

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C.,
H.D.KOTE**

Present: NATARAJ YADAV .S, M.B.A., LL.B.,
Senior Civil Judge & J.M.F.C.,
H.D.Kote

Dated, this the 23rd day of December, 2020

O.S.NO.44/2020

Plaintiff/s : Kendagannappa
S/o Late Mariswamappa,
Aged about 44 years,
R/at Hanchipura Village,
Saraguru Hobli & Taluk,
Mysuru District.

(By Sri. B.S.Umesha., Advocate)

-V/s-

Defendant/s : 1. Nataraj
S/o Late Chamappa,
Aged about 52 years,

2. Chikkarathana
W/o Nataraj,
Aged about 20 years,

3. Naveen
S/o Nataraj,
Aged about 20 years,

4. H.S.Mallesha
S/o Late Siddamallappa,

All are R/at Hanchipura Village,
Saraguru Hobli & Taluk,
Mysuru District.

(By Sri. G.N.Narayanagowda., Advocate)

PARTIES TO I.A.II

Applicant/ Plaintiff : Kedagannappa

-V/S-

Opponents/Defendants : Nataraja and others

ORDER ON I.A.II

This order shall dispose off an application u/o 39 Rule 1 and 2 CPC R/s Sec. 151 CPC moved by the plaintiff.

2. The plaintiff has filed the present suit for declaration of ownership and permanent injunction against the defendants.

3. Briefly stated the case of the plaintiff is that the land bearing Sy.No.32/3 measuring 1.30 Acres originally belonged to his great grandmother Smt.Basamma. After her demise her grandson Mariswamappa was in the possession of the suit property having inherited by operation of law and was paying taxes to the concerned authority. The Mariswamappa passed away intestate leaving behind his wife and children including plaintiff as his legal heirs. As such, they inherited the suit property by operation of law and they were in in

possession and enjoyment of suit property. In a family partition, the suit property was fallen to the share of the plaintiff vide partition deed 23.09.2019 and as such the plaintiff become exclusive owner in possession of the suit property. The defendants who are strangers are trying to encroach upon the suit property. On 15.7.2020 the defendants along with their henchmen tried to remove the fence and interfere with the possession of the plaintiff in respect of suit property and also threatened the plaintiffs for dire consequences. Plaintiffs stated to have given complaint to SHO, PS, HD Kote but it went into vain as the police directed the plaintiff to approach the court for remedy. By the present suit, the plaintiff has sought declaration of ownership and permanent injunction restraining the defendants from interfering in their possession over the suit property.

4. Along with the plaint, the plaintiff has filed an application u/o 39 Rule 1 and 2 R/2 Sec.151 CPC for granting ad interim injunction in his favor for restraining the defendants, their representatives and family members from interfering in their possession over the suit property till the disposal of the suit.

5. After service of summons upon the defendants, the defendants put appearance. Written statement was filed on behalf of defendants, wherein, it is stated that plaintiff has not come to the court with clean hands and he has concealed the material facts from the court. Nor he has any cause of action in his favor and against the defendants for filing the present suit. On merits, the ownership of Smt.Basamma is admitted. It is submitted that the son of Late Smt.Basamma namely Sanappa had two wives namely Puttamma and Gurumallamma (elder aunt of defendant

no.1). The said Gurumamma has exchanged the suit land and another land bearing Sy.No.9/2 measuring 2.33 Acres with the land bearing Sy.no.28 belonging to Chikkamma (mother of the defendant no.1) by deed of exchange dated 04.02.1975. The possession of the respective lands was exchanged on the said day itself. The Chikkamma was in exclusive possession of the suit property since date of exchange deed as absolute owner and the same is within the knowledge of the plaintiff. It is submitted that Chikkamma passed away intestate leaving behind her children i.e., defendant no.1 and Basavanna as her legal heirs. As such, they inherited the suit property by operation of law and they are in possession and enjoyment of suit property. The plaintiff who is not in the possession of the suit property is trying to take the forcible possession of the suit property in the guise of this false suit and by taking advantage of non change of the revenue documents. The allegations of interference in the suit property are denied. It is stated that the plaintiff has not made out prima facie case; balance of convenience also does not lie in his favor and prayed for dismissal of the suit and application.

6. I have heard Ld.counsel the parties and perused the file.

7. The case of the plaintiff is that the father of the plaintiff namely Mariswamappa was the absolute owner of the suit property having inherited from his grandfather Basamma by operation of law. The revenue documents were recorded in his name and he was paying the taxes to the authority concerned. The Mariswamappa passed away intestate leaving behind his wife and children including plaintiff as his legal heirs. As such, they inherited the suit property by operation of law and they were in possession and enjoyment of suit property. In a family

partition, the suit property was fallen to the share of the plaintiff vide partition deed 23.09.2019 and as such the plaintiff become exclusive owner in possession of the suit property. The defendants who are the strangers without having any rights, title or interest over the suit property are trying to dispossess the plaintiff from the suit property. Certainly, the plaintiff is likely to suffer irreparable loss if the defendants are not restrained to raise further unauthorized construction in the suit property.

8. In support of his contention, the plaintiff has filed on record copy of RTC extract of the suit property for the year 2019-20 wherein, the plaintiff is recorded to be the owner/occupant of the suit property, copy of partition deed dated 23.09.2019 which shows that the suit property was allotted to the share of the plaintiff in a family partition, copy of the tax paid receipt, copy of RTC extract of the suit property for the year 90-91 wherein, the plaintiff great grandmother Basamma is recorded to be the owner/occupant of the suit property.

9. Perusal of the records clearly reflects that the great grandmother Basamma of the plaintiff was the absolute owner of the suit property. There is no dispute that in a family partition, the suit property was fallen to the share of the plaintiff vide partition deed 23.09.2019. Thus it can be held that the plaintiff is the absolute owner in possession of the suit property. The defendants have alleged that the daughter in law of Late Basamma i.e., Gurumallamma (Second wife of Sanappa) has exchanged the suit land and another land bearing Sy.No.9/2 measuring 2.33 Acres with the land bearing Sy.no.28 belonging to Chikkamma (mother of the defendant no.1) by deed of Exchange dated 04.02.1975. The possession was handed over to the respective parties to have and to hold the same

absolutely and forever which was exchanged under the deed of transfer. Thus Chikkamma become exclusive owner in possession of the suit property and after her demise the defendant no.1 along with his brother become owners in possession of the suit property. In view of execution of deed of Exchange dated 04.02.1975, there is passing of title from one generation to another generation and as such the plaintiff cannot claim any rights over the suit property. In support of their contention, the defendants have filed on record copy of Deed of Exchange dated 04.02.1975.

10. The law relating to exchange of property is governed by Chapter VI of Transfer of Property Act, 1882 (hereinafter referred to as 'TPA'). S.118 of TPA specifically provides that a property can be transferred by completion of exchange only in the manner provided for transfer of such property by sale.

11. In the present case, as the property is immovable property it can be validly exchanged in the manner provided for sale of immovable property.

12. The sale of immovable property is governed by Chapter III of TPA and S.54 of TPA provides that such sale can only be made by way of a registered instrument.

13. Thus, a combined reading of S.118 and S.54 of TPA makes it amply clear that an exchange of immovable property can only be made by way of a registered instrument and not otherwise.

14. A perusal of Deed of Exchange shows that it is not registered. Thus, the exchange of the suit property executed is not a valid exchange as envisaged under the provisions of [Transfer of Property Act](#).

15. As the exchange of suit property alleged by the defendants is not a valid exchange in law, the mother of defendant no.1 do not get any ownership rights in her by the exchange purported vide Deed of Exchange. Resultantly, the defendant no.1 and his brother also do not get any ownership rights in the suit property. Thus without any much discussion at this stage I am of the considered view that the defendants have not able to show their “prima facie legal right” over the suit property in question and on the other hand, the plaintiff has been able to show is “prima facie legal right” over the suit property in question.

16. The apprehension of the plaintiff is that at this stage, defendants are trying to dispossess him from the suit property. The plaintiff has stated the attempts of the defendants to dispossess him from the suit property by swearing an affidavit and also supported by the copy of the complaint said to be made by the plaintiff against the defendants before SHO, HD Kote PS. In these circumstances, I am further of the opinion that “balance of convenience” as per the record and in the light of the reasoning so given above, is also said to be in the favor the plaintiff. In these circumstances, therefore, I am of the considered opinion that the plaintiff shall suffer an “irreparable loss and injury” which cannot be quantified in terms of money if the relief asked by him is not given to him during the pendency of the suit and the purpose of the filing this suit is frustrated. In these circumstances, therefore, I am of the considered

opinion that plaintiff has been established all the tree ingredients of the application u/o 39 Rule 1 and 2 hence, I proceed to pass the following:

ORDER

IA No.II filed by the applicant/ plaintiff under Order 39 Rules 1 and 2 read with section 151 of Civil Procedure Code is hereby allowed.

Consequently, Defendants their representatives and family members are hereby restrained from interfering in his possession over the suit property till the disposal of the suit.

It is needless to mention here that the opinion express above shall not lay its impact upon the merits of the main case.

For compliance under sec.89 of CPC and for recording of evidence of Parties under order 10 rule 1 CPC

No order as to costs.

Call on : 21.01.2021

(Dictated to the Stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the 23rd day of December, 2020.)

(NATARAJ YADAV .S)
Senior Civil Judge & J.M.F.C
H.D.Kote