

**IN THE COURT OF PRL. CIVIL JUDGE NAD JMFC.,
CHIKKANAYAKANAHALLY**

Dated: This 13th day of September 2022.

Present: Sri. SHRINATH. A, B.A.L., LL.B.,
Principal Civil Judge & JMFC.
Chikkanayakanahalli.

O.S. No. 114/2020

Plaintiff : Eranna

V/s

Defendants : Lakkamma & Others.

IA. No. 1

Applicant : Eranna

V/s

Opponents : Lakkamma & Others.

Orders on application U/O 39 Rule 1 & 2 of CPC

The plaintiff has prayed for temporary injunction to restrain the defendants from interfering in the possession of plaintiff over the suit property.

2. In the affidavit, plaintiff contends that he has filed the suit for relief of declaration to declare him as owner of the suit property and with consequential relief of permanent injunction. The tracing of the title over the suit property goes back to the possession of the government and that government

has granted one property bearing sy.no.16/4 which was later renumbered as suit property sy.no.144. The plaintiff having in need of money to purchase another property, he borrowed loan from Mudlappa and to that effect he has executed a document for security for the loan advance. The document executed is nominal and more over the plaintiff had no right to alienate the suit property and that he continues in physical possession and enjoyment of the suit property without any inference from anyone. Such being the case, the revenue authorities in contravention of Land Grant Act has mutated the name of Mudlappa and after his death his son defendants name in revenue records. These defendants are now interfering trying to take possession of the suit property. The plaintiff being aged is finding difficult to restrain the acts of the defendants. Hence, prays to allow the application.

3. The defendants have filed written statement also objection to the application and it is their case that, the plaintiff has sold the suit property in the year 1978 by way of registered sale deed handing over the possession of the suit property to the father Mudlappa and thereafter plaintiff has not been in possession. The suit is also barred by law of limitation, as the plaintiff was aware of the execution of such document and had not sought for such declaration right within the limitation period. Instead of plaintiff seeking for declaration and possession has sought only for declaration and permanent

injunction and hence, the suit is liable to be dismissed. This court has no jurisdiction and appropriate authority for adjudication of the grant land is before the revenue court and hence, this court lacks jurisdiction. The defendants being in possession have grown coconut trees and as such plaintiff is not in physical possession as contended in the plaint. Hence, prays to dismiss the application.

4. Heard advocates for plaintiff and defendants and the following points arise for consideration.

1. Whether the plaintiff has made out prima-facie case to try this suit?
2. Whether the plaintiff has made out balance of convenience in his favour?
3. Whether plaintiff proves that irreparable hardship is being caused by the acts of the defendants?
4. What order?

5. This court answers the above points in the Negative, for the following:

REASONS

6. **Point no.1 to 3** :- The question for determination is with regard to the proof of prima-facie case. This is a suit for declaration and permanent injunction. The plaintiff is relying on grant certificate which was granted in his favour by the government upon an application made that he was in unauthorized occupation and considering his application, the

suit property was granted in his name in the year 1970 up on payment of upset price and therefore he is the owner. The declaration sought is on the basis of this document. The contention raised by the plaintiff is that, it is grant land and there is a non alienation clause in the grant certificate not to alienate for 15 years. The plaintiff as per his plaint averments he had borrowed loan and for security purpose a document was executed. From perusal of the plaint, clever drafting of advocate is seen in order to obtain an interim relief. However, the basic pleadings have to be brought before the court and for grant of equitable relief, the plaintiff has to approach with the clean hand. Though the plaintiff has furnished the document of the sale deed which he claims as a nominal document, has not pleaded in the plaint of such execution of the sale deed in favour of father of the defendants Mudlappa in the year 1978. This type of pleadings leads to suppression of material facts which are necessary to adjudicate the interim application. From perusal of the sale deed, there is a clear recital to the effect that possession has been handed over to Mudlappa under the sale deed.

7. Such being the case, the interim order sought is to restrain the defendants from interfering in the suit property, contending the plaintiff himself is in possession. Contrary to sale deed, the plaintiff has not furnished any document to show that he had retained the possession of the suit property even

executing such sale deed. The plaintiff relies on the entry of his name in RTC until 1983 suppressing the execution of the sale deed in favour of Mudlappa in the pleadings.

8. The argument canvased by the advocate for plaintiff is that, the suit property being a grant land, the plaintiff himself was a lessee and he had no absolute right to alienate the suit property in violation of grant conditions and any such alienation is a void-ab-initio and therefore there is no requirement for seeking for cancellation of such a sale deed. Further, as per section 9 of the Land Grant Act, the purchaser who is intending to purchase has to pay the half amount of the consideration amount to the government as deposit and the plaintiff is not permitted to handover possession. Up on enquiry by this court to the advocate for plaintiff, he submitted that no loan amount has been repaid and the reason given is that there was no demand for such repayment.

9. Noting the submission of the advocate for plaintiff, there is no denial of the execution of the sale deed in favor of the Mudlappa by the plaintiff herein way back in the year 1970. There is no prima-facie document to substantiate of plaintiff continuing in possession upon execution of such sale deed.

10. The point for prima-facie consideration is whether the plaintiff is in possession continuing despite after executing

the sale deed. From perusal of the RTC's the names of Mudlappa and after his death the defendants name has been mutated. The plaintiff being party to the sale deed has not sought for cancellation or has also not sought for declaration to declare that the sale deed executed in the year 1978 is void-ab-initio. Therefore, there is no challenge to the sale deed more so, there is no pleadings in the plaint with regard to the execution of the sale deed.

11. The legal arguments canvased with regard to the Land Grant Act is subject matter of trial and not coming before the court with correct pleadings and suppressing the execution of sale deed in the pleadings by the plaintiff and questioning the effect of the sale deed after lapse of more than 40 years and no prima-facie proof of physical possession, goes against the case of the plaintiff of his prima-facie case.

12. When the prima-facie is not proved by the plaintiff, no question for determining the balance of convenience and irreparable hardship. The plaintiff himself having produced the sale deed and having benefited out of such sale transaction, now the plaintiff is prima-facie estopped from raising the plea of not following the due procedure as enumerated under Land Grant Act, as per the case of the advocate for plaintiff. Hence, upon the above observations, this court answers points no.1 to 3 in the negative.

13. Advocate for defendants have relied on decisions of Honorable High Court of Karnataka with regard to the presumption U/Sec. 133 of Karnataka Land Revenue Act in Vasudev and other V/s Tukaram Bheemappa Nayak and others reported in ILR 2014 KAR 4716. In this case there is execution of sale deed, which plaintiff admits as he himself has produced the said document and further the entry of name of Mudlappa and of the defendants based on the sale deed prima-facie shows of entry of their names in the RTC is on a valid document and therefore, the law of presumption is prima-facie applicable. In another case between Vemula Sudheerkumar V/s Deputy Commissioner, Rural District Bangalore and others reported in 2019(2) KCCR 1712 with regard to the application for restoration of land under PTCL Act and with regard to the delay of more than 38 years after execution of sale deed such application was filed in that case and the Honorable High Court has held that such exercise of such statutory power on such belated application is untenable. Herein this case the plaintiff has not made any such application before the competent authority and has filed this suit for declaration which is prima-facie against the law. Also relies on another similar such decision in Muniyappa @ Chikkamuniyappa V/s Special Deputy Commissioner reported in 2020(4) KCCR 2776.

14. Though these decisions are applicable with regard to latches on the part of the plaintiff, it do not come under the purview of PTCL Act for its applicability to the present facts of the case.

15. **Point no.4** :- Having answered point no.1 to 3 in the negative, this court proceeds to pass the following

ORDER

The application U/O 39 Rule 1 and 2 of CPC
is hereby dismissed.

(Directly dictated to the Typist on computer, corrected, signed
& then pronounced in the open court on this 13th day of September 2022)

Sd/-
(Shrinath. A)
Prl. Civil Judge & JMFC.,
C. N. Halli.