

KAUP400024372023



**IN THE COURT OF CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS AT BAINDURU.**

PRESENT:

**Smt. Vidya, A.S. B.A., LL.B.
Civil Judge & J.M.F.C.,
Bainduru.**

Dated this the 31st day of March, 2023

New Original Suit No. 417/2023

Old Original Suit No. 473/2021

Plaintiffs	Manjunath B. aged about 56 years, S/o. late Shankar Sheregar, R/at: Mayyadi, Bijoor House, Byndoor Village and Taluk, Udupi District.
Defendants	1. Mukambu Sherigarthi, Aged about 77 years, W/o. Late Mahabala Sheregar, 2. Nagaraj, Aged about 61 years, S/o. Mukambu Sherigarthi, 3. Prema H., Aged about 45 years, W/o. Nagaraj, Defendant No.1 to 3 are R/at: Mayyadi, Byndoor Village and Taluk, Udupi District. 4. Ganesh,

	Aged about 30 years, S/o. Nagaraj, R/at: Kolluru Police Station, Kolluru. 5. Hemaraj, Aged about 34 years, S/o. Vasudev, R/at: Byndoor Police Station, Byndoor.
	<u>Rank of the Parties On I.A.II</u>
Applicant/Plaintiff:	Manjunath B.
	(Rep. by Sri. T.G.R.- Advocate)
Opponents/Defendants:	Mukambu Sherigarthi and others
	(Rep. by Sri. T.B.S.-Advocate)

ORDERS ON I.A. NO.II

The plaintiff along with suit has filed IA No.II under Order XXXIX Rule 1 and 2, for seeking the relief of temporary injunction infavour of the plaintiff and thereby temporarily restraining the opponents, their LR's and attorneys from constructing building, compounds and interfering his possession till the disposal of the suit.

2. In the accompanying affidavit, applicant has stated that, the item No.2 of the 'A' schedule properties was moolgeni property purchased by late.Shankar Sheregar, on 06-09-1976 under a sale deed and he has acquired the absolute right of the item No.1 of the suit 'A' schedule

properties on the basis of the will dt:17-03-1965, on the death of the executant of the will and he was in actual possession of the same on absolute right. Further stated that the defendants are trying to damage to the suit schedule property. With these averments the applicant has sought for allowing the application.

3. The defendants have stated that the written statement may be treated as objection to the I.A.No.II.

4. Heard both sides and perused the materials on record.

5. Now, the following points arise for consideration of this Court are:

Point No.1: Whether the plaintiff has made out prima facie case?

Point No.2: Whether the plaintiff establishes that balance of convenience lies in their favour ?

Point No.3: Whether the plaintiff establishes that if temporary injunction is not granted, they will be put to great loss or hardship?

Point No.4: What order?

6. The findings of this Court on the above said points are as under:

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

7. **Point No.1:** On perusal of case file, it is seen that the plaintiff has sued the defendants for seeking the relief of declaration and permanent injunction.

8. The specific contention of the defendants that, Shankar Sheregar/plaintiff's father has agreed to sell the suit 'A' schedule properties to the 1st defendant for Rs.30,000/- and an agreement dt:04-04-1992 was entered into between the 1st defendant and Late Shankar Sheregar under which, Late Shankar Sheregar received the entire sale consideration of Rs.30,000/- from the 1st defendant and delivered possession of the suit 'A' schedule properties to the 1st defendant. The 1st defendant got issued a notice dt:01-11-2021 through her advocate calling upon them to execute a registered sale deed in respect of the suit 'A' schedule properties in the name of the 1st defendant.

9. This Court has carefully perused the materials on record in order to ascertain whether the plaintiff has made out prima facie case for grant of temporary injunction as sought for. The primary requirement in an injunction suit is possession. In a suit for permanent injunction the plaintiff has to prove his possession over suit schedule property. The burden of proving the same lies on the plaintiff. In this case, the applicant is seeking temporary injunction restraining the opponent from constructing building and interfering his possession. In the instant suit, it is pleaded by the plaintiff that, after death of his father he and his siblings became the absolute owner of the suit 'A' schedule properties.

10. The Learned counsel for the opponents vehemently argued before the Court that, the plaintiff's father delivered possession of the suit schedule properties under agreement dt:04-04-1992 to the 1st defendant. Further argued that, the plaintiff has not raised counter claim in O.S.No.71/2023. The 3rd defendant has paid tax in respect of suit schedule properties.

11. This Court has carefully perused the list of documents produced by the both parties. There is no dispute

regarding the original owner of the suit properties was Late Shankar Sheregar. On perusal of RTC in respect item No.1 of suit schedule property stands in the name of plaintiff and RTC relating to item No.2 of suit schedule property stands in the name of Surendra Hegde and others. Except, the RTC in respect of item No.1 of suit schedule property plaintiff has not produced the any single piece of evidence in order to show that he is in actual possession and enjoyment of the suit schedule properties. The entry in revenue records is not conclusive evidence of possession. On perusal of tax receipts, it would show that defendants have paid tax in their name in respect of suit properties. On perusal of agreement dt:04-04-1992 prima facie it appears that, since 1992 the defendant has been in possession of suit schedule property. The contentions raised by the plaintiff and defendants are all matter of trial, hence, it is required trial to answer who is in possession over the suit schedule property. At this stage, this Court by considering the materials on record is of the opinion that the plaintiff has not made out prima facie case and he is not entitled for the equitable relief of temporary injunction. With these observations, this Court has answered point No.1 in the Negative.

12. Point No.2 and 3: In order to avoid repetition, I would like to discuss these points together, since they are interconnected to each other. In *Gowrishankar Swamigalu Vs. Siddhaganga Mutt and others* reported in ILR 1989 KAR 1701, the Hon'ble High Court of Karnataka has held that:

"The existence of a prima facie case in the matter of granting injunction is really the harbinger or all the clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put forward was so weak and tainted having very little purpose of being accepted by the Court, further question of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself".

13. Since the plaintiff has not made out prima facie case in his favour, the question of balance of convenience lying in his favour and irreparable injury may be caused to him requires no discussion at this stage. Therefore, the balance of convenience does not lie in favour of the

plaintiff. With these observations, this court answer point No.2 and 3 in the Negative.

14. Point No.4: For the aforesaid discussion on point No.1 to 3 this Court proceeds to pass the following:

ORDER

I.A. No.II filed by the applicant under Order XXXIX Rule 1 and 2 R/w. Section 151 of CPC is hereby rejected.

For plaintiff evidence.

Call on: 12-06-2023.

(Dictated to the stenographer, transcribed and typed by her, corrected by me and then pronounced in the open Court on this **31st day of March, 2023**)

**(Smt.Vidya A.S)
Civil Judge & J.M.F.C.,
Bainduru.**

