

KAUK310015182020



**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND JMFC
BHATKAL**

PRESENT

Smt.Dhanavathi. B.A.(law) LL.B.,
Addl. Civil Judge and J.M.F.C, Bhatkal

O.S.No.98/2020

Dated this the 7th day of December, 2024

PLAINTIFF :

1. Mohiddin Bin Hussain Kadli -(Died)
by his legal heirs
 - (1) Abdul Kadli Khadir Bash (Died)
 - 1a. Smt. Rehan W/o Abdul Kadli Khadir Basha,
Aged about: 73 years,
 - 1b. Sanaulla Kadli S/o Abdul Kadli Khadir Basha,
Aged about: 55 years,
 - 1c. Shaheen Kali W/o Siggique Mohammed Moula,
Aged about: 51 years,
 - 1d. Shireen Banu W/o Mohammed Fahim Shingathi,
Aged about: 45 years,
 - 1e. Simeen Kali W/o Noorull Hassan Mohiddin Malpa
Aged about: 41 years,
 - 1f. Shabi Kadli S/o Abdul Kadli Khadir Basha,
Aged about: 32 years,
All are resident of 24, Sultan Street,
Bhatkal Taluka.
2. Hassan S/o Mohiddin Kali-(Died)
By his legal heirs,
 - 2a. Najamunnisa W/o Kali Mohammed Hassan,
Aged about: 71 years,
R/o: #878, Bab-e-Hasan, Azad Nagar,
1st Cross, Bhatkal, N.K.

- 2b. Farzana Mohammed Hussain Kazia,
Aged about: 51 years,
R/o: Hussain Villa, Bunder Road,
2nd Cross, Near Salman Farsi Masjid,
Bhatkal Taluka.
- 2c. Hasan Safiullah Kadli S/o Hassan Bapa Kadli,
Aged about: 51 years,
R/o: #878, Bab-e-Hasan, Azad Nagar,
1st Cross, Bhatkal, N.K.
3. Bibi Fatima Kadli W/o Syed Abdul Rehman,
(Died) by her legal heirs
- 3a. Zareena W/o Mohammed Akeeb Chamundi,
Aged about: 55 years,
R/o: No.24, Sultan Street, Bhatkal Taluka.
(By Sri.S.B.B., Advocate)

// Versus //

DEFENDANTS :

1. Mohammed Bin Hussain Kadli-(Died)
By his legal heirs
- 1A. Abdul Khadir Kadli-(Died)
By his legal heirs
- A1. Smt. Akthar Sakeen W/o Abdul Khadir Kadli,
Aged about: 86 years,
- A2. Abdul Mallik Kadli S/o Abdul Khadir Kadli,
Aged about: 61 years,
Both are R/o: #3, Shabistan,
Qidwai Road Cross,
Bhatkal Taluk, N.K.
- A3. Abdul Basit S/o Abdul Khadir Kadli,
Aged about: 60 years,
R/o: Jali Road, Bhatkal Taluka.
- A4. Amzad Hussain Kadli S/o Abdul Khadir Kadli,
Aged about: 55 years,
R/o: #3, Shabistan,
Qidwai Road Cross,
Bhatkal Taluk, N.K.
- 1B. Hussain S/o Mohammed Kadli-(Died)
By his legal heirs

- A. Kadli Mohammed Ali S/o Kadli Hussain-(Died)
By his legal heirs
1. Smt. Waheeda Mohammed Kadli
W/o Kadli Mohammed Ali
Aged about: 57 years,
 2. Wafiya D/o Kadli Mohammed Ali
Aged about: 32 years,
 3. Ismail Sawaab Kadli S/o Kadli Mohammed Ali
Aged about: 29 years,
All are R/o: Nagappa Nayak Road,
Kaziya Apartment, Flat No.201, Bhatkal.
- 1C. Kadli Mohammed Sayeed-(Died)
By his legal heirs
- A. Mohammed Javeed Kadli
S/o Mohammed Sayeed Kadli,
Aged about: 26 years,
R/o: Usman Nagar, 1st Cross,
Bhatkal Taluka .N.K.
- 1D. Kadli Mohammed Jaffar
S/o Mohammed Saheb Kadli,
Aged about: 81 years,
R/o: #64, Maskan Behind Hammed
Compound, Near Modern Press,
Navayath Colony, Bhatkal Taluka.
- 1E. Bibi Khateeja Kadli
W/o Mohammed Iqbal Khazia-(Died)
By her legal heirs
- A. Mohammed Suhaib Khazia S/o Mohammed Iqbal,
Aged about: 56 years,
R/o: Housing Board, 3rd Cross,
Bhatkal Taluka.
- 1F. Bibi Fatima W/o Hassan Habeeb,-(Died),
By her legal heirs
- A. Abdul Raheem S/o Hassan Habeeb,
Aged about: 64 years,
R/o: Opp. To Thasildar Office,
Main Road, Bhatkal Taluka.
- B. Nizamuddin S/o Hassan Habeeb,
Aged about: 58 years,
R/o: Gulshan Ara, Moulana Road,
Bhatkal Taluka.

2. Narayan S/o Bermayya Naik,
Aged about: 93 years,
R/o: Mundalli, Bhatkal Taluka.
3. D. Shivanand S/o Shankar Sherugar,
Aged about: 42 years,
R/o: Daddumane, Paduvari, Byndoor,
Byndoor Taluka, Udupi District.
4. Nagappa S/o Badiya Naik,
Major,
R/o: Mundalli, Bhatkal Taluka.
5. H. Jayanand,
Major,
R/o: Byndoor, Byndoor Taluka,
Udupi District.
6. Praveen S/o Ramanchandra Kini,
Aged about: 35 years,
R/o: Rayalkeri, Kasba Village,
Honnavar Taluka.
7. Anil S/o Vittal Gaitonde,
Major,
R/o: Honnavar Taluka.
8. Neelkanta M. Naik,
Major,
R/o: Honnavar Taluka.
9. The Manager,
Sirsi Urban Co.Op Bank Ltd.,
Honnavar Branch, Honnavar.

**(Defendant No. 1(a) (1 to 5), D1(c), (d),D1(f) (1,2)
by Sri.S.R.L., Advocate, defendant No.3 by
Sri. N.S.R.B Advocate, D6, D7 and D9 by Sri. S.V.A.,
Advocate and D4 & 8 are placed Exparte)**

Parties to I.A.No.XI

APPLICANT/ PLAINTIFF :

Sanaullah Kadli S/o Abdul Khadir Basha Kadli ,

// Versus //

RESPONDENT/DEFENDANT No.6 :

Mohammed Bin Hussain Kadli by his legal heirs
and others

**ORDER ON I.A.No.XI FILED UNDER ORDER XXXIX RULE 1
AND 2 CIVIL PROCEDURE CODE.**

I	Provision under which the applications are filed	U/o XXXIX Rule 1 and 2 of C.P.C
II	Relief sought for	To restrain the defendant No.6 and his men, servants labourers, coolies from doing mining work or to change the nature of the suit land till the disposal of the suit.
III	The date on which the application filed.	07-11-2024
IV	Number of application.	I.A.No.XI
V	The date on which the objection filed by opponent.	15-11-2024
VI	The date of which the order passed on the application.	07-12-2024

2. Briefly, the plaintiffs case is as follows:-

Description of Suit properties:-

SCHEDULE

The property is situated at Mundalli Village, Susgadi Hobli of Bhatkal
Taluka

Sl. No.	SY. No.	Hissa No.	Extent	Asset	Boundary
1.	207	2	5-24-0 Kar 1-10-0 Remaining 4-14-0	4.02	Survey Boundary

3. In the annexed affidavit to I.A.No.XI, the plaintiff No.1(b) stated that, this suit filed for declaration and partition against the defendant No.1(a) to 9 and for temporary injunction against the defendant No.6, since who has purchased the suit schedule property behind back on the basis of fake, forged document, through the executants of the alleged G.P.A have died much prior to execution of the said G.P.A. Further stated that, plaintiffs and defendant No.1a to 1f are the legal heirs of them, hence prayed to cancellation the said sale deed. Now the name of defendant No.6 is appeared in the RTC, on the strength of that who is in a position to alienate the said property just to change the hands, if he done so himself and other plaintiffs and his family members will suffer a lot.

Further, stated that, the suit land is situated far away from his resident, hence it is very difficult to visit the suit land every day. The defendant No.6 by taking undue advantage of their absence started mining work in the suit land and removed loads of red stone, by making the suit land into big trench. Further stated that, one week back from the reliable information of his friend, he has visited the suit land on 01-11-2024, the labourers, workers and his men are doing mining work through stone cutting machine. He enquired them about the illegal work

and requested them to stop the work, instead of complying his legitimate request they have held out a threat stating that, the workers have authorized by the defendant No.6. The defendant No.6 have no such right to do illegal act over the suit land during the pendency of the suit. The suit is posted for further chief of plaintiff, after knowing the facts, behind their back illegally removing red stone. Hence filed this application. Therefore it is prayed to grant injunction order against the defendants as sought in the application.

4. Per contra, the defendant No.6 has filed objection to this application. The defendant No. 6 prays to adopt the contentions made in his written statement as objection to this application. In his objection, it is contended that, the application filed by the plaintiffs is not maintainable and liable to be dismissed. The averments made by the plaintiff in the annexed affidavit to the application are not true and same are categorically denied by this defendant. Further, it is not true that this defendant has executed the sale deed by fraudulent fabrication behind the plaintiff No.1(a) and the defendant No.1(a) to 1(f). Further it is denied that, the defendant No.6 has started quarry business in the schedule property and doing leterite stone removal work behind back of the plaintiff. There is no relationship between the plaintiffs and defendant No.1(a) to 1(f) to the propositus of the suit property and they are not the legal heirs of the propositus. The original owners of the suit property, by name Mohammad Hussain and Mohiddinn Hussain, have given a power of attorney to the defendant prior to this suit regarding the sale of the suit property before the notary, and they have sold the property to the defendant No.6 after receiving the sale consideration with the consent of the original owners. Further, after purchasing the suit property, the defendant No.6 is in the possession of the said property. A lot of money has been spent on this property and it has been

developed by the defendant No.6 and he also borrowed loan from the bank. The defendant No.6 is the bonafide purchaser. Hence, this suit cannot be instituted against him. The information and knowledge that the defendant No.6 has purchased and developed the suit land is a matter of public knowledge and knowledge of all persons in the vicinity of the suit property. Since the suit is barred by limitation, this application will not survive for consideration.

Further, the defendant No.6 has spent huge sums of money to purchase and enjoy the suit property. Therefore, this defendant is entitled to enjoy the suit property according to his will. The plaintiffs do not have a prima facie case. The suit property has nothing to do with the plaintiffs. If an injunction is issued against the defendant No.6, he will suffer loss. On the other hand, if the application is rejected, the plaintiff will not suffer loss in any way. The Plaintiff's motive is not bona fide. There is no merits in the suit and application filed by the plaintiffs. Hence, prays to dismiss the I.A No.XI.

5. Heard arguments, perused the pleadings and the documents available on record.

6. In view of above the following points that would arise for my consideration are as follows:-

1. Whether, at this stage the plaintiffs have made out prima facie case in their favour?
2. Whether the plaintiffs proves the balance of convenience lies in their favour?
3. Whether the plaintiffs proves that in event of not allowing I.A.No.II, they will be put to irreparable loss and injury?
4. What Order?

7. My answers to the above points for I.A.No.XI is as follows:-

Point No.1 : In the **Affirmative**
Point No.2 : In the **Affirmative**
Point No.3 : In the **Affirmative**
Point No.4 : As per final order
for the following:-

REASONS

8. **Points No.1 to 3:-** These three points are taken up for discussion together in order to avoid repetition of facts. This application is filed at the stage of further chief examination of PW1. The plaintiffs have filed this suit for declaration and partition against the defendant No.1(a) to 9 and for temporary injunction against the defendant No.6.

9. It is the case of the plaintiff that, the defendant No.3 has purchased the suit schedule property behind their back on the basis of fake, forged document, through the executants of the alleged G.P.A have died much prior to execution of the said G.P.A. Thereafter, the defendant No.3 has sold the suit property to the defendant No.6. Further stated that, plaintiffs and defendant No.1a to 1f are the legal heirs of Mohammad Hussain Kadli and Mohiddin Hussain Kadli, hence prays to cancellation the said sale deed dated: 18-12-2006-07 and sale deed dated: 13-03-2013. Now the name of defendant No.6 is appeared in the RTC, on the strength of that he is in a position to alienate the said property just to change the hands, if he done so the plaintiffs and his family members will suffer a lot.

10. It is the specific case of the plaintiffs is that, the suit property is originally belong to late. Siddyali Mohammed Bin Hussain Kadli and his brother Siddyali Mohiddin Bin Hussain Kadli and they died living behind the plaintiffs and defendant No.1(a) to

1(f) as his legal heirs. But suit properties and such other properties of their family not yet transferred by way of vaarisa. The defendant No.2 to 8 are nowhere concerned to the plaintiffs and defendant No.1(a) to 1(f)'s family and they created a bogus and false and fraudulent GPA of the Siddyali Mohammed Bin Hussain Kadli and his brother Siddyali Mohiddin Bin Hussain Kadli dated:11-12-2006 in the name of defendant No.2 as shown in the sale deed dated: 18-12-2006. But the said Siddyali Mohammed Bin Hussain Kadli was died on 31-01-1975 and Siddyali Mohiddin Bin Hussain Kadli was died on 16-06-1977. Even then the defendant No.2 to 5 conspired together to Gulf the suit property, they have created fake GPA in the name of defendant No.2 at the instance of defendant No.3 and sold the suit property to the defendant No.3 as per sale deed dated: 18-12-2006 by the defendant No.2. Thereafter, the defendant No.3 has sold the suit property to defendant No.6 as per document No.1944/2012-13 dated: 13-03-2013. Now the defendant No.6 by taking undue advantage of his name in the RTC of the schedule property started mining work in the suit land and removed loads of red stones by making the suit land into a trench. Further on 01-11-2024 when the plaintiff No.1(b) visited the suit land, labourers and workers of the defendant No.6 were doing mining work through stone cutting machine. If the defendant No.6 continued to remove the red stones the suit land will become useless and same cannot be identified. Hence, prays to restrain the defendant No. 6 from mining work in the suit land till the disposal of the suit.

11. The learned counsel for the plaintiff argued that, if the defendant No.6 continues the red stone removal work in the suit property, it will become a big trench and it cannot be identified. The plaintiff No.1(b) has filed criminal case against defendants for forgery of GPA dated: 11-12-2006. But police have filed 'B' report, stating

that, they have not found original GPA. The said 'B' report is challenged by the plaintiff No.1(b) and the said case is pending before this court. Hence, prays to allow the application. In support of the arguments, the learned counsel for the plaintiff has produced photo and C.D of the suit land and also produced 'B' report filed in Crime No.95/2020 of Bhatkal Rural Police station and also produced letter dated: 25-11-2024, addressed to the Tahashildar Bhatkal from the office of Assistant Commissioner Bhatkal for enquiry regarding the fake GPA and also produced notice dated: 25-11-2024 issued to the defendant No.6 from the office of Senior Geologist, Department of Mines and Geology, Uttara Kannada.

12. On the other hand, the learned counsel for the defendant No.6 filed objection denying the allegations made in the affidavit annexed to the above application and prays to dismiss the application. The learned counsel for the defendant No.6 argued that, the plaintiffs and defendant No.1(a) to 1(f) are nowhere connected to the Siddyali Mohammed Bin Hussain Kadli and his brother Siddyali Mohiddin Bin Hussain Kadli. The defendant No.6 has purchased the suit land and he is in the possession of the same. The plaintiffs have appeared before this court after lapse of many years and filed this false suit against the defendant No.6. The learned counsel for the defendant No.6 has referred the Ex.P4 and 5 death certificates produced by the plaintiff and argued that, the said death certificates are not belong to the Siddyali Mohammed Bin Hussain Kadli and his brother Siddyali Mohiddin Bin Hussain Kadli. Further, argued that, the defendant No.6 has borrowed huge loan from the Bank and same is invested to the suit land for its development. If now defendant No.6 is restrained from his work, he will suffer huge loss. Hence, balance of inconvenience is in favour of the defendant No.6 and if the application is rejected no harm will cause to the plaintiffs.

Therefore, prays to reject the application. In support of the arguments, the learned counsel for the defendant No.6 has produced one decision reported in ILR 1992 KAR 2905.

13. The plaintiff has produced photograph of the suit property and also notice issued by the department of mines and geology Uttara Kannada. Those documents are not denied by the defendant No.6. On perusal of those documents it is clear that the defendant No.6 is carrying laterite stone removal work in the suit schedule property. Further in the present case there is serious dispute with regard to the sale deed executed in favour of the defendant No.3 and 6 with respect to the suit property. The defendant No.2 has executed the sale deed in favour of the defendant No.3 on the strength of GPA executed by the Siddyali Mohammed Bin Hussain Kadli and his brother Siddyali Mohiddin Bin Hussain Kadli with respect to the suit schedule property. But the plaintiffs have questioned said GPA in the present suit and contended that in the name of death persons the defendant No.2 to 5 have colluded and created fake GPA of the Siddyali Mohammed Bin Hussain Kadli and his brother Siddyali Mohiddin Bin Hussain Kadli. In support of their contention they have relied the Ex.P4 and 5 death certificates of the Siddyali Mohammed Bin Hussain Kadli and his brother Siddyali Mohiddin Bin Hussain Kadli. Though these documents are denied by the defendant No.6, that has to be tested in the full fledged trial. The plaintiff has produced photographs of the suit property, wherein the defendant No.6 alleged to be doing the red stone removal work. And even the defendant No.6 has also admitted that he is carrying the said work in the suit land. It is the contention of the defendant No.6 that for the stone removal work in the suit property he has availed huge loan from the Bank and if he is restrained from his work, he

may suffer huge lose. But in support of his contention, the defendant No.6 has not produced any documents to show that he has availed loan for his stone removal work in the suit land. Only he relies the documents produced by the plaintiffs i.e., the mutation entries of the suit property. In the said documents it is only encumbered that the defendant No.6 has availed loan. Merely on the said entry at this stage the court cannot say that the defendant No.6 has availed loan for the purpose of the development of the suit property.

14. Since, there is a serious dispute of title of the defendant No.6 over the suit schedule property between the plaintiffs and defendants. If at all, the defendant No.6 continues stone removal work in the suit property, it may change the nature of suit property and it will become big trench, therefore before adjudication of the rights of the plaintiffs over the suit property, it will be infringed, even before it get tested in the trial. The property right though is not a fundamental right, but it is a constitutional right, recognized under the Indian Constitution by the article 300A. Therefore, protecting the constitutional right of the citizens is the duty of the Court, whether the violation is done by an individual or by an authority established under law. In view of the above discussion, the plaintiff has made out a prima-facie case and balance of convenience lies in their favour. If the relief of temporary injunction is not granted in favour of the plaintiffs, they will be caused irreparable loss and injustice, which can not compensated in terms of money. Accordingly, this Court answers point No.1 to 3 in the **Affirmative**.

15. **Point No.4:** In view of the findings to the point No.1 to 3, this Court proceed to pass the following:

ORDER

The I.A.No.XI filed U/o XXXIX Rule 1 and 2 of C.P.C, by the plaintiff is hereby allowed.

The defendant No.6, his men, agents, servants or claiming under him are hereby restrained from doing mining work i.e., letarite (red) stone removal work in suit schedule property in any manner, by way of ad-interim temporary injunction, till the disposal of suit.

Any observations made above, will not be having bearing on the main matter.

(Dictated to the stenographer directly on computer, corrected by me and then pronounced in the open court this the 7th day of December, 2024)