

IN THE COURT OF THE CIVIL JUDGE AT ANKOLA

Dated this the 12th day of June 2018

PRESENT

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

ORIGINAL SUIT NO.77/2017

PLAINTIFFS : 1. Smt.Vathsalabai Rama Pavaskar,
APPLICANTS Aged about 86 years,
Occ: Retired Teacher,

2. Smt.Radhabai W/o Shripad
Pavuskar, Aged about 80 years,
Occ: Agriculturist and household,
represented by her G.P.A. holder
Sri Chandrahas S/o Shripad
Pavuskar, Aged about 53 years,
Occ: Agriculturist and Goldsmith,

3. Sri Ramakrishna Vishwambar
Pavaskar, Aged about 65 years,
Occ: Agriculturist and Goldsmith,

4. Sri Pandurang Vishwambar
Pavaskar, Aged about 62 years,
Occ: Agriculturist and Goldsmith,

5. Sri Divakar Vishwambar
Pavaskar, Aged about 60 years,
Occ: Agriculturist and Goldsmith,

All are R/o Aversa, Taluk: Ankola,
Uttara Kannada District.

(By Sri M.A.Raikar, Advocate)

-Vs-

- DEFENDANTS:** 1. Smt.Sudha Rohidas Banavalikar,
OPPONENTS Aged about 40 years,
Occ: Fisheries, R/o Near Bhudevi
temple, Aversa,
Taluk: Ankola (U.K.)
2. Smt.Seetha @ Geeta W/o Nagesh
Naik (U.F.M.),
Aged about 60 years,
Occ: Household,
3. Smt.Indira W/o Umesh Naik,
Aged about 54 years,
Occ: Agriculturist,
4. Sri Anandu Umesh Naik,
Aged about 30 years,
Occ: Agriculturist,
5. Sri Shivanand Umesh Naik,
Aged about 26 years,
Occ: Agriculturist,
6. Sri Seetharama Ananth Naik,
Aged about 56 years,
Occ: Agriculturist,
7. Sri Maruthi Ananth Naik,
Aged about 54 years,
Occ: Agriculturist,
8. Smt.Anitha Manjunath Naik,
Aged about 32 years,
Occ: Agriculturist,
9. Smt.Akkamma D/o Ananth Naik,
Aged about 52 years,
Occ: Agriculturist,
10. Smt.Vasanthi D/o Ananth Naik,
Aged about 42 years,
Occ: Agriculturist,

11. Smt.Rathnavathi
W/o Ananth Naik,
Aged about 39 years,
Occ: Agriculturist,

2 to 11 are R/o Dandebag,
Aversa, Ankola Taluk,
(Uttara Kannada District.)

(1, 3, 4, 5,6, 8, 9, - Exparte

7 – By Sri M.P.Bhat, Advocate)

ORDER ON I.A.NO.III

This is an interlocutory application filed by the plaintiffs under Order 39 Rule 1 and 2 read with Section 151 of CPC seeking grant of temporary injunction against the defendant No.1 to restrain her and her agents from constructing building by encroaching the suit properties till disposal of the suit.

2. Along with the application, plaintiff No.1 has filed affidavit wherein she contended that, the suit summons and notice of I.A.No.1 was served upon the defendant No.1. She did not appear before the court in person or through Advocate. The court has made order "placed exparte". The defendant No.1 with the help of gundas constructed the foundation by trespassing and encroaching more than one gunta of land of plaintiffs. She also planned about constructing the house. If defendant No.1 constructed the house, it cannot be compensated in

terms of money. It will leads to multiplicity of litigation. The plaintiffs requested the defendant No.1 not to construct any building in the suit property till order of the court. But, she did not heed the words of plaintiffs. The plaintiffs could not stop the act of the defendant No.1. Hence, prayed for grant of temporary injunction against defendant No.1 to restrain her from constructing the house by trespassing the property.

3. On perusal of the materials available on record, it appears that inspite of service of summons and I.A. notice, defendant No.1 remained absent. He placed exparte.

4. The learned counsel for defendant No.7 Sri M.P.Bhat, Advocate submitted that, he will argue the matter on I.A.No.3. But, this court not permitted to argue the matter on I.A.No.3. Due to present I.A.No.3 is against defendant No.1 only.

5. Heard and perused the materials available on record.

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

1. Whether plaintiffs have 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.3?
4. What order?

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

Point No.1: Partly in the affirmative.

Point No.2: Partly in the affirmative.

Point No.3: Partly in the affirmative.

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

REASONS

8. **POINT NO.1** :- This is a suit for the relief of permanent injunction against the defendants restraining the defendants from trespassing and encroaching the suit properties.

9. According to plaintiffs, the suit property bearing Sy.No.310/2 is family property of plaintiffs. The deceased mother of defendant No.6 to 10 by name Smt.Savithri W/o Ananth Naik had executed agreement to sell on 8.11.1990 in favour of plaintiff No.2 by receiving consideration amount of Rs.1,600/- in respect to suit property bearing Sy.No.316/2 of Aversa village. The said Sy.No.316/2 is connection to the plaintiffs family property bearing

Sy.No.310/2. The Sy.No.316/2 was in actual possession since from 1965. Both suit properties bearing Sy.No.310/2 and 316/2 are in actual and peaceful possession of the plaintiffs. The plaintiffs have planted the 5 coconut trees, one Mango tree and Guava tree. Since the name "Karnataka Government" was appeared in Sy.No.316/2 and there is hurdle in the Karnataka Land Reforms Act. The deceased Smt.Savitri or her husband could not executed the sale deed in favour of plaintiff No.2. After demise of the deceased Smt.Savitri Naik and after dismissal of the suit No.81/2011 the present defendants who are the legal heirs of deceased Smt.Savitri started obstruction to the plaintiffs. In this regard, plaintiffs have filed O.S.No.50/2016 which is pending before this court for consideration. Now, defendant No.6 to 8 trying to sell the property in favour of defendant No.1 and defendant No.1 started obstruction to the plaintiffs and trying to encroach the properties. Hence, plaintiffs constrained to file the suit.

10. Admittedly, defendant No.1 placed exparte. She did not contested the suit.

11. Along with the application, the plaintiffs have produced the documents, the document serial No.1 is record of right of bearing Sy.No.310/2. Serial No.2 is record of right of bearing Sy.No.316/2. Serial No.3 is survey map belongs to Sy.No.310/2.

Serial No.4 is endorsement given by S.H.O., Ankola police station. Serial No.5 is judgment copy of O.S.No.81/2011. Serial No.6 is plaint copy in O.S.No.50/2016. Serial No.7 is copy of agreement to sell.

12. On careful perusal of the materials available on record, it appears that the plaintiffs alleging that suit property bearing Sy.No.310/2 is their family property. The suit property bearing Sy.No.316/2 is belongs to defendants No.2 to 8. But, plaintiffs are in actual possession of the said Sy.No.316/2 by virtue of agreement to sell said to have been executed by deceased Smt.Savithri who is mother of defendant No.5 to 8. Hence, it is better to discuss one by one.

13. In respect to suit property bearing Sy.No.310/2, the plaintiffs have produced suit serial No.1 which is record of rights. On perusal of the said document, it appears that the said property is standing in the name of plaintiffs. It is settled principles of law that record of rights are not the title deed. They do not disclose any title of the person. But, those documents discloses who is in possession of the property. Hence, at this juncture, it prima facie discloses that suit Sy.No.310/2 is in possession of the plaintiffs.

14. In so far as suit property bearing Sy.No.316/2, the plaintiffs produced document serial No.2 which is

record of rights. On perusal of the said document, it appears that said property is standing in the name of defendants. The plaintiffs alleged that the said property is in their possession by virtue of agreement to sell dated 8.11.1990 said to have been executed by Smt.Savithri. To showing this fact, the plaintiffs produced document serial No.7. On perusal of the said document, the agreement was executed in the year 1990. Suit has been filed in the year 2018. There are 18 years are lapsed after executing the agreement. It is also material to note that in O.S.No.81/2011 (document serial No.5) the Hon'ble court has clearly observed that the plaintiffs are not in possession of suit property bearing Sy.No.316/2. So on perusal of document serial No.5 and serial No.7, it prima facie discloses that plaintiffs are not at all having the possession of the said property. Even on perusal of the document serial No.6, it appears that plaintiffs have filed the O.S.No.50/2016 for the relief of specific performance. But, the said suit is pending for consideration.

15. So after discussion in the above paras, it is clear that the plaintiffs have made out prima facie case in respect to Sy.No.310/2, but not to Sy.No.316/2. Hence, I am of the opinion that there is no prima facie case in favour of plaintiffs in respect to Sy.No.316/2. Hence, **I answered point No.1 partly in the affirmative.**

16. **POINT NO.2 AND 3**:- Since these points are interlinked together they are taken together for consideration to avoid the repetition.

17. This court already holds that plaintiffs have made out prima facie case in respect to Sy.No.310/2 only. But, not Sy.No.316/2. If defendant No.1 is not resisted from temporary injunction, certainly defendant No.1 will dispossess the plaintiff from suit Sy.No.310/2. It is settled principle of law that possession may be protected until due process of law. The defendant No.1 not appeared before the court and not contested the suit or application. If, temporary injunction is not granted, plaintiffs will put to the heavy loss rather than defendant No.1. The balance of convenience is also in favour of plaintiffs in respect to Sy.No.316/2. Hence, **I answered point No.2 and 3 partly in the affirmative.**

18. **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.III filed by the plaintiffs under Order 39 Rule 1 and 2 read with Section 151 of CPC is hereby partly allowed.

Defendant No.1 is hereby restrained from trespassing and

encroaching the suit property bearing Sy.No.310/2 of Aversa village till the disposal of the suit by way of temporary injunction.

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 12th day of June 2018.)

(Shambhulingayya Mudimath)
Civil Judge, Ankola.