

KAKL510014252020



IN THE COURT OF PRL. CIVIL JUDGE & ADDITIONAL JMFC,

AT K.G.F

DATED THIS THE 10TH DAY OF NOVEMBER 2021

: **PRESENT:**

MISS.NASRAT MUKHTAR AHMED KHAN, B.A. LLB, LL.M
PRL. CIVIL JUDGE & ADDL. JMFC., K.G.F.

O.S. No.399/2020

PLAINTIFF/s : Sri. G.Subramani
s/o N.Govindaraj,
Aged about 61 years.,
R/at House No.1710,
Kuvempu Road, 1st Cross,
Near Kannada Sangha,
Robertsonpet,
K.G.F.

(Rep. by Sri. **N.S.**, Advocate.)

Vs

DEFENDANT/s : Dr.Mohammed Bukhari Moidu
s/o Hajee Mohammed Moidu,
Aged about 56 years.,
R/at Moidu Complex,
BEML Nagar, K.G.F.
Also C/o President,
KGF Chamber of Commerce,
& Industries,
Dr.B.R.Ambedkar Road,
Robertsonpet,
K.G.F.

(Rep. by Sri. **K.V.P.**, Advocate.)

I.A.No.I

APPLICANT/s : Sri. G.Subramani
(Plaintiff) s/o N.Govindaraj,
Aged about 61 years.,
R/at House No.1710,
Kuvempu Road, 1st Cross,
Near Kannada Sangha,
Robertsonpet,
K.G.F.

V/s

OPPONENT/s : Dr.Mohammed Bukhari Moidu
(Defendant) s/o Hajee Mohammed Moidu,
Aged about 56 years.,
R/at Moidu Complex,
BEML Nagar, K.G.F.
Also C/o President,
KGF Chamber of Commerce,
& Industries,
Dr.B.R.Ambedkar Road,
Robertsonpet,
K.G.F.

* * *

ORDER ON I.A.No.I

Plaintiff has filed I.A.No.I under Order 39 Rule 1 & 2 read with Section 151 of CPC praying this Court to issue an ad-interim Order of injunction restraining the defendant, his family members, servants and representatives from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property, pending the disposal of the above suit.

2. Plaintiff has filed an affidavit accompanying the said IA averring that, he is the absolute owner in exclusive possession of the suit schedule property and has acquired the same under registered sale deed dated 06.08.2020 from K.Ramana Reddy. The said K.Ramana Reddy in turn had acquired the suit schedule property under registered sale deed dated 19.11.2018 from Santhosh Reddy. The khatha of the schedule land is duly mutated in his name by revenue authorities vide MR No.H-5-H1/2020-21 dated 06.10.2020 and RTC is appearing in his name and he is the absolute owner in possession of the suit schedule property and exercising all his right of ownership. After acquiring the suit schedule property he has invested amounts to develop the land being in possession of the same. The defendant having no any manner of legal right, title, interest or possession over the suit schedule property is illegally and unlawfully interfering with his peaceful possession and enjoyment of the suit schedule property and when he was making development of the suit schedule property, the defendant illegally interfered with his possession on 19.10.2020 and gave complaint to the police vide NCR No.161/2020 dated 19.10.2020 and the defendant was called and advised not to give trouble to him but, they have not given any protection on the ground that, it is civil

dispute. Despite the said complaint, the defendant is troubling and interfering with his peaceful possession and enjoyment of the suit schedule property and came with number of persons and interfered with his possession and enjoyment of the suit schedule property. Therefore, he constrained to file the present application.

3. The defendant has filed memo adopting the written statement as also objection to IA No.1 and denies the plaint averments and contends that, G.Narayana Reddy was original owner of suit schedule property and contends that, the property claimed by the plaintiff is not in existence for the reason that, the said properties are already converted by original owner G.Narayana Reddy from agriculture to non-agricultural purpose and converted into building sites in ALNSR-436/75-76 dated 05.05.1976 Deputy Commissioner, Kolar, and ALN No.82/75-76 dated 10.05.1976 of the Tahasildar, Bangarpet Taluk and sold the said properties under registered sale deed dated 02.02.1979 in favour of "INDIA FINANCIAL ASSOCIATION OF 7th DAY ADVENTIST," and handed over the said property to him i.e. item no.1 and 2 of written statement properties. In turn "INDIA FINANCIAL ASSOCIATION OF 7th DAY ADVENTIST," has executed a registered sale deed in favour of the defendant on 22.10.2019 mentioning about earlier sale deed

dated 02.02.1979 and has put defendant in the possession and enjoyment of the same. The said G.Narayana Reddy converted the survey numbers to non-agricultural purpose as per the Orders of Deputy Commissioner, Kolar, and it loses the importance of survey number and it is the duty of the authorities to open khatha as per registered documents and purchaser need not approach the authorities to open the khatha as per the decisions.

4. The plaintiff's vendor's vendor acquired the suit schedule property from GPA holder of Santhosh Reddy N. i.e. Srinivas Reddy K. and Johnson vide registered GPA dated 19.09.2018. But the said Santhosh Reddy N. has not marketable title on the date of his father's death for the reason that, during the lifetime the said G.Narayana Reddy, father of Santhosh Reddy N. has transferred the survey number by converting the same and sold on 02.02.1979 and G.Narayana Reddy father of N.Santhosh Reddy could not have khatha in his name and further G.Narayana Reddy had left his wife Premalatha and daughter Sujatha and N.Santhosh Reddy and khatha could not be opened in the name of Santhosh Reddy N. alone and hence, the revenue entries in the name of Santhosh Reddy and Rama Reddy and the present plaintiff G.Subramani are not legal entries.

5. The defendant came to know that, the vendors of plaintiff gave application to the Tahasildar, KGF, to open khatha in his name as per the sale deed dated 19/2018, the Tahasildar , KGF, have registered a case RRT(D) Cr.136/2018-19 and in the said objection the defendant has furnished all the details and also stated the property is not agricultural land. Hence the question of entering the name of persons in the RTC does not arise at all. While passing the Order in RRT (D) Cr:136/2018-19 he ought to have got the information from his higher authorities about the alienation of the property and without getting information an illegal order is passed without giving notice to the defendant to appear and to produce the documents. The revenue Inspector colluded with the plaintiff for monetary gain and has given a false report without inspecting the property and without enquiring the adjacent owners. The defendant for his business improvement has purchased the written statement property under the registered sale deed dated 22.10.2019 and before his purchase , Water Tank, Old Church and Compound was existing in the statement property and after the purchase by the defendant ,he has repaired the compound and made it in a good condition. The plaintiff gave false complaint before Robertsonpet Police on 19.10.2020 and the police have

enquired the matter and after visiting the written statement property found that, there was already a compound wall existing in the written statement property and directed the plaintiff not to give such false complaints.

6. Santhosh Reddy N. son of G.Narayana Reddy has created revenue documents though his father not retained any property in the year 1979, after the death of G.Narayana Reddy, the said Santhosh Reddy to escape his faults executed GPA in favour of Srinivas Reddy K. and Johnson on the basis of alleged GPA and they have sold the property in favour of K.Ramana Reddy, the said K.Ramana Reddy in turn sold the non-existing property in favour of present plaintiff on 06.08.2020 on the basis of concocted sale deed. The Order passed by Tahasildar, KGF, is not binding on the defendant and plaintiff will not derive any title, possession or ownership with respect to non-existence of the suit schedule property. The plaintiff has filed a false suit on the basis of concocted documents and sale deeds, cannot claim the written statement property and neither the plaintiff nor his vendors ever enjoyed the written statement schedule property and same is not agricultural land. The plaintiff is a land grabber and created the documents with support of other persons and the said GPA holder

Johnson gave an undertaking and cancelled declaration stating that, he does not know about the sale deed details and written statement belongs to the defendant. On the basis of ex-parte injunction , the plaintiff wanted to trespass in the written statement schedule property and defendant protested and gave complaint to Robertsonpet Police, KGF, and plaintiff was summoned and gave statement that, he is nothing to do with the written statement schedule property and will not interfere with the written statement property. Hence, pray the Court to reject the said application.

7. Heard the plaintiff and defendant counsel and perused the materials on record.

8. On perusal, the following points arise for my consideration:

1. Whether the plaintiff has made out prima-facie case ?
2. Whether the plaintiff further shows that the balance of convenience lies in his favour ?
3. Whether the plaintiff further shows that an irreparable injury will be caused to him if the said IA is not allowed ?
4. What order ?

9. On perusal of materials on record and after hearing the arguments canvassed by both the counsels, my findings for 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 final order, for the following:-

REASONS

10. **POINT NO.1** :- It is the case of plaintiff that, he is the absolute owner in exclusive possession of the suit schedule property and has acquired the same under the registered sale deed dated 06.08.2020 from K.Ramana Reddy and plaintiff was put in possession and enjoyment of the suit schedule property as per the said sale deed. In order to substantiate the same, the plaintiff has produced xerox copy of the said sale deed dated 06.08.2020 reflecting sale by K.Ramana Reddy. Further plaintiff states that, the khatha of the schedule land is mutated in the name of plaintiff by revenue authorities vide MR No.H-5-H1/2020-21 dated 06.10.2020 and RTCs are appearing in the name of plaintiff. To substantiate the same, plaintiff has produced RTC of Sy.No.226/3

standing in the name of plaintiff and also RTC existing in the name of his vendor K.Ramana Reddy of survey number 226/3 and encumbrance certificate, the said documents reflects the name of plaintiff. Further, the plaintiff states that, his vendor's K.Ramana Reddy had acquired the suit property under registered sale deed dated 19.11.2018 from Santhosh Reddy son of late G.Narayana Reddy. To substantiate the same, the plaintiff has produced xerox copy of said sale deed bearing no.6784/2018-19 dated 19.11.2018 reflecting sale of suit property to K.Ramana Reddy by Santhosh Reddy and the copy of RRT (D) CR:136/2018-19 reflects that, the khatha was ordered to be entered in the name of K.Ramana Reddy vide the said sale deed 19.11.2018 though the present defendant has objected for the same. The said documents reflect the mode of possession of plaintiff over the suit properties and the source of title but, the plaintiff states that, the original owner of the suit schedule property was G.Narayana Reddy which is not denied by the defendant. But, the defendant states that, the original owner G.Narayana Reddy had during his lifetime converted the said suit survey number into sites and has sold the same to “ INDIA FINANCIAL ASSOCIATION OF 7th DAY ADVENTIST,” on 02.02.1979 and in turn “INDIA FINANCIAL ASSOCIATION OF 7th

DAY ADVENTIST,” has sold the same to the present defendant under registered sale deed on 22.10.2019 .To substantiate the same, the defendant has produced sale deed of 02.02.1979 made by G.Narayana Reddy to “ INDIA FINANCIAL ASSOCIATION OF 7th DAY ADVENTIST,” and the said sale deed states about converting of survey number 226 in to non-agricultural land vide ALN SR-436/75-76 dated 05.05.1976 and ALN No.82/75-76 dated 10.05.1976 and out of the said alienated survey number 226/1 item no.1 and 2 of written statement properties are shown to be given to “ INDIA FINANCIAL ASSOCIATION OF 7th DAY ADVENTIST,” . The said sale deed speaks about conversion of survey number 226 by original owner G.Narayna Reddy and the defendant has questioned the sale deed of plaintiff stating that, the said survey number 226/1 is not in existence as its original owner has converted into sites and have already sold them. The said sale deed reflects about the conversion and also sale of sites out of the said converted survey number. The plaintiff counsel in the reply has stated that, the conversion order is false and created. The conversion order whether is false or created is the matter to be decided only after full fledged trial.

11. Further the point to note is that, its original owner G.Narayana Reddy had sold by converting and the documents produced by defendant reflects that, G.Narayana Reddy its original owner has converted Sy.No.226 into sites and out of the same he has alienated item no.1 and 2 to “INDIA FINANCIAL ASSOCIATION OF 7th DAY ADVENTIST,” and the same has been re-sold to defendant under the said sale deed dated 22/10/2009 and the plaintiff who alleges that, from G.Narayana Reddy the suit property had come to Santhosh Reddy cannot be believed at this juncture as the sale deed produced by the defendant reflects sale by G.Narayana Reddy during his lifetime and thereby ,the question of transfer to Santhosh Reddy by Pavathivarasu after the death of Narayan Reddy cannot be accepted at this juncture and though, the plaintiff has stated that, the said sale deed dated 02.02.1976 is false and concocted, the said question whether the sale deed dated 02.02.1979 is false and created it is the matter to be decided only after full fledged trial. Further the said sale deed 02.02.1979 is prior to the sale deed of the plaintiff and his vendor and said sale deed reflects conversion of survey number 226 into sites and sale out of alienated survey number 226/1. Hence the point that arises for consideration is that, when G.Narayana Reddy the

original owner has already converted and sold the sites out of Sy.No.226, where is the question of the suit property remaining as agricultural land and plaintiff being in possession of agricultural land. No doubt, the revenue documents produced by the plaintiff reflects the name of plaintiff as vendor and also Santhosh Reddy by Pavathivarasu but, the defendant has produced RA No.343/2020-2021 dated 07.07.2021 wherein RRT(D) CR:136/2018-2019 MR No.H1/2020-2021, MR No.H7/2019-2020 and MR No.H17/2017-2018 is stayed till next date of hearing. Hence plaintiff has failed to show prima-facie case and Point No.1 is answered in Negative.

12. POINT NO.2 AND 3:- As in point no 1, this court by giving reasons have concluded that, the plaintiff has failed to prove the prima facie case, there is no need to discuss further regarding the balance of convenience and irreparable injury, as it is settled law that, when a party lacks the existence of prima facie case, the other two requirements such as balance of convenience and irreparable loss, loses their significance. In **Kashi Math Samsthan and Another -v/s- Srimad Sudhindra Thirtha Swamy and Another AIR 2010 SC 296**

it has been held that, in order to obtain an order of injunction,

the party seeking the grant of injunction, has to prove that he has made out the prima facie case to go for trial, balance of convenience is also in his favour and he will suffer irreparable loss if the injunction is not granted. But it is equally well settled that, when a party fails to prove a prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove a prima facie case to go for trial, it is not open to the court to grant injunction in his favor, even if he has made out a case of balance of convenience and irreparable injury. Accordingly the point no. 2 and 3 are answered in Negative.

13. POINT NO .4 :- In view of the discussion made above, I proceed to pass the following:-

ORDER

I.A.No.I filed by the plaintiff under
Order 39 Rule 1 and 2 read with Section
151 of Civil Procedure Code is hereby
rejected with cost of Rs.200/-.

(Dictated to the Stenographer, on computer and computerized by him, corrected by me, and then pronounced in the open court on this the 4th day of October 2021.)

(NASRAT MUKHTAR AHMED KHAN)
PRL. CIVIL JUDGE & ADDL. JMFC., K.G.F.