KAUK210005232023

IN THE COURT OF THE ADDL. CIVIL JUDGE, ANKOLA

PRESENT

Smt. Arpitha B Bellad.
B.Com., LL.B.,
Addl,. Civil Judge and J.M.F.C.,
Ankola.

CIVIL CASE NO.35/2023
Dated this the 06th day of November 2023

Plaintiff:-

1. Sri. Sudhakar Palgun Naik,
   Age:38 years, O/c.Agriculturist,
   R/o. Nadibag, Tq. Ankola. U.K.

2. Smt. Geeta Gajanan Naik
   D/o. Palgun Naik,
   Age:46 years, O/c.Agriculturist,
   R/o. Vajralli, Tq. Ankola. U.K.

3. Smt. Neela Purandar Naik
   D/o. Palgun Naik,
   Age:39 years, O/c.Agriculturist,
   R/o. Vajralli, Tq. Ankola. U.K.

[By Sri. A.N.T. Advocate]

V/s

Defendants:- 1.U.F.M. Smt. Usha Pandurang

Naik,
Age:54 years, O/c.Agriculturist,
R/o: Nadibag, Tq. Ankola.

2.U.F.M. Jyothi Ramesh Naik,
Age:48 years, O/c.Agriculturist,
R/o: Nadibag, Tq. Ankola.

3. Smt. Kavita Keshav Naik,
Age:42 years, O/c.Agriculturist,
R/o: Near Civil Hospital Karwar. Tq. Ankola.

4. Sri. Santosh Ira Naik,
Age:35 years, O/c.Agriculturist,
R/o: Nadibag, Tq. Ankola.

5. Smt. Jayashree Shanta Naik,
Age:47 years, O/c.Agriculturist,
R/o: Kanasagiri, Tq. Ankola.

6. Smt. Kusuma Umakant Naik,
Age:54 years, O/c.Agriculturist,
R/o: Keni, Tq. Ankola.

7. Sri. Shrikant Thaku Naik,
Age:58 years, O/c.Agriculturist,
R/o: Nadibag, Tq. Ankola.

8. Sri. Purandar Thaku Naik,
Age:47 years, O/c.Agriculturist,
R/o: Nadibag, Tq. Ankola.

9. Smt. Mangala Subramanya Naik,
Age:47 years, O/c.Agriculturist,
R/o: Kantri, Tq. Ankola.

10. Smt. Preeti Prabhat Naik,
Age:49 years, O/c.Agriculturist,
R/o: Nadibag, Tq. Ankola.

11. Smt. Kamala Prabhakar Naik,
Age:55 years, O/c.Agriculturist,
R/o: Aversa, Tq. Ankola.

12. Smt. Nirmala Maruti Naik,
Age:48 years, O/c.Agriculturist,
R/o: Hattikeri Tq. Ankola.

13. Smt. Saroja Naik,
Age:48 years, O/c.Agriculturist,
R/o: Hattikeri, Tq. Ankola.

14. Smt. Veena Venkatesh Naik,
Age:42 years, O/c.Agriculturist,
R/o: Gunda, Tq. Kumta

15. Smt.Vinaya Vishnu Naik,
Age:46 years, O/c.Agriculturist,
R/o: Binaga, Tq. Karwar

16. Sri. Shrikant Chudiya Naik,
Age:60 years, O/c.Agriculturist,
R/o: Bobruwada, Tq. Ankola.

(By Sri. P.P.G.-Adv. For D.1,2,4,5,6,
& 11 to 14)
(By Sri. V.S.N.-Adv. For D.7 to 9)
(By Sri. G.N.N.-Adv. For D.16)

COMMON ORDERS ON IA NO. I AND II FILED BY PLAINTIFFS UNDER ORDER 39 RULE 1, 2 and 7 R/W Section 151 OF CODE OF CIVIL PROCEDURE, 1908

1. Plaintiffs have filed IA-I under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, 1908 restraining the defendant No.16, his men, agents or anybody claiming through him from alienating, transferring, mortgaging or creating charge over the suit schedule property till the disposal of the suit.
I.A. No.II has been filed under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure restraining defendant No.16 from constructing any structure till the disposal of the suit.

2. **Plaintiffs version in brief is recapitulated as under:**
Suit property is land-bearing Sy.No.118/1 measuring total area of 01-01-00 which is now numbered as Sy.No.118/1 measuring an area of 00-10-04 and Sy.No.118/2 measuring an area of 00-30-12 situated at Bobruvada village in Ankola Taluk.

3. The genealogy described at para No.3 depicts that the main propositus Jogi had four sons by name Ira, Thaku, Govind and Phalgun. The plaintiff are the children of Palgun. Defendant No.1 to 6 are the legal heirs of deceased Ira, Defendant No.7 to 10 are the legal heirs of deceased Thaku and Defendant No.11 to 15 are the children of deceased

Govind and defendant No.16 is the stranger to the family. The plaintiffs and defendants constituted Hindu Joint family governed by Mitakshara Law. The suit schedule property is the ancestral tenancy property and occupancy rights have been granted by Land Tribunal conferring rights on deceased Ira, Thaku, Govind and Palgun as jointly and Form No.10 patta was also issued after which their names came to be certified in the revenue records. The plaintiff and defendant No.1 to 15 are in joint possession and cultivation of the suit property.

4. It is further averred that the father of the plaintiffs never transferred his share i.e., 00-10-04 in the total extent of the suit property to the defendant No.16 but when the plaintiff recently obtained the revenue records, the name of their father is not seen in the revenue records. They came to know that M.E.No. 7268 got certified regarding phodi of the suit land after which an area of 0-10-04 is shown in the name of defendant No.16 and remaining area of 0-30-12 is shown in the name of Ira, Thaku and Vishnu(legal heir of Govind) but the name of father of plaintiffs is not shown in record of rights without any basis and the said mutation entry is certified on the basis of the Hissa Form No.XII without ascertaining any right to defendant No.16 which is illegal . It is further averred that the father of the plaintiffs was not having an entire right to alienate the share of his branch without the consent of the family members. There

was no partition by metes and bounds in respect of the suit schedule properties among plaintiffs and defendant No.1 to 15. and the plaintiffs are having 1/4th share in the suit schedule properties. It is also stated that the defendant No.16 by taking undue advantage of his name is attempting to create a charge or mortaging the property to deprive the legitimate share of the plaintiffs and he has also started to construct the shed illegally. It is further stated in the affidavit that they have established prima facie case and balance of convenience lies in their favour. If injunction is not granted, prejudice and hardship will be caused to them. On these grounds, they sought for interim injunction.

5. Defendant No.16 has filed written statement cum objections to the said applications interalia denying entire contents of the plaint and resisted the applications. It is admitted that the suit property is tenancy property which was in cultivation and possession of fathers of plaintiffs and defendant No.1 to 15 and accordingly occupancy rights have been granted by Land Tribunal as per Form No.10 in joint names of deceased Ira, Thaku, Govind, Phalgun. It is also admitted that Mutation Entry No.7268 came to be certified in which name of defendant No.16 is entered and after the phodi the Sy.No.118/2 was separated for an area of 0-30-12.

6. It is specifically contended at para no.7 of the written statement that about 27 years back in the year 1996, deceased Thaku Jogi Naik and Palgun Jogi naik approached the defendant No.16 by claiming to enter the name of defendant No.16 to an area of 0-10-04 by effecting the partition between said Thaku and Palgun and received an advance amount of Rs.50,000/- from this defendant out of total sum of Rs.1,00,000/- as fixed by them for the purpose of performing marriage of children of Palgun and Thaku. Thereafter the name of defendant No.16 came to be entered as per M.E. No.7231 on 14/05/1997 and on that day, he gave the remaining amount of Rs.50,000/- and at that time, as per Mutation Entry No.7076 dated 25/04/1996,father of plaintiffs late Palgun and Thaku affected the partition between them and the share of Palgun i.e., 0-10-04 area was transferred to the name of Thaku and Mutation Entry No. 7076 came to be mutated in this regard wherein the name of defendant No.16 came to be entered as per M.E.No. 7231 dated 14/05/1997 and the defendant No.16 has obtained the possession of an area of 0-10-04 after fixing the boundaries after which M,.E.No. 7268 came to be certified on 08/01/1998 and since then this defendant only has been paying the taxes and he has also taken the permission from concerned authorities for construction. It is also averred that the children of Thaku and Ira are in cultivation as per the oral partition. The defendant has been in possession and enjoyment of the said property since 1997 without

questioning the same from plaintiffs and defendant No.1 to 15. This defendant has also constructed the well and small tiled roof house for which plaintiffs and defendants have objected and this defendant had told him to approach the Court seeking for possession and from 30/09/1997 to 30/09/2009, neither the plaintiffs nor the defendant No.1 to 5 or their fathers have not taken any steps to get the possession back and since 12 years have been elapsed, the defendant No.16 has perfected his title by adverse possession and he sought for the counter claim seeking declaration of title on the basis of adverse possession. On all these grounds, he sought for dismissal of the suit as well as I.A.No.I and II.

7. Heard learned counsel for the plaintiffs as well as learned counsel for the defendants at length.

8. Upon hearing arguments and on perusal of material placed on record, the following points arise for consideration:

1. Whether plaintiffs have established prima facie case?
2. Whether balance of convenience tilts in favour of plaintiffs?
3. Whether irreparable loss or injury will be caused to the plaintiffs, if the injunction is not granted?
4. What order?

9. My answers to the above points are as under:

Point NO.1: In the Affirmative.

Point No.2: In the Affirmative.

Point No.3: In the Affirmative..

Point NO.4: As per the final order, for the following:

R E A S O N S

10. **POINT NO.1 to 3:** The suit has been filed by the plaintiff seeking partition of his 1/4th share.It is the case of the plaintiff that suit property was total measuring an area of 01-01-00 which is now numbered as Sy.No. 118/1 measuring an area of 00-10-04 and Sy.No.118/2 an area of 0-30-12 which is the ancestral tenancy property of plaintiffs and defendant No.1 to 15 which is granted by land Tribunal conferring occupancy rights jointly in names of predecessors of plaintiffs and defendants. No partition was effected among them but the defendant No.16 by taking an undue advantage of his name in mutation entry trying to mortgage or creating a charge over the suit property who is having no right or interest in the suit property.

11. Per contra it is the urge of the defendant No.16 that deceased Thaku and Palgun(father of plaintiffs) approached him and received the sum of Rs.50,000/- as an advance amount out of total sum of Rs.1,00,000/- for their family necessities and for performing marriages of children of Palgun by effecting partition between them and after

effecting the name of Ira to the share of Palgun to an extent of 0-10-04, name of defendant No.16 came to be certified after which he had given remaining amount of Rs.50,000/- . In respect of the partition that got effected between Ira and Palgun, M.E.No. 7076 came to be certified and after which as per M.E.No. 7231, name of defendant No.16 came to be entered to an exten of aforesaid area and remaining area of 0-30-12 got separated as Sy.No.118/2. He also sought for declaration of his title by way of adverse possession.

12. In order to establish the prima facie case, plaintiffs have produced two Record of Rights for the year 2022-23 in respect of suit schedule property bearing Sy.No.118/1 measuring an area of 0-10-04 which depicts the name of defendant No.16 and Sy.No.118/2 measuring an area of 0-30-00 standing in the joint names of Defendant No.1 to 15. He also produced Form No 7 submitted to land Tribunal and the Order of the Land Tribunal granting occupancy rights in favour of predecessors of plaintiffs and defendant No.1 to 15 jointly. Form No.10 patta given by the Land Tribunal. M.E.No 7268 which depicts the names of defendant No.16 and predecessors of defendant No.1 to 15. He also produced old RTCs pertaining to the suit property.

13. Per contra, to rebut the contention of the plaintiffs, defendant No16 has produced RTC bearing Sy.No.118/1 from the year 1996-97 till 2001-2002, Mutation Entry Nos.

7076, 7231 and 7268. He also produced tax paid receipts and construction permission register.

14. On perusal of the old Record of Rights pertaining to the suit property, the names of Ira, Thaku, Govind and Palgun can be seen in cultivator and possessor column. The copy of the order of the Land Tribunal and Form No.10 patta are the vital documents which shows that the land Tribunal has granted occupancy rights jointly in the name of Ira, Thaku, Govind and Phalgun and in this regard patta has also been given to them. The aforesaid documents have not at all in dispute and the defendant No.16 also clearly admitted in the written statement. Hence based on the aforesaid documents, it can be presumed that the suit property is joint family property of plaintiffs and defendant No.1 to 15 unless the contrary is proved. And the plaintiffs are also having equal share at par with defendant No.1 to 15.

15. However, in RTC bearing Sy.No.118/1 for an area of 0-10-04, the name of the defendant No.16 came to be entered on the basis of the mutation entries. Admittedly, defendant No.16 is not the member of the family of plaintiffs and defendant No.1 to 15. As could be seen from his pleadings, he asserted that partition was effected between Thaku and Palgun after which the the name of Thaku came to be certified to the share of Phalgun to an extent of 0-10-04 and thereafter the same was transferred to defendant No.16 and

he gave consideration amount of Rs.1,00,000/-. In support of his claim, he has heavily relied upon the Mutation Entry No. 7076 which is styled as "Vantani" wherein the name of Thaku came to be entered to an extent of 0-10-04 and on perusal of M.E.No.7231 and 7268, it can be seen that the name of defendant No.16 came to be mutated to an extent of 0-10-04.

16. It is well settled law that the mutation entries in the revenue record are made only for the fiscal purpose of recovering the revenue and do not constitute a document of which title is created or has been conferred. Mutaton entries are not the conclusive proof of the partition. According to plaintiff, there was a partition between father of Plaintiffs Palgun and Thaku as per M.E.No.7076 wherein the share of Palgun was effected to the name of Thaku but no partition deed has been produced to prove the same. Also on perusal of M.E.No.7076, it can be seen that plaintiffs being the coparceners are not made as parties to the said mutation entry. Whether there effected a partition between father of plaintiffs and Thaku is the matter of trial which cannot be decided at this stage. It is also the urge of the defendant No.16 that he gave consideration amount of Rs.1,00,000/- to an extent of 0-10-04. When the defendant No.16 has given a consideration amount to the said property, then the same amounts to sale as per section 54 of the Transfer of Property Act and it is well settled principle that any

instrument which creates title, interest or any right in an immovable property needs to be compulsory registered as per the mandate section 17 of the Registration Act and as per section 54 of the TP Act, such transfer in case of tangible immovable property of value of one hundred rupees and upwards can be made only by a registered instrument.

17. The defendant No.16 has not at all produced any sale deed also but he is mainly relying only upon the revenue records which does not create any right, title or interest as already observed. The question whether the defendant No.16 has perfected his title by way of adverse possession or not is again the matter of trial and at this juncture, it is not safe to come to the conclusion only on the strength of mutation entries in the absence of any title deeds.

18. On perusal of the documents produced by the plaintiffs, it prima facie shows that the suit property is joint family property in which the interest of the plaintiffs is also included and the plaintiffs can seek an injunction in order to prevent violation of his rights over the suit property. Prima facie case cannot be equated with prima facie title. Prima facie case is a triable issue. At this juncture, Court is not expected to hold a mini trial. At this juncture, the plaintiffs have made out a triable issue.

19. It is also trite that, main intention of granting temporary injunction is to maintain the status quo of things as it is till

conclusion of the trial. If the parties are permitted to change the nature of the suit property or permitted to alienate it, it will leads to multiplicity of proceedings.

20. The core question to be determined in the present suit is "Whether the plaintiffs are entitled for 1/4th share in the suit property". Unless this question is determined, the suit property is required to be kept intact without affecting it. To maintain status quo, it is just and necessary to grant temporary injunction. If the defendant No.16 alienates, mortgages or creates a charge on the suit property, it will certainly much hardship to the plaintiffs to implead the subsequent purchasers also as one of the parties to the suit, on the other hand it will cause hardship to the subsequent purchasers also which may lead to multiplicity of proceedings. And also defendant no.16 has not taken undertaking for not transferring the suit property. And also if the defendant no.16 puts up any structure over the suit property, then it will be difficult for the plaintiffs to take back the possession of the same. As such I can safely hold that the plaintiffs have made out an arguable case.

21. At this juncture, the affidavit of the plaintiff No.1, coupled with documentary evidence placed on record, the plaintiffs have established a triable issue i.e. Prima Facie case. If the injunction is not granted and the defendant No.16 is able to transfer the suit property in any manner, the hardship will

be caused to the plaintiffs. Balance of convenience also tilts in favour of plaintiffs. Hence considering over all circumstances of the case, Points No.1 to 3 is answered in the **Affirmative.**

22. **Point NO.4:** For the foregoing reasons, this Court proceeds to pass the following:

ORDER

Interim Application No. I and II filed by the plaintiffs U/O XXXIX Rules 1, 2 and 7 R/W 151 of the Code of Civil Procedure, 1908 are hereby allowed.

The defendant No.16 or anybody acting on his behalf is hereby restrained from transferring, alienating, mortgaging or creating a charge over the suit schedule property bearing Sy.No.118/1 in an area of 00-10-04 out of total area of 01-01-00 Sy.No. 118 in any manner and also he is restrained from constructing any structure in the aforesaid property till the disposal of this suit.

Note : Any observations/findings made in this order is confined only to the disposal of this IA. None of the parties are permitted to take the benefit of the findings/observations of this order during the course of trial or for any other purposes.

(Typed and prepared by myself, then corrected by me and printed through stenographer, then pronounced in the open court on this the 06th day of November- 2023)

Digitally signed by
Arpita B Bellad

Addl., Civil Judge, Ankola

(Order Pronounced by in the open court vide separate order)

ORDER

Interim Application No. I and II filed by the plaintiffs U/O XXXIX Rules 1, 2 and 7 R/W 151 of the Code of Civil Procedure, 1908 are hereby allowed.

The defendant No.16 or anybody acting on his behalf is hereby restrained from transferring, alienating, mortgaging or creating a charge over the suit schedule property bearing Sy.No.118/1 in an area of 00-10-04 out of total area of 01-01-00 Sy.No. 118 in any manner and also he is restrained from constructing any structure in the aforesaid property till the disposal of this suit.

Note : Any observations/findings made in this order is confined only

to the disposal of this IA. None of the parties are permitted to take the benefit of the findings/observations of this order during the course of trial or for any other purposes.

Issues have been framed. For list of witness and plaintiff evidence.

Call On: 17-11-2023

Addl., Civil Judge, Ankola.