

IN THE COURT OF CIVIL JUDGE & JMFC., AT: MUNDGOD.

PRESENT

Sri. KESHAVA.K, B.A. LL.B.,
Civil Judge & JMFC.,
Mundgod.

Dated this the 14th day of July, 2021

O. S. No.39 of 2019

Plaintiff : Sri. Shyam Prasad S/o. Kuttappan
(By Sri. R.N.H. Advocate)

V/s

Defendants : 1.Smt.Radhamani Kom. C.R.Diwakaran
& Anr.
(By Sri. B.F.P. Advocate)

PARTIES IN I.A.NO.I

Applicant : Sri. Shyam Prasad S/o. Kuttappan

V/s

Opponents : 1.Smt.Radhamani Kom. C.R.Diwakaran
& Anr.

PARTIES IN I.A.NO.II

Applicants : 1.Smt.Radhamani Kom. C.R.Diwakaran
& Anr.

V/s

Opponent : Sri. Shyam Prasad S/o. Kuttappan

ORDERS ON APPLICATIONS IN TWO NUMBERS

UNDER ORDER XXXIX RULES 1 & 2

R/W. SECTION 151 OF C.P.C.

The plaintiff has filed this suit against the defendants seeking for the relief of permanent injunction in respect to suit schedule property accompanying with I.A.No.I i.e. application under Order XXXIX Rules 1 & 2 r/w.Sec.151 of CPC, praying to grant ad-interim

temporary injunction order against the defendants and restrain them dispossess the plaintiff from the suit schedule property, in turn the defendants have also filed application under Order XXXIX Rules 1 and 2 r/w. Sec. 151 of CPC praying to grant ad-interim order of temporary injunction against the plaintiff from interfering into the defendants' peaceful possession and enjoyment over the suit schedule property till disposal of this suit and such other reliefs.

Description of the suit property:-

ಉತ್ತರ ಕನ್ನಡ ಜಿಲ್ಲಾ, ಮುಂಡಗೋಡ ತಾಲೂಕು, ಮುಂಡಗೋಡ ಗ್ರಾಮದ ಸ.ನಂ.78 ರಲ್ಲಿ ಒಟ್ಟೂ ಕ್ಷೇತ್ರ 09-02-00 ಭಾಗಾಯತ ಮಿಶ್ರಿತ ತರೀ ಜಮೀನು ದಾವಾಸ್ತಿಯಾಗಿದ್ದು, ಅದರ ಚರ್ತುಗಡಿಯು:-
 ಪೂರ್ವಕ್ಕೆ : ಕ್ಯಾಸನಕೇರಿ ಕೆರೆ ಮತ್ತು ರಸ್ತೆಯು ಗಡಿ.
 ಪಶ್ಚಿಮಕ್ಕೆ : ಮಕ್ಕುಂ ಅಂಟಾಳ ಇವರ ಜಮೀನಿನ ಗಡಿ.
 ದಕ್ಷಿಣಕ್ಕೆ : ಶಾಂತಪ್ಪ ಪಾಟೀಲ ಹಾಗೂ ನಂದಿಕಟ್ಟಿ ಇವರ ಜಮೀನಿನ ಗಡಿ.
 ಉತ್ತರಕ್ಕೆ : ನಿಂಗಪ್ಪ ಕುರುಬರ ಇವರ ಜಮೀನಿನ ಗಡಿ.

2. Briefly, the plaintiff's and defendants case is as follows:-

In the annexed affidavits which filed by both parties respectively in relation to above said applications, it is stated that the plaintiff has filed this suit against the defendants for the relief of permanent injunction in respect to suit schedule property which was admittedly purchased by the second defendant for valuable sale consideration from his vendor. Further it is stated that the defendants No.1 and 2 who were working in Muscut country by that time executed general power of attorney in favour of plaintiff so as to take care about the suit schedule property and authorized him to make all affairs towards that property, in which he has consented to spend money so as to grown up agricultural crops and therefore he has spent huge amount upon the said property, finally the defendants who returned back to here without intimation and revert back of amount which he

spent directly they have revoked the said GPA and tried to dispossess him from the suit schedule property who is having lawful right over the same, for which he come up with this suit accompanied with above said application, on the other hand the defendants also seek ad-interim temporary injunction order against the plaintiff by denying the averments made in the annexed affidavit and the defendants specifically stated in their annexed affidavit that he has not spent huge amount on said property particularly drilling of borewell, plantation of areca plants and made fit for cultivation that land, in fact all these expenses really spent by the defendants alone instead of that the agricultural produces along with rent which derived in the properties bearing No.117/1 and 117/A which belongs to defendants utilized themselves only, even though the plaintiff and other members of their family were colluded with each other trying to knock off the defendants property and therefore the defendants herein revoked the said general power of attorney through their counsel and therefore the plaintiff would not get any right over the same, for all these reasons if this court cannot extend discretionary relief of ad-interim injunction order definitely the plaintiff going to create false documents in respect to suit schedule property that event of time defendants rights over the same would going to curtailed, hence both parties prayed that be pleased to allow their respective applications.

3. Per contra, both parties have filed objections to the above said applications wherein the defendants have denied the averments made in the annexed affidavit as stated above inter-alia the plaintiff also denied the same set of facts mentioned in the affidavit which filed by the defendants, therefore this court feels that once again herein no need to extract those averments, apart from that the plaintiff prayed that be pleased to reject the application which filed

by the defendants inter-alia defendants prayed that be pleased to reject the application which filed by the plaintiff with exemplary costs respectively.exemplary

4. Heard arguments from both sides, perused the pleadings and the documents available on record.

5.In view of above the following points that would arise for my consideration for I.A.No.I are as follows:-

1. Whether, at this stage the plaintiff has made out *prima facie* case in his favour?
2. Whether the plaintiff proves the balance of convenience lies in his favour?
3. Whether the plaintiff proves that in event of not allowing I.A.No.I, he will be put to irreparable loss and injury?
4. What Order?

6. My answers to the above points for I.A.No.I is as follows:-

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:-

7. In view of above the following points that would arise for my consideration for I.A.No.II are as follows:-

1. Whether, at this stage the defendants have made out *prima facie* case in their favour?
2. Whether the defendants prove the balance of convenience lies in their favour?
3. Whether the defendants prove that in event of not allowing I.A.No.II, they will be put to irreparable loss and injury?
4. What Order?

8. My answers to the above points for I.A.No.II is as follows:-

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. **Points No.1 to 3 on I.As No.I & II**:- All these points are taken together for common discussion as they are inter-linked with each other and to avoid repetition of facts.

10. Firstly in order to substantiate the case of plaintiff, he has produced several documents among them computerised RTC extract pertains to land bearing Sy.No.78, copies of general power of attorney dated 30-6-2004 and 9-9-2017 respectively, legal notice dated 11-5-2018, another notice dated 22-1-2019, reply notice dated 1-2-2019, amicable settlement unregistered deed dated 14-1-2019, invoice which issued by Rani Hi Power borewell drilling contractors Dharwad in two numbers dated 28-4-2017, quotation dated 30-4-2013 which issued by V.Priya Rig services, copy of receipt dated 5-3-2012 issued by Rani Fast Drills, copies of receipts dated 28-4-2016 in two numbers, on careful perusal of these documents it is clearly discloses that the defendant No.2 who is lawful owner to the suit schedule land bearing Sy.No.78 which situated at Mundgod village Mundgod Taluk, measuring to an extent of 09-06-00, according to RTC extract it is very clearly reveals that he is the owner of the said property as on 2017 to 2018, further it is discloses that the owner of the said property has executed general power of attorney in favour of plaintiff in order to maintain or take care of this property in all aspects, finally that on 11-5-2018 the owner of the said property got

issued a notice through his counsel by revoking the said GPA which executed in favour of the plaintiff, in this regard on 22-1-2019 the plaintiff herein has issued reply to the said notice by denying the contents mentioned in the notices being issued against him, on 1-2-2019 the defendant No.2 given reply to the said notice which issued by the plaintiff by explaining in details, finally on 14-1-2019 both were entered into amicable settlement before the well-wishers under the unregistered settlement deed, other documents discloses that so much of amount said to be paid to the borewell drillers, for which prior revoking of said general power of attornies and after the revoking of the same somebody has paid so much amount to the said firms in order to get water sources in the said property because those documents could not speak about the specific names who was paid that much of amount.

11.Per contra, in order to get ad-interim temporary injunction order with the aid of this court the defendants who have also produced several documents in relation to I.A.No.II, among them RTC extract pertains to land bearing Sy.No.78, original sale deed, copy of mutation register, copy of legal notice dated 23-1-2019, copy of reply notice dated 1-2-2019, copies of postal receipts and postal acknowledgements, copy of FIR No.41/2019, copy of complaint dated 6-3-2019, copy of pass book and photographs in total 16 numbers along with CD, herein also on perusal of these documents it is clearly discloses that the defendant No.2 is lawful owner of the suit schedule land bearing Sy.No.78 measuring to an extent of 09-02-00. According to Col. No.12 as on 2018 to 2019 he has been in possession and enjoyment over the suit schedule property, in addition to that it indicates he has grown up paddy and other seasonal agricultural crops in the said property, according to mutation extract the defendant No.2 who had purchased the suit property and same was

entered in the revenue documents, so far as other documents are concerned, the defendant No.2 and his wife were given complaint to the Mundgod police station alleging that the plaintiff has interfered into the suit schedule property intentionally and destroyed the pipe lines which shown in the photographs and disturbed their possession even after revoke of GPAs, notices and reply notices were supported the above said contents, over all these are very clearly establishes that the defendant No.2 is lawful owner and he has executed general power of attornies in different dates in favour of plaintiff and he had revoked the same, by alleging both were not obliged the terms and conditions of GPAs nor did not keep their promises and therefore both come up before the court for necessary relief.

12. During the course of arguments both counsels to the litigant parties have reiterated the averments which mentioned in their respective affidavits as well as objections which filed inter-alia applications, therefore this court feels that there is no need to discuss again these averments herein also, so far as above said applications are concerned herein clearly made out the fact that there is no dispute with regard to ownership in respect to suit schedule property, but herein the question would arose before the court is that whether both parties have made out prima facie case in their favour by producing relevant and cogent documents, to this extent on careful perusal of documents the plaintiff who is said to be GPA holder consented to take care of said property and even he has also consented to invest money so as to make fit for cultivation and so as to make commercial agricultural crop, on considering this specific contentions during the course of arguments the learned S.K.K. advocate drawn attention of this court that since the plaintiff come from poor family and therefore that much of 54 lakhs together

as stated in the plaint could not be possible to invest on agricultural land and it is created for the sake of convenience of this case only, on the other hand the learned Sri.RSH advocate rendered arguments that according to GPAs he has authorized to invest amount in the said property and therefore he has invested huge amount on the said property in order to get water sources and growing up areca plants, at this stage without reimbursement of that amount if he dispossess in the thrashhold from the suit schedule property by revoking said GPA, definitely he will be put to great hardship and inconvenience who has spend huge amount on suit schedule property as per terms and condition of GPA, but it is to be noted that the bounden duty which casting upon him to produce relevant documents so as to believe as he invested huge amount on the said property for plantation of areaca and other agricultural crops, that apart he has spent huge amount for digging borewells in the said property, all these reasons by keeping in mind on careful perusal of documents which produced by the plaintiff among it is discloses that on 28-4-2017 and subsequently so much of amount has been spent so as to dig borewells in the said alleged property, among them some of the bills were stood in the name of defendant No.2 and some of does not discloses any name in the said receipts, apart from that among four receipts were written in Malayalam that too not understand in proper manner, apart from these documents he could not produced any documents in support of his case. Moreover the plaintiff has failed to made out prima facie case that after revoking of said GPAs whether that huge amount was spent or before that much of amount was spent on agricultural operations.

13. In turn so far as defendants case is concerned he has produced several documents among them the defendant No.2 has obtained

loan from agricultural co-operative society and he had revoked said GPAs which executed by him by issuing notices according to postal acknowledgments and receipts which were duly served on him. However question before us is that whether he had discharged his duty accordance with law when he revoked said alleged general power of attornies, the manner in which as he corresponded with the plaintiff is very clearly discloses that there are so many allegations about the plantation and growing paddy and other seasonal crops in the said property and there was a financial transaction took place in between them, so far as alleged investment of rupees 54 lakhs herein is remained for fact in issue, according to contention of plaintiff that amount of rupees 54 lakhs so far no returned by the defendants, but the defendants have simply revoked for the eye sake without reimbursement of that amount for the reasons best known to them therefore these aspects have to be adjudicated in fact who is in actual possession over the suit schedule property even revoking of the said GPAs, otherwise it is so difficult to decide the dispute arising between the parties in relation to possession, therefore this court of the considered opinion that both parties were not come up with clean hands and failed to made out prima facie case in their favour respectively, suppose if any prohibitory orders going to pass either in favour of plaintiff or in favour of defendants in respect to agricultural land it may leads further complications due to lack of materials and it has to be considered after full-fledged trial, hence I answer points No.1 to 3 on **I.A.No.I** and Points No.1 to 3 on **I.A.No.II** in the **Negative.**

14. **Point No.4 in I.A.Nos.I & II**:- In view of the findings on points No.1 to 3 on I.A.Nos.I & II, I proceed to pass the following:-

ORDER

I.A.No.I filed by the plaintiff under Order XXXIX Rules 1 and 2 r/w. Sec. 151 of C.P.C. and I.A.No.II filed by the defendants under Order XXXIX Rules 1 and 2 r/w. Sec. 151 of C.P.C. are hereby rejected.

(Dictated to the Stenographer transcribed by her, corrected by me, signed and then pronounced in open court on 14th day of July 2021)

(Keshava.K)
Civil Judge, Mundgod.