

KARN320042302022



IN THE COURT OF PRL CIVIL JUDGE AND JMFC,
KANAKAPURA

Present:

Sri. Suresh Annappa Savadi, B.A., LLB., (Spl.)

Prl. Civil Judge & JMFC, Kanakapura

O.S.No.421/2022

Dated this the 21st day of April 2023

PLAINTIFF:

1. Smt. Shivamma

-Versus-

DEFENDANTS:

1. Smt. Gowri Bai and others

PARTIES ON I.A.I AND II

APPLICANT:

Plaintiff

1. Smt. Shivamma

(By Sri. S.D.P. Adv.,)

-Versus-

OPPONENTS:

Defendants

1. Smt. Gowri Bai and others

(Ex-parte)

ORDER ON I.A.No.I AND II

The plaintiff filed these applications under Order 39 rule 1 and 2 r/w Sec.151 of CPC to restraining the defendant from alienating the suit schedule property and also restrain the defendant from interfering the peaceful possession and enjoyment of the suit schedule property of the plaintiff till disposal of this suit.

2. In the affidavits the plaintiff contended that, one Girigowda @ Thammaiah S/o late Dasegowda was the original propositous and he had a wife by name Muddamma, out of their wedlock one Venkatachalaiah was born who is the husband of the plaintiff. The plaintiff is the absolute owner of the property bearing Sy.No.75, measuring to an extent of 0.11.157 guntas of agricultural property and having a residential house thereon, situated at Hallimaranahalli village, Kasaba Hobli of Kanakapura Taluk. Further submitted that the original propositor ie., Girigowda @ thammiaah and Muddamma had acquired the right of the suit schedule property through registered sale deed dated 30.06.1966 and 14.12.1966 from the father of the defendant No.2 to 4 in Sy.No.75. The original propositor and his wife were in peaceful possession and enjoyment of the suit schedule property. The said Muddamma was died on 03.09.2005 and the propositor was died on 16.04.2006. Thereafter the husband of the plaintiff was in possession and enjoyment

of the suit schedule property and built the house in the portion of the suit schedule property and he was resided in the suit schedule property till his death. Thereafter the plaintiff having peaceful possession and enjoyment of the suit schedule property. The plaintiff forming sericulture plants in the suit schedule property. This being a fact one Debra Naika was having the property in Sy.No.75 to an extent of 02 acre 14 guntas out of 2 acre 14 guntas, the said Debra Naika who is the grandfather of the defendant No.2 to 4 was alienated the portion of the property ie., suit schedule property to the original propositor ie., Girigowda @ Thammaiah and Muddamma and due to illierecy the khata of the suit schedule property could not transferred in the name of Girigowda, the revenue records were stands in the name of the grandfather of the defendant No.2 to 4. The grandfather of the defendant No.2 to 4 was already alienated the suit schedule property to the original propositor and his wife in the year 1966-67 through registered sale deeds. The defendants had no manner of right, title or interest over the suit schedule property. Taking the undue advantage of the khata which is standing in the name of grandfather of the defendant No.2 to 4, the defendants with the dishonest intention trying to grab the valuable property of the plaintiff. The defendants had managed to get the khata of the suit schedule property along with remaining property and also tried to dispossess the plaintiff from the suit schedule property. Hence filed this present suit

along with these applications and prays to allow the applications.

3. After service of summons, the defendants did not appeared before the court, hence placed them as ex-parte.

4. Heard the counsel for the plaintiff.

5. The following points arises for my consideration.

1. Whether the plaintiff has made out sufficient grounds to allow the application?

2. What order ?

6. My answer to the aforesaid points are as under:

Point No.1: In the Negative

Point No.2: As per final order for the following:

REASONS

7. **POINT NO.1.** The plaintiff filed this suit for declaration and injunction alleging that the father-in-law of the plaintiff has purchased the suit schedule property from the grandfather of the defendant No.2 to 4 and due to illiteracy the khata of the suit schedule property was not transferred in the name of father-in-law of the plaintiff I.e, Girigowda, though the sale deed was taken

place in the year 1966, still the suit schedule property stands in the name of the grandfather of the defendant No.2 to 4 and the plaintiff contended that after the death of the father-in-law and mother-in-law of the plaintiff the husband of the plaintiff was in continued in possession of the suit schedule property and in the suit schedule property the husband of the plaintiff constructed the house and started residing in the suit schedule property itself. This being a fact the defendant taken undue advantage of the non-entry in the records trying to dispossess the plaintiff to grab the suit schedule property and also trying to alienate the suit schedule property in favour of third person.

The plaintiff produced genealogical tree, certified copies of the sale deeds, E.C. record of rights, mutations. After going through the entire documents, the plaintiff specifically pleaded that the grandfather of the defendant No.2 to 4 has sold the suit schedule property to the extent of 0.11.157 guntas in favour of the one Girigowda who is the father-in-law of the plaintiff and the khata was not transferred in the name of Girigowda and till today the property stands in the name of grandfather of the defendant No.2 to 4. As per the record of right of the Sy.No.75 several persons names were appearing in the record of rights. In the suit property the extent of suit schedule property not mentioned in the record of right. As per the pleadings the suit schedule property stands in

the name of grandfather defendant No.2 to 4 but in the record of rights the extent of suit schedule property was not appeared, though in the E.C. the Girigowda @ Thammaiah has purchased the property to the extent of 50 X 60 mola but the plaintiff claiming that 0.11.157 guntas. As per the record of right the name of the Girigouda appearing to the extent of 05 guntas. But the plaintiff contended the name of the propositus name was not entered in the revenue records. The suit property stands in the name of the grandfather of the defendant no.2 to 4. The plaintiff contended that the husband of the plaintiff constructed the house in the suit schedule property and she is residing in the said house, but to show the same the plaintiff did not placed any material documents. Hence after going through the entire material, this court is of the opinion that the plaintiff has not approached this court with clean hands, though the defendant did not appeared but it is the bounden duty of the plaintiff to prove the case on her own strength and in this case, after going through the material, at this stage, the plaintiff not made out prima-facie case in respect of I.A.No.I and II. Hence under such circumstances this court answered point No.1 in the **negative**.

9. **POINT No.2:** For the reasons stated in the point No.1, this court proceed to pass the following:

ORDER

The I.A.No.I and II filed by the plaintiff U/O XXXIX Rule 1 & 2 r/w 151 of CPC are hereby rejected.
No order as to costs.

(Dictated to the Steno, transcribed by her, corrected and then pronounced by me in the open Court on this the 21st day of April 2023)

(SURESH ANNAPPA SAVADI)

Prl. Civil Judge & JMFC.,
Kanakapura.