

IN THE COURT OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE AT MYSURU

Dated this, the 30th day of November 2020

Present: **Sri. RAMACHANDRA D.HUDDAR**, B.Com., LL.M,
Prl.District & Sessions Judge,
Mysuru.

R.A.106/2019

Appellant : Sri.Appaji S/o late Smt.Gowramma,
Aged about 61 years,
Residing at No.177, II Cross,
Manasara Road,
Indira Nagar,
Ittigegud,
Mysuru-570010.

(By Sri. K.J.Vinu, Advocate)

//Vs//

Respondents : 1. Smt.Choodamani
W/o Sri.Vijendra Rao,
Aged about 64 years,
Residing at No.1047/39,
II Main Road, 5th Cross,
Vidyaranyaapuram, Mysuru.

2. Sri.Narayana
H/o late Smt.Vijayalakshmi,
Aged about 99 years,

3. Sri.Kullala @ Kumar
S/o late Smt.Vijayalakshmi,
Aged about 67 years,

4. Smt. Subhadra
D/o late Smt.Vijayalakshmi,
Aged about 64 years,

5. Sri. Manju
S/o late Smt. Vijayalakshmi,
Aged about 62 years,
6. Sri.Thimma
S/o late Smt.Vijayalakshmi,
Aged about 60 years,
7. Smt.Rani
D/o late Smt.Vijayalakshmi,
Aged about 58 years,
8. Sri.Ganesh
S/o late Smt.Vijayalakshmi,
Aged about 54 years,

Respondents 2 to 8 are
residing at No.3597,
Mantapada Beedi,
Veeranagere II Cross,
Mahalakshmi Devasthanada Beedi,
Ashoka Road,
Mysuru.

9. Sri.P.Shivanna
S/o late Sri.Puttadevappa,
Aged about 75 years,
Residing at No.97,
Behind Bethalamma Temple,
Bhugathagalli Village,
Varuna Hobli,
Mysuru Taluk.
10. Smt.Gayathri
W/o late Sri.Mallesh,
Aged about 64 years,
11. Sri.Raja S/o late Sri.Mallesh,
Aged about 39 years,

12. Smt.Nagarathna
D/o late Sri.Mallesh,
Aged about 44 years,

Respondents 10 to 12 are
residing at No.3082,
K.T.Street, Mandi Mohalla,
Mysuru.

13. Sri.Chandrashekar
S/o Sri.Ningappa,
Aged about 55 years,
Residing at No.31,
Brindavan Apartments,
Akashavani Circle,
K.R.S.Road,
V.V.Mohalla,
Mysuru.

14. Sri.Ramaraju
S/o late Smt.Krishnamma,
Aged about 61 years,

15. Smt.Rajalakshmi
W/o late Sri.Sahadeva,
D/o late Smt.Krishnamma,
Aged about 59 years,

16. Smt.Gajalakshmi
W/o Sri.Krishnappa,
D/o late Smt.Krishnamma,
Aged about 57 years,

17. Sri.Jayadeva S/o late Krishnamma,
Aged about 55 years,

Respondents 14 to 17 are
residing at No.3597, II Cross,
Lakshmiddevammagudi Road,
Veeranagere,
Mysuru.

(By Sri.B.Parashiva – Adv. for R.1, R.2 & 5 – dead, Sri. M.P.Chandrakanth – Adv. for R.3, 4, 7, Sri.A.V.Jayarama Rao – Adv. for R.9, R.10 to 12 – Absent, R.13 to 15 – exparte)

Parties to I.A.No.V

**Applicant:
(Appellant)** Sri.Appaji

Vs.

**Opponents/
(Respondents):** Smt.Choodamani and others

:: ORDERS ON I.A.NO.V ::

Appellant has filed this interim application under Order XXXIX Rules 1 and 2 r/w Section 151 of C.P.C., seeking temporary injunction against the respondents from alienating the suit schedule property and from putting up any construction or undertake any work in the suit schedule property, till disposal of this appeal.

2. Along with this application, appellant himself has filed an affidavit stating that, he filed a suit before the trial court in O.S.No.63/2010. Being aggrieved by the judgment and decree so passed in the said suit, dismissing his suit, this appeal is filed by the appellant. According to him, suit schedule property involved in this case belongs to him and he is the absolute owner of the same. It is alleged that, the respondents being the defendants before the trial court, in

collusion with the revenue officials have got transferred their names in the revenue records. Now, the appeal is pending for disposal. Because of no interim order is operating against the respondents, now they are trying to alienate the suit schedule property and put up the construction over the schedule property. If the application is not allowed, the appellant will be put to hardship and loss. If the interim application is allowed no loss or hardship would be caused to the respondents. Hence, it is prayed by the appellant to grant him ad-interim temporary injunction as prayed in I.A.V.

3. Along with the application he has filed the photographs in support of his application.
4. Copy of this application is served upon the respondents. It is respondent Nos.1 and 9 resisted the application by filing independent objections. The other respondents have not filed any objections to the application.
5. It is interalia contended by respondent No.1 stating that, the application is false and frivolous. Appellant is not the owner of the suit schedule property in the manner stated. Respondent No.1 has filed written statement before the trial court, which may be read as part and parcel of this objection. It is contended that, he has produced Voters Identity Card, sale deed, will, mutation register and other revenue documents which were marked as Exs.D.1 to D.5 before the trial court. These documents and evidence so led by the respondents before the trial court established their

case. Suit of the appellant came to be dismissed. The application so filed by the appellant reflects two prayers which is not at all permissible under the provisions of Karnataka Civil Rules of Practice. To harass the respondents this application is filed. No case is made out to grant any temporary injunction.

6. The 9th respondent also has filed similar objections stating that, application so filed by the appellant is hit under the provisions of Rule 23 of Karnataka Civil Rules of Practice. There is a delay in filing the appeal and therefore this application is not maintainable. The contents of the affidavit in support of the application are not true. There is no irreparable injury which is going to be caused to the appellant, in case application is dismissed. Now, to get the sympathy of the court this present application is filed by misusing the lock-down. Hence, it is prayed by the respondents 1 and 9 to dismiss the application.
7. Heard the arguments of the learned counsel for the appellant and learned counsel for the respondents at length. Meticulously perused the records.
8. The points that would arise for my consideration are as under:

1. Whether appellant/applicant has made out prima-facie case in his favour as prayed in I.A.V?

2. With whom the balance of convenience tilts?

3. To whom the hardship is caused in case of grant of temporary injunction or otherwise?

4. What Order?

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

Point No.1: In the negative

Point No.2 & 3: In favour of respondents

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

: R E A S O N S :

10. **POINT NOS.1 TO 3:** These three points require common discussion, therefore I would like to discuss them together.

11. As could be seen from the records of this case, the appellant being the plaintiff before the trial court in O.S.63/2010 has preferred this appeal being aggrieved by the judgment and decree of dismissal of the plaintiff's suit. The said suit was filed by the plaintiff against the defendants seeking relief of declaration to declare that, he is the absolute owner and in possession of the suit schedule property and also consequential relief of permanent injunction, restraining the defendants or anybody claiming against them from interfering with the peaceful possession over the suit schedule property and grant such other reliefs for which the plaintiff is entitled to.

12. As could be seen from the plaint averments in this case, plaintiff claims his right over the schedule property by virtue of registered sale deed based on the grant dated 11.07.1950. It is stated that, the said property was sold in favour of Smt.Madamma, who was none other than the maternal grandmother of the plaintiff. After having purchased the same, she approached the revenue authorities to effect her name in the concerned revenue records. Mutation proceedings were initiated in M.R.7/1950-51. It is stated that based on unreasonable ground that, name of the vendor did not tally, therefore khatha in the name of Madamma came to be rejected. But, the said Madamma continued to be in possession of the plaint schedule property. She did not think in terms of challenging the same as she was a rustic villager.
13. It is further stated that, the said Madamma got two sons and four daughters. The first son is by name Petti who died as bachelor and issueless. The second son Bhim Raj and the issues of Bhim Raj as well as his wife predeceased him. The said Bhimraj passed away about 20 years back. The first daughter by name Smt.Thayamma, the second one by name Smt.Gowramma and 3rd daughter by name Smt.Krishnamma, the deceased and 4th daughter by name Vijayalakshmi is the second defendant in this case. Gowramma got two sons and a daughter. The first son is the plaintiff i.e., the grandson of Madamma.

14. It is further stated that, the first defendant without having any rights over the plaint schedule property is claiming right in the schedule property and changed the khatha in his name. The proceedings pending before the revenue authorities in R.R.C.370/2007-08 and based on the orders dated 02.09.2009 khatha was changed to the name of first defendant. It is stated that, on certain documents the name of defendant No.1 came to be entered in the revenue records. It is stated by the plaintiff that, he is in possession of the schedule property and defendant No.1 has no right at all. It is further stated that, in the first week of January 2010, when the plaintiff approached the revenue authorities, he was utter shock that the name of one P.Shivanna is entered who is arrayed as defendant No.3 in the suit, was seen in the revenue records. As the defendants are strangers to the schedule property, therefore they have been impleaded in this case.
15. Before the trial court defendant Nos.1 to 3, 7 to 11 appeared.
16. So far as defendant No.1 is concerned, she is specifically contended that, the property bearing Sy.No.145 situated at Bhugatagalli village, Varuna hobli, measuring 31 guntas was originally belonging to one M.C.Ramaswamy. All the records are standing in his name. By virtue of the Will dated 05.09.1991, defendant No.1 became the owner of the schedule property. It is further contended that, when the matter was pending before the Deputy Tahasildar for

change of mutation records, a stranger who has no manner of right and interest objected before the revenue authorities. Therefore, it is contended in the written statement of defendant No.1 that, the suit of the plaintiff itself is not maintainable.

17. As narrated in the foregoing paras, by filing this interim application, appellant/plaintiff is claiming temporary injunction against defendants. As rightly submitted by the counsel for the respondent No.1, in a single application two prayers are made by the plaintiff i.e., he seeks an injunction against the defendants not to alienate the suit schedule property and another not to put up any construction or do any work in the schedule property till disposal of this appeal. Rule 23 of Karnataka Civil Rules of Practice prescribes that, for each prayer there shall be separate application i.e., in respect of each distinct prayer. In this case, two prayers are combined by the plaintiff in one application, though such a contention has been taken up by the respondent Nos.1 and 9, the plaintiff/appellant has not cared to confine the application only to one of such prayer and has not filed any separate application in respect of each of the prayer so made.

18. So far as grant of temporary injunction is concerned, it is governed by the provisions of Order XXXIX Rules 1 and 2 of C.P.C. In this case, plaintiff has prayed the relief of declaration and injunction against the defendants. He

claims title over the property by virtue of grant of 1950 and also claims that, his grandmother was a grantee etc. That means, from his grandmother he is claiming right over the property in question. He has moved the revenue authorities for effecting his name in the revenue records, but his application was not considered by the revenue authorities. Here in this case, respondent No.1 claims right over the property being defendant No.1 based upon the Will. It is stated by the plaintiff that, because of the name not tallying, therefore name of the plaintiff was not entered into. Name of respondent No.1 came to be entered in revenue records and based upon that, as per the say of the respondents, it is the respondent No.1 who is in possession of the property. All the while, revenue records were standing in the name of respondent No.1 and respondent No.1 claims rightful ownership over the property. The Hon'ble Apex Court of India has elaborated the principles with regard to the grant of injunction reported in **1995(3) SCC 33** that, in a suit for injunction, the court should inquire on affidavit evidence and other material placed before the court to find strong prima-facie case and balance of convenience in favour of granting injunction, otherwise irreparable damage or damage would ensue to the plaintiff. The law is that, an injunction cannot be granted against the rightful owner in favour of a person in unlawful possession. That means, an application of temporary injunction, restraining the defendants from interfering with the possession of the plaintiff's suit for

declaration and injunction, definitely it is maintainable. But the plaintiff has to bring the materials on record to show that, if injunction is granted no hardship would be caused to the defendants. That means ex-facie, a prima-facie case has to be brought on record by the plaintiff for claiming temporary injunction. Merely because a suit is filed by the plaintiff seeking injunction, that does not provide any right to the plaintiff to seek injunction. That means, object of the interim injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. Here already trial is concluded in O.S.No.63/2010 and the suit of the plaintiff has been dismissed by the learned trial court disbelieving the pleadings of the plaintiff. Now, though he filed I.A.IV under similar provision he has not pressed that application. He has filed I.A.V on 05.07.2020 claiming temporary injunction against the respondents. No doubt, the order sheet of the trial court do reveal about operating of the interim order till disposal of this suit. But immediately after filing of the appeal, no such prayer was made by the plaintiff/appellant seeking temporary injunction against the respondents. He filed I.A.V and now he seeking injunction by producing certain documents.

19. In this case, the evidence has been recorded by the trial court and also documents have been looked into by the

trial court. Now, the appellant has produced the photographs showing the work alleged to have been undertaken by the respondents in the suit schedule property. All the while the revenue records were standing in the name of respondent No.1. Therefore, when the respondents are exercising right over the property by virtue of the revenue documents, so also certain title deeds, now merely because the suit has been filed by the plaintiff, that does not enable the plaintiff to claim temporary injunction against the respondents as prayed in the application. Even, the recitals in the application are very much silent about the prima-facie case, balance of convenience etc. The only prayer is that, if the injunction is not granted, the plaintiff/appellant would be put to greater hardship and loss. The object of interim injunction is to protect the plaintiff against the injury. He has to establish that, he is a need for such a protection and it has to be weighed against the corresponding need of the defendants to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. While deciding such an application, the court has to weigh one need against another and determine where the balance of convenience lies. All the ingredients of grant of temporary injunction i.e., prima-facie case, balance of convenience, hardship have to be proved by the plaintiff. So in order to protect the defendants, while granting an order of injunction in favour of plaintiff, no doubt undertaking has to be taken.

But in this case, jurisdiction of the court is very much limited. In a case of present nature, when already suit has been dismissed by the trial court and when the revenue records are standing in the name of respondent No.1 based upon the title document and respondent No.1 is exercising her right over the property in question, it is for the plaintiff to establish all the ingredients of grant of temporary injunction. The photographs no doubt show about the work being under taken in the schedule property etc. But that will not give any right to the plaintiff to get an injunction. The plaintiff slumbered for all these days right from the date of filing the appeal and now he is pressing to pass an order. Therefore, in the considered view of this court, the facts and circumstances of this case do not warrant to grant any interim order much less claimed in the application. Therefore, the plaintiff has not at all made out any prima-facie case so as to grant temporary injunction in his favour. Balance of convenience also do not tilt in favour of the plaintiff. So also the as the rights of the plaintiff are still to be decided in this case and all the while plaintiff has slumbered for all his rights, no hardship would be caused to the plaintiff in case refusal of granting temporary injunction as prayed for. Hence, I record my findings on **point No.1** in the **negative** and **point Nos.2 and 3 in favour of the respondents.**

20. **POINT NO.4:** Resultantly, I.A.V filed by the appellant/plaintiff is liable to be dismissed with no order as to cost. Accordingly, I pass the following:

ORDER

I.A.V filed by the appellant under Order XXXIX Rules 1 and 2 r/w Section 151 of C.P.C. is dismissed with no order as to costs.

However, in view of the facts and circumstances of the case, both the appellant and respondents have to co-operate for early disposal of this case with all their promptitude.

(Dictated to the Stenographer, transcribed by her on Computer, revised, corrected and then pronounced by me in open court on this day, the **30th day of November 2020**)

(RAMACHANDRA D. HUDDAR)
Prl. District & Sessions Judge,
Mysuru.

*Jk