

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC,
AT BHATKAL**

Dated this the 31st day of March, 2022

PRESENT: Sri. J. B. Shivapuji, B.Sc.,LL.B.(Spl.)
Senior Civil Judge & JMFC, Bhatkal

R.A. No. 41/2019

Appellant : Joseph s/o Martin D'Souza

-VS-

Respondents : Tony S/o Duming D'Souza and 7 others

I.A.NO. II

Applicant/: Joseph s/o Martin D'Souza
Appellant

-VS-

Opponents/ Tony s/o Duming D'Souza and 7 others
Respondents

* * * * *

ORDER ON IA.NO. II

The appellant being the plaintiff in the Original Suit has filed the present IA against the respondents - the defendant Nos.1 to 8 under order 39 Rule 1 and 2 r/w Sec. 151 of the Code of Civil Procedure seeking the order

directing the respondents and their men to maintain status-quo as to changing of revenue entries before the revenue officials pending disposal of the suit.

2. *The case of the plaintiff and the defendants that led to filing of this IA are as hereunder;*

The plaintiff has filed the suit in OS.No.34/2011 on the file of the Hon'ble Addl. Civil Judge & JMFC, Bhatkal seeking declaration that the sale deed dated 30-04-2009 executed by the defendant Nos.1 to 7 infavour of the defendant No.8 is void and for consequential order of permanent injunction restraining the defendants from interfering with the possession and enjoyment of the plaintiff over the suit schedule property. The plaintiff has contended that the suit schedule property bearing Sy.No.76A/1 measuring 0-33-0 situated at Mavalli-2 village, Bhatkal taluk was owned by the father of the defendant Nos.1 to 7 and after the death of their father, the defendant Nos.1 to 7 have inherited the same. He has contended that the father of the plaintiff was in possession over the suit schedule property and after his death, the plaintiff has continued the possession and the plaintiff is growing groundnut and paddy therein and he has constructed the house bearing Mavalli Gram Panchyath Door No.937 with the electric connection ML.No. 1710. He has contended but, the defendant Nos.1 to 3 by colluding with the defendant No.8 and also by creating GPA said to be

executed by their sisters have executed the sale deed dated 30.04.2009 in the name of the defendant No.8. He has contended now, the defendant No.8 on the guise of the sale deed is trying to interfere with the possession of the plaintiff over the suit schedule property. Hence, the suit seeking declaration that the sale deed executed by the defendant Nos.1 to 7 in favour of the defendant No.8 is illegal and concocted and for the order of permanent injunction restraining the defendants from interfering with the possession of the plaintiff over the suit schedule property. The defendant No.8 has appeared in the Original Suit and contested the claim of the plaintiff. The defendant Nos.1 to 7 did not turn up and in the Original Suit they have been placed exparte. The defendant No.8 has contended that the defendant Nos.1 to 7 being the absolute owners of the suit schedule property have sold the same in his favour and now he is in possession of the same. He has contended that the plaintiff has failed to prove his possession over the suit schedule property and in the absence of such material the Hon'ble Trial Court has rightly dismissed the suit of the plaintiff. Hence, he has sought to dismiss the IA filed by the plaintiff.

3. Heard both sides.

4. On the materials available on record and also on the argument advanced, the points that arises for my consideration are:

POINTS

1. Whether the plaintiff has made out a prima facie case?
2. Whether the balance of convenience is in favour of the plaintiff?
3. Whether the legal hardship would cause to the plaintiff if his application seeking the order of status-quo is not allowed?
4. What order ?
5. My findings to the above framed points are as hereunder:

Point No.1: In the negative

Point No.2: In the negative

Point No.3: In the negative

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

REASONS

6. **POINT NOS. 1 TO 3:** The plaintiff has filed the suit seeking declaration that the sale deed dated 30.04.2009 said to be executed by the defendant Nos.1 to 7 in favour of

the defendant No.8 is illegal and concocted and for the order of permanent injunction restraining the defendants from interfering with his possession over the suit schedule property bearing Sy.No.76A/1 measuring 0-33-0 situated at Mavalli-2 village, Bhatkal Tq. The Hon'ble Trial court after trial has dismissed the suit of the plaintiff by holding that the plaintiff has failed to prove his possession over the suit schedule property. The plaintiff aggrieved by the judgment and decree passed by the Trial Court has filed the present appeal. The lower Court records have been secured.

7. The plaintiff has contended that the father of the defendant Nos. 1 to 7 was the owner of the suit schedule property and after his death, the defendant Nos.1 to 7 being his legal heirs have inherited the same. He has contended that his father was in possession over the suit schedule property and after his death, he continued the possession and he is growing groundnut and paddy. He has contended that he has constructed the house in the suit schedule property bearing Gram Panchayath Door No.937 and he has also taken the electric connection ML.No.1710 to the said house. The defendant Nos.1 to 7 even in the original suit have failed to contest the suit of the plaintiff. The defendant No.8 has contended that the defendant Nos.1 to 7 being the owners have sold the suit schedule property in his favour

and he is in possession of the same. He has contended that neither the plaintiff nor his father was or is in possession over the suit schedule property and there is no such house in the suit schedule property and there is no such electric connection.

8. It is on record that the father of the plaintiff and the father of the defendant Nos.1 to 7 are the own brothers. The plaintiff in his suit has not disputed the title of the father of the defendant Nos.1 to 7 over the suit schedule property. Now, the father of the defendant Nos.1 to 7 is no more and a sale deed said to be executed. The plaintiff in his suit though has contended that his father was in possession and after his death, he has continued possession over the suit schedule property he has not whispered how his father was inducted into possession over the suit schedule property. The Trial Court in its judgment has held that the plaintiff has failed to prove his possession over the suit schedule property. Moreover, the plaintiff in this IA, has sought the order directing the respondents to maintain status-quo as to changing of revenue entries before the revenue officials based on the sale deed but, the revenue authority has vested with absolute power under the Land Revenue Act and the revenue authority cannot be restrained from proceeding in terms of the provisions of the Land

Revenue Act. In this juncture, I am of the opinion particularly, in the appeal the plaintiff has not made out any prima-facie case seeking the order of status-quo as sought for. In the absence of prima-facie case, the balance of convenience and relative hardship are only imaginary. **Accordingly, I answered the point Nos.1 and 3 in the Negative.**

9. **POINT NO.4:** In view of the reasons assigned supra, I proceed to pass the following:

ORDER

I.A. No.II filed by the plaintiff U/Order 39 Rule 1 and 2 r/w Sec. 151 of the code of civil procedure is hereby rejected.

Keeping in view of the facts and circumstances of the case, no order as to costs.

*(Dictated to the Stenographer directly on the computer, computerized by him, corrected by me and then pronounced in the open Court on **31st** day of **March, 2022**)*

Sd/-
(J. B. Shivapuji)
Senior Civil Judge & JMFC., Bhatkal