

**IN THE COURT OF SENIOR CIVIL JUDGE AND
J.M.F.C., AT SIRA.**

Dated this the 3rd day of January 2020

PRESENT

SRI. S.MAHESH

B.A., LL.B.,

SENIOR CIVIL JUDGE AND J.M.F.C., SIRA.

O.S.No.79/2016

Plaintiffs

:

1. Hanumakka,
Aged about 85 years,
W/o late Narasimaiah.
 2. Narasamma,
Aged about 55 years,
D/o late Narasimaiah.
 3. Hanumakka,
Aged about 55 years,
D/o late Narasimaiah.
 4. Dasappa,
Aged about 50 years,
S/o late Narasimaiah.
 5. Narayanappa,
Aged about 47 years,
S/o late Narasimaiah.
- All are R/at Ojagunte Village, Kasaba
Hobli, Sira Taluk,
Tumkur District.
(By a advocate Sri.D.L.P.)

V/s

Defendant :

Kambanna,
Aged about 50 years,
S/o Mudalappa,
R/at Ojagunte Village,

Kasaba hobli,
Sira Taluk,
Tumkur District.
(By a advocate Sri.S.B.)

IN I.A.NO.2

Applicants : Hanumakka and others
..... Plaintiffs

V/s

Opponents : Kambanna
.....Defendant

ORDERS ON I.A.NO.2 U/O 39 Rule 1 & 2 OF CPC

Plaintiffs filed this application seeking temporary injunction against the defendant restraining him from alienating or creating any encumbrance over the suit property in the ends of justice and equity.

2. It is stated in the annexed affidavit that, plaintiffs are the owners in possession of suit property having acquired by way of inheritance. They were in possession since from the life time of their father. Defendant is a stranger to the suit property. He had no manner of right, title, interest or possession in the suit property. Defendant is attempting to alienate the property taking advantage of revenue records standing in his name. Hence, this application.

3. The defendant filed objections stating that, he has purchased the eastern 5 acre in Sy.No.72 under sale deed dated:17.06.2001. He is in possession of the said property. He has improved the property by investing huge amount. Plaintiffs had no manner of right, title, interest or possession over the said property. On these grounds prayed to reject the application.

4. Heard both sides and perused the records.

5. The points that arise for my consideration are;

1. Whether plaintiffs have made out prima facie case in their favour?
2. Whether plaintiffs shows that, the balance of convenience lies in their favour?
3. Whether the plaintiffs put to great hardship and injury, if an order of injunction is not granted?
4. What order ?

6. My answer to the above points are as follows;

POINT NO.1 to 3 : In the Negative ;

POINT NO.4 : As per Final order
for the following;

REASONS

7. POINT NO.1 to 3: Plaintiffs have instituted the suit for the relief of declaration of title and permanent injunction. It is the specific

case of the plaintiffs that, they have acquired the suit property by way of inheritance. Suit property bears Sy.No.72 measuring 10 acres situated at Ojugunte village, Kasaba hobli, Sira Taluk. As per index of land, khata of suit property stands in the name of one Kadara, S/o Dasa and Honnadasappa, S/o Kadarappa. As per RTC extract of Sy.No.72/2 for the year 2015-16, khata stands in the name of defendant. Khata has been mutated as per M.R.No.18/2000-01. Plaintiffs have not challenged khata standing in the name of defendant. It remained unchallenged for a period more than 15 years.

8. On the other hand, defendant has produced sale deed dated:21.05.2001 for having purchased an extent of 5 acres in Sy.No.72/2 from one P.H.Ranganathappa and his sons. Further produced certified copy of sale deed dated:06.11.1941 under which Honnadasappa and his son Narasimhaiah have sold an extent of 5 acre in Sy.No.72. Further produced RTC extract of Sy.No.72/2 for the year 2000 to 2019, khata stands in the name of defendant. The defendant availed loan over the suit property and cleared the same. This fact is disclosed by clearance letter dated:05.12.2014 issued by PLD Bank, Dwaralu. Further produced records of rights which

disclose the alienation of 5 acres under sale deed dated:07.11.1941. He has also produced tax paid receipts and patta book.

9. The documents available on record indicates that, in Sy.No.72 an extent of 5 acre has been sold by Honnadasappa and his son Narasimhaiah under sale deed dated: 06.11.1941 in favour of one Hanumanthappa. The defendant has purchased said property under sale deed dated:21.05.2001 from sons of Hanumanthappa. Khata of the said property stands in the name of defendant. Plaintiffs have never challenged the above sale deeds and khata. These documentary evidence indicates no prima-facie case in favour of plaintiffs. The defendant has purchased an extent of 5 acre out of suit property about 15 years back. He has every right to deal with the property. As such, no balance of convenience lies in favour of plaintiffs. If defendant is restrained from alienating or creating any encumbrance, it is the defendant who put to great hardship and injury than the plaintiffs. For these reasons, I answer the above points in the **Negative**. Consequently order of status-quo liable to be vacated.

10. **Point No.4:** For the above discussed reasons, I proceed to pass the following;

ORDER

The I.A.No.2 filed by the plaintiffs U/o 39 rule 1 and 2 r/w Sec.151 of CPC stands dismissed.

Order dated: 21.05.2016 to maintain status-quo with respect to suit property stands vacated.

Parties to bear their costs.

(Directly dictated to steno through online, the same is corrected and then pronounced by me in the open court on **03.01.2020**)

(S.MAHESH)
Senior Civil Judge and
J.M.F.C., Sira.