

IN THE COURT OF THE SENIOR CIVIL JUDGE AND
J.M.F.C., HEGGADADEVANA KOTE.

Present: SHANKAR.K.M. B.A.L., LL.B.,
Senior Civil Judge & J.M.F.C.,
H.D.Kote.

Dated, this the 23rd day of November 2018

O.S.135/2016

Plaintiffs : 1 Chudamani.N
W/o late H.N.Nagaraju
Aged about 54 years
2 Sunilkumar.N
S/o late H.N.Nagaraju
Aged about 33 years
3 Omprakash.N
S/o late H.N.Nagaraju
Aged about 32 years
4 Latha.N
D/o Late H.N.Nagaraju
Aged about 28 years

All are R/o D.No.781, 'D' block
9th main, J.P.Nagar
Mysore.

V/s

Defendants : 1 Bilal
W/o Abdulla
Aged about 68 years
2 Abdulla
S/o late Dasthagir Sab
Aged about 75 years
3 Aminna D/o Abdulla

Aged about 48 years

- 4 Banu
D/o Abdulla
Aged about 46 years
- 5 Anwar
S/o late Dasthagir Sab
Aged about 61 years
- 6 Nazeer
S/o Anwar
Aged about 24 years
- 7 Hazeera
D/o Anwar
Aged about 18 years
- 8 Sameena
D/o Anwar
Aged about 15 years (Minor)
- 9 Eliyaz
D/o Anwar
Aged about 14 years (Minor)

Defendants 8 & 9 are minors
and they are represented through
their natural guardian father that is
the 5th defendant

- 10 Chotesab
S/o late Dasthagir sab
Aged about 85 years
- 11 Farooq S/o Chotesab
Aged about 27 years
- 12 Ameer
S/o late Dasthagir sab
Aged about 58 years
- 13 Ayesha D/o Ameer
Aged about 24 years
- 14 Mehar S/o Ameer
Aged about 22 years
- 15 Thabasum D/o Ameer
Aged about 20 years
- 16 Shabana D/o Ameer
Aged about 18 years

Defendants 1 to 16 are
R/o D.No.121, 6th cross
Nachanahalli Palya
Mysore.

- 17 H.K.Raghavendra Rao
S/o late H.Krishnamurthy
Aged about 86 years
R/o D.No.68A
J.P.Nagara, main road
Mysore
- 18 Sadiq S/o Abdulla
Aged about 34 years
R/o D.No.121, 6th cross
Nachanahalli Palya
Mysore
- 19 Hanamappa Thubachi
S/o Mallappa
Aged about 57 years
R/o Chinagundi village
Jamakandi taluk
Bagalkote district
- 20 Mahadevappa G.J.
S/o Giramallappa
Aged about 36 years
R/o D.No.627, 3rd main road
Aravindanagar
Mysore.

I.A.No.V

Applicant/ : Smt.Chudamani.N1st
Plaintiff
Plaintiff (By Sri.B.S.S.Advocate)

V/s

Opponent/ : Sri. Bilal and othersdefendants
Defendant

**ORDERS ON IA FILED U/O XXXIX RULE 1 & 2 READ WITH
SECTION 151 OF CPC**

The plaintiffs have made this application against the defendants 18 to 20 seeking the relief of a temporary injunction restraining them from alienating the suit schedule properties in any manner till the disposal of the suit.

2. It is asserted in the accompanying affidavit of this IA that, inspite of service of suit summons the defendants 18 to 20 have not appeared before the court and they have been placed exparte, and now it is come to the knowledge of the plaintiffs that the defendants 18 to 20 are making attempts to sell the suit schedule properties in favour of 3rd person. If the same is happened the plaintiffs would be put to great hardship and inconvenience as the suit schedule properties are the self acquired properties of the husband of the 1st plaintiff, who was purchased the same for valuable consideration. Prima facie case is made out, balance of convenience lies in favour of the plaintiffs and irreparable loss would be cause to them if the application is not allowed. The defendants 18 to 20 have been placed exparte.

3. I have heard the learned counsel for plaintiff and perused material on record. Defendants 7 to 20 have been placed exparte, rest of the defendants are not served with suit summons and 5th defendant is no more. As the IA is filed against D18 to 19 who have been placed exparte at the request the case is taken up for disposal of IA.

4. Points that arise for the consideration of this court are:

1. Whether the plaintiffs have made out prima facie case in their favour?
2. Whether the balance of convenience lies in favour of the plaintiffs?
3. Whether irreparable loss, which cannot be compensated by any means would be caused to the plaintiffs, if the present application is not allowed?
4. What order?

5. Findings of this court on the above points are:

Point No.1: in the affirmative

Point No.2: in the affirmative

Point No.3: in the affirmative and

Point No.4: as per final order for the following:

R E A S O N S

6. Point No.1: it is argued by the learned counsel for the plaintiffs that the defendants 18 to 20 against whom the present application is filed have been placed *exparte* and are trying to alienate the suit schedule properties in favour of the 3rd person. Therefore, they may be restrained by way of temporary injunction. It is well settled principle of law that the person who knocks the doors of court of law has to establish his case independently without taking the weakness of the defendant as an aid or trump card to the case of the plaintiff. Therefore, it is for the plaintiffs to establish *prima-facie* case to issue an order of temporary injunction against the defendants 18 to 20.

7. According to plaintiffs originally the suit schedule properties are the self acquired properties of the husband of the 1st plaintiff and father of the rest of the plaintiffs, he has purchased the suit schedule properties through a registered sale deed dated 10.08.2000 for valuable consideration from the defendants 1 to 4. After purchase he had given application to the concerned authority for change of *khatha* of the suit schedule properties in his name. But, it went in vain as the revenue inspector reported the Tahsildar stating that there is a doubt regarding the violation of section 79(a)

and 79(b) of the land revenue Act and khatha was not changed in the name of the father and husband of the 1st plaintiff. He was in possession of the suit properties, but no action was taken by the Tahsildar in respect of the alleged violation. In the year 2005 the husband of the 1st plaintiff was suffering from kidney problem and he could not cultivate the suit schedule properties personally. Taking the advantage of such illness of the husband of the 1st plaintiff, defendants 5 to 16 colluded with 17th defendant and executed a registered sale deed in favour of 17th defendant on 30.01.2016 in respect of item No.1 of the suit properties without having right of transfer over the said property. Under the guise of the said sale deed the 17th defendant got changed khatha in his name.

8. The 17th defendant colluded with defendants 2 and 8 and purchased the item No.2 of the suit properties. The defendants 2 & 18 had no right over the suit property to sell the same. Further, the 17th defendant sold the suit properties in favour of 19th defendant and inturn he sold the suit properties in favour of 20th defendant though he had no right of sale over the suit properties.

9. The husband of the 1st plaintiff and father of the plaintiffs 2 to 4 orally entered into a mortgage deed with the 2nd defendant

during 2005 as he was unable to cultivate the suit schedule properties as he was suffering from kidney problem. The husband of 1st plaintiff died on 21.09.2012. Under the impression that the 2nd defendant is in possession of the suit properties the plaintiffs have requested him to hand over the possession of the suit properties then he told about the alleged transactions and thereafter, by obtaining necessary documents, the suit is filed.

10. The suit is filed for the reliefs of declaration declaring that the plaintiffs are the owners of the suit schedule properties and the alleged sale deeds are not binding upon the plaintiffs and also sought for the reliefs of possession and permanent injunction. The sale deed dated 10.08.2000 prima facie reveals that the husband of the 1st plaintiff and father of the rest of the plaintiffs by name H.N.Nagaraju purchased the suit schedule properties from defendants 1 to 4 through a registered sale deed. Thereafter, the item No.1 of the suit schedule properties was sold by the defendants 5 to 16 in favour of the defendant No.17 on 30.01.2016. The 5th defendant is the brother of 2nd defendant and the son of the late Dastagiri sab, who was the original owner of the suit schedule properties and defendants 6 to 9 are the children of 5th defendant and defendants 10 & 12 are the sons of the said Dastagir sab. Upto 16th defendant they pertain to the family of late Dastagir sab.

Further, as per the sale deed dated 30.01.2007 the item No.2 of the suit schedule properties was sold in favour of the 17th defendant by the 2nd defendant and his son 18th defendant. Thereafter, the 17th defendant sold item No.1 in favour of 20th defendant on 23.11.2015. Likewise, he sold the item No.1 of the suit schedule properties in the favour of 20th defendant through a registered sale deed dated 06.08.2015. In the circumstances, the material on record reveals that some of the family members of Dastagir sab sold the suit schedule properties in favour of the husband of the 1st plaintiff and father of the plaintiffs 2 to 4 in the year 2000 and some of the family members of Dastagir sab sold suit properties were sold in favour of 17th defendant in the year 2006 and 2007 and the sale deeds executed in favour of the 17th defendant are subsequent to the sale deed executed in favour of husband of the 1st plaintiff and rest of the sale deeds executed in favour of 19th and 20th defendants also executed subsequent to the sale deed of the husband of the 1st plaintiff. Therefore, the first sale deed of the husband of the 1st plaintiff prevails over the subsequent sale deeds. No doubt, all the members of the said late Dastagir sab are not executed the sale deed in favour of the husband of the 1st plaintiff, but unless the 1st sale deed is cancelled, the other members of the family will not get right of transfer of entire

property of the family. As such, at this stage, prima facie the material on record reveals that the sale deeds executed in favour of the defendants 17, 19 and 20 do not bind on the plaintiffs. Accordingly, there is triable issue in the suit and the plaintiffs have made out prima facie case. Thus, the point No.1 is answered in the affirmative.

11. Point No.2 & 3: As noted above, the plaintiffs have made out prima facie case. The material on record reveals that now the suit schedule properties are sold in favour of 19th and 20th defendants through a registered sale deeds. The 18th defendant is the son of 2nd defendant, who has sold the item No.2 of the suit schedule properties in favour of the 17th defendant along with 2nd defendant knowing fully well that his family has other members. Therefore, the defendants 18 to 20 may alienate the suit properties to some other person. As such, they must be restrained from alienating the suit schedule properties to some other person. If not, it may leads to multiplicity of proceedings and it causes loss to the plaintiffs, which cannot compensated by any means. In the circumstances., this court has no hesitation to holds that balance of convenience lies in favour of the plaintiffs and irreparable lose, which cannot be compensated by any means

would be caused to them plaintiffs if the present IA is not allowed. Accordingly, the point No.2 and 3 are answered in the affirmative.

12. Point No.4: in view of the findings arrived on the point No.1 to 3, I proceed to pass the following:

O R D E R

The IA filed under Order 39 Rule 1 and 2 read with section 151 of CPC is hereby allowed.

Defendants 18 to 20 are hereby restrained by way of an order of temporary injunction from alienating the suit schedule properties in favour of 3rd person till the disposal of the suit.

There shall be no order as to
cost.

(Dictated to the stenographer, transcribed by her on
computer, revised, corrected and then pronounced by me in the
open court on this the 23rd day of November 2018)

(SHANKAR.K.M)
Senior Civil Judge & J.M.F.C.,
H.D.Kote