

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

Present: Sri Thimmaiah G.

B.A. L.L.B.

CIVIL JUDGE & JMFC, SIDDAPUR

Dated this the 21st day of July 2022

O.S. No.87/2021

PLAINTIFFS: Geeta Raju Naik
(Represent By Sri. K.M.N., Advocate)

V/s.

**DEFENDANTS: Subraya Gangadhar Bhatta and
another**

(Represented for Defendant No.1.
& 2 R S H Adv.)

APPLICANTS: Geeta Raju Naik

V/s.

**OPPONENTS: Subraya Gangadhar Bhatta and
another**

ORDERS ON I.A.No.II

The plaintiff has filed I.A.No.II U/o. XXXIX rule 1 and 2 r/w Sec. 151 of C.P.C. for an interim injunction against the respondents/defendants restraining their men, agents, servants, relatives or any other persons claiming under them on behalf of the defendants not to interfering with the plaintiff

peaceful possession and enjoyment of the schedule property by allowing the application pending disposal of the suit and allow this application in the interest of justice.

2. DESCRIPTION OF THE APPLICATION SCHEDULE PROPERTY

SCHEDULE

The property bearing Herekai village sy. No. 7/2 measuring 1 acre 3 guntas, is bounded by 7.03 guntas :

East : Sy. No. 7/4

West : Sy. No.7/3

North: Sy. No.19

South: Sy. No. 8

(Hereinafter the above property is called as suit schedule property/application schedule property.)

The plaintiff filed this application with sworn affidavit and he stated as follows;

3. The plaintiff is stated that, she has filed the suit against the defendants for seeking the relief of permanent injunction and several averments made in plaint may read as part and parcel of this affidavit.

Further, plaintiff has submitted that , she is permanent resident of Herekai village, Siddapur Taluk, their livelihood by doing agriculture and they are in possession and enjoyment of the plaint schedule property.

Further, plaintiff has submitted that, the plaint schedule property was purchased by the plaintiff on 17-2-2020 by one Indira Vishwanath Bhat and her children. After purchasing the same she is in possession over the same and cultivating the said land and growing the paddy and areca nut. Accordingly, plaintiff has absolute right and interest over the same. such being the case defendants are trying to interference and also disturb to the cultivation over the suit schedule property.

Further, defendants also threaten to the destroy the crops which is grown in the suit schedule property. If defendants to do so, plaintiff will be face irreparable loss and injury.

Further, plaintiff has submitted that plaintiff having prima facie case and balance of convenience lies in her favour. Under the above circumstance said plaintiff has submitted that it is necessary that to

pass an ad-interim temporary injunction order against the defendants and their agents or anybody claiming any right under her from interfering with plaintiff's peaceful possession and enjoyment of the schedule property pending disposal of the suit in the above case in the interest of justice. Hence, plaintiff has pray for allow the application.

4. On the other hand, defendant No.1 is filed his objection and denied the application's contention. Further, they alleged that , the suit of the plaintiff is not maintainable either in law or in facts.

Further, he contents of the plaint as well as the affidavit filed in support of the application are false and not admitted. The plaintiff has no prima-facia case or balance of convenience in her favor and even there is no hardship in case IA No. 2 rejected. On the other hand in case the relief as prayed in the application will allotted this defendants will be put to great hardship, injustice and irreparable loss. Further, the plaintiff has not approached this Hon'ble court with clean hands. On all these grounds the suit of the plaintiff and as well as IA No. 2 both are liable to be dismissed.

Further, it is not admitted that, the plaintiff is in position of the suit property as a owner. The alleged sale deed dated: 17/2/2020 which is the base for asserting the right and position is not legal. it is submitted that the alleged sale deed is illegal and the plaintiff will not enquiry any right or position on basis of the alleged sale deed 17-02-2020. Further, it is submitted that there is a partition or a family arrangement arrived at amongst the sharers of the family properties on 15-3-1988 and every sharers including the plaintiff received their respective sharers adn came in position of the properties. Further, it is submitted that same has been reduced in to writing as a memorandum of division of properties in presence of panchas. At the time of said family arrangements the boundaries are fixed as per the panchas and accordingly the each sharers enjoying their respective shares. The Bhagayath sy. No. 7/1 is allotted to the share of the defendant no. 1 and 7/2 allotted to the 1) shri. Vishwanath Gangadhar Bhat who is the own brother of the plaintiff. The said vishwanath Gangadhar Bhat died on in 2008-09 living behind him his wife, son and daughter. It is learned that the legal

representatives of the deceased Vishwanath Bhat alleged to have been executed a sale deed in favor of the present plaintiff n 17/2/2020. It is respectfully submitted that, in the memorandum of family arrangements of a partitionit it is specifically mentioned that the right to purchase a particular share of a person if he intends to sell or alinate. The said memorandum of arrangement dated 15-3-1988 signed by all the sharers and it is a bilateral agreement and it is binding to the signatories to the said documents. Further it is submitted that none of the sharers cannot sell or alinat without consent of the remaining sharers. When such being the case the present defendant has already challenged the sale deed dated 17/2/2020 against the legal representatives of Vishwanath Bhat and the present plaintiff who is the defendant No. 4 in O S NO. 16/2021 from the file of the Civil Judge court Siddapur. In the said suit the IA No. 1 is also filed and the suit and IA No. 1 is pending herein. when such being the case the present plaintiff by suppressing all these facts filed the present suit and obtained the exparte order which amounts to suppression of material facts. It is false to say that

the plaintiff is in position and cultivated the areca and paddy in the suit property. It is respectfully submitted that the property allotted to the defendant No.1 in the family arrangement of 1988 is complete arecanut lands and the land allotted to Vishwanath Bhat is not arecanut lands. The present plaintiff prepared the Map so as to cover the arecanut crops in her portion and thereby intending to harvest the arecanut crops of the defendant No.1. It is false to say that this defendant is not having no right over the suit property.

Further, defendants submitted that, even assuming that but , not admitted the portion of arecanut land covers in the suit property is belongs to the right of the defendant No.1 as the perfected his title by adverse position. The said Vishwanath Bhat and his legal representatives asserted the right over the arecanut portion and the defendant No. 1 during december 2000 itself the defendant No.1 denied the right and they have not sought either for survey or not initiated for recovery of the arecanut portion land. Hence, the application filed by the plaintiff is liable to dismiss with cost.

5. Heard both side arguments.

6. The following points that arise for my consideration are as hereunder:

1. Whether the plaintiff has made out prima facie case?
2. Whether the plaintiff has made out that balance of convenience in his favour?
3. Whether the plaintiff has made out that if temporary injunction is not granted, he will be put into great loss or hardship?
4. What order?

7. Heard arguments. Perused the materials on record.

8. Perused the entire materials available on record. My answers to the above points are as hereunder:

- 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

9. **Point No.1 to 3** : Since these 3 points are interrelated to each other to avoid the repetition, have taken together for my consideration. Further, I am of the opinion that, I need not repeat the entire facts of the application and objection here also, since I have already narrated the same at the inception of this order.

10. Plaintiff has filed the suit against the defendants for the relief of permanent injunction over the suit schedule property. At the pendency of the suit, the plaintiff has filed an present I.A.No.I U/o. XXXIX rule 1 and 2 r/w Sec. 151 of C.P.C. for an interim injunction against the defendants restraining their men, agents, servants, relatives or any other persons claiming under them on behalf of the defendants not to interfering with the plaintiff peaceful possession and enjoyment of the schedule property by allowing the application pending disposal of the suit and pray for allow this application in the interest of justice.

11. In order to prove the prima facie case plaintiff has produced the certified copy of the Registered sale deed dated 17-2-2020, one Compatarized RTC and one Mutation Registered regarding the suit schedule

property which is stands in the name of plaintiff . Support of the said documents is concerned plaintiff's counsel has been argued that the suit schedule property is acquired by the plaintiff through Registered Sale Deed dtd:- 17-02-2020. Accordingly, the said property has incorporated in the revenue documents and entered the name of plaintiff. As per the said documents it's revels that, as per the registered sale deed the suit schedule property possession also delivered to the plaintiff. Such being the case on contrary the defendants have strongly denied the execution of the said registered sale deed dated:17-2-2020and invalid one. But, it can be known to this court after full pledged trial only but not at this stage. Such being the case, as per the registered sale deed with the support of revenue documents plaintiff has proved Prima-facia case that plaintiff case is triable one. Further, since proved the prima-facia case balance of convenience also lies in favor of plaintiff. If application is not allowed plaintiff's will caused irreparable loss and injury. On the other hand defendants have no prejudice and caused any injury Further, as contended by the defendants in their objection regarding the validity of

sale deed regarding suit schedule property it known to the court after full pludged trial only but not at this stage.

Under such circumstances, as alleged by the plaintiff that, defendants are trying to interference and also disturb to the harvesting the crops which grown in the suit schedule property, if succeeded over the same, plaintiff will be caused to irreparable loss and injury and also it will be caused to the multiplicity of the proceedings. Hence, the court considered the above all and I am of the opinion that, for the safe guard of the suit schedule property and also avoiding the multiplicity of the proceedings, the court can considered this application. Hence, in view of the above observation the plaintiff application is deserved to be allow. Therefore, I answered to the point No.1 to 3 in the **affirmative**.

12. **POINT No.4:** For the findings arrived at Point No.1 to 3, I proceed to pass the following:

:O R D E R:

The I.A.No.II filed by the plaintiff U/o. XXXIX Rule 1 and 2 r/w Sec. 151 of CPC is hereby allowed with cost.

It is further granted the ad interim temporary injunction restraining the defendants or their men, from interfering with the peaceful possession enjoyment of the plaintiff in the suit schedule property and also restraining the defendants peaceful cultivation of the plaintiff over the suit schedule property till pending disposal of the suit.

(Dictated to the Court hall typist directly on the computer, after transcription, corrected, signed and then pronounced by me in the open Court this the **21st day of July 2022**)

Sd/-
(Thimmaiah G.)
CIVIL JUDGE & JMFC
SIDDAPUR

