

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: 06-01-2025.

OS No.47/2024

Plaintiff/s :
Ameer Khan S/o Ayyub Khan
(Smt/Sri S.B.M, Advocate)

VS

Defendant/s :
Executive Officer, Taluk Panchayat Sedam
and others
(D.1 & 2, Smt/Sri S.K.D., Advocate)
(D.3 by ADGP)

RANK IN IA 2

Ameer Khan : Applicant/s/Plft

VS

Executive Officer & others : 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	20-04-2024
iv	Number of application	One
v	The date on which the objections are filed by different opponents	27-09-2024
vi	The date on which the orders were passed on the said application	06-01-2025

ORDERS ON IA 2
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 property till disposal of the suit.

2) The plaintiff has sworn to an affidavit in support of IA and stated that he is the owner and possessor of the suit property. The defendants are in no way concerned to the suit property. The defendants are Government servants. The plaintiff purchased the suit property from one Rehaman Shah S/o Adam Shah Darvesh under the registered sale deed dated 18.6.2022 for a valuable sale consideration of Rs.308000/- and based on the said sale deed he became owner of the suit property. After purchasing the suit property the plaintiff filed application before the defendant No.2 for the mutation of the suit property in the name of the plaintiff. But the defendants intentionally prolonged the matter. Thereafter

the plaintiff approached the Hon'ble High Court of Karnataka Kalaburagi Bench in WP No.202951/2023. The Hon'ble High court allowed the writ petition and issued direction to defendant No.2 to effect partition within six weeks from the date of order i.e., 7.11.2023. Thereafter also the defendant No.2 did not effect mutation.

3) It is submitted that one Turab-UL-Haq and other persons filed application before the defendant No.1 on 5.10.2023 stating that the suit property is in no way concerned to the plaintiff. The said application is illegal one. They filed the application to grab the suit property. The defendants 1 and 2 colluding with each other passed illegal order 29.2.2024 to the effect that the suit property belonged to the Gram Panchayat. The order is illegal one. Hence, prays to allow the IA.

4) After service of suit summons, the defendants 1 and 2 have appeared through their counsel and defendant No.3 has appeared through learned ADGP. The defendant No.2 has filed his written statement and filed memo adopting the written statement as objections to IA No.2. In the written statement the defendant No.2 has disputed the description of the suit property and contended that no such property is in existence as on the date of the suit. The Panchayat records are created at earlier point of time either by misrepresenting or concealing the material facts. The plaintiff has not come

to the court with clean hands. He has suppressed the material facts. The plaintiff is not the owner and possessor of the suit property.

5) It is submitted that as per the provisions of Karnataka Panchat Raj Act the concerned authority i.e., the defendant No.1 passed orders on 12.2.2024 and the Gram Panchayat body also passed resolution dated 22.8.2023 in its Meeting. The sale deed of the plaintiff is created one. The plaintiff by suppressing true facts had filed WP No.20295/2023. After due enquiry the defendant No.1 passed orders on 12.2.2024. The plaintiff or his vendor are in no way concerned to the suit property. There is no cause of action to file the suit. The suit in the present form is not maintainable. The suit is not properly valued and court fee paid is not sufficient. 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:** The object of a temporary injunction is to preserve the matters pending the trial of matters in dispute, to maintain the status, to preserve the property pending decision in the proceedings. The temporary injunctions are passed to prevent the ends of justice from being defeated. At this stage it is useful to refer the decision of the Hon'ble Supreme Court in **Gujarath Bottling Company VS Coca Cola Company reported in AIR 1995 SC 2372** wherein the Supreme Court held the tests for exercise of discretion in granting temporary injunction and the same are stated as under:

While exercising the discretion the court applies the following tests:

whether the plaintiff has a prima facie case;

whether the balance of convenience is in favour of the plaintiff; or

whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.

10) To sustain validity of a claim for temporary

injunction, it is not only that plaintiff has to establish his prima facie case as to his right, but he has to also establish further the balance of convenience lay in his favour, and that he would suffer irreparable injury if the temporary injunction prayed for was not granted.

11) In this case the plaintiff in order to substantiate his case has produced original registered sale deed dated 18.6.2022, wherein one Rehman Shah sold the suit property to the plaintiff. The application dated 5.1.2023 shows that the plaintiff submitted application before the defendant No.2 and sought to effect mutation based on the sale deed. The applications dated 30.6.2023 shows that the plaintiff submitted similar application to defendant No.2. The application dated 8.8.2024 shows that the plaintiff submitted application before the defendant No.1 and sought to effect mutation. The application dated 11.9.2023 shows that the plaintiff submitted similar application to the defendant No.1. The applications dated 11.9.2023 shows that the plaintiff submitted application before the Regional Commissioner, Kalaburagi, the Assistant Commissioner, Sedam the above documents shows that after purchasing the suit property the plaintiff has submitted applications on several times before the defendants and their Higher officials seeking to effect mutation based on the sale deed. The certified copy of the order of the Hon'ble High Court of Karnataka Kalaburagi

Bench in WP No.202951/2023 (LV-RES) DD.7.11.2023 shows that the plaintiff had filed writ petition against the respondents seeking writ of mandamus directing the respondent No.1 to consider the representation made by the plaintiff by letter dated 28.6.2022. The Hon'ble High Court allowed the writ petition directing the respondent No.1 to consider the representation made by the petitioner and thereafter pass suitable order in accordance with law within six weeks from the receipt of the order.

12) The copy of the enquiry notice dated 8.11.2023 shows that the defendant No.1 issued notice to the plaintiff and to one Turab-UI-Haq stating that the said Turab-UI-Haq submitted application that the plaintiff got created the sale deed by playing fraud and hence called upon the plaintiff and said Turab-UI-Haq to be present on 7.8.2023 for enquiry. Similar notices were issued on 8.12.2023 and 20.12.2023. The order passed by the defendant NO.1 on 12.2.2024 shows that the defendant No.1 came to the conclusion that the boundaries of the property bearing No.17/17/1 purchased by the plaintiff and the boundaries of the property reserved for Urdu Kanya High School are one and the same and passed orders to get survey the property reserved for Urdu Kanya High School and to protect the Panchayat property. The application dated 13.2.2024 shows that the plaintiff submitted application before the defendant No.2 and

sought reason for not effecting mutation. The endorsement issued by the defendant No.2 on 3.3.2024 shows that since property No.17-17/1 was illegally entered in the Gram Panchayat DCB and hence the same was cancelled from the DCB register by defendant No.1.

13) The above discussion goes to show that the plaintiff has made several attempts to get mutate the suit property in his name based on the registered sale deed. But the defendants did not effect mutation and passed order to the effect that the suit property belongs to Gram Panchayat.

14) The copy of the judgment dated 2.1.1995 passed by the Hon'ble I Addl. District Judge, Gulbarga in RA No.20/1994 shows that one Mehtab Shah had filed suit for injunction in respect of land measuring 2 acres 12 guntas in Sy.No.72 against the Gram Panchayat Malkhed before the Addl. Civil Judge, Gulbarga and the said was dismissed. Aggrieved by the same the said Mehtab Shah preferred Appeal before the I Addl. District Judge, Gulbarga and the same came to be allowed. The order passed by the Assistant Commissioner shows that the land measuring 25 guntas in Sy.No.72 was converted for residential purpose in the name of one Mehboob Shah and Rehman Shah. The Layout Plan shows that as per the order layout was made and Plots were carved out. The tax Demand Register extract and E-Khata extract and the sketch show that earlier suit

plots were standing in the name of vendor of the plaintiff by name Rehman Shah. The Tax paid receipt shows that the said Rehman Shah paid tax to the Gram Panchayat. The E-Tax paid receipt shows that the said Rehman Shah paid taxes in respect of the suit property to defendant No.2. The above documents reveal that earlier the suit plot was standing in the name of vendor of plaintiff Rehman Shah in the Panchayat records and he was paying tax to the defendant No.2-Gram Panchayat.

15) The defendants have produced the judgment in O.S.No.34/1994 passed by the Addl. Civil Judge, Gulbarga passed on 24.11.1994, wherein the suit filed by one Mehtal Sab for the relief of declaration of title and injunction was dismissed. It is to be noted that the said judgment was set aside by the Hon'ble I Addl. District Judge, Gulbarga in RA No.20/1994 by its judgment dated 2.1.1995. Therefore, the judgment in O.S.No.34/1994 is not helpful for the defendants. They have produced unregistered agreement of sale dated 21.8.1961 which is in Urdu language and its English Translated copy shows that the said Mehboob Shah and Umar Shah @ AINU SHAH jointly executed agreement of sale in favour of Sarpanch Gram Panchayat Committee Kasba Malkhed for a sale consideration amount of Rs.6.50 and thereby transferred all their ownership rights in the land measuring 2 acres 7 guntas out of 2 acres 12 guntas in

Sy.No.72 of Kasba Malkhed. It is to be noted that the said document is unregistered one. Moreover, there is a difference between agreement of sale and sale deed. An agreement of sale is not out and out-sale it only enable the agreement holder to enforce the agreement. But no ownership rights will be transferred under the agreement of sale. Therefore, based on agreement of sale the Gram Panchayat cannot claim title and possession over the said land. The payment receipts dated 21.8.1961 and 14.10.9161 show that the said Mehboob Shah and Umar Shah received Rs.200/- and Rs.450/- and acknowledged that they sold land measuring 2 acres 12 guntas in Sy.No.72 and the receipt of R.200/- and Rs.450/- respectively. These documentary are ancillary to the agreement of sale. Therefore, these documents are also not helpful for the defendants to prove their title and possession over the land measuring 2 acres 12 guntas in Sy.No.72 of Malkhed village. It is settled that under the agreement of sale title will not transfer it only enables the vendee to enforce the agreement and to get the execute the registered sale deed. But in this case the defendants have not produced any documents to show that in pursuance of the alleged agreement of sale they have got registered sale deed from the said Mehboob Shah and Umar Shah. Therefore, the defendants cannot be considered as owners of the said land measuring 2 acres 7 guntas in Sy.No.72.

The letter dated 22.9.1971 addressed by the Assistant Commissioner, Sedam to the Deputy Commissioner, Gulbarga shows that the Assistant Commissioner got clarification from the Deputy Commissioner as to conversion of the agricultural lands in Sy.No.71/1, 71/2, 72, 73, 701, 423/2 of Malkhed village into non agricultural purpose.

16) It is pertinent to note that the plaintiff purchased the suit property under the registered sale deed dated 18.6.2022 from one Rehman Shah and the Panchayat records reveal that as on the date of the sale deed the suit property was standing in the name of the vendor Rehman Shah. The defendants at one breath say that the suit property is not in existence. At another breath they say that the suit property was wrongly entered in the name of the said Rehman Shah in the Panchayat records. Further at another breath they say that the suit property belongs to the Gram Panchayat. The same discloses that these defendants are not having definite stand regarding the suit property. The plaintiff purchased the suit property looking to the revenue entries that were standing in the name of his vendor and the defendants are claiming that the entries in the name of plaintiff's vendor were created. It is to be noted that it is the defendants who make entries in the Panchayat records and the plaintiff purchased the suit property looking to the entries made by the defendants. Therefore, for the fault of the

defendants the plaintiff cannot be penalized. Further the judgment in RA No.20/1994 passed by the Hon'ble I Addl. District Judge, Gulbarga on 2.1.1995 discloses that the ancestors of the vendor of the plaintiff were in possession of land measuring 2 acres 12 guntas in Sy.No.72 and conversion order show that out of the said 2 acres 12 guntas they converted 25 guntas and formed layout and carved out the plots. These documents make it clear that the family of the plaintiff's vendor was the owner of the suit property. Accordingly, the plaintiff's vendor being the exclusive owner of the suit property sold the suit property through registered sale deed. Thereafter it is the duty of the defendants to get mutate the property in the name of the plaintiff as per the registered sale deed. If at all the Gram Panchayat is having any rights in the suit property they can approach the Civil Court and they cannot act as judges in their own case as it is one of the principles of natural justice that no one should act as judge in his own case.

17) The original registered sale deed dated 18.6.2022 shows that the plaintiff purchased the suit property from its previous lawful owner Rehman Shah and the recitals of the sale deed show that the possession of the suit property was handed over to the plaintiff as on the date of execution of the sale deed. Merely because the defendants have not mutated the suit property in the name of the plaintiff

it cannot be said that the plaintiff is not in possession of the suit property. Therefore, prima facie at this stage it appears that the plaintiff is in peaceful possession and enjoyment of the suit property. Hence, the plaintiff has made out prima facie case. Hence, I answer point No.1 in the Affirmative.

18) **Point No.2:** This court has already come to the conclusion that the plaintiff is in peaceful possession and enjoyment of the suit property. Therefore, his possession needs to be protected. The defendants despite submission of several applications by the plaintiff have not effected mutation based on the registered sale deed. This act of the defendants itself indicates that they are trying to interfere with plaintiff's possession over the suit property. If the plaintiff's possession is not protected irreparable loss and untold hardship would be caused to the plaintiff. If the interim order is not passed there is chances that the defendants taking government machinery into their hands may disturb the possession of the plaintiff over the suit property and the same may lead to breach of peace in the locality. If interim order is passed against the defendants unless and until they prove their rights, title and possession over the suit property no loss will be caused to them. Therefore, the balance of convenience lies in favour of the plaintiff. Hence, I answer point No.2 in the Affirmative.

19) **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 **6th day of January - 2025.**)

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