

KAKL40-003078-2021



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

Dated this the 17th day of December 2021

Present:

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

O.S. No. 337/2021

Plaintiff : **Sri. G. Krishnappa**

V/s

Defendant: **Sri. M. Ramu**

Parties to I.A.No.I

Applicant: **Sri. G. Krishnappa,**
Plaintiff : S/o Chikka Gurappa
@ Guruvana Bovi,
Aged about 65 years,
R/at: Veerabhadra Nagar,
Mulbagal Town.

(By **Sri. K.V.S** -Advocate)

V/s

Opponent: **Sri. M. Ramu,**
Defendant: S/o Muniyappa,
Aged about 42 years,
R/at: Veerabhadra Nagar,

Mulbagal Town.

(By **Sri. C.V.S** - Advocate)

ORDER ON I.A. No.I

The counsel for Plaintiff filed IA No.I U/O XXXIX Rule 1 and 2 R/w Sec.151 of CPC seeking add interim Temporary Injunction against Defendant to restrain him from alienating or encumbering the suit schedule property in any manner.

2. The said application is accompanied with an affidavit of Plaintiff wherein he contended that, he filed said suit for the relief of Permanent Injunction and prayed to treat the averments of plaint as part and parcel of affidavit. Further it is contended that, the suit land was formerly owned by one Venkatamma W/o Ramappa, inturn she sold the same in favour of his father under Registered Sale Deed dated 08-04-1963 and delivered the possession. From the date of said Sale Deed, his father was in possession and enjoyment of property and his name came to be entered in column Nos.9 and 12 of RTC. Further it is contended that, the Defendant has no manner of right or possession over the property. The Defendant is stranger to the Plaintiff. But one Anjappa S/o Munivenkatappa of Upparahalli Village has managed to get

entered his name in Mutation Register No.H.17/2013-14 as if Khata of 2 acres 36 guntas in the suit schedule Sy.No.89 is in his name. After noticing the above said illegal entry, the father of Plaintiff filed an appeal before the Assistant Commissioner, Kolar in RA No.201/2014-15, the said appeal came to be allowed after contest on 21-10-2016. In the said appeal the matter was remanded to Tahasildar, Mulbagal with a direction to dispose the case in accordance with law. But, the Tahasildar, Mulbagal yet to dispose of the above said case. The Defendant being stranger to the family of Plaintiff, has managed to get his name entered in Mutation Register and RTC as if by way of inheritance from Munivenkatappa. The Defendant is not having any kind of right or possession over the property. Taking undue advantage of said fake entries in Revenue Records, the Defendant made an attempt to interfere with Plaintiff's possession on 04-10-2021 with a view to grab the property. Therefore, the Plaintiff has filed present suit and has filed this application. On these grounds, he prayed to allow the application.

3. On the contrary, the Defendant has appeared by advancing the case through his counsel and filed written

statement and filed adoptive memo to adopt the written statement as objections to IA No.I. In the written statement, the Defendant had denied contention taken by the Plaintiff in his plaint. It is contended by the Defendant that, originally suit schedule property bearing Sy.No.89 measuring 2 acre 36 guntas were belonging to Munivenkatappa S/o Ramanabovi. He got 4 issues viz., (i) Peddaramanna, (ii) Thippanna, (iii) Venkatappa and (iv) Muniyappa. The 4th son Muniyappa acquired the suit schedule property through the Will executed by Munivenkatappa in the year 1987. The remaining properties were allotted to other 3 sons of Munivenkatappa. The said Munivenkatappa died in the year 1996, since then the father of Defendant i.e., Muniyappa was in possession and enjoyment of suit schedule property. But due to his illiteracy, he has not transferred Khata into his name. Further it is contended that, the Muniyappa died in the year 2003 leaving behind Defendant. The Defendant transferred the Khata in his name on Pavathi Varasu in the year 03-05-2019. Since then the Defendant is in continuous possession and enjoyment of suit schedule property. The Defendant denied the Sale Deed dated 08-04-1963 and submitted that, the same is created and concocted

one. Taking undue advantage of interim order passed by this court, the Plaintiff is giving troubles to the Defendant. On these grounds he prayed to reject the application.

4. I have heard the arguments of both sides.

5. Upon hearing arguments and on perusal of materials placed on record the following points that would arise 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

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

Point No. 1 : in the **Negative**

Point No. 2 : in the **Negative**

Point No. 3 : in the **Negative**

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

REASONS

7. **POINT No. 1:** This is the simple suit filed for the relief of Permanent Injunction to restrain the Defendant from interfering

with the peaceful possession of Plaintiff over suit schedule property. Along with suit, the Plaintiff filed IA No.I upon which this court granted exparte TI order in favour of Plaintiff on 29-10-2021. Subsequently the Defendant has appeared and filed written statement. It is the case of Plaintiff that, formerly the suit schedule property was belonging Venkatamma W/o Ramappa who has sold the same in favour of father of Plaintiff through Registered Sale Deed dated 08-04-1963. Since from the date of Sale Deed till today the father of Plaintiff and after his demise the Plaintiff is in possession and enjoyment of the same, but the Defendant who is the stranger to the family of Plaintiff. However, the Khata of suit schedule property was illegally transferred in the name of Anjappa S/o Munivenkatappa by virtue of MR No.H.17/2013-14. Accordingly, the father of Plaintiff filed an appeal before the Assistant Commissioner, Kolar in RA No.201/2014-15 which was allowed by setting aside the said Mutation and by remanding the matter to the Tahasildar, Mulbagal to dispose the matter in accordance with law. But, the Tahasildar is yet to dispose the matter. Further, the Defendant succeeded to change Khata into his favour by way of inheritance from

Munivenkatappa. But, the Defendant is not the son of Munivenkatappa. In spite of that, the Defendant has managed to transfer the Khata of property into his name. But, on the contrary, the case of Defendant is different as comparing to the Plaintiff. He contended that 2 acre 36 guntas of land in Sy.No.89 was belonging to one Munivenkatappa who has got 4 issues. Out of them the 4th son Muniyappa acquired the property through the Will executed by Munivenkatappa in the year 1987. The said Munivenkatappa died in the year 1996. Since then Muniyappa was the owner of suit schedule property. But, due to illiteracy Muniyappa did not change the Khata into his name. But, he died in the year 2003 leaving behind the Defendant. Thereby the Defendant has got transferred the Khata of above said property into his name by way of Pavathi Varasu under MR No.H289/2018-19.

8. In support of his contention, the Defendant has not produced any kind of Will alleged to be executed in favour of his father. However, MR No.H289/2018-19 produced by Defendant shows that the name of Defendant came to be entered by virtue of Pavathi Varasu. On perusal of old RTC produced by the Defendant, the name of one Munivenkatappa S/o Ramanabovi

finds place in the RTC of Sy.No.89 to an extent of 2 acres 36 guntas from 1986-87 to 2001-02. But the contention of Plaintiff that, the Sale Deed was executed in the year 1963 in favour of his father. But, the earlier record of rights show the name of one Munivenkatappa S/o Ramanabovi. However, if at all the Venkatamma was the original owner of suit schedule property, after execution of Sale Deed in favour of father of Plaintiff, either the name of Venkatamma or the name of father of Plaintiff should continue in the record of right of suit schedule property. But, the Plaintiff has not furnished the Khata which stands in the name of original vendor by name Venkatamma.

9. However, coming to the technical aspect of the suit, the suit is filed for the relief of Bare Injunction. Therefore, the first and foremost duty of the Plaintiff is to establish his possession over suit schedule property either lawful or unlawful. The ownership does not matter to the Plaintiff according to the prayer sought by the Plaintiff himself in the plaint. On the contrary, the Plaintiff has not established that, the Defendant is trying to alienate the suit schedule property. On the contrary, it is the contention of Defendant that, on the basis of exparte

Temporary Injunction which was granted by this Court from restraining the Defendant from alienating the property, basing upon the same, the Plaintiff is trying to disturb the possession of Defendant over the property. Indirectly the Defendant is contending that, the Plaintiff is taking undue advantage of exparte TI order granted by this Court. Therefore, the Plaintiff has failed to establish that, the Defendant is trying to alienate the suit schedule property.

10. 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"*.

11. 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, in view of absence of sufficient materials this Court is unable to

grant remedy in favour of Plaintiff. Hence, at this stage this Court is of opinion that the Plaintiff has failed to establish prima-facie case. Hence, I answer **Point No.1** in the **Negative**.

12. 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 lies in favor of Plaintiff. Hence, my answer to the **Point No.2** is in the **Negative**.

13. 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 the

Defendant is contending that he is in possession and enjoyment over the suit schedule property. Further, at this stage no materials available to hold that the Plaintiff is in possession over suit schedule property. 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**.

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

ORDER

**The IA No.I filed by the Plaintiff U/O XXXIX
Rule 1 and 2 R/w Sec.151 of CPC is hereby
dismissed.**

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 17th day of December, 2021)

**(HAJIHUSENSAB YADAWAD)
Prl. Civil Judge & JMFC.,
Mulbagal.**