

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: 27-11-2024.

OS No.16/2024

Plaintiff/s :
Sharanappa @ Sharanayya
(Smt/Sri R.S.B., Advocate)

VS

Defendant/s :
Smt.Shivakantamma
(Deft. Smt/Sri H.S.R., Advocate)

RANK IN IA 1

Sharanappa & Sharanayya : Applicant/s/Plft

VS

Smt.Shivakantamma : Opponent/s/Deft

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	03-02-2024

iv	Number of application	One
v	The date on which the objections are filed by different opponents	29-10-2024
vi	The date on which the orders were passed on the said application	27-11-2024

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 defendant by way of temporary injunction from alienating the suit property till disposal of the suit.

2) The plaintiff has sworn to an affidavit in support of IA and stated that the one Manikamma W/o Bhimayya is grand mother of the plaintiff. After her death her daughter Mallamma D/o Bhimayya i.e., plaintiff's mother, his maternal uncle late Kashappa succeeded the suit property. The said Kashappa died issueless. The plaintiff's grand mother Manikamma was the owner of land measuring 08 acres 09 guntas in Sy.No47 of Hulgol village. After her death the plaintiff's mother and his maternal uncle succeeded the suit property. The defendant is no way concerned to the suit property.

3) It is submitted that the defendant by producing fake documents before the revenue authorities without

knowledge and consent of the plaintiff got mutated the suit property in her name illegally. The defendant is in no way concerned to the suit property. The plaintiff's maternal uncle Kashappa and his wife Bandemma died issueless. Therefore, the plaintiff is the only heir who succeeded the suit property. The plaintiff is in possession of the suit property and cultivating the suit property since long time. Now the defendant is trying to alienate the suit property. Hence, prays to allow the IA.

4) After service of suit summons, the defendant has appeared through her counsel and filed written statement and memo adopting her written statement as objections to Ia No.1. In her written statement she has denied entire plaint averments and contended that her father purchased the suit property during the year 1961-62 and became exclusive owner and possessor of the suit property. Accordingly, the mutation was effected in his name. Therefore, the suit is not maintainable. Hence, prays to dismiss the IA.

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

REASONS

8) **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.

9) The Khasra Pahanies from the year 1955-56 to 1958-59 show that earlier the suit property was standing in the name of one Manikamma W/o Bhimayya. The same reveals that previously the said Manikamma was the owner of the suit property. The mutation register dated 15.1.1962 at Ex.P.4 shows that the suit property was mutated in the name of one Ramalinganna on the basis of the sale deed. The RTC extracts at Ex.P.5 to P.22 show that from the year 1963-64 the suit property had been standing in the name of said Ramalinganna and thereafter from the year 1988-89 to 1997-

98 the suit property had been standing in the name of the defendant.

10) The above documents reveal that previously the suit property belonged to plaintiff's grand mother Manikamma and she sold the same to father of the defendant Ramalinganna during the year 1961-62. Since then the revenue records were standing in the name of the said Ramalinganna and after him in the name of the defendant. The same prima facie show that the defendant's father Ramalinganna acquired title to the suit property through sale deed. Thereafter the defendant succeeded the suit property. Based on long standing revenue records it can be presumed that the defendant is in possession of the suit property. At this stage the plaintiff has failed to prove that he is having any right, title or possession over the suit property as on the date of the suit. Therefore, it can be said that the plaintiff has failed to make out prima facie case.

11) As discussed in foregoing paragraphs it is on record that the defendant is in possession of the suit property as its absolute owner. Therefore, the defendant cannot be restrained from exercising her ownership rights. Since the plaintiff has failed to show semblance of rights in the suit property if the defendant is restrained from alienating the suit property irreparable loss and untold hardship would be

caused to the defendant. Therefore, the balance of convenience lies in favour of the defendant. Hence, I answer points 1 and 2 in the Negative.

12) **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 dismissed.

(Dictated to the Stenographer directly on computer, the same revised, corrected and pronounced in the open court on this the **27th day of November - 2024.**)

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