

KAUK510015742022



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

DATED THIS THE 20TH DAY OF JUNE, 2023

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

OS. No.93/2022

**BETWEEN : 01. SRI. BHAVAKAYEE DEVI DEVASTHAN
TRUST COMMITTEE, NIRALAGA AND
10 OTHERS.**

...PLAINTIFFS

**AND : 01. YALLARI MASANU KADAM AND TWO
OTHERS**

...DEFENDANTS

PARTIES TO I.A NO.II

**BETWEEN : 01. SRI. BHAVAKAYEE DEVI DEVASTAN
TRUST COMMITTEE, NIRALAGA AND
10 OTHERS**

...PLAINTIFFS/APPLICANTS

(By: Sri. M.B.P./Sri. S.I.B., Advocate)

**AND : 01. YALLARI MASANU KADAM AND TWO
OTHERS**

...DEFENDANTS/OPPONENTS

(By: Sri. P.B.A./Sri.M.P.A., Advocates)

ORDERS ON I.A. NO.II

The instant application is filed by the plaintiffs under Order 39 Rule 1 and 2 of C.P.C. for the grant of temporary injunction to restrain the defendants or anybody acting on their behalf from alienating or transferring or creating any charge over the suit schedule property or changing the nature of the suit schedule property till final disposal of the suit.

2. The plaintiff No.2 has filed an affidavit in support of the instant applicant wherein, he has stated that, the defendant No.1 is the purchaser of the suit schedule property, the defendant No.2 is the son of defendant No.1 and the defendant No.3 is the legal heir of the Deshpande family who were looking after the suit schedule property and sold the same to the defendant No.1.

3. It is further stated in the affidavit that, Bhavakayee Devi is worshiped by the plaintiffs and the villagers of Neeralaga from time immemorial and temple of the said Bhavakayee Devi is situated in the said Village. Whereas, the suit schedule property is located just outside the Village and the same is an open land. The Jatra of the said Devi will be held in the suit schedule property and at the time of said Jatra, the Devi

statue will be brought out from the temple and it will be kept in the suit schedule property. The said Jatra is held once in 12 years and it is celebrated for 12 days. For the first 7 days, the pooja and jatra of the said Devi will be held in the temple premises and thereafter, it will be shifted to the suit property and it is one of the biggest jatra in the surrounding Villages and thousands of people would witness the said pooja and jatra. Number of shops and other stalls will be installed in the suit property and even a permanent stage has been built in the same to install the statue of the Devi.

4. It is further stated in the affidavit that, since 1955 and even prior to that period, the records of the suit schedule property is standing in the name of temple and the same is used for temple activities. Earlier, the suit schedule property was numbered as Block No.73/A/2 and now, the same is re-numbered as Block No.59/1. The Kartha of the Deshpande family was the original manager of the suit schedule property from generation to generation. However, Deshpande family was not holding the suit schedule property as absolute owners and they have no rights to alienate the suit schedule property. The said fact is also within the knowledge of defendants No.1 and 2. This being the position, on

7.5.1988, one Smt. Mangalabai .K. Deshpande who was the then manager of the suit schedule property and successor of late Sri. Krishnaji Ganapathrao Deshpande has sold the suit schedule property to the defendant No.1 illegally and without having any right to alienate the same. Even the defendant No.1 was aware of the nature of the suit schedule property but, without informing the temple's devotees, villagers and public at large, he has purchased the same. The said transaction is against the law as both seller and purchaser did not obtain any prior permission from Charity Commissioner or from any other competent authority and as such, the defendant No.1 is not a bonafide purchaser.

5. It is further stated in the affidavit that, the defendant No.1 with a malicious intention has transferred the suit schedule property into the name of his son i.e. defendant No.1 through a registered Gift deed dated 24.12.2019. The said transaction has taken place after the arisen of dispute between the plaintiffs and defendants in respect of ownership, possession and wahiwat of the suit schedule property. Though the revenue records of the suit schedule property is standing in the name of defendant No.2 but, neither the defendant No.1 nor the defendant No.2 are in possession and enjoyment of the suit schedule property. The plaintiffs and

devotees of the temple have dug a bore well in the suit schedule property for drinking water for the villagers and the panchayat has also sanctioned amount for pipeline connection. As such, the suit schedule property is meant for public use and the same is vacant land.

6. It is further stated that, the elders of the village attempted to convince the defendants No.1 and 2 that, the suit property is temple land which is kept for jatra and pooja purpose and requested to not to claim ownership over the same and also offered to receive reasonable amount but, the defendants No.1 and 2 did not heed the request of the villagers and they are trying to blackmail the villagers for more money. There are every possibilities of alienation of the suit schedule property by the defendants No.1 and 2 by colluding with each other and the plaintiffs are also attempting to create charge over the suit schedule property and attempting to change the nature of the suit schedule property and as such, the plaintiffs are constrained to file the present application. It is also contended that, the plaintiffs have prima-facie case, balance of convenience and they will be put to great hardship and loss in the event of rejection of the instant application. With these facts and pleadings, the plaintiffs have prayed to allow the instant application.

7. On the other hand, the defendants No.1 and 2 have filed objections wherein, they have contended that, the plaintiffs have deliberately suppressed the true facts and the plaintiffs have no semblance of right, title or interest over the suit schedule property. The defendant No.1 has legally purchased the suit schedule property under a registered Sale deed and his name is mutated in the concerned revenue records as per the said sale deed and he has been in lawful, peaceful and actual possession, wahiwat and enjoyment of the suit schedule property. The defendant No.1 on account of his old age, ill-health and natural love and affection towards the defendant No.2 has gifted the suit schedule property and the said transaction is genuine transaction. The plaintiffs cannot curtail the legitimate rights of the defendants No.1 and 2 by filing instant application. It is further contended that, the plaintiffs are misusing the exparte T.I order and attempting to evict the defendants No.1 and 2 from the suit schedule property forcibly. The plaintiffs are not having prima-facie case and no chance of success in the suit and the entire balance of convenience is in the favour of defendant and as such, the instant application is liable to be rejected. With theses facts and pleadings, the defendants No. 1 and 2 pray to reject instant application.

8. Heard on both sides. Perused the entire materials. The plaintiffs in support of its case have relied upon documents such as, copy of Kannada Prabha Newspaper published on 4.1.2023, copy of Karavali Munjavu Newspaper dated 11.01.2023 and copy of Charge-sheet in CC No.116/2020, Record of Rights of land bearing Survey No.59/1 measuring 1 acre standing in the name of defendant No.1, copy of Trust Deed, certified copy of Record of Rights of land bearing Survey No.59/1 measuring 1 Acre, copy of Mutation Entry Nos.211, 687, 679 and 755, certified copy of Sale deed dated 7.5.1988, Copy of Gift Deed dated 24.12.2019, Record of Rights of land bearing Survey No.59/1 measuring 1 acre standing in the name of defendant No.2, certified copy of Hand sketch map Survey No.59/1, copy of Mutation Register bearing MR No.H10/2019-20, Seven Photographs along with Receipt and C.D and Postal Receipts. On the other hand, the defendants have not produced any documents.

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

POINT NO.1: Whether the plaintiffs have made out a prima-facie case?

POINT NO.2: Whether balance of convenience lies in favour of the plaintiffs?

POINT NO.3: Whether if TI is not granted, the plaintiffs would be put to untold hardship and irreparable loss?

POINT NO.4: What Order?

10. 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:

11. POINTS NO.1 TO 3 : Since these points are interlinked with each other, they are taken together for common discussion to avoid repetition of facts.

12. During the course of arguments on the instant application, the learned counsel for the plaintiffs has argued that, the suit property belongs to temple but, the defendants No.1 and 2 without obtaining any permission from competent authority have entered into sale transaction. It is further argued that, though the defendants No.1 and 2 have pleaded at

paragraph No.19 of their written statement that, only the jatra of Gram Devi temple i.e., Durgavva-Demavva Temple will be held in the Village but, no documents have been produced by the defendants in support of said contention. It is further argued that, the plaintiffs have produced sufficient documents to show that, the suit schedule property is belongs to Bhavakayee Devi and even the RTC of the suit schedule property from the year 1974-75 discloses the name of Bhavakayee temple. The learned counsel for the plaintiffs has further brought to the notice of the Court in respect of M.E.Nos.211 and 483 of suit schedule property and contended that, from time immemorial, the suit schedule property is meant for jatra and pooja purpose of Bhavakayee Devi. It is also argued that, if the temporary injunction is not granted, the defendants No.1 and 2 will further alienate the suit schedule property and in such an event, the plaintiffs and devotees of the temple would loose its rights over the suit schedule property.

13. On the other hand, the learned counsel for the defendants No.1 and 2 has argued that, the plaintiffs have no manner of rights to file the present suit in representative capacity and further argued that, in a single I.A. multiple reliefs cannot be sought. It is further argued that, the

defendant No.1 has purchased the suit schedule property from defendant No.3 in the year 1988 and the suit is filed in the year 2022 and as such, the present suit is barred by law of limitation. It is further argued by the learned counsel for the defendants No.1 and 2 that, the defendant No.1 has executed Gift deed in favour of his son i.e. defendant No.2 on account of love and affection and the said transaction is not based on any monetary benefits and it is further argued that, no documents have been produced by the plaintiffs with regard to their apprehension of alienation of the suit schedule property by the defendants. It is also argued that, the revenue records of the suit schedule property pertaining to Bhavakayee temple do not concerned to the plaintiffs and the villagers of Neeralaga but, the same is restricted only to the family of Deshpande. It is further argued that, no documents have been produced by the plaintiffs to show that, jatra once in 12 years will be performed in the suit schedule property and the alleged trust deed relied upon by the plaintiffs is created for the sake of this suit. It is also argued that, if the defendant No.1 has purchased the suit property illegally from defendant No.3 then why the plaintiffs have not challenged the same before the competent authority i.e. Charity Commissioner and further argued that, M.E.Nos.211 and 483 are

concerned only to the family affairs of the Deshpande. With this, the learned counsel for the defendants No.1 and 2 prays to reject the instant application.

14. Having heard of aforesaid rival submissions, Court has once again gone through the entire materials. According to plaintiffs, the suit schedule property is meant for the Neeralaga villagers for performing pooja activities in the jatra of Bhavakayee Devi. It is the case of the plaintiffs that, from time immemorial, the villagers are performing jatra in the suit schedule property and the same is not meant for any other purpose. The plaintiffs contend that, the revenue records of the suit schedule property also discloses the name of temple and neither Deshpande family nor any other individual have any powers to alienate or make any type of transaction in respect of the suit schedule property. On the other hand, the defendants No.1 and 2 have mainly contended that, the suit schedule property is not meant for the public but, earlier, it was meant for Deshpande family and no jatra is held in the suit schedule property at any point of time.

15. The initial burden is on the plaintiffs to show that, they have prima-facie case. Admittedly, the present RTC of the suit schedule

property is standing in the name of defendant No.1. There is no reference of Bhavakayee Devi or Bhavakayee temple in the latest RTC of the suit schedule property. The plaintiffs have mainly relied upon M.E.Nos.211 and 483 of Neeralaga Village. Court has gone through the said mutation entries and other mutation entries produced by the plaintiffs. There is no dispute that, originally, the suit schedule property was belonged to Deshpande family. It is also not in dispute that, earlier, the suit schedule property was numbered as Block No.73/A/2 and subsequently, it is renumbered as Block No.59/1.

16. M.E.No.211 of Neeralaga Village is pertaining to partition of family properties by the Deshpande family. As per the said mutation entry, the land in Survey No.74 measuring 3 acres 33 gunthas and the land in Survey No.73/A/2 measuring 1 acre i.e. suit schedule property was ordered to be mutated in the name of Bhavakayee Temple, Neeralaga and it was further ordered to mutate the name of R.G. Deshpande, K. G. Deshpande and Ambabai Ganapathrao Deshpande as wahiwatdars of the said land. Admittedly, in the said mutation entry, there is no reference that, the said Bhavakayee Temple belongs to the villagers of Neeralaga. Coming to another mutation entry i.e. M.E.No.483, the same is also

pertaining to affairs of Bhavakay Dev, Neeralaga by the family members of Deshpande. In the said mutation entry, new survey number of the suit schedule property i.e. 50 is shown. It is further stated in the said mutation entry that, in view of death of Ambabai Ganapathrao Deshpande on 15.10.1971, it was ordered to delete the name of R.G. Deshpande and Ambabai Deshpande as wahiwatdars of Bhavaka Dev, Neeralaga. Hence, this document is also not pertaining to Bhavakayee temple of Neeralaga villagers. At the beginning of the said mutation entry itself, it is clearly mentioned that, Bhavakay Dev, Neeralaga belongs to the family of the Deshpande. Therefore, at this stage, the mutation entry relied upon by the plaintiffs would not assist them to show that, the suit schedule property belongs to entire villagers of Neeralaga.

17. There is no bar under law to perform private pooja by constructing any temple or otherwise by anybody in their property. When a temple is constructed, that does not mean that, said temple is constructed for public. An individual can also construct any temple or perform any pooja in his own property by having exclusive right of worship of any God or Goddess. In the present case, the plaintiffs contend that, the suit schedule property belongs to them and entire villagers of

Neeralaga. However, the documents relied upon by the plaintiffs themselves show that, the suit schedule property is meant for Deshpande family for Bhavaka Dev, Neeralaga. Even in old revenue records of Survey No.59 of Neeralaga Village, the names of Ramchandra Deshpande, Mangalabai Deshpande, Krishnaji Deshapande etc., have been shown as wahiwatdars of Bhavaka Dev, Neeralaga at different points of time. Nowhere in the said RTCs, none of the plaintiffs or any other names of villagers of Neeralaga has been shown.

18. Admittedly, the defendant No.1 has purchased the suit schedule property from Smt. Mangalabai Deshpande on 15.06.1988. If really, the suit schedule property belongs to the entire villagers, one or the other member of the villager would have noticed the said transaction within a reasonable point of time. After lapse of more than 30 years, the plaintiffs have come up with the present suit by contending that, the sale deed dated 15.06.1988 is an illegal document. If the villagers of Neeralaga were performing jatra and pooja in the suit schedule property from time immemorial then they would have formed a registered society or a registered trust very long back. However, the plaintiffs have produced the Trust deed dated 28.07.2021 and contending that, the Trust

is in existence to manage jatra and pooja of Bhavakayee Devi. Admittedly, in the said Trust deed, what property has been held by the Trust has not been mentioned. If the Trust is managing the suit schedule property, the same could have been shown in the Trust deed. Nowhere in the said Trust deed, it is stated that, the Trustees are the managers and controller of the suit schedule property.

19. Apart from the above, though it is contended by the plaintiffs that, once in 12 years, a big jatra will be held in the suit schedule property but, no single piece of document has been produced by the plaintiffs to that effect. Though it cannot be ruled out that, from the photographs produced by the plaintiffs that, a Bhavakayee temple is situated in the Neeralaga Village but, there are no documents to show that, jatra of said temple is held in the suit schedule property. Therefore, Court opines that, both the parties should got for trial in respect of their respective claims. Merely because, there is a reference in the revenue records with regard to Bhavakayee Devi, the same does not mean that, the villagers of Neeralaga have rights in the same. It is already discussed above that, only the Deshpande family has been shown as manager of Sri. Bhavaka Dev. Under these circumstances, Court does not finds prima-facie case on the

side of the plaintiffs. Even balance of convenience also does not lie on the side of the plaintiffs. With regard to the apprehension of the plaintiffs that, the defendants would change the nature of the suit property or alienate the same, they have not produced any documents. Hence, the plaintiffs are not entitled for the relief of temporary injunction. With this discussion, Points No.1 to 3 are answered in the **NEGATIVE**.

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

ORDER

I.A.No.II filed by the plaintiffs under
Order 39 Rule 1 and 2 of C.P.C is hereby rejected.

No order as to costs.

(Dictated to the Stenographer, transcribed and typed by her, then corrected and pronounced by me in the Open Court on this the *20th Day of June, 2023*)

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