

IN THE COURT OF THE CIVIL JUDGE AT ANKOLA

Dated this the 15th day of December 2017

PRESENT

Sri Shambhulingayya Mudimath,
B.Com.,LL.B. (Spl.),
Civil Judge and J.M.F.C.,
Ankola.

ORIGINAL SUIT NO.44/2017

PLAINTIFF : Mohan S/o Purassar Gaonkar,
APPLICANT Age: 65 years,
Occ: Agriculture,
R/o Basgok, Tq: Ankola,
Dist. Karwar U.K.

(By Sri G.S.Savadatti, Advocate)

-Vs-

DEFENDANT : Arvind S/o Mangesh Shetti,
OPPONENT Age 42 years,
Occ: Business,
R/o Shirkuli, Tq: Ankola,
Dist. Karwar U.K.

(By Sri V.A.Todurkar, Advocate)

ORDER ON I.A.NO.II

I.A.No.2 is filed by plaintiff under Order 39 Rule 1 and 2 read with Section 151 of CPC seeking temporary injunction against the defendant restraining him from alienating the suit property till the disposal of the suit.

2. Along with the I.A.No.2, plaintiff has filed the affidavit wherein he contended that, he has filed suit for declaration, possession and permanent injunction against the defendant. The contents of plaint may be treated as part and parcel of the affidavit. It is further contended that, he had approached the defendant number of times and requested to pay the rent and hand over the vacant possession of the suit property. The defendant not heeded the request of the plaintiff. The defendant is trying to alienate the suit property to the stranger and trying to mortgage the suit property. If the defendant sold or mortgage the suit property, the purpose of filing the suit is frustrated and multiplicity of proceedings may arise. Hence, prayed for granting temporary injunction against the defendant. It is also contended that, if the application is allowed, no harm will be caused to the defendant as the plaintiff has prima facie case and balance of convenience and irreparable loss is in favour of him.

3. On the other hand, the defendant has filed the detailed objection contending that, application filed by the plaintiff is false, vexatious, frivolous and same is not maintainable in law or facts of the case. It is also contended that, plaintiff has filed the I.A.No.2 with an ulterior motive to harass the defendant. The plaintiff has not come to the court with clean hands. The plaintiff has concealed several material facts before the court. Hence, application is deserve to be dismissed. The defendant totally denied all the allegations made in the affidavit as well as plaint. It is specifically contended that, the father of original owner viz., Vithoba Hariyappa Shetti has filed eviction suit against the father of defendant to evict from suit premises before Munsiff Court, the same was allowed. Thereafter, District Court upheld the judgment. Thereafter, the appeal preferred by father of defendant was also allowed and the lower court's order were dismissed by the Hon'ble High Court of Karnataka in C.R.P.1593/1977. The execution proceedings filed by

the Vithoba Hariyappa Shetti against the father of defendant were also dismissed.

4. It is specifically contended that, on 28.3.2013 the said Ramanath Vithoba Shetti has executed an agreement of sale in respect of said commercial shop situated in Ankola Town Panchayat No.2572. Apart from that, the said owner Ramanath Vithoba Shetti has executed a registered Will, registered G.P.A. for the particular shop. For that, defendant has already paid the consideration amount at the time of agreement of sale in the year 28.3.2013 in respect of said shop to Ramanath Vithoba Shetti. This fact is well known by the plaintiff and plaintiff is also witnesses to the above said document. At the time of receiving the consideration amount, the Ramanath Vithoba Shetti executed the promissory letter in favour of the defendant. Hence, it is strictly denied that, the said Ramanath Vithoba Shetti executed release deed in favour of plaintiff.

5. It is also specifically contended that, as the defendant has already purchased said shop in the year 2013 and from very long period defendant's father, fore-grand- father was using the said shop the question of giving rent by defendant to plaintiff does not exist at all as the plaintiff is not an owner and defendant is not a tenant. It is also contended that, the property is within the possession of defendant as an owner. Hence, question of handing over the possession to the plaintiff does not arise. Therefore, on the above grounds and other grounds the defendant has prayed for dismissal of the application with costs.

6. Heard the arguments of learned counsel for plaintiff and defendant. Perused the materials available on record.

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

1. Whether plaintiff has made out prima facie case?

2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff will be put to irreparable loss and injury if the T.I. is not granted as prayed in I.A.No.2?
4. What order?

8. My findings on the above points for consideration are as under:

Point No.1: In the negative.

Point No.2: In the negative.

Point No.3: In the negative.

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

REASONS

9. **POINT NO.1 TO 3**:- Since these points are interlinked together they are taken together for consideration to avoid the repetition. The main case of the plaintiff is that, the suit property is originally belongs to Ramanath Vithoba Shetti, resident of Basgod. The said owner has executed a release deed in favour of plaintiff on 7.12.2015 for consideration of Rs.3,50,000/- and he also executed correction deed in

favour of plaintiff on 8.12.2015. The defendant and his father are in possession of the suit property as a tenant. The original owner Ramanath Vithoba Shetti was the landlord. Defendant and his father were the tenant. Defendant behind the back of the plaintiff and earlier owner Ramanath Vithoba Shetti on the basis of G.P.A. has executed a release deed in favour of himself and same is registered. But no consideration amount is paid to Ramanath Vithoba Shetti. Hence, the alleged release deed is illegal, not binding on the title and interest of the plaintiff. It is also contended that, plaintiff approached the defendant number of times requested to pay the rent and vacant possession of the suit property, but defendant denied the same. Hence, plaintiff constrained to file this suit. On the other hand, the defendant has strongly taken a contention that, the earlier owner has executed the agreement of sale by receiving the consideration amount. The said owner has also executed the G.P.A. and Will deed in favour of the defendant and the said owner has also executed sale deed in favour of the defendant. Hence, the

defendant is the absolute owner of the suit property. The question of paying the rent to the plaintiff does not arise as the plaintiff is not the landlord and defendant is not tenant. On these grounds and other grounds, defendant prayed for dismissal of the suit.

10. I have perused the application, affidavit and objection and documents which are produced by the both parties. The plaintiff has produced the following documents along with the suit.

1. Record of rights pertaining to suit property.
2. Encumbrance certificate from 1.4.2004 to 8.5.2017.
3. Release deed dated 7.12.2015.
4. Correction deed dated 8.12.2015.
5. Release deed dated 14.10.2016.
6. Notice dated 29.5.2017.
7. Reply notice dated 2.6.2017.

11. On the other hand, the defendant has produced the following documents.

1. Agreement of sale dated 28.3.2013.
2. General Power of Attorney dated 28.3.2013.
3. Will deed dated 28.3.2013.
4. Sale deed dated 13.10.2016.
5. Execution petition No.6/1983.

12. On perusal of the documents which are produced by the both plaintiff and defendant, it prima facie appears that the said earlier owner namely Ramanath Vithoba Shetti has executed release deed in favour of the plaintiff and also in favour of the defendant. The documents of defendant reveals that, the said earlier owner has executed the agreement of sale, general power of attorney and Will deed in favour of the defendant before executing the release deed in favour of the plaintiff. The said Ramanath Vithoba Shetti has also executed sale deed in favour of the defendant on dated 13.10.2016. Now the question before the court is whether the plaintiff has prima facie case against the defendant? The main contention of the plaintiff is that, the earlier owner Ramanath Shetti has executed

release deed in his favour. It is also contended that, behind the back of plaintiff and original owner Ramanath Shetti defendant has got created release deed in his(defendant) favour. Hence, plaintiff seeking the said release deed executed by Ramanath Shetti in favour of defendant is not binding on the plaintiff. It is also prayed for declaration of title on the strength of release deed in favour of plaintiff. The plaintiff has also contended that, the defendant and his father were the tenant. On perusal of the documents the plaintiff did not produced any document with regard to payment of rent by the defendant to the plaintiff or erstwhile owner Ramanath Shetti.

13. It is the case of the defendant that, the father of Ramanath vithoba Shetti namely Vithoba Shetti has filed eviction petition against the father of defendant the said eviction petition was dismissed by Hon'ble High Court of Karnantaka, thereafter the execution proceedings were also dismissed, in this regard defendant has produced document serial No.5

execution petition No.6/1983. The contention of the plaintiff is that defendant and his father were tenant having the possession as a tenant, but defendant admitting the possession of the suit property not as tenant but as a owner, on perusal of the document the plaintiff did not produced any single document to show the defendant and his father paying the rent to the erstwhile owner later to plaintiff, The documents produced by the defendants at this juncture prima facie shows that defendant is having the possession of the suit property on the basis of sale deed and other documents. It is also material to note that, plaintiff challenging the release deed in favour of defendant. The said Ramanath Vithoba Shetti has not challenged the agreement of sale deed, Geneal Power of Attorney, will deed, release deed and sale deed which are executed in favour of defendant. This court cannot express any opinion regarding merits of the case, the plaintiff came with a case for declaration with release deed, but he did not produced any document to show defendant is the tenant. The documents of defendant

are discloses that defendant had the possession since long back, As per the say of the plaintiff, if defendant is the tenant, the tenant is always having possessory right not ownership title, when the tenant having the possessory right, the question of alienating the property does not arise as tenant did not have the title over the property. Hence, I am of the view there is no prima facie case in favour of the plaintiff to grant the temporary injunction against the defendant. The balance of convenience is also not established, if T.I. is granted, more hardship will be caused to defendant rather than the plaintiff. Hence, on the above observations, **I answered point No.1 to 3 in the negative.**

14. **POINT NO.4:-** For the aforesaid reasons, discussion made above considering the material on record, I proceed to pass the following

ORDER

I.A.No.II under Order 39 rule 1
and 2 read with Section 151 of CPC filed
by the plaintiff is hereby rejected.

No order as to costs.

(Dictated to the Stenographer directly on computer,
typescribed by her, the same is corrected and then
pronounced by me in the open court on this the 15th
day of December 2017.)

(Shambhulingayya Mudimath)
Civil Judge, Ankola.

