

KAUK620021842023



IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC ,
AT: HONNAVAR

Present : Sri. Chandrashekhar Banakar.,B.A.,LL.B., LL.M.,
Prl. Civil Judge & JMFC.,Honnavar.

Dated this the 2nd day of January, 2024

O.S. No. 127/2023

Plaintiff:

Sri. Gajanana Parama Hegde,
Age: 74 years, Occ: Agriculture,
R/o. Kavalakki, Mugwa Village,
Tq: Honnavar, U.K.,

//Vs//

Defendant:

Sri. Biliya Sambayya Gouda,
Age: 65 years, Occ:Agriculture,
R/o. Guddebala Paiki, Hammudikeri,
Hosakuli, Tq: Honnavar.,

Parties to I.A. No. III:

Applicant/plaintiff:

Sri. Gajanana Parama Hegde,
Age: 74 years, Occ: Agriculture,
R/o. Kavalakki, Mugwa Village,
Tq: Honnavar, U.K.,

(By Advocate Sri. S.V.A).

//Vs//

Opponents/defendants:

Sri. Biliya Sambayya Gouda,
Age: 65 years, Occ:Agriculture,
R/o. Guddebala Paiki, Hammudikeri,
Hosakuli, Tq: Honnavar.,

(By Advocate Sri. C.G)

ORDER ON I.A. NO. III

The plaintiff/applicant has filed I.A. No. III under Order 39 Rule 1 and 2 read with section 151 of CPC praying this Court to issue an order of temporary injunction against the defendant, his people from demolishing the compound situated over the boundary of the suit schedule property and also from encroaching and interfering or obstructing in the possession and enjoyment of the suit schedule property till the disposal of this suit.

2. The application is supported with the affidavit of the plaintiff, wherein he deposed that he has filed this suit seeking for the relief of permanent injunction. Further it is contended that originally, the father of the plaintiff by name Parama Devaru Hegde had purchased the suit schedule property from its original vendor by name Subraya s/o Amase Gouda vide registered sale deeds dated 02/04/1987 and 10/04/1995. While purchasing the said property, the boundaries were fixed and possession of the said property was delivered in favour of his father. Based on the said sale deeds, the name of the Parama Devaru Hegde was mutated in the mutation entry.

2.1. Further he deposed that thereafter there was a partition among the brothers of his father and in that partition, the suit schedule property was allotted to his share.

2.2. Further he deposed that in the year 1992, he got converted the 10 guntas of land in the suit schedule

property as non-agricultural purpose and constructed the house. Thereafter, he had developed the suit schedule property by planting several kinds of fruits trees.

2.3. Further he deposed that the land of the defendant bearing Sy.No. 313/1A1 measuring 2-29-0 is situated towards northern side of the suit schedule property. The suit schedule property and property of the defendant are bifurcated by a road.

2.4. Further he deposed that in order to grab the suit schedule property, the defendant in collusion with the revenue officials got podification order from the revenue officials. The surveyor without issuing any notice to the plaintiff, had created the survey sketch and shown lessor land measuring 1-19-0 in the suit schedule property. The said sketch was challenged before the ADLR.

2.5. Further it is contended that the defendant had tried to demolish the northern side of the compound and tried to encroach the same in the suit schedule property. Therefore, he filed this suit along with this application.

3. On the other hand, the defendant has appeared before the Court through his advocate and filed his serious objection. In his objection, the defendant has contended that the application is not maintainable. Further he contended that the plaintiff wants to deprive the true owner. Further it is contended that there is no prima facie and balance of convenience in favour of plaintiff and no injury will cause to the plaintiff if the application is rejected.

If application is allowed, then the applicant may take advantage of the order and defendant will be put into financial loss and hardship. Further it is contended that as the defendant has disputed the right and title of the plaintiff over the suit schedule property, the plaintiff is not entitled for any relief without seeking for the relief of declaration of title. Further it is contended that the plaintiff has not challenged the order passed by the Revenue authority. Hence, he prayed to dismiss the application.

4. I have heard the arguments of learned advocate for the plaintiff and learned advocate for the defendants.

5. The points which arise for my consideration are:

1. Whether the plaintiff has made out a prima facie case for the grant of temporary injunction against the opponent/defendant?
2. Whether the plaintiff proves that the balance of convenience lies in his favour?
3. Whether the plaintiff proves that he will be put to great loss and hardship if T.I. is not granted?
4. What order?

6. By considering the materials on record, my answers to the above points are 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

7. **Point Nos. 1 to 3:-** These point required are interconnected with each other, to avoid repetition of facts, these points are answered in common.

8. I have already discussed the rival contentions raised in this case. Therefore, I directly move to discuss about the documents produced in this case.

9. In order to prove his case, the plaintiff has produced certified copy of the sale deed dated 02/04/1987 and on perusal of this document, it appears that one Subraya s/o Amase Gowda had sold the land bearing Sy.No. 313/2A measuring 20 guntas along with karab land measuring 30 guntas was sold to one Parama s/o Devaru Hegde for the sale consideration of Rs. 20,000/-. The said Parama s/o Devaru Hegde is none other than the father of the plaintiff. Further the plaintiff has produced another certified copy of the sale deed dated 07/04/1995 and on perusal of this document, it appears that one Subraya s/o Amase Gowda had sold the the land bearing Sy.No. 313/2A measuring 1.03.00 and karab land measuring 0-10-0 was sold in favour Parama S/o Devaru Hegde.

10. The plaintiff has also produced the certified copy of the sale deed dated 22/11/1985 under which the land measuring 313/1A1 of Mugva village measuring 2.29.04 was sold by one Subraya s/o Jatti Gowda in favour of

Sambayya s/o Billi Gowda. The said Sambayya s/o Billi Gowda is none other the father of the defendant.

11. The plaintiff has also produced the survey sketch. He has also produced the RTCs pertaining to the years 1958-1965 and the names of Subraya s/o Jatti Gowda and Subraya s/o Amase Gowda are shown as share holder of 2/3rd and 1/3rd in the land bearing Sy.No. 313. He has also produced another RTC pertaining to the land bearing Sy.No. 313/2A for the year 1983 to 1997. He has also produced the RTCs pertaining to the land bearing Sy.No. 313/2A for the years 1999 to 2017 and the name of the plaintiff is shown as actual possessor of the land measuring 1.19 acre along with 1 acre B karab. Further he produced the RTC pertaining to the land bearing Sy.No. 313/A1, wherein the name of the defendant is shown as actual possessor of the land measuring 2.18.04 and in later RTC, the said extent is shown as 2.00.12 acres.

12. The plaintiff has also produced the several mutation entries. He has also produced the copy of the order passed by Asst Commissioner dated 10/05/2012, wherein the Hon'ble Asst Commissioner, Bhatkal had cancelled the M.R.No. 8937 in relation to the land bearing Sy.No. 313A/1 of Mugva village and also directed to resurvey the said land based on possession. Further he has produced the photos and compact disk. Further he produced copies of mutation entries bearing No. 6258. Further he produced the copy of registered partition deed

purported to be entered in between the plaintiff and his brothers, wherein the schedule property of this suit was granted in favour of the plaintiff. In furtherance of this partition deed, the plaintiff has also produced the mutation entry.

13. On the other hand, the defendant has also produced several documents. He has produced the mutation entries. He has produced the copy of the registered sale deed dated 02/04/1987, under which the plaintiff had purchased the land bearing Sy.No. 313/2A. He has also produced the mutation entry to that effect. He has also produced another sale deed dated 10/04/1995, under which the father of the plaintiff had purchased the land measuring 0-39-0 in Sy.No. 313/2A. He has also produced the copy of the sale deed dated 22/11/1985, wherein the father of the defendant had purchased the land bearing Sy.No. 313/1A1 measuring 2-29-4 from one Subraya s/o Jatti Gowda. He has also produced the mutation entries in that connection. He has also produced the copy of the order passed by the Deputy Commissioner, Karwar, wherein the appeal filed by the plaintiff of this suit was dismissed and the order passed by the Asst Commissioner was confirmed.

14. In support of his case, the learned advocate for the defendant has submitted the following judgments.

i. Kashi Math Samsthan and another vs Shrimad Sidhindra Thirtha Swamy and another, reported in (2010)1 SCC 689.

ii. K.Jayaram and another vs Bangalore Development Authority and others, reported in (2022)12 SCC815.

iii. Mahadeo Salvaram Shelke and others vs The Puna Municipal Corporation and another,

iv. T.V.Ramakrishna Reddy vs M.Mallappa and another, reported in (2021)13 SCC 135.

v. Vishwasrao Satwarao Naik and others vs State of Maharashtra, in Civil Appeal Nos. 2038-2039/2009.

vi. The Chief Secretary of Government of Karnataka and others vs Sri Siddaraju, in RSA.No. 399/2015(Inj).

vii. Jag Mohan Chawla and another vs Dera Radha Swami Satsang and others, reported in (1996)4 SCC 699.

15. I have perused all the cited judgments. The principles laid down in the 1st and 3rd judgments are settled principles of law and it is mandatory on the part of the applicant to prove his prima facie case and other two ingredients. The facts in this case and facts in second cited judgment are differed and therefore the second judgment will not apply to the case on hand. In the 4th judgment, the Hon'ble Supreme Court of India has held about the maintainability of the suit in respect of non-pleading of the relief of declaration. For this, a full fledged trial is required. Therefore, at this point of time, the 4th judgment is not applicable. For application of the principles laid down in the 5th and 6th judgments, a full fledged trial is required and therefore at this point of time, these judgments are not

applicable to the case on hand. The 7th judgment, relates to the principles of counter claim.

16. In this case, the plaintiff has produced several documents. He has produced both title deeds and revenue records. On perusal of those documents, it appears that the plaintiff had totally purchased 1.19 acre through two registered sale deeds from its original owner. This fact is not denied by the defendant. But, there is no clarity with regard to the actual possession of the karab land of 1.00 acre. All the documents produced by the plaintiff are clearly showing that the plaintiff is in the actual possession and enjoyment of the land measuring 1.19 acre in Sy.No. 313/2A. On the other hand, the defendant has also produced several documents such as title deeds and revenue records.

17. On meticulous perusal of pleadings and documents filed and produced by both the parties, it appears that both are contending that they are in the actual possession and enjoyment of the suit schedule property. Both are submitted several documents in that regard. But, this Court is of the opinion that in order to decide who is in the actual possession and enjoyment of the schedule property, a full fledged trial is necessary. Without a full fledged trial, it is not possible to decide the crux of the suit.

18. At this point of time, it is proper and necessary to cite the following judgment. In the State of Karnataka and

others v/s S. Venkatraj, reported in AIR 1975 KANT 119, the Hon'ble High Court of Karnataka has held as follows,

"5. I do not want to express any opinion as to the merits of the plaintiff's case as that may prejudice one or other of the parties in the trial of the suit. The object of an interim injunction is to keep things in status quo, so that if at the hearing the plaintiff obtains a judgment in his favour, the defendants will have been prevented in the meantime from dealing with the property in such a way as to make that judgment ineffectual – vide Preston v. Luck, (1884) 27 Ch. D 497. A temporary injunction maintaining the status quo may properly issue whenever the question of law or fact to be ultimately determined in a suit is grave and difficult and injury to the moving party will be immediate, certain and great if denied, while the loss or inconvenience to the opposing party will be comparatively small and insignificant if granted. The party who seeks the aid of the Court in that behalf must as a rule, be able to satisfy the Court on three points; (a) that there is a serious question to be tried at the hearing and there is a probability that he is entitled to the relief sought by him, or in other words, that he has a prima facie case to go to the trial; (b) that the Court's interference is necessary to protect him from that species of injury which the Court calls irreparable before his legal right is established at the trial; and (c) that the comparative mischief or the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting it."

19. The Hon'ble High Court of Karnataka in the above cited judgment has held that the object of an interim injunction is to keep thing in status quo, so that if at the hearing the plaintiff obtains judgment in his favour, the defendants will have been prevented from dealing with the property in such a way as to make that judgment ineffectual. Further held that for grant of temporary injunction, whether the plaintiff has a prima facie case, and the existence of a triable question, are to be considered, and is not to involve an enquiry into the merits of the case.

The party to the litigation, who seeks an injunction, must satisfy the court that there is a serious question to be tried at the hearing of the suit and every probability tilts in his favour for the relief sought for i.e. prima facie is in his favour. Here prima facie case is not to be confused with prima facie title which has to be established on evidence at the trial. Prima facie case is a substantial question raised, bonafide, which needs investigation and a decision on merits. Satisfaction of court that there is a prima facie case by itself is not sufficient to grant injunction. The court has to further satisfy that non-interference by court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. "Irreparable injury" however does not mean that there must be no physical possibility of repairing the injury but

means only that the injury must be material one, namely one that cannot be adequately compensated by way of damages. The third condition is that the "balance of convenience" must be in favour of grant of interim injunction. The court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief of injury which is likely to be caused to the parties if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury, the court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. These principles are laid down in Dalpat Kumar and another vs Prahlad Singh and others, reported in (1992)1 SCC 719 and in Maria Margarida Sequeira Fernandes and others Vs Erasmo Jack De Sequeira(dead) through LRs, reported in (2012) 5 SCC 370.

20. Therefore, the party to the litigation, who seeks an injunction, must satisfy the court that there is a serious question to be tried at the hearing of the suit and every probability tilts in his favour for the relief sought for i.e. prima facie is in his favour. The prima facie case may not be confused in prima facie success, but simply if there is serious question to be tried the test of prima facie is satisfied and further court's interference is necessary without which a right accrued in favour of the party

concerned, cannot be protected from species of injury which is known as irreparable injury and comparative mischief which is likely to cause in the absence of the injunction will be greater and not compensable, thus the balance of convenience also tilts in his favour.

21. In this case on perusal of the documents produced by the plaintiff, it appears that name of plaintiff is shown in the RTC to the extent of 1.19 acre and it is settled principle of law the based the contents of the RTC, Court can presume about the contents of the RTC unless and until it is rebutted by the adverse party.

22. So on perusal of the records, it appears that there is a triable question in this suit. In this case, the plaintiff has made out grounds for trial, thereby he has made out prima facie case. Further if this Court refuses to grant the relief sought in this application, obviously it is the plaintiff, who will suffer irreparable injury. Because, if the defendant starts to develop the suit schedule property, then it will cause irreparable injury to the plaintiff. Further, on comparing the inconvenience, it is the plaintiff who will suffer greater inconvenience on refusal of the relief sought in the application. On the other hand, no injustice will cause to the defendants. Hence, I answered point Nos. 1 to 3 in the affirmative.

23. **Point No.4:-** In view of findings on point Nos. 1 to 3, I proceed to pass the following:

ORDER

The I.A. III filed by the plaintiff under Order XXXIX Rule 1 and 2 of CPC is hereby allowed.

The defendant, his people are restrained from demolishing the compound or fence built around the suit schedule property and from encroaching over the suit schedule property and from interfering in the suit schedule property till the disposal of this suit.

No order as to costs.

(Typed by me in my laptop, corrected and signed by me and then pronounced in the open Court on this 2nd day of January, 2024).

**Pri. Civil Judge & J.M.F.C.
Honnavar.**