

1) OS. No. 200-2017 Order on IA No. 1.

IN THE COURT OF THE SENIOR CIVIL JUDGE AND

J.M.F.C.

AT: MAGADI

Present:- Sri. K. Mahadeva,
B.A., LL.B.,
Sr. Civil Judge & JMFC.
Magadi.

OS. No. 200-2017

Dated this the 9th Day of April 2018

Plaintiffs:-

Sri. B.G Ramaiah

(By. T.S.R advo...)

AND:-

Defendants:-

1. Sri. Mohammed Liyakat,
2. Sri. Abdul Haq
3. Sri. Mohammed Ameen Khan,
4. Sir. Krishnamurthy,
5. Smt. Muneera,
6. Smt. Reshma
7. Sri. Nafeez,
8. Sri. Atheeq,
9. Sri. Waseeq,
10. Sri. K.B Balaraju.

(Def. 4 by N.S.S advo...)

(Def. 5 to 9 M.S.N advo..)

(Def. 10 by N.S.S advo..)

(K. Mahadeva),,
Sr. Civil Judge & JMFC.,
Magadi.

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ORDERS ON IA No. 1

The plaintiff has filed IA No. 1 U/o 39 rule 1 and 2 of CPC for temporary injunction restraining the defendants 4 to 9 or anybody claiming through them from interfering with the possession of suit schedule property bearing Sy.N o. 62/1A situated at Kudur village, Kudur Hobli, measuring 9 gts, within the boundaries

East by Property of Rangappa

West by Road

North by Property of Syed Ibrahim

South by Property of Sayed Rasool
presently held by defendant No. 4.

2. The plaintiff has filed affidavit in support of IA No. 1 and contended that he has filed the suit for declaration and also for other reliefs , he is the absolute owner of the suit schedule property as per the sale deed dated 24.06.2016, obtained in the EP no. 51/14 on behalf of defendants 1 to 3 through court. He has been put in possession of suit schedule property on 08.08.2016 through the court order , he is the absolute owner and in possession of the suit property. The defendant No. 4 has got the fraudulent sale deed dated 28.12.2016 from K. R Krishnappa and 6 others , based on the said sale deed the defendant No. 4 came near the suit property on 31.07.2017 and declared that he is the owner of the suit property and denied the right of the plaintiff over the suit property and threatened to dispossess the plaintiff from

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suit schedule property . That on 01.08.2017, the defendants 5 to 9 came near the suit schedule property and declared that the husband of the defendant No. 5 and father of defendant No. 6 to 9 had purchased the suit property as per the sale deed dated 06.01.2017 , the Syed Jaleel Sab died after the purchase of the said property , after his death the defendants 5 to 9 are claiming right over the suit property , they have directed the plaintiff to handover the possession of suit schedule property, with great difficulty , the plaintiff has resisted the illegal act of defendants 5 to 9. If the injunction is not granted it is very difficult for the plaintiff to protect the suit property from the hands of defendant No. 4 to 9. If the injunction is granted no hardship would be caused to other side. He prays to allow the IA No. 1.

3. The defendant No. 4 to 9 have filed their written statement and contended that the written statement may be considered as objection to the IA no. 1. The written statement averments that , these defendants have denied the claim of the plaintiff in respect of the suit schedule property , they have stated that they are not the parties to the proceedings stated by the plaintiff. These defendants specifically contended that the sale deed dated 28.12.2015 produced by the plaintiff do not concerned to the suit schedule property , the plaintiff is a stranger to the sale deed dated 14.12.2015 and it can not be disputed by the plaintiff. The said sale deed is not subject matter of suit. The partition deed dated 18.06.2006, has no relevance to the suit schedule property claimed by the plaintiff as per sale

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deed dated 24.06.2016. The plaintiff has created the story in respect of threatening. The defendant No. 4 has not threatened the plaintiff on 31.07.2017. The plaintiff is not entitled for the relief sought in in this suit and also for the IA 1 They prays to dismiss the IA no. 1.

4. The defendants 5 to 9 have contended that the plaintiff has not acquired the suit schedule property as per sale deed dated 26.04.2016 in the execution proceedings in EP. No. 51/14. They have contended that the land bearing Sy. No. 62 was totally measuring 12 acre 1 gts out of which 2 acres 19 gts was the karab land and 9 acre 22 gts was the cultivable land , it was belonged to three persons namely Puttarangaiah S/o Thimmaiah, Kempaiah S/o Puttarangaiah and Syed Abdul Kadar Sab S/o Syed Sab. That in the pody proceedings the Sy. No. 62 of Kudur Village has been podd into Sy.No. 62/1 , 62/2 and 62/3 , Sy. No. 62/1 was measuring 4 acre 13 gts, in the said Sy.No. 2 acre 1 gts was the karab land ,the remaining land was the cultivable land , it was allotted to Puttarangaiah S/o Thimmaiah . The Sy.No. 62/2 was measuring 3 acres 31 gts, in the said land 5gts was the karab land ,the remaining land was the cultivable land. It was allotted to Kempaiah S/o Puttarangaiah. The Sy.No. 67/3 was measuring 3 acre 37 gts , in the said land 13 gts was the karab land, the remaining land is the cultivable land , it was allotted to the name of Syed Abdul Kadar Sab, the said Puttarangaiah had sold 1 acre 39 gts of land in Sy.no. 62/1 in favor of Meheboobiyamma as per the sale deed dated 03.07.1946. The said Meheboobiyamma

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had sold the said 1 acre 39 gts in favor of Syed Rasool as per the sale deed dated 25.11.1959, the said Syed Rasool and his brothers have effected partition as per the partition deed dated 18.06.1969. These defendants have denied the other averments of the plaint as false and not correct. The defendants 1 to 3 have not executed the sale agreement in favor of plaintiff in respect of suit schedule property. They have denied the filing of suit by plaintiff and execution of the sale deed in favor of plaintiff through the court process.

5. The Husband of the defendant No. 5 and father of defendant No. 6 to 9 namely, Syed Jaleel Sab has not created sale agreement dated 17.10.2007 to defeat the right of the plaintiff. The said Syed Jaleel has not filed the suit in OS. No. 82/13 based on the created document, the said sale agreement was the agreement executed by defendant No. 1 in favor of Seyd Jaleel Sab, the defendant No. 1 has not executed the sale deed. Therefore the said Jaleel Sab had filed the suit in OS. no. 82/13 and it was decreed and as per EP proceedings in EP No. 44/14, the said Sayed Jaleel has obtained the sale deed through the court on 06.01.2017. The plaintiff is not in possession of the suit schedule property. The plaintiff has not been put into possession of the suit schedule property on 08.08.2016. There is no cause of action for the suit, the plaintiff has created the agreement and filed the suit to defeat the right of the defendants 5 to 9. The agreement in favor of Syed Jaleel was the earlier agreement. It was known to the plaintiff in respect of the said fact. The plaintiff has created the sale

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agreement dated 08.12.2007 to defeat the right of the husband of the defendant No. 5. They pray to dismiss the suit.

6. Heard the arguments of the learned advocates for both the side.

7. The points that arise for my consideration are as under:

1. Whether the plaintiff has made out prima facie case ?
2. Whether the balance of convenience lies in favor of plaintiff ?
3. Whether the plaintiff prima facie prove that he would be put to hardship and injury, if injunction is not granted ?
4. To what order ?

8. My findings to the above points are as follows:-

Point No.1 In the **negative**

Point No.2 In the **negative**

Point No.3 In the **negative**

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

REASONS

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9 POINT NO. 1 to 3 :- The plaintiff has filed IA No. 1 U/o 39 rule 1 and 2 of CPC for temporary injunction restraining the defendants 4 to 9 or anybody claiming through them from interfering with the possession of suit schedule property bearing Sy.No. 62/1A situated at Kudur village, Kudur Hobli, measuring 9 gts, within the boundaries

10. The plaintiff has produced the following Zerox and other documents

The plaintiff has produced the copy of the sale deed dated 24.06.2016, the copy of the letter dated 16.07.2016 of Assistant Registrar , Bangalore , the copy of the EC , Copy of the Survey documents. But they are not related to Sy.No. 62/1A. The Copy of the sale deed dated 03.07.1946, the copy of the sale deed dated 25.11.1959. The Copy of the rough sketch prepared by the plaintiff. The Copy of the partition deed dated 18.06.1969, the Copy of the sale deed dated 01.06.1998. The Copy of the agreement of sale deed dated 16.05.2007 by Mohammed Liyakath and Abdul Haq in favor of Mohammed Ameer khan. The Copy of the sale agreement dated 18.12.2007 by Mohammed Liyakath and Abdul Haq in favor of B.G Ramaiah , the Copy of the plaint in OS. No. 494/14. The Copy of the Judgment passed in OS. no. 494/14 (Old No. 363/12) The Copy of the order sheet of E.P No. 51/14. The Copy of the petition of EP No. 51/14, the Copy of the spot mahajar warrant in EP. No. 51/14. The Copy of the Delivery receipt. The Copy of the sale deed dated 14.12.2015. The Copy of the sale deed dated

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28.12.2015. The Copy of the sale agreement dated 17.10.2007. The Copy of the plaint in OS. no. 82/13, the Copy of the Judgment passed in OS. no. 82/13, the Copy of the decree of OS . No. 82/13, the Copy of the sale deed dated 05.01.2017. It is not necessary to give findings on the merits of the said documents at the stage of passing of order on IA No. 1.

11. The defendant No. 4 to 10 have produced the following Xerox documents , death certificate of Syed Jaleel who died on 02.08.2017, Copy of the sale agreement dated 17.10.2007 in favor of Syed Jaleel by liyakath. The Zerxo copy of the letter of thahasildar dated 22.06.2016. The Zerxo copy of the survey sktech. The Zerxo copy of the Akarband extract, The Zerxo copy of the 11 E sketches. The Zerxo copy of the order of DDLR dated 26.09.2017. The Zerxo copy of the Mahajar. The Monthly Kannada Paper namely, Kempegowda dated 9th November 2017.

12. This is the stage of findings to be given as the IA No. 1 , therefore it is not necessary to give findings on the merits of the case and also on the merits of documents produced by the both parties. Only the prima facie case and prima facie value of the documents is to be considered and prima facie case of the parties to be considered at this stage.

13. On this background I am considering the available prima facie case here on wards.

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14. Now it is necessary to refer to the suit schedule property mentioned in the plaint .

The land bearing Sy.no. 62/1A situated at Kudur Village, Kudur Hobli, Magadi taluk measuring 9 gts with the following boundaries.

| | |
|----------|---------------------------------------------------------------|
| East by | Property of Rangappa. |
| West by | Road, |
| North by | Property of Syed Ibbrahim. |
| South by | Property of Syed Rasool , presently held by defendant No. 4 . |

15. The same property and same measurement has been mentioned in OS.No. 494/14 , in the EP also the same boundaries has been mentioned.

16. Now it is necessary to refer to the suit schedule property mentioned in the OS. No. 82/13. It reads as under;-

The property bearing Sy.No. 62/1A measuring 9.12 gts, situated at Kudur Village, Kudur Hobli, Magadi taluk. Bounded as under:

| | |
|----------|----------------------------|
| East by | Property of Rangappa. |
| West by | Road, |
| North by | Property of Syed Ibbrahim. |
| South by | Property of Syed Rasool. |

The exparte decree has been passed in OS. No. 82/13 as per Judgment dated 26.11.2013 by the Addl. Senior Civil

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Judges Court, Ramanagara in favor of Syed Jaleel with regard to above the said property. The sale deed has been executed in respect of the said property in favor of Syed Jaleel on 06.01.2017 on behalf of Mohammed Likayath ,through the Court Commissioner , the Advocate A.S Siddaraju for 9.12 gts. When we consider the boundaries mentioned in the present suit schedule and also the boundaries mentioned in the OS. no. 82/13 and the sale deed dated 06.01.2017 are refers to same properties and the same Sy. No, but the extent is in OS. no. 82/13, the decree contains the 9.12 gts and other decree in OS.No. 494/14 (Old No: 363/12) contain 9 gts.

17. The plaintiff or defendant No.4 to 10 have not produced the RTC extracts in respect of Sy . No. 62/1A. The plaintiff has not produced the 11 E sketch to show the extent and boundaries of the suit schedule property.

18. Now it is necessary to refer to order 7 rule 14. The plaintiff has to produce the documents in support of his case. The plaintiff has not produced the revenue documents that the RTC or MR in respect of suit schedule property bearing No. 62/1A. The RTC is prima facie necessary to show the extent and possession of the suit schedule property by the concerned persons. In the present case the plaintiff has not produced the RTC extract in respect of the suit schedule property. In the absence of the RTC extract, only based on the sale agreement and Ex.parte decree passed in OS. No. 494/14 and EP proceedings in EP no. 51/14 and documents

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obtained in EP No. 51/14. It is not possible to accept the prima facie case of the plaintiff at this stage. To consider the documents produced by the plaintiff, the evidence of parties is necessary. Without the evidence and without the cross examination of the parties it is not possible to accept the contention of the plaintiff. The documents produced by the plaintiff or the defendants 4 to 10 can not be considered on merits at this stage. Those documents prima facie case do not establish the case of the plaintiff and possession of the plaintiff over the suit schedule property. There are 2 Ex.parte decrees for the same property and there are 2 sale deeds executed through courts for the same property for the same boundaries in favor of plaintiff and also in favor of Syed Jaleel as per decree in OS.no. 494/14 and decree in OS. no. 82/13 and sale deeds dated 26.04.2016 and 06.01.2017. When there are 2 decrees and when there are 2 sale deeds for the same property it is not possible to accept the contention of the plaintiff. To consider the said Ex.parte decrees and the sale deeds obtained by plaintiff and deceased Syed Jaleel through Court based on the said Ex.parte decrees, the evidence of the parties is necessary and required. The cross examination of witnesses of the both the side is necessary. Therefore, without the evidence, the contention of plaintiff is not acceptable. That as per the order of DDLR mentioned in Para No. 8 of the order, the land claimed by the plaintiff has been constructed with houses. To consider the said fact also, the evidence is necessary.

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19. The plaintiff has filed the suit for specific performance in OS.no. 494/14, (Old No: 363/12) and got the exparte decree. That afterwards he filed EP no. 51/14 and got the sale deed through court on 24.06.2016. That after the sale deed, he has not approached the revenue authority and not got the revenue documents like RTC and MR to his name. The plaintiff has not explained the same in the plaint. The said fact goes against to the claim of plaintiff and do not establish the prima facie case of plaintiff. The plaintiff has produced the delivery receipt and Mahajar. The said documents do not establish the prima facie case and possession of the plaintiff over the suit schedule property. The identity of the suit property has not been properly established by producing acceptable revenue documents. Therefore at this stage, it is not possible to accept the prima facie case and possession of plaintiff over the suit schedule property.

20. When the plaintiff has no prima facie case, balance of convenience and hardship can not be held in favor of plaintiff. Therefore the plaintiff has failed to establish the prima facie case, balance of convenience, and hardship in his favor, hence, **I am holding these points in the negative.**

21. POINT NO.4:- In view of my findings to point No.1 to 3 and the reasons stated therein, I proceed to pass the following:-

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ORDER

The IA 1 filed by the plaintiff U/o 39 rule 1 and 2 of CPC is here by dismissed.

No order as to costs.

Dictated to the Stenographer, transcribed by him, corrected and signed by me and then pronounced in the open court on this the **9th Day of April 2018**)

(K. Mahadeva).,
Sr. Civil Judge & JMFC.,
Magadi

Prs. /-.

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