

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: 20-09-2024.

OS No.49/2024

Plaintiff/s :
Mohd. Gouse Khan and another
(Smt/Sri S.S.K, Advocate)

VS

Defendant/s :
Mohd.Khan S/o Peerkhan
(Deft.S.B.M.,Advocate)

RANK IN IA 2

Mohd. Gouse Khan & another : Applicant/s/Plifts

VS

Mohd.Khan : 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 partition and separate possession
iii	The date on which the application is filed	25-04-2024
iv	Number of application	One
v	The date on which the objections are filed by different opponents	21-06-2024
vi	The date on which the orders were passed on the said application	20-09-2024

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

The plaintiffs/applicants have filed this application under Order 39 Rule 1 & 2 of CPC and sought to restrain the defendant by way of temporary injunction from interfering with the plaintiffs' peaceful possession and enjoyment over the suit properties till disposal of the suit.

2) The plaintiff No.1 has sworn to an affidavit in support of IA and stated that the plaintiffs and defendant are brothers and their father purchased the suit properties and non suited properties measuring 3 acres 06 guntas in Sy.No.66 in the name of defendant when he was aged about 14 years in the year 1976-77 through registered sale deed bearing document No.209/1976-77. The father of the plaintiffs and defendant orally got divided the suit properties and non suited properties among his sons in the year 1988

and allotted the suit properties to the share of the plaintiffs and land in Sy.No.66 and one flour mill was allotted to the share of the defendant.

3) It is submitted that since the year 1988 the plaintiffs have been in possession of the suit properties as its owners. After the death of father of the plaintiffs and defendant the sisters of the plaintiffs and defendant asked share in the family properties in the year 2018 and with the help of elders and mother of the plaintiffs and defendant the matter was settled. Accordingly the suit properties continued as the share of the plaintiffs. The defendant sold land in Sy.No.66 which was fallen to his share to one Manya Nayak through registered sale deed of the year 2018-19. The defendant having knowledge about the division of the properties in the year 1988 and resettlement dated 01.10.2018 had filed appeal before the A.C. Sedam challenging the mutation passed by the Tahasildar after lapse of 35 years. The A.C. Sedam without considering the case of the plaintiffs condoned the delay and allowed the appeal on 29.02.2024. Accordingly, the defendant got mutated his name in the revenue records. Aggrieved by the same the plaintiffs had filed Revision before the D.C. Kalaburagi on 5.3.2024 and the same is pending for adjudication.

4) Now the defendant taking undue advantage of

the revenue records standing in his name is trying to alienate the suit properties and he is also trying to interfere with plaintiffs' peaceful possession and enjoyment over the suit properties. Hence, prays to allow the IA.

5) After service of suit summons, the defendant appeared through his counsel and filed written statement and contended that the suit is not maintainable without seeking the relief of possession. The suit is not properly valued and court fee is insufficient. It is submitted that the defendant is the owner of the suit properties having purchased the same through registered sale deed dated 04.06.1976. As per the sale deed the name of the defendant was mutated in the concerned records as owner and possessor and since then the defendant is cultivating the suit properties. The plaintiffs are brothers of this defendant and they were cultivating the suit properties for 3-4 years on the batai basis and taking advantage of absence of the defendant got changed the records in their names. The said change was made behind the back of this defendant. In fact no mutation was passed in the name of the plaintiffs. This defendant preferred before the A.C. Sedam and the appeal was allowed restoring the name of this defendant in the revenue records.

6) It is submitted that unlike Hindu Law there is no concept of joint family and joint possession under the Muslim Law. Therefore, the plaintiffs are entitled to seek any rights

in the suit properties during the life time of the defendant. He has denied that his father purchased the suit properties and non suited properties measuring 3 acres 6 guntas in Sy.No.66 when he was aged about 14 years through registered sale deed of the year 1976-77. He has also denied the partition of the year 1988 and settlement of the year 2018. He has denied the rest of the plaint averments and prays to dismiss the IA.

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

- 1) Whether the plaintiffs have made out prima facie case?
 - 2) Whether the balance of convenience lies in favour of the plaintiffs?
 - 3) What order?
- 8) Perused the records. Heard arguments.
- 9) 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

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

discussion.

11) In order to establish their case the plaintiffs have produced certified copy of the registered sale deed dated 4.6.1976, wherein the suit properties and non suited property measuring 3 acres 6 guntas in Sy.No.66 was purchased in the name of the defendant. The recitals of the sale deed reveal that when the above property was purchased the defendant was aged about 14 years and his father being his guardian purchased the above property. The RTC extracts from the year 1976 till the year 1986-87 pertaining to the suit item No.1 property shows that the suit item No.1 property was standing in the name of the defendant. The RTC extracts from the year 1976 till the year 1986-87 pertaining to suit item No.2 property show that the suit item No.2 was property was standing in the name of the defendant. The RTC extracts from the year 1987-88 show that the suit properties were standing in the name of plaintiff No.1 for some years. The mutation register bearing No.H.13/2018-19 shows that the defendant sold the suit item No.1 property to one Manya Nayak. The RTC extracts show that since then the suit item No.1 property is standing in the name of the said Manya Nayak.

12) The Appeal Memo in Revision Appeal No.82/2023 shows that the defendant had filed appeal before the Assistant Commissioner, Sedam and sought to delete the

name of the plaintiff No.1 in the ROR of suit item NO.1 property and enter the name of the defendant herein. It is not in dispute that the said appeal was allowed and the name of defendant was entered.

13) It is the case of the plaintiffs that the suit properties allotted to the share of the plaintiffs as per the settlement of the year 1988 and resettlement of the year 2018. On the other hand the learned counsel for the defendant has argued that under the Muslim Law there is no concept of joint family and therefore, until the death of the defendant no one can claim rights in the suit properties as they are the absolute properties. It is settled law that under the Muslim Law succession opens only after the death of the owner of the property. But in this case the plaintiffs are not claiming rights in the suit properties by way of inheritance of succession. But they are claiming rights to partition. It is to be noted that under the Muslim Law there is no bar to get divide the properties among the brothers. Assuming that if the defendant with his free and wish got partitioned the suit properties with the plaintiffs it cannot be said that till the death of the defendant the plaintiffs cannot claim rights in the suit properties. Whether there was a partition or settlement in the year 1988 and resettlement in the year 2018 is a matter of trial. The burden is on the plaintiffs to prove the alleged settlement and resettlement. Therefore, the plaintiffs

have to be given a reasonable opportunity to lead evidence and to prove their case.

14) It is true that under the Muslim law there is no concept of the joint and the joint family properties. But in this case admittedly when the suit properties were purchased in the name of the defendant he was minor and his father as the minor guardian purchased the suit properties. Whether under the said purchase the father of the defendant became owner or the defendant himself became owner is a question of law that has to be decided along with the facts of the case after the trial.

15) The records reveal that the suit properties were purchased in the name of defendant in the year 1977. The revenue records show that till the year 1988 the suit properties were standing in the name of the defendant. Thereafter the plaintiffs got mutated their names. But they have not produced the mutation registers and instead they have produced endorsement issued by the revenue authorities stating that the said mutation is not available in the records. Thereafter the defendant challenged the said mutation before the learned Assistant Commissioner, Sedam in the year 2023 and the same was allowed. Accordingly, again the name of the defendant was entered in the revenue records of the suit properties. Aggrieved by the order of the learned Assistant Commissioner, Sedam the plaintiffs

preferred appeal before the learned Deputy Commissioner, Kalaburagi and the said appeal still pending for consideration. Finally the facts remains is that at present the suit properties are standing in the defendant. Therefore, at this stage it cannot be said that the plaintiffs are in possession of the suit properties. Whether they are in possession of the suit properties as per the settlement of the year 1988 and resettlement of the year 2018 has to be decided during the trial. But at this stage it is very much difficult to come a conclusion that the plaintiffs are in possession of the suit properties as the suit years RTC extracts are standing in the name of the defendant.

16) As discussed already at this stage the plaintiffs have prima facie failed to establish that they are in possession of the suit properties. Therefore, if the IA is allowed irreparable loss and untold hardship will be caused to the defendant. It may also lead to breach of peace in the locality. Since the plaintiffs have failed to show that at this stage they are in possession of the suit properties the question of causing any loss or hardship to them does not arise in case of dismissal of the IA. Hence, I answer points 1 and 2 in the Negative.

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

ORDER

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

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

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