

KADG420008162021



**IN THE COURT OF THE CIVIL JUDGE & JMFC,
HARAPANAHALLI.**

Present

Smt. Fakirawwa Kelageri, *B.A., LL.B.*,
Civil Judge & JMFC, Harapanahalli.

Dated this the 5th day of February 2024.

O.S.NO.108/2021

Plaintiff/s: Yogesh.A
(By Sri.K.J.P., Adv.,)

-VS-

Defendant/s: Kasnya Naik and others
(By Sri.S.J.K., Adv.,)

INTERLOCUTORY APPLICATION NO.I

Applicant/s: Yogesh.A
(Original plaintiff)

-VS-

Opponents: Kasnya Naik and others
(Original defendants)

ORDERS ON IA. No.I

This is an application filed by plaintiff U/Order 39 Rule 1 and 2 of CPC., seeking the relief of temporary injunction against the defendants restraining the defendants, their followers, relatives, coolies, agents or

any other persons claiming under them from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property till disposal of the suit.

2. In the affidavit, in support of the application, it is stated by this plaintiff that, he has purchased the suit schedule Sy.No.419/3 measuring 2 acre and Sy.No.419/2 measuring 1 acre 99 cents through registered sale deeds dated 14.09.2020 and 31.03.2021 respectively from its original owners. On the basis of sale deed, mutation has been effected as per M.R.No.T.114/2020-2021 and his name has been entered in the ROR. Since from purchase, he has been in peaceful possession and enjoyment of the suit schedule property and cultivating the same. The defendants have no right, title and interest over the suit schedule properties. The original owners i.e., Nitturu Mudi Mallappa and Nitturu Veerappa have filed suit in O.S.No.87/1976 against the mother of the defendants and obtained permanent injunction. The defendants have highhandedly trespassed into the suit schedule properties and obstructed his peaceful possession and enjoyment of the suit schedule property. In this regard, he has lodged complaint on 16.06.2021 against the defendants before Halavagalu police. The police have called the defendants, their followers and advised them not to interfere with

the plaintiff's peaceful possession and taken statement from them. On 19.06.2021 he has cultivating the land, again the defendants illegally trespassed into the suit schedule land with deadly weapons with dire consequence and threatened to him. The defendants have obstructed him from cultivating the suit schedule land. If the injunction is granted no loss or injury will be caused to the other side. If injunction is not granted they we will be put to great hardship and injury. Both prima-facie case and balance of convenience are in their favour. Hence, prayed to allow the application.

3. The defendants have objected said application and contended that, the present application is not maintainable either in law or on facts as such liable to be rejected in limine. The father of the defendants Nanya Naik S/o. Hariya Naik is basically lambani SC caste and he is in peaceful possession and enjoyment of the suit schedule property Sy.No.419/2 measuring 4 acre 02 cents since from 50 to 60 years. The government called for application for Akrama and Sakrama, in this regard the father of defendants have filed application before Tahasildar, Harapanahalli. Considering the caste, the government has granted patta on 20.01.1957 in favour of father of the defendants. After granting patta, on 10.12.1958 he has paid

tax to the suit schedule property and same has been entered into resettlement register measuring 3 acre 99 cents. Since from granting patta, they are in peaceful possession and enjoyment of the suit schedule property and has not sold the said property. Such being the case, the legal heirs of Nitturu Mudi Mallappa viz., Smt. Girijamma, Revappa, Bettappa, Mahesh colluding each other illegally created partition deed and got mutated their names as per M.R.No.150/2016-2017 to the extent of 01 acre 99 cents to Smt.Girijamma W/o. Kushalappa. Like wise, remaining 02 acres has been mutated in favour of Revappa, Bettappa and Mahesh after the death of their father as pothi varasu. Thereafter, on 14.09.2020 the legal heirs of Nitturu Mudi Mallappa have sold 02 acre to plaintiff for a valuable consideration of Rs.4,20,000/-. On the basis of registered sale deed, the plaintiff got mutated their name by colluding with revenue officials vide mutation order No.144/2020-21 dated 30.01.2021. Out of 3 acre 99 cents the LR's of Girijamma viz., Smt. Ravakka, Smt. Shankuthala, N.Prakash, N.Eshappa have sold 01 acre 99 cents to plaintiffs. The LR's of Nitturu Mudi Mallappa and Smt. Girijamma and other have no right to alienate the suit schedule property to third party. Hence, prayed to reject the application.

4. Heard learned counsel for the plaintiffs and defendants and perused the materials on record.

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

- 1) Whether the plaintiff has made out prima-facie case?
- 2) Whether the balance of convenience lies in favour of plaintiff?
- 3) Whether irreparable loss will be caused to the plaintiff, if temporary is not granted ?
- 4) What order?

6. My findings on the above points are as follows:

Point No.1 : In the Negative.

Point No.2 : In the Negative.

Point No.3 : In the Negative.

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

REASONS

7. **Point No.1 to 3:-** Since these points are interlinked with each other, in order to avoid repetition, they are taken together for common discussion. This is a suit filed by the plaintiffs against the defendants for a relief of declaration and permanent injunction.

8. At the out set, it is material to note that of person seeking grant of injunction as to prove that the has made out prima-

facie case to go for trial. They are also required to show that balance of convenience is in their favor and they will suffer irreparable loss and injury if injunction is not granted. It is equally well-settled that when the party fails to prove prima facie case to go for trial, the question of considering balance of convenience or irreparable loss and injury to the party concerned would not be material at all. If that party fails to prove prima-facie case to go for trial it is not open to the court to grant injunction in his favor if he has made out case of balance of convenience being in their favor and they would suffer irreparable loss and injury if no injunction order was granted. This proposition of law has been laid down by the Hon'ble Supreme Court of India in **2010 AIAR (Civil) 1 (Kashimath Samstan and another V/s Srimad Sudhindra Thirthaswamy and another)** in the light of above proposition of law now I have to see as to whether plaintiffs have made out prima-facie case or not?

9. In order to show prima facie case, the plaintiff has produced original registered sale deed dated 14.09.2020, original registered sale deed 31.03.2021, RTC for the year 2021-2022 land bearing Sy.No.419/3, measuring 2 acre 16 cents situated at Kadati village, Mutation copy M.R.No.T114/2020-2021, certified copy of the

judgment and decree in O.S.No.87/1976 dated 13.07.1976 and original endorsement copy issued by Halavagalu police dated 17.06.2021.

10. The defendants have produced cash paid receipt dated 10.12.1958, certified copy of patta copy dated 20.01.1957 issued by Tahasildar, certified copy of memorandum issued by Tahasildar, certified copy of re-settlement extract, certified copy of Aakarband, certified copy of the form No.10, certified copy of the sketch, certified copy of the RTC extract in respect of Syd.No.419/2 for the year 1968-2000-2001, certified copy of encumbrance, certified copy of R.R.T.No.267/2020-21 notice, notarized genealogical tree, computerized mutation copies and three RTC extract 2021-2021.

11. On proper appreciation of pleadings and documents produced by the plaintiff, it appears that the plaintiff has filed this suit for declaration and permanent injunction against the defendants. According to plaintiff, he is owner of suit item No.1 property bearing Sy.No.419/4 to an extent of 2 acre on 14.09.2020 and item No.2 property bearing Sy.No.419/2 to an extent of 1.99 acre on 31.03.2021 by registered sale deeds. On the said of sale deeds, his name has been entered to said properties. The defendants are not

having right, title and interest over suit properties. The plaintiff is in possession of the suit properties and they are obstructing or interfering with plaintiff's peaceful possession and enjoyment of suit properties. On the other hand the defendants have taken specific contention that, the defendants are belongs to SC community the property bearing Sy.No.419/2 to an extent of 4 acre was granted by the government on 20.01.1957 in the name of their ancestor by name Nanya Naik S/o Hari Naik. After issuing patta, name of their ancestor by name Nanya Naik S/o Hari Naik had entered to an extent of 3.99 acre in re-settlement register. Afterwards his name has been entered to said property in the year 1968-69. But in the year 1970 the name of one Nitturu mudi Mallappa has been entered to suit property by deleting the name of father of defendants without any proper documents and he colluding with officials of revenue department created false documents in order to grab the suit properties. Afterwards LR's of Nitturu Mallappa namely Girijamma, Revappa, Bettappa and Mahesh have colluding with each other got partition as per MR.No.150/2016-17. After death of husband of Girjamma, their names have been entered to an extent of 1.99 acre out of 3.99 acre and after death of Veerappa his LR's by name Revappa Battepa and Mahesh have been entered their names to an

extent of 2.00 acre by creating documents and without having any prior permission from concerned authority, the LR's of Nitturu Mudi Mallappa sold the suit property to the plaintiff on 14/9/2012 and sons and daughters of Girjamma by name Revakka, Shakuntala, N Prakash and N.Eshappa illegally sold the property to an extent of 1.99 acre in favour of plaintiff on 31.03.2021. Both two sale deeds executed without prior permission from concerned authority. Said Nitturu Revappa and Nitturu Bettappa and Mahesh and Nitturu Girijamma have no right to execute said sale deeds in favour of Plaintiff in respect of suit property.

12. The records produced by the defendants disclose that the government granted the property bearing Sy.No.419/2 to an extent of 4 acre on 20.01.1957. Re-settlement register disclose that name of Nanyak S/o Hirya Naik is mentioned to an extent of 3.99 acre and name of Nitturu Mudi Mallappa and Nitturu Erappa entered to revenue records in the year 1970 up to 2000-01. MR.No.T150/2017 disclose that name of Nitturu Girijamma mutated property bearing Sy.No.419// 2 to an extent to 1.99 acre and name of Nitturu Revappa, Nitturu Bettappa and Mahesh jointly mutated bearing Sy.No.419//3 to an extent to 2.00 acre. MR.No.T114/2021 disclose that name of

Plaintiff has mutated to property bearing Sy.No.419//3 to an extent to 2.00 acre.

13. The documents produced by the plaintiff disclose that Nitturu Revappa, Nitturu Bettappa and Mahesh sold to an extent of 2.00 acre in favour of Plaintiff on 14/9/2020 and Girijamma W/o Kushalappa Kadathi has sold the property to an extent of 1.99 acre in favour of Plaintiff on 31.03.2021. MRNo.T114/2021 disclose name of plaintiff mutated to suit property and his name has been entered in revenue records. Certified copy of OS.No.87/1976, it appears that Nitturu mudi Mallappa filed suit for injunction against Bendigere Lambani Sakri Bai W/o Nanya Naik. As per this document, Nitturu Mudi Mallappa purchased bearing Sy.No.419 to an extent of 3.99 acre from defendant and the said suit was decreed.

14. Now points for consideration is whether one Lambani Sakri Bai W/o Nanya Naik was wife of Nanyanaik S/o Heeryanaik and grandmother of defendants or not, whether Sakribai W/o Nanyanaik was having right to execute registered sale deed one Nitturu Mudi Mallappa or not, whether one Nitturu Mudi Mallappa has been entered to suit property without any proper document or not are matter of trail. Admittedly there are two registered documents

herein. Now the revenue records are standing in the name of plaintiff. Except revenue records the plaintiff has not produced any documents to show that they are in possession of the suit property.

15. In order to established their respective contentions as taken by the parties to the suit they have to go for trial. Hence at the stage, it is not shown by the plaintiff that there is triable dispute involved in the suit, in order to establish their contention parties have to go for trail. At this stage, in order to ascertain truth in contention as taken by respective parties go to cannot hold mini trial. At the stage of proceeding court has to consider whether there is a trial issue existed or not. As already discussed about there is serious dispute with regard to ownership of suit property and also there is a serious dispute with regard to physical possession of suit property. Such being the fact, it can be held that, at this stage Plaintiff has not made out of prima-facie case.

16. It is worth to not that the plaintiff has filed suit for permanent injunction. As dispute with regard to genuinity of sale deeds in respect of suit property, which has to be decided by the court after full pledged trial. Hence the plaintiff has not made out from a prima-facie case. Taking into consideration of facts of present

case if temporary injunction at the stage granted the plaintiff will be put to hardship and injury on the other hand, hardship and injury would be caused to the defendant in case add-interim temporary injunction as prayed for by the plaintiff/applicant is granted. Hence, I **answer the point No.1 to 3 in the Negative.**

17. Point No.4 : As already discussed above on points No.1 to 3, I proceed to pass the following :

ORDER

I.A. No.I filed by plaintiff U/o.39 Rule 1 and 2 R/w 151 of CPC is hereby dismissed.

No order as to costs.

(Dictated to the Stenographer directly on computer, revised by me and then pronounced in the open court this the 5th day of February 2024).

(Fakirawwa Kelageri)
Civil Judge & JMFC,
Harapanahalli.