

**IN THE COURT OF THE CIVIL JUDGE & JMFC,  
HALIYAL**

**DATED THIS THE 22nd DAY OF APRIL, 2022**

**PRESENT:- DESHABHUSHAN KOUJALAGI,  
Civil Judge and J.M.F.C., Haliyal**

**OS. No.39/2022**

**BETWEEN : SRI. ABDUL AZIZ MODINSAB DALAL.  
...PLAINTIFF**

**AND : SRI. ABDUL SHIKUR MODINSAB  
DALAL.  
...DEFENDANT**

**PARTIES TO I.A NO.I**

**BETWEEN : SRI. ABDUL AZIZ MODINSAB DALAL.  
...PLAINTIFF/APPLICANT  
(By: Sri. Y.N.A, Advocate)**

**AND : SRI. ABDUL SHIKUR MODINSAB  
DALAL.  
...DEFENDANT/OPPONENT  
(By: Sri. K.T.J, Advocate)**

**ORDER ON I.A. NO.I**

The instant application is filed by the plaintiff under Order 39 Rule 1 and 2 R/w Section 151 of C.P.C. for the relief of temporary injunction

to restrain the defendant from disturbing his possession over the half portion of the the suit property till final disposal of the suit.

2. In support of the instant application, the plaintiff has filed an affidavit wherein, he has deposed that, suit property belongs to himself and defendant who is his brother. On the basis of Javab statement on 29-05-1986, name of the plaintiff and defendant was jointly entered into the CTS records of the suit property. No partition has taken place between himself and the defendant by metes and bounds and both of them have equal share. It is further stated in the affidavit that, the plaintiff and defendant have partitioned the suit property in the presence of panchas and accordingly they are in possession and enjoyment of their respective shares. Earlier the suit property was comprised with a house constructed with bricks and the same was fell down due to heavy rainfall and wind and thereafter, the defendant by taking consent of the plaintiff has erected a shed in his share and engaged in scrap business and he is illegally dumping scrap articles in the half portion of the plaintiff and thereby, the defendant without any just cause is obstructing the plaintiff's peaceful possession in respect of 1/2 share in the suit property. It is also stated that, disposal of the main suit would take its own time and in the meanwhile, if the defendant is not restrained from disturbing the plaintiff's possession, the plaintiff will be put to great hardship and loss. If the instant application is allowed by granting temporary injunction till final disposal of the suit, no loss or hardship will be caused to the defendant. With this, plaintiff prays to allow the application.

3. After registration of the suit, Court has issued suit summons and notice on I.A.No.I to the defendant. In pursuance of the same, the defendant has put his appearance before the Court through his counsel and filed written statement and the same is adopted as objections to the instant application by filing a memo.

4. The defendant has contended that, he is in actual possession of the suit property which was earlier an open space belonged to TMC, Haliyal and defendant was making Vahivat of the same by putting temporary shed therein and on 20-02-1984, Chief Officer of TMC, Haliyal has sold the suit property to the defendant through a registered sale deed and thereby, the defendant has become absolute owner in possession and enjoyment of the suit property. It is further contended that, suit property is not in joint possession of plaintiff and defendant but it is exclusive property of the defendant who has purchased the same on 20-02-1984. The defendant has neither executed any registered relinquishment deed in respect of 1/2 share nor transferred 1/2 share in the suit property in favour of the plaintiff through any registered deed and as such, plaintiff has to value the suit property as per market value as on the date of the suit and provisions of Section 35(2) of Karnataka Court Fees and Suit Valuation Act is not applicable to the present case.

5. It is further contended that, the plaintiff is neither the owner nor in possession of the suit property and as such, suit is not maintainable in the present form. The plaintiff is not entitled for the relief of partition by metes and bounds as the suit property is not joint family property. Since the defendant is younger brother of the plaintiff

and since he is an illiterate and innocent person, it appears that, the plaintiff has managed to get his name entered jointly in respect of the suit property and the said entry is without the knowledge and beyond the back of the plaintiff and false Vardi has been given by forging the defendant's signature. It is further contended that, merely on the basis of Vardi, the plaintiff will not acquire any right, title or interest in the suit property. The plaintiff has not purchased the suit property jointly with the defendant and he has not contributed any amount towards sale consideration. The plaintiff has not produced any documents to show that either he has jointly purchased the suit property or he has contributed towards payment of sale consideration. The Vardi which has relied by the plaintiff is a forged document on which the plaintiff cannot claim partition or possession.

6. It is alternatively contended that, the father of the plaintiff and defendant by name Sri. Modinsab Dalal was originally the native of Mangalwad Village and subsequently, he has shifted to Haliyal Town along with his wife and 4 sons. Except the plaintiff, no other legal heirs are claiming their share in the suit property. The plaintiff has purchased the properties bearing CTS Nos.1630 to 1637 of Haliyal in the name of his wife and those properties have not been included in the present suit and he has not disclosed entire genealogy of his father and he has not arrayed all the sons of Modinsab as parties to the suit and as such, suit of the plaintiff is bad for non-joinder of necessary parties and non inclusive of all family properties and as such, the instant application is liable to be dismissed.

7. Heard on both sides. The plaintiff in support of his case has relied on documents such as, CTS Property Extract of CTS No.2773 and its sketch, Property Tax Register of CTS No.2773, certified copy of Javab Besami dated 29-05-1986, certified copy of notice dated 29-05-1986 which is issued by City Surveyor, Haliyal, certified copy of application submitted on 29-05-1986 by defendant to City Survey Office, Haliyal, Tax paid receipt, letter dated 27-07-2012 of TMC, Haliyal, Form C, two photographs, one CD and two electricity bills. On the other hand, the defendant has produced copy of sale deed dated 20-02-1984. Perused the entire materials available on record.

8. Under the above circumstances, the following points arise for the consideration of the Court:

- POINT NO.1: Whether plaintiff has made out a prima-facie case?
- POINT NO.2: Whether balance of convenience lies in favour of the plaintiff?
- POINT NO.3: Whether if TI is not granted, plaintiff would be put to untold hardship and irreparable loss?
- POINT NO.4: What Order?

8. Findings of the Court on the above points 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 inter linked with each other, they are taken together for common discussion to avoid repetition of facts.

**10.** To get an order of temporary injunction, the applicant must fulfill three ingredients. Out of those three ingredients, making out a prima facie case is the most important and first ingredient. The prima facie case means, the party who is seeking temporary injunction must have a triable case. In other words, the applicant must have a strong case for trial and there are every probabilities of establishing his case by undergoing a trial. The second ingredient of temporary injunction is balance of convenience. To obtain a temporary injunction, the plaintiff must show that, balance of convenience lies in his favour. Balance of convenience means, the Court must be satisfied by the applicant that, the greater mischief or hardship or inconvenience would likely to be caused to him in case of rejection of his prayer for the temporary injunction and less hardship will be caused to the opposite party if Court grants injunction against the opposite party. Apart from the aforesaid two principles, to get an order of temporary injunction, the applicant has to

show that, if his prayer for temporary injunction is rejected, he would be put to irreparable loss.

**11.** In the background of aforesaid principles and in the background of arguments advanced by the learned counsels on both sides, the Court has gone through the entire materials. According to plaintiff, suit property belongs to himself and defendant and records of the suit property is also standing jointly. Further case of the plaintiff that, no partition by metes and bounds has taken place in respect of the suit property between himself and defendant but as per Apsath Vatni entered before the panchas, plaintiff is in possession of half portion of suit property and remaining half portion is in possession of defendant but now the defendant is trying to dispossess the plaintiff. In support of said contention, the plaintiff has relied mainly on CTS Utara, Tax paid receipts, Javab Besmi and Varadi. On going through the said documents, it could be seen that, suit property is standing in the name of both plaintiff and defendant.

**12.** On the other hand, the defendant has taken a contention that, he has purchased the suit property from TMC, Haliyal through a registered sale deed for valuable consideration but by taking undue advantage of his illiteracy, the plaintiff has somehow managed to enter his name jointly with the defendant in respect of the suit property and it is settled law that, no title could be passed on the basis of Varadi and entire suit property is in exclusive possession of the defendant. In support of the same, the defendant has produced copy of sale deed dated 20-02-1984 which discloses that, the defendant alone has purchased the suit property.

It is pertinent to note that, at one breath, the plaintiff asserts that, he is in possession of half portion of the suit property on the basis of Apsath Vatni and at another breath, he contends that, no partition has taken place between himself and defendant. Moreover, the plaintiff though contends that, he is in 1/2 portion of the suit property but not given any details of the same. There is no clarity in the pleadings as to which 1/2 portion of the suit property is stated to be in possession of the plaintiff. When there is no clear and unambiguous pleading with regard to possession of the property, execution of the order of temporary injunction would become difficult. Under such circumstances, it is not just and proper for grant of temporary injunction. Otherwise, the same would leads to multiplicity of litigations.

**13.** The plaintiff has not pleaded the source of title to the suit property. It is pleaded that, himself and defendant is the owner of the suit property. But as per sale deed produced by the defendant, the plaintiff has not purchased the suit property jointly with defendant. Admittedly, the plaintiff is claiming ownership, rights, interest and possession over 1/2 portion of the suit property on the basis of Varadi which is not an accepted mode of change of title of a property. As per the Property Registered Card produced by plaintiff, name of the plaintiff was entered in the year 1986 itself i.e., more than 30 years back. If plaintiff is in long standing possession of 1/2 portion of suit property, he could have produced any documents to show his possession. But except CTS Property Register, he has not produced any documents to show the possession. Now at this stage, question before the Court is whether plaintiff could prima-facie establishes his possession over the suit

property. But documents relied upon by the plaintiff would not fortify the same. Hence, Court opines that, the dual contentions taken by the plaintiff and lack of satisfactory documents declines the Court to grant temporary injunction in favour of the plaintiff. With this discussion, Court opines that, plaintiff has failed to make out prima-facie case and balance of convenience does not lies in his favour and he has failed to show the irreparable loss which would be caused to him in case of rejection of his prayer of instant application. Hence, Points No.1 to 3 are answered in the **NEGATIVE**.

**14. POINT NO.4:** In view of the findings on Points No.1 to 3, Court proceeds to pass the following:

**ORDER**

The application filed by the plaintiff under  
Order 39 Rule 1 and 2 R/w Section 151 of CPC is  
hereby rejected.

No order as to costs.

(Dictated to the Stenographer directly on computer, computerized by her corrected and then pronounced by me in the Open Court on this the 22nd DAY OF APRIL, 2022.)

**(DESHABHUSHAN KOUJALAGI)**  
Civil Judge and J.M.F.C., Haliyal

