

KABI300014752023



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

~ : PRESENT : ~

SRI.VEERESH KUMAR C.K B.A.L, LL.M, CC [CYBER LAWS]
CIVIL JUDGE AND JMFC.,
HADAGALI.

DATE OF ORDERS: 8th DAY OF SEPTEMBER 2023

O.S.No.120/2023

PLAINTIFF:-

Sri. A.M. Veeraiah,
S/o Late Ajjayya,
aged about 80 years,
R/o Manyaramasalavada village,
Hadagali taluk,
VijayangaraDist.,
(Shri.SHC., Advocate)

//Versus//

DEFENDANTS :-

1. Sri. H.M. Renukaiah,
S/o Late H.M. Mallaiah,
aged about 52 years,

2. Sri. H.M. Vrushabendraiah,
S/o Late H.M. Mallaiah,
aged about 58 years,
Both are R/o Sogi village,
Hadagali Taluk,
VijayangaraDist.,
(Shri. KMJ., Adv. for Defendants)

ORDERS ON IA No.1

The present application is filed by the plaintiff under Order 39 Rule 1 and 2 R/w 151 of C.P.C., to restrain the defendants, their agents, relatives, servants, assignees or anybody on their behalf from interfering and obstructing to the cultivation of the plaintiff over the suit property by way of temporary Injunction.

02. FACTS IN NUTSHELL:

It is the case of the plaintiff that the suit property bearing Sy.No.178/A measuring 3.58 acres and Sy.No. 178/D measuring 3.02 acres are situated at Manyramasalavada village in Hadagali taluk. The defendant's father by named H.M Mallaiah was absolute owner of the suit properties and he sold suit property on 20.10.1994 for valuable consideration of Rs.36,300/- in favour of mother of the plaintiff and also delivered the possession of the suit property on the same day itself. The suit property was sold for the purpose of discharging his debt and to meet out family necessities and agricultural expenses. Since then the mother of the plaintiff is

in cultivation of the suit property. On 15.06.2003 the mother of the plaintiff died leaving behind the plaintiff as her legal heir and the plaintiff continued the possession of the suit property even to this day. The father of the defendants had agreed to execute the regular registered sale deed at cost in favour of his mother A.M. Kamma.

As per the terms and conditions of the agreement of sale, the mother of the plaintiff requested and also demanded on several occasions for execution of sale deed however the same came to be postponed on one or the other pretext by the father of the defendants. In the meanwhile the father of the defendant died. Thereafter the present defendants were also requested by the mother of the plaintiff calling upon for execution of sale deed and even they also postponed the same. Then on 05.10.2019 the plaintiff got issued notice calling upon for execution of sale deed. The same was duly served on the defendants and they have not replied to the same. The plaintiff has also filed suit for specific performance in O.S.No. 107/2019. The plaintiff is cultivating the suit property by

growing jawer, cotton and other crops in the suit properties. The defendants have no manner of right and interest in the suit properties and they have interfered and obstructed to the cultivation in the suit properties on 25.06.2023. The interference was resisted by the plaintiff. The defendants have held out threat of dispossession of the plaintiff over the suit properties and the same is imminent. The plaintiff has prima facie case and the balance of convenience is in his favour. Hence, the present application.

03. The said application is resisted by the defendants and they have filed written statement and memo to treat them as objections to I.A.No.1.

04. The sum and substance of the objections as contended in the written statement are as follows.

The entire averments of the application are denied. It is contended that, the suit of the plaintiff is barred by law of limitation. The alleged sale agreement produced by the plaintiff itself is barred by limitation and the transaction dates back to the year 1994. It is also contended that the plaintiff

is/was never in possession of the suit properties at any point of time. All the legal representatives i.e., class- I heirs of deceased H.M. Mallaiah are the proper and necessary parties to this suit. Even all the class-I heirs of A.M. Kamma are also the proper and necessary parties to this suit.

The plaintiff has filed the suit against the defendants in OS.No.107/2019 with respect to the same suit properties and the second suit is not maintainable. Thereby prayed for dismissal of the present application.

05. Based on the above pleadings the following points arise for consideration are:

POINTS

1. *Whether the plaintiff has made out Prima - facie case ?*
2. *Whether the plaintiff proves balance convenience in his favour ?*
3. *Whether the plaintiff proves that he would suffer irreparable loss in case rejection of temporary injunction ?*
4. *What order ?*

- 06.** Heard the both sides.
- 07.** Meticulously perused records.
- 08.** The above points are answered as follows;

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 ::

09. On Point No.1 to 3 : These points are taken together for consideration at one stretch in order to avoid the repetition of facts.

10. At the outset the present suit is filed for the relief of permanent injunction. The plaintiff is seeking to protect his possession over the suit property and also to restrain the act of the defendants in causing obstruction to the cultivation of the suit property. As per the averments and documents produced by the plaintiff it is found it is the claim of the plaintiff that he father of the defendants had executed the agreement of sale with respect to the suit properties in favour

of the mother of the plaintiff way back in the year 1994 and even the possession was delivered at the time of the execution of agreement of sale. Based upon said transaction the plaintiff claims to be in the possession of the suit properties. The plaintiff has also pleaded that the suit for specific performance of agreement is pending before this Court in O.S. No. 107/2019. The plaintiff in support of the case has produced the copy of agreement of sale with respect to the suit properties as document No.1. The Tax paid receipt to the Revenue Department is also produced. Two Affidavits of neighbouring land owners is also annexed. They have affirmed the possession of the plaintiff over the suit properties. 14 photographs are also produced along with the plaintiff. The plaintiff has also produced two receipts for sale of crop in the suit properties. More importantly the plaintiff has sought cultivation certificate from Tahasildar in the suit properties and the Tahsildar in turn has directed Village Accountant and Revenue Inspector calling for report by making spot inspection. In continuance to the same the revenue officials

have conducted the spot inspection and GPS location photographs are taken during that time and the copy of the same is produced by the plaintiff which has all the necessary particulars. Importantly the report is submitted by the Revenue Inspector to Tahsildar Hadgali stating the true of the properties are not staying in the village of the suit properties and the plaintiff is currently in cultivation of the suit properties. The said report is annexed with the statement of the villagers and Mahazar. The said Mahazar is conducted by village accountant and Revenue Inspector. The report of the Revenue inspector is important piece of document to show the possession of the plaintiff over the suit properties.

11. On other hand the defendants have merely filed the written statement denying the claim of the plaintiff. However has not furnished any single document to show exercise of their right of ownership over the suit properties. Even as per the documents produced by the plaintiff, a complainant is lodged by the plaintiff before the Hadagali Police station in Cr.No. 107/2023, against the defendant for the offence of

causing loss and damage to the crops grown by the plaintiff in the suit properties. All these aspects go to show that as on the day of filing of the suit the plaintiff is in possession of the suit properties. Based on the above discussion the plaintiff has made out prima-facie case and even the balance of convenience lies with the plaintiff. In the event of rejection of the present application the plaintiff would face irreparable loss. As a result, the above points 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.1 filed by the plaintiff under Order 39 rule 1 and 2 R/w 151 of C.P.C., is allowed.*
- *The defendants by way of temporary Injunction are hereby restrained from interfering and obstructing to the possession and cultivation of the plaintiff over the*

*suit properties until disposal of the
suit.*

(Directly dictated to the stenographer on computer, typed by his, corrected and then pronounced in the Open Court, by me, on this 8th day of September 2023.)

(VEERESH KUMAR C.K.)
CIVIL JUDGE AND JMFC.,
HADAGALI.