

KAMS600010522022



O.S./50/2022

IN THE COURT OF THE SENIOR CIVIL JUDGE AT
PERIYAPATNA.

Present
Sri.A.SAMIULLA
B.Sc., LL.B.,
Senior Civil Judge,
Periyapatna.

Dated: 1st Day of August 2022

OS.No.50 of 2022

Sri.Kalamari.

..... Plaintiff

V/s

Sri.H.K.Mallesha & Ors.

..... Defendants

IA.No.1

Sri.Kalamari

.... Applicant/Plaintiff

V/s

Sri.H.K.Mallesha & Ors.

.... Opponents/Defendants

Order on IA-1; u/O 39 Rule 1 & 2 r/w Section 151
of CPC:

Plaintiff moved this application seeking to issue

temporary injunction to restrain the defendants from obstructing his possession over suit property in any manner till disposal of suit.

2. Defendants resisted the application adopting the written statement as objections to the application.

3. Heard arguments from both side.

4. Following points arise for consideration:

- 1. Whether plaintiff proves that he has got a prima facie case?*
- 2. In whose favour the balance of convenience lies?*
- 3. To whom the irreparable loss will be caused?*
- 4. What order?*

5. Findings to the above points are as under;

Point-1: Affirmative.

Point-2: In favour of plaintiff.

Point-3: To the plaintiff.

Point-4: As per below

for the following;

REASONS

6. Point-1: At the outset; suit is filed for declaration of title & for perpetual injunction & also to declare that; the decree passed in RA.No.48/13 arising

out of OS.No.246/08 is void by asserting that; suit lands were granted to plaintiff by issuing saguvali chit on 01.02.03 subject to decision of WP.No.25130/2000 dated:30.04.01; his name was mutated under MR.No.10/02-03. He is in possession of suit lands prior to issue of saguvali chit. Defendant-1 has created documents in respect of suit lands and mutated his name, which is questioned in RA.No.87/17 before the Assistant Commissioner, Hunsuru wherein MR.No.34/04-05 dated:20.05.05 was set aside and it is ordered to mutate his (plaintiff) name & accordingly his name was mutated under MR.No.H13/18-19 and MR.No.H14/18-19 dated:22.12.18. Defendants with an intention to gulp the suit land have filed RA.No.48/13 and obtained compromise decree to which neither the plaintiff nor his legal heirs are parties to it. Defendants are no way related to the plaintiff despite they filed OS.No.246/08 which ended in compromise in

RA.No.48/13. Plaintiff has filed private complaint against defendants for the offence punishable u/Section 420 IPC for obtaining Khatha illegally. Defendants on the strength of created documents attempting to obstruct the possession of plaintiff over suit land. Hence, suit is filed.

7. Defendants resisted the suit by filing written statement denying plaint averments in toto and inter alia contended that; originally suit lands belongs to their father H.M.Kariyappa @ Karigowda, who along with other 25 persons purchased the lands under sale deed dated:25.08.55. In consent deed effected between defendant-1 & his father; suit properties fell to the share of defendant-1 and on the basis of consent deed MR.No.34/04-05 was certified in respect of land bearing Sy.No.35 (1A 1G). Plaintiff never cultivated the lands bearing Sy.No.35 (28Gs) & Sy.No.39 (1A 1G) at

any point of time. In between defendant-1 and his brothers a civil suit OS.No.248/08 was filed and in RA.No.48/13 they entered into compromise. In spite of having knowledge about all these facts plaintiff has filed false suit to harass them. Among these grounds they prayed to dismiss the suit.

8. Along with plaint; plaintiff filed this application for the relief stated supra by stating facts set out in the plaint, which is objected by the defendants by adopting the written statement as objections to the application, which are stated above; no need of repetition.

9. The settled position of law is that; to seek discretionary relief of temporary injunction plaintiff must satisfy the Court with respect to existence of a prima facie case, irreparable injury likely to be suffered by him and balance of convenience lies in his favour.

10. Let us see whether plaintiff has established a

prima facie case or not. Plaintiff produced documents viz., **i)** Saguvali Chit dated 01.02.2003, wherein it is stated that lands bearing Sy.No.38 (28Gs) and Sy.No.39 (1A 1G) were granted in favour of Kalamari s/o Sannagowda with a condition not to alienate the lands for 15 years from 01.02.03 and also stated that Saguvali chit is issued subject to conditions enumerated in WP.No.25130/01 dated 30.04.01. **ii)** MR.No.10/02-03, wherein name of Kalamari was mutated on the basis of grant in LND 2509/91-92. **iii)** RTC extract of lands bearing Sy.No.35 (28Gs) and Sy.No.39 (1A 1G) standing in the name of Kalamari. **iv)** MR.No.34/04-05, wherein it is stated that; original Khatedar Kalamari s/o Sannegowda has no issues, as such he and his wife Kamma have executed consent deed to mutate the name of M.K.Mallesha (D1), as such his name was mutated. **v)** RA.No.87/19 dated

24.11.18 on the file of Assistant Commissioner filed by Kalamari against M.K.Mallesha to set aside MR.No.34/04-05 in respect of lands bearing Sy.No.35 and 39; after contest said mutation was set aside and name of Kalamari was re-written as per mutations MR.No.13/18-19 and 14/18-19. **vi)** Judgment passed in OS.No.246/08, wherein suit filed by H.K.Mallesha against Javaramma and others for partition in respect of lands bearing Sy.No.53/2C, 62, 2/2, 3, 6/1, 6/2, 6/3 and Janjar No.253 was dismissed after contest holding that partition is already taken place. **vii)** Compromise decree dated 12.11.13 passed in RA.No.48/13, which was filed against judgment and decree passed in OS.No.246/08, which ended in compromise, wherein the lands bearing Sy.No.2/2, 3, 6/1, 6/2, 6/3 and also lands bearing Sy.No.35 & 39 (suit lands herein) were allotted to H.K.Mallesha. It is

worth to note that lands bearing Sy.No.35 and 39 were not the subject matter of OS.No.246/08. **viii)** Unregistered consent deed dated 18.02.02 said to have been executed by Kalamari and his wife Kamma in favour of H.K.Mallesha in respect of lands bearing Sy.No.35 & 39. **ix)** FIR in Cr.No.293/17 registered on the basis of private complaint filed by Kalamari against H.K.Mallesha for the offence punishable under Section 420 IPC by stating that he has manufactured documents to obtain Khatha of suit lands. **x)** RTC extracts of lands bearing Sy.No.35 and 39 for the year 2021-22, wherein name of Kalamari finds a place at column No.9 and 12(2) as per MR.No.H14/18-19.

11. Defendants placed reliance on the documents viz., **i)** Compromise decree in RA.No.48/13. **ii)** Copy of sale deed dated 22.06.55, wherein 27 persons purchased lands which includes Sy.Nos.35 & 39 also

and the name of purchaser Karigowda is at serial number 22. **iii)** Consent deed dated 18.02.02. **iv)** Consent deed dated 31.03.03 said to have been executed by Kalamarigowda in favour of H.K.Mallesh in respect of lands bearing Sy.No.35 and 39 consenting to mutate the name of H.K.Mallesh. **iv)** RTC extract of land bearing Sy.No.35 pertaining to the year 2005-06, wherein name of Mallesh is mutated as per MR.No.34/04-05. **v)** RTC extract of land bearing Sy.No.39 pertaining to the year 2006-07, wherein name of Mallesh is mutated as per MR.No.34/04-05. **vi)** On demand Pro-note dated 12.05.11 executed by H.K.mallesh in favour of Kalamarigowda. **v)** Rent deed dated 12.05.11 executed by H.K.mallesh in favour of Kalamarigowda.

12. Careful scrutiny of rival pleadings put forth by the parties to lis and the contents of documents

produced by them, one can see that; there is no dispute that earlier lands were in the name of Kalamari; according to him the lands were granted and he has produced grant certificate. His name was mutated in revenue records on the basis of grant. In the mean while defendant-1 H.K.Mallesh got entered his name in the revenue records of suit lands by stating that Kalamarigowda and his wife have no issues and they have consented to mutate his name and on that basis his name was mutated as per MR.No.34/04-05, which was challenged by Kalamari by filing appeal before Assistant Commissioner, wherein appeal was allowed and name of H.K.Mallesh was deleted and name of Kalamari is re-entered and till this day his name finds a place at column No.9 & 12(2).

13. Facts supra manifest that; at the moment the

plaintiff has demonstrated his right over the suit properties, as the claim of defendant-1 that plaintiff and his wife consented to enter his name shows the right of plaintiff over the suit lands. The dispute ie., whether consent is valid or not and defendant-1 derived any right over the suit properties by virtue of said consent or not are to be adjudicated in a full-fledged trial. By this it can be said without any hesitation that at this stage plaintiff has demonstrated a prima facie case against the defendants by showing that he has right over the suit properties and a trial is necessitated to resolve the real controversy between the parties to suit. Dispute involved in the lis at hand cannot be decided at the threshold, which shows that there are triable issues involved in the suit, which requires a trial to decide the same. Hence, point-1 is answered in affirmative.

14. Points-2 & 3: These points are taken together for common discussion to avoid repetition of facts.

15. Temporary injunction is a preventive relief and its purpose is to preserve status quo in respect of the subject matter of the suit.

16. In the instant case; plaintiff sought preventive relief to restrain defendants from obstructing his possession over suit properties. At this stage findings on above point shows that at the moment plaintiff is having a prima facie case and the revenue records standing in his name carries presumptive value as envisages under Section 133 of Karnataka Land Revenue Act, which shows his possession over suit lands. Under these circumstances if defendants are not restrained from obstructing the possession of plaintiff he will be subjected to hardship because it will result in the multiplicity of proceedings and same

would adversely affect the right of the party seeking injunction on ultimately succeeding in the suit. In that event plaintiff will be subjected to irreparable injury which cannot be compensated by any means, as such Court interference is necessary to protect plaintiff from the injury, which is irreparable. Under these circumstances comparative mischief or inconvenience likely to be caused from withholding injunction will be greater than by granting it. Thus, the balance of convenience also tilts in favour of plaintiff against defendants. Accordingly, these points are answered.

17. Point-4: By virtue of above findings, Court proceeds to pass the following;

ORDER

IA-I; u/O 39 R 1 & 2 r/w Section 151 CPC filed by the plaintiff is allowed.

Defendants are hereby temporarily restrained

from obstructing the possession of plaintiff over the the suit lands bearing Sy.No.35 (28Gs) and Sy.No.39 (1A 1G) situated at Magali village, Kasaba Hobli, Periyapatna Taluk in any manner pending disposal of suit.

No order as to costs.

(Dictated to the Stenographer directly on computer, typed by her, corrected and initialed by me and then pronounced in the open Court on 01.08.22).

sd/-
(A.Samiulla)
Senior Civil Judge,
Periyapatna.