

KAKL40-000019-2021



IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC,
MULBAGAL

Dated this the 09th day of February 2022

Present:

Sri. HAJIHUSENSAB YADAWAD B.Com, LL.B,
Prl.Civil Judge & JMFC,
Mulbagal.

O.S. No. 07/2021

Plaintiff: Sri. Sadiq Pasha

V/s

Defendant: Sri. Bashu Sabi

Parties to I.A.No.I

Applicant: **Sri. Sadiq Pasha,**
Plaintiff: S/o Ameersab,
Aged about 46 years,
Agriculturist,
R/at: Ward No.14, Rahamath Nagar
Near Kurubarapalya,
Mulbagal Town and Taluk,
Kolar District.

(By **Sri. P.N** -Advocate)

V/s

Opponent: **Sri. Bashu Sabi,**
Defendant: S/o Janusabi,
Aged about 70 years,

Agriculturist,
R/at: Agara Village
Duggasandra Hobli,
Mulbagal Taluk,
Kolar District.

(By **Sri. P.M.S** - Advocate)

ORDER ON I.A. No.I

The counsel for Plaintiff filed IA No.I U/O XXXIX Rule 1 and 2 of CPC seeking temporary injunction to restrain the Defendant from interfering into the peaceful possession and enjoyment of the Plaintiff over suit schedule properties pending disposal of the suit.

2. The said application is accompanied with an affidavit of Plaintiff wherein he contended that, originally the suit properties were belong to one Alimabi @ Chotimabi. She on the basis of love and affection executed WILL in favor of her brother Ameersab and his wife Rajiyabegum dated 19/05/1984 as they look after her welfare. After the death of said Alimabi @ Chotimabi the said WILL came into force and as per the WILL the said Ameersab and Rajiyabegum enjoying the properties i.e. the suit properties. After the death of said Ameersab his son the present Plaintiff became the owner in

possession and enjoyment of suit properties as its absolute owner.

3. Further it is contended that the Plaintiff is very poor person, running Cycle Repair Shop and entire family depending upon his income. Except the suit properties there are no properties belong to Plaintiff. The Plaintiff is uneducated and has no worldly knowledge, as such he is unable to get transfer the katha of property from Alimabi @ Chotimabi to his father. Such being the state of affairs the Defendant is no way connected to the Plaintiff and his family. The Defendant is permanent resident of Muthakpalli village of Srinivasapur taluk, but he temporarily came to Agara village of Mulbagal Taluka and colluding with revenue and panchayat authority, created and concocted the documents and transferred the katha of suit properties from Alimabi @ Chotimabi into his wife Shamshunnissa illegally under register document No. 1466/1986-878 dated 03/12/1986. After the death of Shamshunnissa the Defendant transferred the same into his name. But Alimabi @ Chotimabi died on 27/06/1985. Therefore, restraining the Defendant is very necessary and on these grounds the Plaintiff prayed to allow the application.

4. On the contrary the Defendant has appeared through his counsel and filed written statement. But he has not filed any objections to present application. However, the Defendant has submitted his defense by way of written statement. Therefore, this court proceeded to take a note of contentions averred by the Defendant in his written statement.

5. In his written statement the Defendant has denied about the execution of WILL and submitted that the Plaintiff has created the WILL dated 19/05/1984. Further it is contended that the Sy.No. 381/1 measuring 1 acre 13 Guntas were sold by Alimabi @ Pyarijan @ Chotima in favor of his wife by name Shamshunissa through registered sale deed dated 03/12/1986 wherein the possession was also delivered in her favor. Further it is contended that after the purchase of suit item No.1 the wife of Defendant made an application for transfer of Khata and same was transferred in her name.

6. Further it is contended that said Shamshunissa died on 31/01/2008 at Agara village and after her death, the Khata of suit item No. 2 property was transferred in the name of Defendant on Pavathi Varasu as the Defendant is Class-I legal

heir to Shamshunissa. Thereafter the Defendant became the absolute owner of suit item No.2 property and is continuous possession and enjoyment over it. Further it is contended at para No.13 of written statement that, the suit item No.2 property previously owned by Enayathulla s/o. Ameersabi who inturn executed registered sale deed in favor of Defendant on 26/09/1991 and on the same day delivered the possession thereon. By virtue of said sale deed the name of Defendant got mutated to the suit item No.2 property. Therefore he is in possession and enjoyment over suit item No.2 property. The Plaintiff has no right, title, interest, muchless possession over suit properties. Hence, the suit deserves to be dismissed. On these grounds the Defendant prayed to reject the application.

7. Heard the arguments of both sides.

8. Upon hearing arguments and on perusal of materials placed on record the following points that would arises for my consideration.

1) Whether the Plaintiff has established prima facie case?

2) Whether the balance of convenience lies in favour of Plaintiff?

3) Whether irreparable loss or hardship will be caused to the Plaintiff if injunction is not granted?

4) What order

9. My findings to the above points are as under:

Point No. 1 : **Negative**

Point No. 2 : **Negative**

Point No. 3 : **Negative**

Point No. 4 : As per order for the following:

REASONS

10. Point No.1: This is a simple suit for declaration to declare the Plaintiff as an owner of suit properties and for permanent injunction. The Plaintiff further prayed to cancel the Khata of suit properties made on the basis of registered document No. 1466/86-87 dated 03/12/1986. The said document registered on 03-12-1986 is nothing, but the Sale Deed executed by Alimabi @ Pyarijan in favour of wife of Defendant by name Shamshudunnisa. But it is the contention of Plaintiff that, the said Alimabi died on 26-07-1985 then how it would be possible to execute Sale Deed by a deceased person on 03-12-1986. On the contrary, the Defendant in his written statement contending about

Sy.No.381/1 measuring 1 acre 13 guntas as suit item No.1. But on perusal of plaint, the schedule shown as Sy.No.381/1 measuring 1 acre 16 guntas. Further it is the contention of Defendant that, the said Alimabi @ Pyarijan @ Chotima executed Sale Deed with regard to said item No.1 in favour of wife of Defendant by name Shamshudunnisa on 03-12-1986 and on the same day possession is handed over.

11. Further it is contended at para No.12 of written statement that, the suit item No.2 was transferred in the name of Defendant on pavathi varasu as a Defendant is clause-1 legal heir. But, again at para No.13 it has been contended by the Defendant that, the previous owner of suit item No.2 was one Inayath Ulla S/o Ameersab and the said Inayath Ulla executed Registered Sale Deed in favour of Defendant on 26-02-1991 and delivered the possession of said item No.2 on the same day in favour of Defendant. Thereby the Defendant is the owner and is having possession over suit item No.1 and 2 properties. But, on perusal of written statement nowhere the Defendant stated about the date of death of Alimabi. But, on perusal of records furnished by Plaintiff, it is noted that the said Alimabi @ Chotima has been died on 26-07-1985 at Agara

Village, Duggasandra Hobli, Mulbagal Taluk. Further, on careful perusal of said xerox copy of death certificate it is noted at column No.11 that, the said date of death of Alimabi was registered on 28-12-2011 under registration No.52/2011-12. Therefore at this stage, it would not be proper to say that, the said document has been created for the purpose of filing of this suit. Therefore, one thing is clear that, the Alimabi @ Chotima died on 26-07-1985, then how can she execute sale on 03-12-1986 that too after 1 ½ year of her date of death. Therefore, a doubt would arise on the sale transaction alleged to be executed by Alimabi in favour of wife of Defendant. However without touching the merits of the case, one thing is clear that, the present suit is filed for the relief of Permanent Injunction wherein the first and foremost duty of Plaintiff is to establish his possession over suit schedule properties. As admitted by the Plaintiff, he is residing at Rahamath Nagar, Mulbagal Town and suit item No.1 and 2 are situated at Agara Village, Duggasandra Hobli, Mulbagal Taluk. On further perusal, it is noted that, suit item No.1 and suit item No.2 are standing in the name of Defendant. But, at this stage basing upon the documents furnished by either parties it would not

be proper to hold that, the Plaintiff is in possession over suit schedule properties. On the contrary, it also would not be proper to say that, the Defendant is in possession of suit schedule properties.

12. At this stage this court relied upon decision reported in **1996 SCC online Kar 208 - Dr.Ganapathi Narayan Sabhahit & others V/s Shivaram Narayan Bhat & others.**

Wherein the Hon'ble High Court of Karnataka at para 24 held that *"The purpose of interlocutory order as mentioned earlier is to maintain states-quo as it existed on the date of the suit and not to grant the final and complete relief or relief of the final nature as claimed in the suit as it is beyond the purview and scope of jurisdiction of granting interlocutory relief"*.

13. Basing on the principles of said decision the case on hand is filed for the relief of bare injunction where the final relief as well as relief sought under IA are one and same. Therefore, if at this stage TI is granted, then what would remain to adjudicate in the suit. Therefore, to decide the fact that, whether the Plaintiff is having actual possession over suit schedule property a full-fledge trail is very much necessary. When at this stage the Plaintiff has not made out sufficient grounds and prima facie case in his favor to grant temporary

injunction in his favour. Therefore, I answer **Point No.1** in the **Negative**.

14. Point No. 2: The existence of prima facie case in this matter of granting injunction is really harbinger to investigate other points as per principal cited in the decision of **Gourishankar Swamigalu has reported in ILR 1989 Karnataka 1701** and it has been further held that if there is no prima facie case at all or the case put forward is so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the Plaintiff would fall at the very first stage itself. The relief of injunction is remedy in equity. Hence, such relief must be bestowed only on whose reputation and hands are both spotlessly clean. In the light of discussion made above, I am of the opinion that balance of convenience does not lie in favor of Plaintiff. Hence, my answer to the **Point No.2** is in the **Negative**.

15. Point No. 3: If any temporary injunction is granted the Plaintiff should be put into irreparable injury or hardship which cannot be compensated in terms of money. In this case

there is a dispute with respect to possession over suit schedule properties. Both parties are submitting that they are in possession over suit properties. But there is a necessity of full fledged trial to come to any conclusion about the possession over suit properties. Therefore, if the I.A. is not allowed then no loss or any hardship which could not be compensated in terms of money would cause to the Plaintiff. Hence, my answer to the **Point No.3** is in the **Negative**.

16. Point No. 4: In view of my answer on Point No.1 to 3, I proceed to pass the following;

ORDER

I.A. No.I filed by the Plaintiff Under Order

XXXIX Rule 1 and 2 of CPC is hereby rejected.

No order as to costs.

(Dictated to the Steno on computer, typed by him, revised, corrected and then pronounced by me in open Court, on this 09th day of February, 2022)

Sd/-
(HAJIHUSENSAB YADAWAD)
Prl. Civil Judge & JMFC.,
Mulbagal.