

KAUK030009512023



IN THE COURT OF PRL. CIVIL JUDGE & JMFC.,II COURT

KARWAR

Present: Shri.Dhanuraj.S.M
B.A.,LLB.
Prl.Civil Judge and J.M.F.C., II Court
Karwar.

ORIGINAL SUIT No.125/2023

DATED THIS 30th DAY OF OCTOBER-2024

Plaintiff/s : Smt. Sonia Devi W/o. Ramanand Singh

[By Sri. P.B.T, Advocate]

V/S

Defendant/s: Shri. Vinay Manohar Naik

[By Sri.H.S.S, Advocate]

PARTIES TO I.A.No.I

Applicant/s: Smt. Sonia Devi W/o. Ramanand Singh.
(Ori.Pltf).

V/s

Opponent/s : Shri. Vinay Manohar Naik
(Ori. Defds)

ORDER ON I.A.NO.I

Plaintiff has filed IA No.I under Order XXXIX Rules 1 and 2 r/w Section 151 of CPC seeking for granting ad-interim temporary injunction restraining the defendant from trespassing into the suit property till pending disposal of the suit.

2. The defendant has filed objection to IA No.I.

3. Heard the learned counsel appearing for the plaintiff and defendant. Perused the pleadings and materials placed on record.

4. The points arise for the determination of this court is as follows:

POINTS

1. Whether the plaintiff has made out a prima-facie case?

2. Whether the plaintiff proves that, the balance of convenience lies in his favour?

3. Whether the plaintiff will be put into irreparable loss and injury, if temporary injunction is not granted ?

4. What order?

5. Finding of this court to the above said points are as here under:-

Point Nos.1 to 3 : In the Negative.

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

REASONS

6. **Points Nos.1 to 3:-** Since these points are interlinked each other and for the sake of brevity and to avoid the repetition of facts and circumstances, these points are took up for common discussion.

7. Plaintiff has filed the present suit seeking for the relief of declaration and consequential relief of permanent injunction against the defendant.

8. Along with the suit, the plaintiff has filed Interim application under order XXXIX Rules 1 and 2 R/w Section 151 of CPC seeking for the relief of ad-interim temporary injunction against the defendant. In support of the said IA he has filed affidavit contending that she is the absolute owner in possession and enjoyment of the suit schedule properties having been purchased by her under a registered sale deed dated 20-04-2013 as document No. KRW-1-00323-2013-2014 of Book-I before the Sub-Registrar, Karwar and that she has purchased the property in question from its erstwhile owner Smt. Parvati Shankar Gurav and others. Ever since the date of purchase the plaintiff is in possession and enjoyment of the suit property by effecting her name in the revenue and public records.

9. That the plaintiff being the owner of the suit schedule property planted teak wood saplings and invested huge money for the development of suit property. That the defendant is the resident of Nagekove village who has no right, title and interest of whatsoever nature over the suit

properties. That on 17-06-2023, the defendant has trespassed into the suit properties and abused the plaintiff and her labourers in filthy language while they are working in the suit properties and stated them that the litigation pertaining to the suit properties pending in the Court. That the plaintiff is not aware of any litigation which is pending before the court with regard to the suit properties. That, he has lodged a complaint against the defendant in Mallapur Police Station on 17-06-2023. But, the police did not take any action against the defendant saying that the said complaint is in civil in nature.

10. It is contended that there is apprehension of plaintiff that the defendant will again trespass into the suit properties and destroy the plantation, if injunction is not granted, the plaintiff will be put into loss and hardship.

11. It is further contended that the plaintiff is in possession and enjoyment of the suit properties and she has made out a prima-facie case, balance of convenience of lies in

her favour and if the injunction is not granted, she will put into loss and hardship. Hence, sought for allowing IA No.I.

12. Defendant filed his written statement as well as separate objection to the IA.NO.I. It is contended that the suit of the plaintiff is not tenable under law and that the plaintiff has no locus standi to file the present suit. It is submitted that the defendant is in possession of the suit schedule properties in 2003 as per the agreement to sell executed by its erstwhile owner and the defendant have also obtained judgment in his favour seeking direction to the erstwhile owner to execute the sale deed in favor of the defendant and the execution petition is filed before this court. That, the plaintiff in order to grab the defendant's property by claiming false relief filed this suit by suppressing the material facts. That the defendant is in possession and enjoyment of the suit properties by virtue of the agreement to sell executed by the erstwhile owner and have been cultivating the same since then without any hindrance. The plaintiff has intended to create false evidence of possession

by filing false case as alleged by him to create a ground of possession. That the plaintiff has not made out a prima-facie and no balance of convenience lies in her favour. Hence, the he sought for dismissal of the suit.

13. To prove that the plaintiff has purchased the suit properties, she has produced the sale deed in respect of the suit property alleged to have been executed by erstwhile owner Smt. Parvati Kom Shankar Gurav and her children. Perusal of the said sale deed dated 20-04-2013, it reveals that the said Smt. Parvati Kom Shankar Gurav and her children had executed sale deed in respect of the suit land in favour of the plaintiff herein. On the strength of the said sale deed name of the plaintiff was effected in the revenue records. Perusal of the acknowledgment issued by SHO Mallapura police station goes to show that the plaintiff has complained regarding interference before the Mallapura PS. Prima-facie documents on record goes to show that original owner of the suit property is one Smt Parvati Shankar Gurav, the said fact is not in dispute. It is the contention of the plaintiff that she is

a bonafide purchaser. However, the defendant contended that the erstwhile owner of Smt Parvati Shankar Gurav had executed sale agreement in favour of the defendant herein and defendant has maintained a suit for specific performance of contract before this court in suit OS No. 59/2013 and the said suit came to the decreed and this court directed to the plaintiff in the said suit OS No. 59/2013 who is the vendor of the defendant to execute sale deed in favour of the defendant in terms of agreement by receiving the balance sale consideration amount.

14. To substantiate the said claim of the defendant, he has produced copy of the judgment dated 11-07-2018 passed in suit OS.NO. 59/2013. In the said judgment is carefully perused, it reveals that the defendant and the vendor of the plaintiff have entered into an agreement of sale in respect of the suit properties under agreement dated 25-09-2003 and under the said agreement the defendant of this case was put into possession by the erstwhile owner of the defendant. Further perusal of the said judgment, it reveals

that the vendor of the defendant Smt Parvati Kom Shankar Gurav remained absent and hence, the suit was decreed and it is directed by this court to the vendor of the plaintiff to execute the sale deed in favour of the defendant of this case by receiving balance sale consideration of amount and it was directed to the defendant to deposit the balance sale consideration amount of Rs.50,000/- before this Court. On perusal of the plaint schedule properties in suit OS.NO.59/2013 and the schedule shown in the agreement executed by the vendor of the plaintiff are one and same. Further the plaintiff has produced document stating that legal heirs of deceased Smt Parvati Kom Shankar Gurav have filed Civil miscellaneous No.8/2023 before this Court.

15. On perusal of said document, it reveals that the vendors of the plaintiff have filed miscellaneous case seeking for setting aside the judgment and decree dated 11-07-2018 passed in suit OS.No.59/2013 and to restore the suit for further proceedings. Perusal of the materials on record it reveals that the defendant entered into an agreement for sale

of the suit schedule property which is the subject matter of the sale deed standing in the name of the plaintiff as well as subject matter in suit OS No.59/2013. By virtue of the judgment dated 11-07-2018 in suit OS.No.59/2013 the deceased plaintiff was bound to execute sale deed and she has not preferred any appeal against the said judgment of the suit OS No. 59/2013. Moreover, the judgment passed in suit OS.No.59/2013 was not set aside or stayed by any appropriate court of law. When there is a Prima-facie case as there is a decree in favour of the defendant of this suit directing the vendor of the plaintiff to execute sale deed in favour of the defendant, she ought not have been executed the sale deed. Moreover, prima facie documents on record goes to show that the defendant is in possession and enjoyment of the suit property by virtue of agreement executed by the vendor of the plaintiff in favour of the defendant herein. Hence, the question of possession claiming under the sale deed alleged to have been executed by Smt. Parvati Shankar Gurav and others in favour of the plaintiff does not arise at all. Prima facie documents on record goes to show that the plaintiff is aware

about the judgment and decree passed in suit OS No.59/ 2013 at undisputed point of time, since the vendors have been filed execution petition before this Court on 16-08-2023 and the alleged sale deed standing in the name of the plaintiff. That available materials on record prima-facie goes to show that the defendant has filed suit for specific performance of contract against the vendor of the plaintiff Smt Parvati Kom Shankar Gurav on 05-03-2013 and the said Smt Parvati Shankar Gurav and her children have executed sale deed on 20-04-2013 in favour of the plaintiff herein which is subsequent to institution of suit OS.No59/2013. Whether there was an order of stay or injunction restraining the vendors of the plaintiff from alienating the suit property was in existence force or not is a matter of trial. However, at this stage prima facie it reveals that the plaintiff was not in possession and enjoyment of the suit property as on the date of execution of the sale deed by the vendor of the sale deed Smt. Parvati Shankar Gurav. Moreover, there is no document available on record goes to show that the plaintiff have challenged the decree passed in suit OS.No.59/2013 dated 11-07-2008. Under such

circumstances, the prima-facie materials on record goes to show that except the document, plaintiff is not in physical possession and enjoyment of the suit property. However, it is settled principle of law that while dealing with the interim application for temporary injunction the court shall not hold mini trial and the interim application has to be decided on available materials on record at the first instance. It is appears that no prima-facie case is made out and no balance of convenience lies in favour of the plaintiff and if the injunction is not granted no hardship or injury will be caused to the plaintiff. **Therefore I answer under point Nos.1 to 3 in the Negative**

16. **POINT NO.4:-** In view of the above discussion and answers to the above points, it is just and proper to pass the following:

ORDER

I.A.No.1 filed by the plaintiff Under
Order XXXIX Rule 1 and 2 R/w.Sec.151 of
CPC is hereby dismissed.

Call for compliance of section 89 of
CPC by 19-11-2024.

(Dictated to the stenographer, transcribe and typed by her, corrected and then pronounced by me in open court on this 30th day of October-2024).