

KAKP400010342021



IN THE COURT OF THE SENIOR CIVIL JUDGE
AND J.M.F.C., AT GANGAVATHI

Dated 1st day of March 2023

Present: Sri. Ramesh S Ganiger,
B.com., L.L.B., LLM,
Senior Civil Judge,
Gangavathi.

O.S.No.275/2021

PLAINTIFF:

1. Sri. Syed Ghouse Pasha S/o
Syed Abdul Azeez, Age: 58 years,
Occ: Agri. R/o Islampur,
Gangavathi, Dist. Koppal &
others.

(By Sri. K.K., Advocate)

// Versus //

DEFENDANTS:

1. Smt. Moshina Begum W/o
Syed Jainullabuddin, Age: 54
years, Occu: Agri. R/o 4th ward,
Andhroni Killa, Near
Venkateshwara & Kote Anjaneya
temple, Gangavathi & another.

(Defendant No.1 & 2 by Sri.
S.S.T., Advocate)

Parties to IA.No 3**Applicants:**

**1. Sri Syed Ghouse Pasha W/o
Syed Abdul Azeez & others.**

and

Opponents:

**1. Smt. Moshina Begum W/o
Syed Jainullabuddin & others.**

Order on I.A.No.3 filed under Order 39
Rule 1 & 2 R/w Sec. 151 of CPC.

It is the interlocutory application filed by the plaintiff No.1 seeking to grant order of temporary injunction restraining the defendants No.1 and 2 not to alienate or to creat charge over the suit property till disposal of suit.

2. In the affidavit annexed to the application the plaintiff No.1 has contended that suit schedule property is inherited from one Mahemooda Begum W/o Jainulla Khadri. They and defendants being the legal heirs of said Mahemooda Begum W/o Jainulla Khadri and all are in tenants in common over the said suit property.

3. Originally the suit property and other family properties have been partitioned by Mahemooda Begum in the year 1975 with her children. Under the partition the said Mahemooda Begum was retained Sy No.100/B measuring 3 acre 38 guntas. The land bearing Sy No.277/A measuring 2 acres 32 guntas and another land bearing Sy No.274/A measuring 1 acre 7 guntas were allotted to her daughter Khadarunnisa Begum. Further land bearing Sy No.99/A paiki measuring 3 acre 7 guntas and Sy No.104/B measuring 2 acres 15 guntas were allotted to Syed Abdul Azeez who is father of plaintiff No.1 to 3 and defendant No.2. Further land bearing Sy No.99/A paiki measuring 3 acre and another land bearing Sy No.104/B measuring 2 acres 25 guntas were allotted to the share of another son Syed Shameed. The land bearing Sy No.274/A paiki measuring 4 acres land was allotted to defendant No.1. The said partition was effected as per written deed and thereafter the names of the allottees were mutated.

4. The plaintiff No.1 has submitted that in the year

1995 the said Khadrusissa Begum was died issue-less. Thereafter Mehemoda Begum was filed application before the revenue authority seeking to restore the said lands in her name. Accordingly, the said revenue authority was mutated the khata of land bearing Sy No.277/A and 274/A measuring 1 acre 7 guntas in the name of Mehamuda Begum. In the mean time the said Mahemooda Begum was sold land bearing Sy No.277/A measuring 2 are 32 guntas in favour of Bhupathi Bheemaraju S/o Chittiraju under the registered sale deed dated: 20-01-1989. But the defendant No.1 without having any legal right over the suit land bearing Sy No.274/A measuring 1 acre 7 guntas behind their back and her mother illegally got mutated to the said property in her name. But they all are in joint possession over the said property and they have legal right over the said property after the demise of Mehamooda Begum. Now these defendants would intended to alienate the suit property in favour of one Vimala Bagrecha and his brother who are Jaya textile owner. On that count they prepared phodi, form No.10 and other survey records pertaining to

the suit property. If these defendants alienate the suit property in favour of 3rd parties diffidently they would cause irreparable loss and their legal right will be deprived. They have prima facia case and prays to allow the application.

5. In the objections the defendant No.1 was vehemently denies the very joint possession of plaintiffs over the suit property. She admits about division taken place in their family. She contends that her mother Mahemooda Begum during her life time was orally gifted suit property bearing Sy No.274/A measuring 1 acre 7 guntas due to love and affection on 20-04-1986. The parents of plaintiffs and defendant No.2 never objected and since year 1986 she has been possession over the suit property. Khata of the said property mutated in her name and no one challenged the khata stands in her name. She contends that the plaintiffs and defendant No.2 no were concern to her suit property and they have no legal right over the said property. She contends that portion of suit land was occurred by the government for formation of road

and also she received compensation in Civil Misc. No.32/1995. Since from the year 2012 the suit property is available only 6 guntas and she has no intention to sell the said property to any one. Now under false claim the plaintiffs have filed this application and prays to reject the application with imposing cost.

6. On going through the application and objections the following points are arises for my consideration:

1) Whether plaintiff No.1 has made out prima-facie case?

2) Whether the plaintiff No.1 has made out sufficient grounds that the order of temporary injunction is not granted she and other plaintiffs would cause irreparable loss?

3) The balance of the convenience of the court lies is who's favour?

4) What order?

7. Learned counsel for the plaintiffs and learned counsel for the defendants were argued.

8. ***My answers 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 final order for the following :-

REASONS

9. **Point No.1:** It is undisputed fact that one Mahemooda Begum has 4 children's namely Khadrunissa Begum, Syed Abdul Azeez, Syed Shameed and Moshina Begum who is defendant No.1. The plaintiffs and defendant No.2 are the heirs of Late Syed Abdul Azeez. Now said Mahemooda Begum was died and one of the daughter Khadrunissa Begum was also died. The parents of plaintiffs were died. It is further undisputed fact that in the year 1975 the division was taken place in between Mahemooda Begum with her children.

10. As per as contention of the plaintiffs in plaint para No.5 the suit land bearing No.274/A measuring 4 acres was allotted to defendant No.1. Herein the plaintiffs shows 4 acre 32 guntas in Sy No.274/*/1 and 6 guntas in another

land bearing No.274/*/1. Out of that the disputed suit property herein is 1 acre 7 guntas which was allotted under the partition in favour of Khadrnunissa Begum. As per as contention of plaintiffs under the partition the disputed property bearing No.274/A measuring 1 acre 7 guntas was allotted to Khadrnunissa Begum along with another property. After her demise without issue-less her mother Mahemooda Begum was made application and retained the said disputed property in her name. As per as contention of the plaintiffs behind the back of said Mahemooda Begum the defendant No.1 was got mutated the said property illegally.

11. As per as contention of the defendant No.1 her mother Mahamoda Begum with love and affection got mutated the disputed property in her name under the oral gift. On going through the property extract furnished by the plaintiffs shows that now the disputed property stands in the name of defendant No.1. The documents furnished by the defendant No.1 shows that on 28-06-1986 by virtue of mutation registered No.21 the said Mahemooda Begum was

transfer the suit land bearing Sy No.274/A measuring 1 acre 7 guntas in the name of defendant No.1. The copy of mutation register clearly shows that in the year 1986 as per the contention of the defendant No.1 the mother Mahemoda Begum was transferred the disputed land in favour of defendant No.1. As per the contention of the plaintiffs in the year 2000 the said Mahemooda Begum was died. Herein, the khata of the suit property mutated in the name of defendant No.1 in the year 1986. So for the said year and suit filing year taken in to consideration after lapse of 35 years these plaintiffs have challenged the mutation in the name of defendant No.1 and also contends that they have legal share in the said suit property.

12. It is no doubt that the father of the plaintiffs and defendant No.2 namely Syed Abdul Azeez would not challenged the said mutation in the name of sister defendant No.1 during his life time. The long standing mutation entry from the year 1986 till the year 2021 clears that during the life time the said Mahemooda Begum was

alienated the disputed property in the name of defendant No.1. These long standing mutation entries prima facie shows that the original owner Mahemooda Begum was transferred the disputed land to the defendant No.1 under the mutation register. Since from 35 years the disputed property is in the name of defendant No.1. Under these factual circumstances only averments made in the affidavit of plaintiff No.1 could not sufficient to hold that plaintiffs made out prima facia case and I answered **Point No.1 in the affirmative.**

13. **Point No.2 and 3:** These points are interconnected and to avoid repetition of discussion of facts these are taken up together for common discussion.

As discussed above point No.1 the plaintiffs could not made out prima facie case. When there is no prima facie case, at this juncture the balance of convenience of this court not lies in favour of plaintiffs. If the order of temporary injunction is not granted no harm or injury

would caused to the plaintiffs and I answered **point No.2 and 3 in the Negative.**

14. **Point No.4:** For the foregoing reasons, I proceed to pass the following;

O R D E R

**I.A. No.3 filed U/O 39 Rule 1 and 2
R/w Sec. 151 of CPC by the plaintiff
No.1 is hereby rejected with imposing
cost of Rs.200/-.**

(Dictated to the Stenographer directly on computer and typed by her, corrected by me and then pronounced in the open court on 1st day of March 2023)

(Sri. Ramesh S. Ganiger)
Senior Civil Judge, Gangavathi.