

KAUK710027822021



**THE COURT OF THE ADDL. CIVIL JUDGE, AND
JUDICIAL MAGISTRATE FIRST CLASS AT KUMTA**

PRESENT : SMT. Joyline Mendonca B.A., LL.B
Addl. Civil Judge & JMFC, Kumta

Dated this the 22nd day of September 2022

ORIGINAL SUIT.No.70/2021

PLAINTIFF/S :

1. Sri. Vinayak Manjunath Nayak
Aged 39 years, Occupation Agriculturist
R/at. Talageri, Gokarna,
Kumta Taluk.
2. Sri. Shivaprasad Ganapati Nayak
Aged 31 years, Occupation Agriculturist
R/at. Bilihonygi
Ankola Taluk.

(By Sri. RGN, Advocate)

- V/s -

DEFENDANT/S :

1. Sri. Tryambak Sadashiva Adi
Aged 40 years, Occupation : Priest
R/at. Gokarna
Kumta Taluk.
2. Sri. Vinayak Sadashiva Adi
Aged 38 years, Occupation : Priest
R/at. Gokarna
Kumta Taluk.

3. Sri. Ramachandra Mahabaleshwara Adi
Aged 70 years, Occupation : Priest
R/at. Gokarna
Kumta Taluk.
4. Sri. Ananth Mahabaleshwara Adi Gurulinga
Aged 66 years, Occupation : Priest
R/at. Gokarna
Kumta Taluk.
5. Smt. Mukta Ramachandra Mahendale
Aged 70 years, Occupation : House wife
R/at. Gokarna
Kumta Taluk.
6. Smt. Suvarn Prabhakar Prasad
Aged 40 years, Occupation : Priest
R/at. Gokarna
Kumta Taluk.
7. Smt. Sheela Suresh Hegade
Aged 36 years, Occupation : Priest
R/at. Gokarna
Kumta Taluk.

(By Sri. NKS Advocate)

Parties to the IA-III

APPLICANT :

Sri. Vinayak Manjunath Nayak
And another

- V/s -

OPPONENTS : Sri. Traymabak Sadasguva Adi
and others

ORDER ON IA-III

Along with the suit the plaintiffs have filed the I.A No.III Under Order 39 Rule 1 and 2 of CPC praying to restrain the defendants from interfering with their peaceful possession and enjoyment and obstructing to the construction carried on by the plaintiffs and to remove the boundary fence over the suit schedule properties by way of temporary injunction.

2. The plaintiff No.1 stated in sworn affidavit on his behalf and also on behalf of plaintiff No.2 that, property bearing Sy No.40/1 measuring to an extent of 0.77 guntas purchased under a registered sale deed dated: 14.07.2017 and pursuant to the registered sale deed their name mutated in the revenue records. Further stated that, the property bearing Sy No.40/2 measuring to an extent of 0.15 guntas purchased under a registered sale deed dated: 26.06.2020 and pursuant to the registered sale deed his name mutated in the revenue records and they are in peaceful possession and enjoyment of the suit schedule properties. Further stated that, they have obtained permission from the competent authority to construct commercial/Resort/Health Resort on 03.09.2021 and 19.07.2021

respectively over the suit schedule properties and thereafter they have started to carry on the construction, as the facts stood at that stage the defendants have tried to interfere with possession and obstructed to the construction carried on by them and tried to remove the fence over the suit schedule property by contending that they are the absolute owner of the property bearing Sy No.40/3 and the said property is situated in the middle of the suit schedule properties. On this apprehension, the plaintiffs seeking temporary injunction by contending that, they have got prima facie case, balance convenience lies in their favour. If injunction is not granted, they will put to great hard ship and loss. On this grounds, prays to allow.

3. Inter alia, the defendants have filed written statement and statement objection to I.A.No.III. The defendants have denied the possession of plaintiff and the alleged interference. Further, they specifically contended, the plaintiffs have obtained conversion in respect of the suit schedule properties without their knowledge and said fact came to their knowledge recently. The defendants have denied the property bearing Sy No.40/3 is situated on the southern side of the property bearing Sy No.40/2. Further specifically contended that, actually they are absolute owner and in

possession of the property bearing Sy No.40/2 measuring to an extent of 0.5 guntas out of measuring to an extent of 20 guntas and measuring to an extent of 0.5 guntas is situated on the northern side and remaining 0.15 guntas situated on the southern and the measuring to an extent of 0.5 guntas of land which is adjacent on the eastern side of the property bearing Sy No.39/2e owned by the defendants in this regard they have given statement before the Assistant Director Land Records in Mojani/dispute/Veeva/01/2014-15 on 26.08.2017. Further contended that recently they came to know that the plaintiffs and their erstwhile owner in collusion with the revenue officials in podi proceeding shown that measuring to an extent of 0.5 guntas is situated on the southern side and the said property is bearing Sy No.40/3 without their knowledge. Further specifically contend that actually father of 1st defendant namely Sadashiva Mahabaleshwara Adi Gurulinga died on 23.02.2019 and his name and the name of defendants No.3 to 7 were jointly mutated in the RTC's in respect of the property bearing Sy No.40/2, however at the time of podi proceeding no notice was issued to the defendants No.3 to 7 and the notice issued to Sadashiva Mahabaleshwara Adi Gurulinga was returned with an endorsement that "died" on 17.02.2020 and again issued notice on 12.06.2020 to him through registered post and

same was returned with an endorsement as "died" on 15.06.2020 and in the podi proceeding recorded him as absent and conducted the podi proceeding and they have filed an appeal No.51/2021-21 before the Deputy Director of land records by challenged the podi proceeding and same is pending and granted interim order on 07.10.2021 by stayed the podi proceeding. Further specifically stated that measuring to an extent of 0.5 guntas which is in their possession and if the injunction is granted then the plaintiffs have interfere with their possession in respect of the said extent. On this grounds, they prays to dismiss the IA.

4. Heard both sides, perused materials on record.

5. The following points arises for my consideration.

1. Whether the plaintiffs have made out prima facie case?

2. Whether the balance of convenience is lies in favour of plaintiffs?

3. Whether the plaintiffs will put to hardship and loss if injunction is not granted?

4. What order?

6. My findings 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 the final order for the following :

-: REASONS :-

7. Point No. 1 to 3 :- I have taken these points together to avoid the repetition of facts:-

The plaintiffs in support of their claim, they have relied upon notarized copies of the sale deed dated; 14.07.2017 and 26.06.2020, revenue records and permission obtained from the competent authority to construct Commercial/Resort/Health Resort and photographs to substantiate the construction carried on by them, copies of the tax paid receipts and the copy of the E-possession certificate and the certified copy of the order passed by the Assistant Director Land Revenue dated: 21.04.2022 dismissed appeal wherein challenged the podi proceeding.

8. In contrary, the defendants have relied upon, the copy of the information dated: 01.10.2021 given by the ADLR in view of the application made by the 2nd defendant under RTI Act, the information given by the postal authority on 06.10.2021, the copy of the appeal

filed before the ADLR challenging the podi proceeding, the copy of the notice dated: 13.09.2021, the copy of the stay order granted by the ADLR, the copy of the Review filed before the District Commissioner, Uttara Kannada by challenging the order dated: 19.07.2021, the copies of NCR given by the police, photographs and CD, the notarized copy of the statement, the notarized copy of the death certificate of Sadashiva Bahabhaleshwara Gurulinga and notarized copy of the order dated: 28.08.2017 passed by the Assistant Director Land Revenue and the copy of the appeal memo No.277/2022 filed before the Karnataka Appellate Tribunal.

9. The learned counsel for plaintiffs have argued that, based on the sale deeds they have acquired the suit schedule properties and the revenue authority has got mutated their names in the RTCs, tax paid receipts and E-possession certificates and the permission obtained from the competent authority to carry on construction. Which discloses that, their possession and to carrying on construction after obtained necessary permission from the competent authority.

10. In contrary, the learned counsel for the defendants have argued, actually they are absolute owner and in possession of the property bearing Sy

No.40/2 measuring to an extent of 0.5 guntas out of measuring to an extent of 20 guntas and measuring to an extent of 0.5 guntas is situated on the northern side and remaining 0.15 guntas situated on the southern side and the measuring to an extent of 0.5 guntas of land which is adjacent on the eastern side of the property bearing Sy No.39/2e owned by the defendants.

11. This Court has given anxious consideration to the material on record as well as the submission made by the learned counsel for both the parties. The law on the subject of grant of interlocutory injunction under Order XXXIX Rule 1 and 2 is well settled. The applicant has to demonstrate in his favour- a prima facie case, balance of convenience and irreparable injury to his right, if the application is not granted. **(SEE; GUJARAT BOTTLING COMPANY PVT LTD. V/S. COCO COL 1995 (5) SCC 454).**

12. It is equally well settled in law that a 'prima facie case' means that the Court should be satisfied that there is a serious question to be tried at the hearing and there is probability of plaintiff obtaining the relief at the conclusion of the trial on the basis of the material placed before the Court. The Court at the initial stage cannot insist upon a full proof of case warranting an eventual

decree.

13. It is also settled that balance of convenience means comparative convenience, mischief and inconvenience of the parties contesting an application for temporary injunction and the same may be equated with what had been left out after weighing the prima facie case of the parties.

14. Similarly, irreparable loss has been held to mean an injury which is substantial and which cannot be remedied by damages. In other words, if any compensation is ultimately payable to the applicant in case of his success in the suit, the same would not be sufficient to place him in the position in which he was before.

15. On the touchstone of the aforesaid legal principles, the facts of the case on hand may be examined.

I. RE: PRIMA FACIE CASE:-

The plaintiffs have sought the relief of permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment and obstruct to the construction carried on by the plaintiffs

and to remove the boundary fence over the suit schedule properties. The plaintiffs in order to demonstrate their entitlement to enjoyment and peaceful possession of the suit schedule properties have produced the sale deeds, tax paid receipts and E-possession certificates, revenue records and copy of the permission obtained from the competent authority to carry on the construction of Commercial/Resort/Health Resort and the photographs. Hence, on the basis of the aforesaid documents, this Court finds that there is sufficient material on record indicating that the plaintiffs have a prima facie case to be tried in their favour.

II. RE- BALANCE OF CONVENIENCE:-

From the material on record as well as on the basis of the averments that the plaintiffs have intend to carrying on construction of Resort in the suit schedule properties, by investing their hard and earned money, the need for protection of the plaintiffs is greater as against the likely infringement of the defendants rights. Hence, this Court is of the opinion that the balance of convenience lies in favour of the plaintiffs.

III. RE: IRREPARABLE INJURY :

It is stated in the affidavit annexed to the IA that the defendants are trying to interfere with the peaceful

possession and enjoyment of the suit schedule properties in which the plaintiffs have carrying on construction of the Resort by investing hard and earned money. The right to enjoyment and peaceful possession of the suit schedule property by the plaintiffs cannot be quantified in monetary terms and the plaintiffs cannot be adequately restituted in case of their eventual success in the suit. Therefore, this court finds that the plaintiffs would suffer irreparable loss in case of IA is refused.

16. Considering, the entire materials on records, with the arguments of the both the sides, it reveals that, the plaintiffs have proved that the golden principles of granting an injunction viz., prima facie case, balance of convenience and irreparable injury. However, in case the plaintiffs have failed to prove their case by adducing oral evidence as well as documentary evidence at the time of conclusion of the trial, then the plaintiffs have not entitled to claim any equities in respect of 0.5 guntas of land. **Accordingly, I answer points No.1 to 3 are Affirmative.**

17. Point No.4 :- In view of my above finding I proceed to pass the following:

:- ORDER :-

The I.A-III filed by the plaintiffs
Under Order XXXIX Rule 1 and 2 of

CPC is hereby allowed.

Consequently, the defendants or agents or servants or anybodies claiming under them are hereby temporarily restrained from interfering with the peaceful possession of the plaintiffs over the suit schedule properties and to obstruct the construction carried on by the plaintiffs and to remove the fence over the suit schedule properties till disposal of the suit in any manner.

(Dictated to the Stenographer directly on computer, typed by him, corrected, signed and then pronounced by me in the open court, on this the 22nd day of September 2022)

sd/-

(Joyline Mendonca)
Addl.Civil Judge and JMFC.,
Kumta.

