s/Plft

VS

Buggappa & Another : Opponent/s/Defts

i.	Provision under which the application is filed	U/O 39 Rule 1 & 2 of CPC
ii	Relief sought for	Suit for declaration & injunction
iii	The date on which the application is filed	20-10-2022

iv	Number of application	One
v	The date on which the objections are filed by different opponents	31-10-2023
vi	The date on which the orders were passed on the said application	20-11-2024

ORDERS ON IA 1
Under Order 39 rule 1 & 2 of CPC

The plaintiff/applicant has filed this application under Order 39 Rule 1 & 2 of CPC and sought to restrain the defendants by way of temporary injunction from interfering into the peaceful possession of the plaintiff over the suit properties till disposal of the suit.

2) The plaintiff has sworn to an affidavit in support of IA and stated that the plaintiff and his brother Saibanna Sons of Nagappa Dhangar/Kurbur purchased the suit land and other on suited lands through sale deed dated 3.6.1983. Out of their own efforts. The defendants' father Ramappa is son of plaintiff's mother but through her previous husband who is native of Annasaram village, Mandal Damarigidda, Dist: Narayanpath. The suit land was fallen to the share of the plaintiff in the partition between the plaintiff and his brother Saibanna. The plaintiff is in possession of the suit land and he dug borewell in suit Sy.No.274 and led pipeline. The plaintiff put up boundary fencing by placing stone poles and fencing wire in the year 2006 and he is growing paddy and

horticulture crops.

3) It is submitted that the plaintiff was working in Kolkunda Panchayat. So, the father of the defendants Ramappa was managing properties of the plaintiff's father and his property. The father of the defendants was falsely claiming that he is son of Nagappa Kurbur and got mutated the suit land in his name. He has no right in the suit properties. He got mutated his name without knowledge to the plaintiffs and his brother. Now the defendants are claiming that they are grand sons of plaintiff's father Nagappa.

4) It is submitted that the defendants came to the suit land on 02.10.2022 and tried to dispossess the plaintiff from the suit land. The plaintiff has filed additional affidavit in support of IA on 8.11.2024 and stated that now the defendants coming to his house by consuming alcohol and threatening the plaintiff by saying that they obstruct the harvesting of paddy crops standing in the suit land. If the paddy is not harvested within time it will wither away. Hence, prays to allow the IA.

5) After service of suit summons, the defendants 1 and 2 have appeared through their counsel and filed written statement but they have not filed objections to IA No.1. In the written statement the defendants have denied that the plaintiff and his brother Saibanna sons of Nagappa

purchased the suit lands and non suited lands through sale deed dated 03.06.1983 out of their own efforts from its owner. They have denied that the defendant's father Ramappa his son of plaintiff's mother but through her previous husband who is native of Annasaram village, Damarigidda Mandal, Narayanpeth District. They have denied remaining plaint averments and contended that their father Ramappa is son of Nagappa Dhangar. As per the family settlement mutation was made out in the name of the said Ramappa and the same is not challenged by the plaintiff. The suit is bad for non joinder of necessary parties. He has contended that entire consideration amount was paid by the said Ramappa out of his income by sheep grazing to purchase the suit lands. The said Ramappa took care of plaintiff and his brother Saibanna. Hence, prays to dismiss the IA.

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

- 1) Whether the plaintiff has made out prima facie case?
 - 2) Whether the balance of convenience lies in favour of the plaintiff?
 - 3) What order?
- 7) Perused the records. Heard arguments.

8) My answer to the above points are as under:

- 1) IN THE AFFIRMATIVE
- 2) IN THE AFFIRMATIVE
- 3) AS PER THE FINAL ORDER

for the following:

REASONS

9) **POINT No.1 and 2:** Since these two points are inter related they are taken up together for common discussion to avoid repetition of the facts.

10) It is not in dispute that the plaintiff and his brother Saibanna are sons of one Nagappa Kurbur and suit lands were purchased in the name of the plaintiff and his brother Saibanna. The defendants are claiming that their father Rmappa his son of the said Nagappa Kurbur. But the plaintiff has pleaded that the said Ramappa his son of his mother but through previous husband who is native of Narayanpeth District.

11) In order to establish his case the plaintiff has produced the certified copy of the registered sale deed dated 31.5.1983, wherein the suit land and non suited lands were purchased in the name of the plaintiff and his brother Saibanna. The defendants have alleged that the suit lands were purchased in the name of the plaintiff and his brother

Saibanna out of the income of their father Ramappa. But they have not produced any documents to substantiate their contention. Apart from this the question that arise is that if at all the suit lands were purchased out of the income of the said Ramappa then what prevented him to purchase the same in his name. The heavy burden is on the defendants to prove that out of the income of their father the suit lands were purchased in the name of the plaintiff. Unless and until they prove the same, it has to be considered that the plaintiff out of his own earnings purchased the suit lands and other lands in their names. Therefore, the plaintiff and his brother Saibanna are the absolute owners of the suit properties.

12) The mutation Register bearing MR.No.44 dated 05.04.1999 shows that mutation was effected in the name of plaintiff and the said Ramappa in respect of lands in Sy.No.274 and 275 based on the partition. The defendants have not produced any such partition deed. Further the mutation bearing MR. No.43 dated 29.03.1999 shows that land in Sy.No.283 was mutated in the name of the said Ramappa on the basis of the alleged partition. But to prove the alleged partition the defendants have not produced any partition deed. It is settled law that the revenue records does not create or extinguish title to the suit property. Therefore, it cannot be said that based on the mutation register the defendants acquired title and possession of the suit

properties.

13) The RTC extract at Ex.P.3 and 4 show that land in Sy.No.283 was earlier standing in the name of Saiabnna S/o Nagappa and later it was mutated in the name of the plaintiff and thereafter in the name of the defendants. The same discloses that earlier the land in Sy.No.283 was standing in the name of the plaintiff and his brother Saibanna. The certified copy of the registered sale deed dated 31.05.1983 reveals that the plaintiff and his brother Saibanna purchased the suit lands and other lands and came in possession of the suit properties. Though at present the suit lands are standing in the name of the defendants but they have not produced any documents to show that the suit lands were validly transferred to them. Therefore, it has to be inferred that the plaintiff is the owner and possessor of the suit properties. Therefore, at this stage the plaintiff has made out prima facie case.

14) It is already concluded by this court that the plaintiff is in possession of the suit properties. Therefore, he is entitled to protect his possession. If IA is not allowed and the defendants interfere with plaintiff's peaceful possession over the suit properties and obstruct the plaintiff from harvesting the plaintiff's crops irreparable loss and untold hardship will be caused to the plaintiff. On the other hand unless and until the defendants prove the alleged family

settlement and produce the documents based on which the mutations were effected they are not entitled for any right or possession over the suit properties. Therefore, if temporary injunction is granted till disposal of the suit no loss or hardship would be caused to the defendants. Therefore, the balance of convenience lies in favour of the plaintiff. Hence, I answer points 1 and 2 in the Affirmative.

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

ORDER

The application filed by the plaintiff under Order 39 Rule 1 & 2 of CPC is hereby allowed.

The defendants are hereby restrained by way of temporary injunction from interfering with the plaintiff's peaceful possession and enjoyment over the suit properties till disposal of the suit.

(Dictated to the Stenographer directly on computer, the same revised, corrected and pronounced in the open court on this the **20th day of November - 2024.**)

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

