

IN THE COURT OF THE PRL. CIVIL JUDGE & J.M.F.C.,
KARKALA.

Present: Sri. Puttaraju, B.A.LL.B,
Prl. Civil Judge & J.M.F.C., Karkala.

Dated, this the 23rd day of June, 2017.

ORIGINAL SUIT No.65/2017

Between:-

Mr. Krishnamoorthy Nayak and another. .. Plaintiffs.

And

Mr. Sudhakar Shetty and others ..Defendants.

PARTIES TO I.A.NO.II

1. Mr. Krishnamoorthy Nayak,
Aged about 78 years,
Son of Manjunatha Nayak and
Husband of late Yashoda.

2. Mrs. Kalavathi Nayak,
Aged about 45 years,
Daughter of late Yashoda and
Krishnamoorthy Nayak.

Both are residing at Donikadavu
Melmane, Marne Village,
Karkala Taluk,Udupi District. ..Applicants/plaintiffs.

- AND -

1. Mr. Sudhakar Shetty,
Aged about 67 years,
Son of late Deju Shetty.

2. Smt. Suma Shetty,
Aged about 50 years,
Wife of Sudhakar Shetty.

3. Smt. Vasanthi Shedthi,
Aged about 60 years,
Daughter of late Deju Shetty.

All are residing at Marne Village,
Karkala Taluk, Udupi District.

..Opponents/defendants.

:: ORDERS ON I.A.NO.II ::

The plaintiff has filed I.A.No.II U/O.39 Rule 1 and 2 read with section 151 of C.P.C., seeking for Temporary Injunction against the defendants restraining them or their men from trespassing, encroaching and interfering with peaceful possession and enjoyment of the suit 'A' and 'B' scheduled property and removing areca nut or its flower from the tree existing in the plaint 'A' scheduled property and also from putting pipe lines in the both the scheduled property.

2. In the sworn affidavit, the plaintiff has stated that the suit 'A' scheduled property originally belongs to one Yashodha who was the wife of the 1st plaintiff and the mother of the 2nd plaintiff, she died intestate on 28-12-2016 leaving behind plaintiffs and other children as her legal heirs, as such they have been in possession and enjoyment of the same as successor of the said Yashodha. The suit

'B' scheduled property is the government land and they have been in possession of the same under settled possession since 1974, which is adjacent land to the suit 'A' schedule property, wherein he dug a well and installed pump set by obtaining electricity connection in the year 1993 and he has been paying T T Tax in respect of same 'A' scheduled property since 1992. The 1st defendant is the owner in possession of the suit 'C' scheduled property and acquired the same under a registered sale deed dated 30-08-2011 by the said Yashodha, which is adjacent to the suit 'B' schedule property, on 30.03.2017 the 1st defendant without having any right and interest over the suit 'A' and 'B' scheduled property himself along with his men making attempts to trespass into the suit 'A' and 'B' scheduled property and started interference over the same and making attempts to remove the areca nut and it's flower. They are unable resist the illegal act of the defendants since he is aged man and 2nd plaintiff is a male. The plaintiff further stated that they have made out prima facie case and balance of convenience lies in their favour, if the ad interim injunction is granted no hardship would be caused to the defendants, on the other hand, if the injunction is not granted, they will be put great hardship and irreparable loss. Hence, in order to protect its possession the plaintiff has filed the present I.A.

3. The Defendants filed the objections, in the objections they denying the allegations made out in the affidavit of the present application. It is contended that the during the life time of said

Yashodha, herself along with 1st plaintiff her husband on 06-06-2011 entered into an agreement of sale with the defendant to sell the suit 'A' and 'C' schedule property along with another property bearing Sy.No. 369/5, as such, on 30-08-2011 they executed two registered sale deeds in favour of the defendant in respect of property bearing Sy.No.369/5 and suit 'C' schedule property and the suit 'A' schedule property was also handed over to the defendant along with the said properties. The well situated in the 'B' schedule property is abutting land, which for the water source for the 'C' schedule property, the defendant has purchased the said property with the intention that he will get the water from the 'B' schedule property for his land. Further, the 1st plaintiff and the said Yashodha postponing the execution of registered sale deed in respect of suit 'A' schedule property as agreed upon by one or the other reason, as such, the 1st plaintiff is liable to execute the registered sale deed in respect of the said same. It is further contended that there is a power of attorney as well as an agreement executed by the said Yashodha to use the water to the defendant land. The 1st plaintiff though having knowledge about the aforesaid facts, purposefully and deliberately suppressed the same and get the status quo order by this court. By misusing the same the 1st plaintiff has changed the nature of the property and dismantled the old shed belonging to the defendant.

4. It is further contended that admittedly this suit is filed for the relief of permanent injunction in respect of suit 'B' schedule government land including 'A' schedule property. As per the Karnataka Land Grabbing Prohibition Act, no such nature of the suit is lie against the government and no relief of either temporary or permanent injunction can be granted in respect of the government 'B' schedule property is concerned. It is further contended the boundary mentioned in respect of 'B' schedule property is totally false and imaginary and it is not correct. It is further contended that the purposefully disturbed the Kumki rights of the defendant over the 'B' schedule property and the plaintiffs are not entitled for the relief of permanent injunction in respect of the 'B' schedule property under section 41 of the Specific Reliefs Act. Therefore, the Plaintiff has no prima-facie case and balance of convenience does not lie in their favour. As such, if the application is allowed, the Defendants will be put to untold hardship and injury. Wherefore, it is prayed to reject the application.

5. In the backdrop of the above rival contentions of the parties, following points are formulated for the purpose of discussion:-

1. Whether the prima-facie case and balance of convenience lies in favour of the Plaintiffs?

2. Whether the plaintiffs will be put to irreparable loss and injury if order of Temporary Injunction is not granted?

3. What Order?

6. Having heard the arguments of both the counsel at length, this court has perused the documents produced by both the parties.

7. Now findings of this court on the above points are as follows :-

Point No.1 :- In the Negative.

Point No.2 :- In the Negative.

Point No.3 :- As per final order for the following:-

:: REASONS ::

8. **POINTS NO.1 AND 2:-** In order to avoid repetition of discussion and to save the time of court, this court has desires to treat points 1 and 2 collectively.

9. As borne out from the records of both the parties and as revealed in their pleadings, undisputedly the plaintiffs are in possession of the suit 'A' scheduled property as a successor of one Yashodha and the 3rd defendant is in possession of suit 'C' schedule

property acquired the same under the registered sale deed dated 30-08-2011 for valuable consideration. The suit 'B' schedule property is the government land situated adjacent to the both 'A' and 'C' schedule property. The Plaintiffs in support of their case have produced the Photostat copy of the registered sale deed dated 17-05-1974, RTC extract, tax paid receipts, photographs and photocopy of sketch. On the other hand, the 3rd defendant in support of his case has produced the xerox copies of the agreement of sale dated 06-06-2011, General Power of Attorney executed by Yashoda, two registered sale deeds and the agreement in respect right to use the water and path way.

10. It is the grievance of Plaintiffs is that they have been in possession of the suit 'B' schedule property under settled possession since 1974 and they dug a well, installed pump set therein by obtaining electricity connection, the defendant has making attempt to trespass into the suit 'A' and 'B' schedule property and remove the areca nut and its flower from tree exists in said property. Towards this, the Plaintiff has produced Photostat copy of the sale deed in respect of suit 'A' schedule property and RTC extracts, photos in respect of suit 'B' schedule property. This court has carefully gone through the recitals of the sale deed, in the sale deed, it is very clearly mentioned that, the suit 'A' schedule property was purchased by one Yashodha. So far as the suit 'B' schedule property is concerned, the plaintiff produced the RTC, photos and tax paid

receipts, the learned counsel for the defendant seriously objected these documents and argued that tax paid receipts does not disclose that to which property tax is paid, there should be a reference in the same in respect of 'B' schedule property, per contra learned counsel for the plaintiff argued that it is not necessary to mention the Sy. No, in the said tax paid receipts, but, if the party has paid tax to the concerned authority in respect of particular property, definitely there would be reference in that regard, perused the tax paid receipts, it prima facie reveals that no such reference in that regard in the tax paid receipts. So, the argument canvassed by the counsel for the plaintiff is not sustainable. The RTC extracts and photographs produced by the plaintiff are reveals that the plaintiff has not made out prima facie case.

11. Further the counsel for the defendant by relying on the documents argued that the plaintiff has obtained the status quo order from this court by suppressing the material fact, so, he did not approach this court with clean hands to get the equitable relief of temporary injunction order. This court has carefully gone through the documents relied by the defendant, on perusal of the same it prima facie appears that the 1st plaintiff and his wife Yashoda executed the registered sale agreement dated 06-06-2011 in favour of the defendant agreeing to sell the suit 'A' and 'B' schedule properties and accordingly they executed the registered sale deed in respect of the suit 'C' schedule property and they yet to be execute

the registered sale in respect of suit 'A' schedule property as agreed upon. Further, they executed an agreement in favour of the defendant to use the water and pathway in the 'B' schedule property. Therefore, from these documents prima facie reveals that the defendant has right to use water and pathway in the said property. But the plaintiff did not disclose the said material fact neither in the plaint nor in his affidavit, so, the documents relied by the defendant clearly shows that the plaintiff has not approach this court with clean hands as argued by the defendant counsel. Therefore, for the aforesaid reasons also, the plaintiff has not made out prima facie case.

12. The counsel for the plaintiff further taken the plea that after passing of the status quo order by this court, the defendant making attempt to interference over application schedule property, in order to show the same the counsel relied on the complaint lodged with jurisdictional police and endorsement issued thereon. Per contra, the counsel for the defendant vehemently argued that the status quo order passed by this court is both parties are maintain status quo and not against the defendant only, but there is reference in the complaint that the status quo order is passed only against the defendant, so, it clears from the said complaint that the plaintiff has misused the order of this court, which shows the conduct of the plaintiff that he has not approached this court with clean hands. Perusal of the said complaint, it appears that the plaintiff has stated

that this court has passed the temporary injunction order against the defendant, but the order sheet reflects that no such order is passed against the defendant only, which applies both the parties. Therefore, in view of the above, it clears that the plaintiff making attempt to misuse the order passed by this court. Therefore, in view of aforesaid reasons the conduct of the plaintiff is also show that the plaintiff has not made out prima facie case.

13. This court has gone through the citations relied by the counsel for the plaintiff, on perusal of the same, it reveals that the same is not applicable to the facts and circumstances of the case.

14. Further contention of the defendant that the plaintiff clearly admitted that the suit 'B' schedule property is the government land and seeking the relief of permanent injunction in respect of the same. As per the Karnataka Land Grabbing Prohibition Act, the suit of the plaintiff itself is not maintainable as this court has no jurisdiction to try this suit and the Special Court is having jurisdiction try the said suit. That being so, when the maintainability of the suit itself is in question, considering application for interim order does survive for consideration. In this regard, the counsel for the defendant produced the xerox copy of the said Act and notification of the government. Perused the same, on perusal of the same it reveals that special court established under section 7 of the said Act is having the jurisdiction to try this nature of suit.

Therefore, in view of the said Act the maintainability of the suit itself is in question. When such being the facts and circumstances of the case, it is necessary to this court that, while considering the application for interim order, court has to look into whether the prima facie case which includes the maintainability of the suit. In that regard, at this stage, this court would like to rely on the decision reported in **ILR 2011 KAR 3141** in the case of **G. Channarayappa and Others v/s M/s Lakshmi Mallables Private Limited and another**, wherein the Hon'ble High Court held that one of the factors to be considered by the court while considering the case of temporary injunction is, Whether the prima facie case is made out by the plaintiff, which certainly would include the nature of the suit and its maintainability. In view of the settled principles of law held in the aforesaid decision and considering the facts and circumstances of the case, the opinion is of the court that the plaintiff has not made out prima facie case and the balance of convenience is not lies in their favour. If, at this stage the injunction as prayed for is not granted no hardship would be caused to the plaintiff, on the other hand if the injunction order is granted, the 3rd defendant will be put great hardship or irreparable loss. Hence, in view of the aforesaid reasons, this court has answers the points 1 and 2 in the **Negative**.

15. POINT NO.3:- For the aforesaid reasons on Points No.1 and 2, this court has 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.

(Dictated to the steno, directly in the computer, computerized by her,
corrected and then pronounced by me in the open court on this 23rd
June 2017).

(Puttaraju)
Prl. Civil Judge & J.M.F.C.,
Karkala.