

KAMS400004292019



**IN THE COURT OF
SENIOR CIVIL JUDGE AND JMFC AT
KRISHNARAJANAGARA, MYSURU
Presided Over by Sujatha Madiwalappa
Sambrani**

O.S./14/2019

Plaintiff Smt. Jainabee & others

VS

Defendants Smt.Savithramma Shetty &
others

: I.A.NO.3 :

APPLICANTS: 1. Sri. Abdul Waheed,
S/o. Late Ahmed Jaan,
Aged about 66 years,
R/at Ward no.21,
D.No.21/36, Muslim Block,
Kallaihana Halli, K.R.Nagar.
....2nd plaintiff

Vs

OPPONENTS: 1. Smt.Savithramma Shetty,
W/o late Dooli Sathyanarayana
shetty, Aged about 80 years,
R/at K.R.Nagar.

2. Manjunatha Babu,
*S/o late Dooli Sathyanarayana
shetty, Aged about 55 years,
R/at K.R.Nagar.*
- 3.Chennappa Shetty K.N.
*S/o Siddalingappa,
Aged about 45 years,
R/at Madhuvanahalli,
K.R.Nagar.*
4. K.N. Manjunatha Shetty,
*S/o. late Dooli Sathyanarayana
shetty, Aged about 50 years,
R/at Madhuvanahalli,
K.R.Nagar.*
- 5.K.M.Bharathi, 45 years,
*W/o K.N.Manjunathashetty,
R/at Madhuvanahalli,
K.R.Nagar.*
6. S.Rafeeq Ahamed,65 years,
*S/o late Shafee Ulla Khan,
R/at S.K.S.Farm, Hunsur Road,
K.R.Nagar.*
7. Manjunatha, 47 years,
*S/o Sajjigowda,
R/at Devanga beedi,
Halenarasipura town,
Hassan District.*
8. Prakash, 42 years,
*S/o. Mani,
R/at K.R.Nagar.*

9. Mallikarjuna, 55 years,
S/o Bar Krishnappa,
R/at K.R.Nagar.
10. Srinivas, 53 years,
S/o. Bar Krishnappa,
R/at K.R.Nagar.
11. Loki, 50 years,
S/o. Bar Krishnappa,
R/at K.R.Nagar.
12. Mehaboob Khan, Major,
R/at K.R.Nagar.
13. Devaraj, 50 years,
S/o Dharmachand Jain,
R/at Madhuvanahalli,
K.R.Nagar.
14. Srikanth, 48 years,
R/at K.R.Nagar.
15. The Under Secretary of
Revenue Department,
Vidhana Soudha,
Bengaluru.
16. Deputy Commissioner,
Mysuru.
17. Assistant Commissioner,
Hunsur.
18. Tahasildar,
K.R.Nagar.

: ORDER ON I.A.No.3 :

The learned counsel for the Plaintiff No.2 has filed this application Under Order 39 Rules 1 and 2 R/w. section 151 of CPC seeking not to alienate the suit schedule property or creating any charge or alienation in any manner till the disposal of the suit.

2. The learned counsel for the defendants No. 1 & 2 orally objected this application and submitted that the written statement may be treated as objections to IA.3.

3. Heard and perused the records.

4. The point that arise for my consideration are as follows:

1. Whether the applicant/Plaintiff No.2 has made out a Prima-facie case?

2. Whether there is balance of convenience lies in favour of the applicants\Plaintiff No.2?

3. Whether applicant/Plaintiff No.2 proves that if temporary injunction is not granted he will be put to irreparable loss and injury?

4. What order?

5. My findings to the above point are as follows:

POINT No.1 : In the Negative.

POINT No.2 : In favour of the defendants

POINT No.3 : In the Negative

POINT No.4 : As per final order for the following:

: REASONS:

POINT No.1:-

6. The Plaintiffs have filed the suit for the relief of declaration that they are the absolute owners having succeeded to the estate of deceased Ahmed Jaan, hence the sale deed dated 05.08.1944 is perfect and valid and the sale deed dated 7.3.1976, 02.03.2017 and 16.11.2016 are not valid and not enforceable in law against plaintiffs. Further to declare that defendants No.1 to 14 including late Dooli Sathyanarayanashetty have no right to alienate property as the property is in the absolute ownership of the plaintiffs and for the relief of cancellation of sale deeds dated 07.03.1976, 16.11.2016 and 21.03.2017.

7. It is the contention of the Plaintiffs that the suit schedule property was originally belongs to Ahmed Jaan who purchased the land in sy.no. 46 from one Javaregowda S/o Puttegowda for Rs.92/- on 05.08.1944 measuring 5 acres 16 guntas situated at Madhuvanahalli village, Chunchankatte Hobli, K.R.Nagar Taluk, Mysuru District. After the purchase, the khatha has been mutated and M.R. was perfected and he has been paying taxes to the said property. After the death of Ahmed Jaan, plaintiffs succeeded to the possession of the suit land as legal heirs. During the lifetime of Ahmed Jaan for their convenience got phodi of this land in two parts, one is measuring 3.6 guntas in sy.No.46/1 and another Sy.No.46/2 measuring 2.6 guntas, totally 5.12 guntas. Thereafter the said Ahmed Jaan decided to sell the Sy.No.46/2 measuring 2.6 guntas along with 4 guntas of karab land to one Dooli Sathyanarayanashetty for Rs.5000/- and sold the same on 02.03.1976. But fraudulently while executing the sale deed the description of the property was mentioned as sy.no.46/1 measuring 3.6 guntas instead of sy.no.46/2 measuring 02 acres of land.

8. The deceased Ahmed Jaan fell ill in the year 1985 and he was died on 30.09.2003. thereafter when the plaintiffs enquired with the revenue authorities, they came to know about the fraudulent act, forgery and dishonest of Dooli Sathyanarayanashetty who changed the land revenue records of sy.no.46/1. The said Dooli Sathyanarayanashetty died about 10 years back. The said Dooli Sathyanarayanashetty translated the property and sold the said property in favor of Rafee Ahmed Khan and the said Rafee Ahmed Khan who is the 6th defendant and Smt. Savithramma who is the 1st defendant have no right over the suit schedule property to alienate the same in any manner. Therefore, both the sale deeds dated 16.11.2011 and 8.3.1976 are void and not binding on the plaintiffs.

9. The defendants who appeared before the court by filing the written statement denied the case of the plaintiff and have produced many documents in support of their contentions. The main dispute between the parties is with regard to alienation of Sy.No.46/1 measuring 3 acres 6 guntas of land in

favor of Doli Sathyanarayana Rao through registered sale deed dated 3.2.1976.

10. In this regard the learned counsel for the plaintiffs have produced the certified copies of the sale deed dated 5.8.1944 which prima facie reveals that late Ahmed Jaan has purchased 05 acres 16 guntas of land in Sy.No.46 from one Puttakaregowda. They have also produced the copy of the settlement register copy, RTCs of Sy.No.46/1 from 1971 to 1976, 1977 to 1981, 1976 to 2001. The RTCs reveals that upto 1980-81 the name of Ahmed Jaan mentioned in Col. No.9 and 12 and thereafter it continued in the name of Doli sathyanarayana upto 2018-2019 to Sy.No.46/1A, 46/1B etc. For Sy.No.46/1A1 its stands in the name of Manjunatha S/o Sajjegowda based on the sale deed for the year 2018-2019. The plaintiffs have also placed the document which reveals that Sy.No.46/1 measuring 3 guntas of land has been converted for non-agricultural purposes, which is mentioned in RTC for the year 2018-19 as Sy.no.46/1A3.

11. Likewise Sy.No.46/1A measuring 17 guntas is also converted into non-agricultural purpose. The lands in Sy.no.46/1A1 measuring 26 guntas was alienated in favor of Sri. Mohamed Rafee Khan by Smt. Savithamma through a registered sale deed dated 16.11.2011. Another certified copy of the sale deed on record reveals that on 2.7.2017 S.Rafee Ahmed Khan sold lands measuring 0.26 guntas in Sy.No.46/1A1 in favour of Sri.Manjunath. These RTCs and the copies of the sale deeds on record prima facie reveals that after the sale by Sri. Ahmed Jaan in favour of Dolisathyanarayan several transactions sale transaction held in Sy.No.46/1 part by part. Therefore, there are several persons acquired title and possession in Sy.No.46/1 after the alienation by Ahmed Jaan. But,the plaintiffs relied upon the Encumbrance certificate wherein the name of Ahmed Jaan appears till today. But the documents is not sufficient to considered the right, title and interest of the plaintiffs.

12. As per transfer of Property Act, the subsequent purchasers acquire the right, title and possession to the properties. At present the question before the court whether the plaintiffs

have any prima facie right, title or possession over the suit schedule property to grant an order of injunction in their favor. The answer is no. Admittedly, the documents on record are not sufficient to hold that plaintiffs have prima facie right, title, possession and interest over the suit schedule property.

13. Though the father of plaintiffs sold the portion of suit property i.e. Sy.No.46/1 in the year 1976 through the registered sale deed, now the sons of said Ahmed Jaan are challenging the same after 43 years of execution of registered document. More over, the executant Ahmed Jaan died on 30.09.2003. After 16 years of his death, the plaintiffs are challenging the sale deed executed by him. Therefore, the question before the court is whether law of limitation permits the plaintiffs to challenge the registered sale deeds executed after 43 years?

14. It is also relevant to note here that during the lifetime of Ahmed Jaan from the date of execution i.e. from 2.3.1976 till the date of his death i.e. on 30.9.2003 i.e. for a period of 27 years he has not challenged the same. This shows that he never

intended to question or challenge the sale deed executed by him on 2.3.1976. The prima facie consideration of materials on record it appears to the court that the plaintiffs have not made out prima faice case to grant an interim order of injunction against the defendants.

15. More over, the trial of the case is not yet commenced. Hence without going to the merits of the case at this stage it appears to the court that if the defendants who are the purchasers of the portion of the suit property through the registered sale deeds cannot be restrained by way of injunction. The balance of convenience lies in favour of the defendants rather than the plaintiffs. The defendants will be put to more hardship and inconvenience if an order of injunction is granted against them. Therefore, the plaintiffs have not made out prima facie case in their favour. Therefore, point No.1 to 3 are answered in favour of the defendants.

POINT No.4:-

16. For the reasons stated above, I pass the following.

: ORDER :

*I.A.No.3 filed by the Plaintiff No.2
Under Order 39 Rules 1 and 2 R/w
section 151 of CPC is dismissed.
No order as to costs.*

(Dictated to the stenographer, transcribed and typed by her, added some phara on computer, corrected and then pronounced by me in the open Court, on **14^h January 2022**)

**(Sujata M. Sambrani)
Senior Civil Judge & JMFC.,
K.R.Nagar.**

