

IN THE COURT OF CIVIL JUDGE & JMFC.,
HADAGALI.

~ : **PRESENT** : ~

SRI.VEERESH KUMAR C.K.

B.A.L, LL.M, CC [CYBER LAWS.]

CIVIL JUDGE AND JMFC.,
HADAGALI.

DATE OF ORDERS: 1st DAY OF DECEMBER 2022.

O.S.No.68/2018

PLAINTIFF:-

**Shri Kuruvatti Basaveswara
Padayatre Seva Samithi (R),**
Represented by its President
Sri. Satyanarayana S/o Nagappa Sakrappa,
Davanagere.

(Sri.D.H.G/K.M.G. Advocates)

-Versus-

DEFENDANTS:-

1) Sri. Itagi Shivanagappa,
S/o Shivanandappa,
aged about 50 years, Agriculturist,
R/o Kuruvatti Village,
Huvinahadagali Tq, Vijayanagara District.

2) Sri. K.Basavarajappa,

*S/o Kotrappa,
aged about 60 years,
R/o £ 341, "C" Block,
Devaraj Urs Extension,
Davanagere.*

3) Sri. Patil Kallanagouda,

*S/o Basavana Gouda,
aged about 37 years, Agriculturist,
R/o Kuruvatti Village,
Huvinahadagali Tq, Vijayanagara District.*

***(Sri.K.P.M. Advocate for D.1,
D.1 & D.3 Exparte)***

ORDERS ON IA No.3

The present application is filed by the Plaintiff U/o. 39 Rule 1 and 2 R/w 151 of C.P.C, with the prayer to restraining the defendants and their men from putting up illegal construction in the suit schedule property until disposal of the suit.

2. In the affidavit in support of the application, it is stated that the present suit is filed for declaration and permanent injunction. The plaintiff's association is the absolute owner and in possession of the suit property and they are vested with the responsibility to make accommodations to pilgrims during the time of Sri Mallikarjuna Swamy fair and all the pilgrims who take shelter in the suit property. The suit property was purchased by the plaintiff's association on 18.12.2009. The defendant No.1 by manipulating the original documents filed the suit in O.S.No.161/2013 against the plaintiff and defendant No.3, for declaration and permanent injunction. Even the plaintiff's association had filed suit in O.S.No.62/2014, for declaration of title and permanent injunction. The defendant No.1 by

playing fraud on the plaintiff got both the suits compromised against the interest of plaintiff's association. The present suit is filed to protect the interest of the plaintiff. This being the facts, the defendant No.1 illegally and high handedly tried to construct over the suit property and thereby interfere with the possession of the plaintiff over the suit property. The construction activities would cause inconvenience to the plaintiff. The defendants have no right to construct over the suit property and thereby prayed to restrain any construction activity on the suit property.

3. The said application is resisted by the defendant No.1 and has filed memo to adopt the written statement as objections to the present application.

4. The sum and substance of the objections are as follows;

The plaintiff and defendants have compromised their previous disputes in O.S.No.161/2013 and O.S.No.62/2014. The said suit ended in compromised. The plaintiffs are bound by the terms and conditions of

the compromise. The said compromise would operate as estoppel and the plaintiff is barred from claiming any reliefs in the present suit. The aspect of the ownership of the plaintiff over the suit property is entirely false and incorrect. The suit property is a Government parampoke site and it is the property of the Gram Panchayath. The defendant No.1 is in the possession and enjoyment of the suit property. The possession of the defendant No.1 is legal. The plaintiff need to prove their title over the suit property. The suit property was purchased by the father of the defendant No.1 on 02.06.1967 from Basavanneppa S/o Sanna Thimmappa Kuruvatti Gouda, R/o Guttal village, Haveri Taluk of the then Dharwad District. Thereby the father of the defendant No.1 was the absolute owner of the suit property. The defendant No.2 was the GPA holder in O.S.No.62/2014 and the plaintiff's association had elected in as GPA holder for their association. Now the plaintiff's association is denying the said act. There is no fraud undue influence or illegal inducement before the court in the compromise

decree. The compromise decree is legally binding upon the plaintiff and defendants. The question of setting aside the compromise decree does not arise. The plaintiff's association has no right over the suit property and thereby prayed for dismissal of the present application.

5. Based on the same, the above points arise for consideration are:

POINTS

1. *Whether the plaintiff has made out prima faice case?*
 2. *Whether the plaintiff proves balance of convenience in his favour?*
 3. *Whether the plaintiff proves that he would suffer irreparable loss in the event of rejection of the present application?*
 4. *What order or decree ?*
6. Heard both the sides.
7. Meticulously perused the records.
8. The above points are answered as follows;

Point No.1 to 3 : In the Affirmative.

Point No.4: As per final order for the following:

:REASONS:

09. On Point No.1 to 3: *These points are interconnected and in order to avoid repetition they are taken together for consideration at one stretch.*

Before advertng to the materials on records it is necessary to advert to the proceedings forthcoming from the order sheet. By order dated 05.06.2020 the I.A. No.2 filed by the plaintiff U/O 39 Rule 1 and 2 came to be partly allowed and both the parties were directed to maintain status quo and not make any construction work in the suit property, all the property of the defendant until the next date of hearing. Thereafter, the said order was not extended in the next date of hearing and the same was kept in abeyance.

10. It is the argument of the learned counsel for the plaintiff that in the month of January and in the month of beginning of February 2023 the fair of Sri Mallikarjuna Swamy is scheduled and as a result the pilgrims from Davangere would come and temporarily take shelter in the suit property. The defendant No.1 is

making efforts for making construction in the suit property by placing the foundation and other construction materials on the suit property. In the present suit already issues are framed by order dated 03.01.2022. Even the plaintiff has led portion of his chief-examination and the matter is posted for further chief of PW.1. In the present suit plaintiff is claiming to be the absolute owner of the suit property. It is manifestly clear that the both the parties are claiming to be the owner and possessors of the suit property. There has been two litigations with respect to the suit property between the plaintiff and defendants. In the earlier round of the litigation the dispute ended in the compromise. In the present litigation the said compromise decree is challenged by the plaintiff on the ground of misrepresentation and undue influence. It is specifically averred in the plaint that the said compromise is not free of consent and the same is against the interest of the plaintiff.

11. On perusal of the two photographs produced by the plaintiff it is found that there is old foundation has

been laid on the suit property and there are no construction materials can be seen in the photographs, however there is enough junk of materials placed on the suit property. The learned counsel for the defendant did not object the present status quo of the suit property. The apprehension of the plaintiff is that the defendants might take recourse to construction on the suit property cannot be ruled out. Even the earlier order of temporary injunction is not continued. Sri K.P.M. the learned counsel for defendant No.1 fairly conceded that he would not take recourse to construction over the suit property until disposal of the suit. In view of the same the plaintiff has made out prima-facie case. In the event of construction over the suit property there would be hardship and irreparable loss to the plaintiff. Even the balance of convenience is in favour of the plaintiff. If there is any construction over the suit property then it would entirely change the nature of the suit property and lead to multiplicity of proceedings. In view of the same the plaintiff has

proved the above points and they are answered accordingly.

12. On Point No.4: For the reasons stated and the discussions made above, proceed to pass the following:-

:: ORDER ::

- *I.A.No.3 filed by the plaintiff is hereby allowed.*
- *The defendants and their men are hereby restrained from any construction over the suit property until disposal of the suit.*
- *The plaintiff and defendants are directed for cooperate for expeditious disposal of the suit by leading evidence on both the sides in next date of hearing.*
- *Call on for further chief of PW.1 by 11.02.2023.*

(Dictated to the stenographer, after transcription and computerized by him, corrected and then pronounced in the Open Court, by me, on this 1st day of December, 2022.)

**(VEERESH KUMAR C.K.)
CIVIL JUDGE & JMFC
HADAGALI.**