

IN THE COURT OF THE CIVIL JUDGE,
AT LINGSUGUR

PRESENT

Sri. Manjunath,
B.Com.,LL.B.,
Addl. Civil Judge & JMFC Lingasugur

Dated 9th day of July 2019

ORIGINAL SUIT NO.96/2018

PLAINTIFF - Basavarajagouda S/o Hanumagouda,
Age-30 years Occ: Business/Agri.,
R/o Killarhutti Tq, Lingasugur,
Dist: Raichur.

...Plaintiff

(By Sri. H.B., Advocate)

// Versus //

DEFENDANTS – 1. Hanumagouda S/o Bukkanagouda,
Age: 70 years, Occ: Agri., R/o Killarhatti
Tq: Lingasugur, Dist: Raichur.

2. Amaregouda S/o Hanumagouda,
Age: 60 years, Occ: Business/Agri.,
R/o Killarhatti, Tq: Lingasugur,
Dist: Raichur

3. Meenakshi W/o Hanumagouda,
Age: 45 years, Occ: Agri.,
R/o Killarhatti, Tq: Lingasugur,
Dist: Raichur

(D-1 and 2 By Sri.M.R. Advocate,
D-3 placed an ex-parte)

ORDERS ON APPLICATION FILED UNDER
ORDER XXXIX RULE 1 & 2 OF CPC.

1. The present suit is filed by the plaintiff against the defendant for the relief of partition and separate possession in respect of the suit schedule property. Further the plaintiff has filed the present application against the defendant No. 4 seeking restrain him from alienating the suit property Sy. No. 73/2 Hissa 1 measuring 4 acres 38 gutas of Killarhutti village till disposal of suit.

2. The plaintiff in his affidavit filed along with the application has contended that the suit property bearing land Sy.NO. 73/2 Hissa 1 measuring 4 acres 38 guntas was previously standing in the name of one Hanumanagouda S/o Amaregouda and after his demise the said land was transferred in the name of his wife i.e defendant No. 3. the proposed defendant No. 4 during the pendency of the suit, has transferred the said land in his name without having any right or title over the property. It is further stated that the suit property is of co-parcenary properties and said

properties are in joint possession of him and his father i.e defendant No. 1 and till today partition is not taken place among them. Now the proposed defendant No.4 by taking undue advantage of his name appearing in the ROR is trying to alienate the suit property. Accordingly he prays to allow the application.

3. The defendant No.2 has filed his detailed objection by contending that the suit brought by the plaintiff is not maintainable in the provisions of law. Further the plaintiff himself admitted that his mother has brought suit under O.S.No.44/1995 and same has been disposed off. Therefore the question of bringing the suit for the same relief is bad in the eyes of law. Further more the suit is hit by the principles of limitation act. Further the defendant No.2 is bonafide purchaser and he is in possession of the suit property since the date of purchase and the plaintiff in order to harass the defendant No.2 has filed the present suit and as such he prays to dismiss the application.

4. Heard the Arguments.

5. Based on the rival contentions raised by both the counsel, the following points would raise for my consideration:-

- I. Whether the plaintiff has made out a prima facie case?
- II. Whether the balance of convenience lies in his favour?
- III. Whether an irreparable loss or injury would be caused to the plaintiff in the event of this application being not allowed?
- IV. What order?

6. My answer to above points are as under:-

Point No.1 to 3 : In Negative.

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

REASONS

7. **POINT NO. 1 AND POINT NO. 2:-** The Point No.1 and 2 are interlinked with each other. To avoid repetition of facts, these two points are taken up for common discussion.

As already stated the plaintiff has instituted the suit against the defendants seeking relief of partition and separate possession and the present application is filed against the defendant No. 1 & 2 seeking restraining them from alienating the suit property. In order to obtain the temporary injunction the plaintiff ought to have made out Prima facie case and the balance of convenience should be lies in his favor and an irreparable loss will be caused to the plaintiff in case injunction is not granted. With these aspects in the mind let us discuss the application and objection on record.

8. The plaintiff in his affidavit has specifically contended that the defendant No.1 is his father and till today no partition was taken place among them and the defendant No.1 has addicted

to bad habits and has sold the suit property to the defendant No.2 under registered sale deed on 01-08-1992. He further specifically contended that his mother was previously brought the suit against the defendant No.1 under O.S.No.44/1995 and thereafter same has been disposed off. On the other hand defendant contended that the suit itself is not maintainable and also he is the bonafide purchaser of the suit property.

9. In the instant case the plaintiff by filing the suit has challenged the registered sale deed bearing document No. 651/1992-93 dated 01-08-1992 and another sale deed bearing document No.151/1995-96 dated 26-04-1995. It means plaintiff has challenged the sale transactions taken place about 25 years ago. Furthermore admittedly mother of the plaintiff has filed the suit under O.S.No.44/1995. On perusal of the certified copy of the order sheet produced by the plaintiff in the said case it appears that said suit was came to be dismissed for default. Thereafter either the plaintiff or his mother has not challenged the said order and till today said order remains unchallenged. Further the defendant No.2 is in

the possession of the suit property since the date of purchase. The documents produced by the plaintiff shows that suit lands are standing in the name of the purchaser. The plaintiff in the case has slept over his right about 25 years and now suddenly wakeup and filed the present suit. Hence it appears that the plaintiff has not approached the court with clean hands.

10. At this juncture it is pertinent to mention the Judgment of Hon'ble Supreme Court of India reported in 2006(4) KCCR SN 193. Wherein Hon'ble Apex court has held that,

“Temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hand. No injunction on the ground of sympathy or hardship.”

In the instant case as already stated the plaintiff has approached the court without clean hands. Further after conclusion of the full pledged trail if court came to conclusion that the plaintiff is also having share over the properties then the sale deed can be declared as not binding with regard to the share of the plaintiff is

concerned. Further the apprehension of the plaintiff will be covered under the Section 52 of the T.P. Act. Further the suit has been already filed and as such if any alienation is made or encumbrance or charge is created over the suit property it amounts to lis-pendence. Hence this court is of the opinion that, the plaintiff has failed to make out the prima facie case and definitely balance of convince will not lies in his favour and accordingly these two points are answered in the **NEGATIVE**.

14. POINT NO.3: Since the plaintiff has fails to make out prima facie case and balance of convenience in his favour and as such an irreparable loss will not cause to the plaintiff in case T.I is rejected. Further the remedy under section 52 of the T.P. Act is always available to the party who is under the apprehension of the alienation and as such this court is of the opinion that, no loss or injustice will cause to the plaintiff if the application is not allowed and accordingly this point answered in **Negative**.

15. POINT NO.4: In view of reasons given on point No.1 to 3, I proceed to pass the following:

ORDER

The application filed by the
Plaintiff U/O XXXIX Rule 1 and 2 of
CPC is hereby dismissed with cost.

(Directly typed by me in the computer then corrected, initialed by me later
pronounced in the open court on this the 9th day of July 2019)

(Manjunath)
Addl. Civil Judge., Lingasugur.

ORDER

The application filed by the Plaintiff U/O XXXIX Rule 1 and 2 of CPC is hereby dismissed with cost.

Addl. Civil Judge & JMFC,
Lingasugur.

