

KAVP210001372021



Presented on : 28-01-2021
Registered on : 02-02-2021
Decided on : 02-08-2022
Duration : --

**IN THE COURT OF ADDL. CIVIL JUDGE AND JMFC,
BASAVANA-BAGEWADI**

PRESENT: Smt. SAUMYA HOOLI

B.A.,LL.B.

**Addl. Civil Judge & JMFC,
BASAVANA-BAGEWADI**

O.S.No.78/2021

Dated this the 2nd day of August 2022

PLAINTIFF:

1. Mustak-Husain @ Mastak S/o:Jiyauddin
Mulla of Kudagi.

-Versus-

DEFENDANTS:

1. Mahammadakashim s/o:Abdularahiman Mulla
and others.

PARTIES ON I.A.I

Applicant/plaintiff:

1. Mustak Husain @ Mastak W/o:Jiyauddin
Mulla, Age:58 years, Occ:Agriculture,
R/o:Kudagi, Tq:Kolhar, Now at
Badikaman Masid Road, Vijaypura

(By Sri.R.B.Ganakumar, Advocate)

-Versus-**Opponents/Defendants:**

1. Mahammadkashim S/so:Abdularahiman Mull
Age: 75 years, Occ:Agriculture, R/o:Kudagi,
Tq:Kolhar, Now at KHB Colony, Vijaypura.
2. Jiyauddin S/o:Abdularahiman Mulla,
Age:40 years, Occ:Agriculture, R/o:Kudagi,
Tq:Kolhar, Now at KHB Colony, Vijaypura,
3. Mahemuda W/o:Jiayaddin Mulla,
Age:80 years, Occ:Agriculture, R/o:Kudagi,
Tq:Kolhar, Now at KHB Colony, Vijaypura,
4. Mahamma-Mudassur S/o:Jiyauddin Mulla,
Age:25 years, Occ:Agriculture, R/o:Kudagi,
Tq:Kolhar, Now at KHB Colony, Vijaypura.

(D-1 exparte)**ORDERS ON IA NO.I**

The Applicant/Plaintiff has filed I.A.No.I U/O 39 Rule 1 and 2 of CPC seeking temporary injunction restraining the defendants and their followers from construction of any building on the suit property bearing Sy.No.459/1 measuring 2 acres 28 guntas situated at Kudagi village of Kolhar taluka.

2. The plaintiff in his affidavit annexed to the IA stated that the plaintiff and defendants are the tenants in common of suit property bearing Sy.No.459/1 measuring

2 acres 28 guntas. The plaintiff is begotten son from Jiyauddin and Rabanabi wherein Jiyauddin is the son of Abdularahiman and his first wife Kulusumabi. Defendant No.1 is the son of Abdularahiman and his second wife Mariyambi whereas defendant No.2 is the son of Jiyauddin and his third wife Rajama. Defendant No.3 is the wife of defendant No.2 and defendant No.4 is the son of defendant No.2 and 3. The plaintiff further stated that, plaintiff and defendants are enjoying the suit property as tenants in common as per M.E.No.5856. Later the plaintiff and defendants alienated 4 acres to one Basayya Gurupadayya Math for family necessity, which is numbered as Sy.No.459/1A as per M.E.No.6781. Further, defendant No.1 by colluding with revenue officials got created M.E.No.7714, wherein he has relinquished the suit property to defendant No.2. The said ME number is not binding on the plaintiff, as the plaintiff is having 1/3rd share. Further, the 2nd defendant got created M.R.No.H121, wherein he has relinquished his property to defendant No.3 and 4. Now, the defendants are illegally constructing buildings for the residential purpose of NTPC

workers and plaintiff having requested for his 1/3rd share and that the defendants having denied, the plaintiff is constrained to file this IA.

3. After filing of this suit, along with suit plaintiff has filed IA No.I and II U/O 39 Rule 1 and 2 of CPC., whereas, court has passed temporary injunction on IA No.II and the emergent notice was issued on IA No.I. As per order of IA No.I, the emergent notice and suit summons was issued to the defendants, where the defendant No.1 refused summons and emergent notice, whereas summons and notice of defendant No.2 to 4 returned as out of station. Further, the defendants have not filed any objection to this stage.

4. Heard the counsel for the plaintiff and perused the entire records placed on record.

5. Upon hearing the arguments and on perusal of materials placed on record, the following points arise for consideration are;

- (1) Whether the plaintiff has made out a prima facie case in his favour?

(2) Whether the balance of convenience lies in favour of plaintiff?

(3) Whether irreparable loss or hardship will be caused to the plaintiff, if injunction is not granted?

(4) What order?

6. My findings to the above points are as under;

Point No.1 : Affirmative,

Point No.2 : Affirmative,

Point No.3 : Affirmative,

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

: **REASONS** :

7. Point No.1 to 3:- Since these points are interlinked with each other to avoid repetition of facts they are taken together for common consideration.

8. In nutshell, it is the case of the plaintiff that, the plaintiff is having 1/3rd share in the suit property and that the defendants are constructing the building in the said suit property.

9. The plaintiff in support of his contention, has placed various materials on record. The plaintiff has produced the RTC extracts for the year 1982 to 1988, wherein it is apparent that, the Sy.No.459/1 measuring 6 acres 29 guntas belonged to Abdularahiman Mulla and from the year 1983 the said property stood in the name of defendant No.1. The plaintiff has also produced M.E.No.5856, wherein it is apparent that after the death of Abdularahiman Kashimasab Mulla dated 22.02.1979, the Sy.No.459/1 devolved upon plaintiff and defendant No.1, 2 and 3. The plaintiff has also produced ME No.6781, where the plaintiffs and defendant No.1 to 3 have sold 4 acres of land in Sy.No.459/1, which in turn numbered as Sy.No.459/1A to one Basayya Gurupadayya Math. As per M.E.No.7714, the defendant No.1 has relinquished 2 acres 29 guntas of land in Sy.No.459/1 to defendant No.2. Thereafter, as per MR No.H121/2014-15, the defendant No.2 has transferred the suit property in the name of defendant No.3 and 4. Thereafter, this suit property is standing in the name of defendant No.2, 3 and 4 as per the recent RTC. The plaintiff has also produced

several photographs along with CD, which on perusal shows that the foundation is being laid for the purpose of construction of building. The plaintiff alleging that the suit property has been illegally mutated by defendants requires to be decided in the course of trial. On the other hand the defendant No.1 has refused the summons sent by the court and whereas the summons to defendant No.2 to 4 has been returned as out of station. Considering, both as deemed service and in order to protect the interest of the plaintiff at this present stage and to ascertain the hardship, which would caused to plaintiff or to the defendants, the court hereby thinks proper to issue TI against the defendants at this stage. As the plaintiff has alleged the transfer of suit property in the name of defendant by fraud, to ascertain the same it requires full fledged trial and without proper trial allowing the defendants to construct any building on the suit property may cause injustice to plaintiff. Hence, I answer point No.1 to 3 in the affirmative.

10. Point No.4:-For the reasons assigned above, this court proceeds to pass the following;

ORDER

IA No-I filed by the Applicant/Plaintiff
U/O 39 Rule 1 and 2 of the Civil Procedure
Code is hereby allowed.

Consequently, the defendants and their
followers are hereby restrained from
construction of any building in the suit
property bearing Sy.No.459/1 measuring 2
acres 28 guntas situated at Kudagi village of
Kolhar taluka, till disposal of the suit.

No order as to cost.

(Dictated to the Stenographer directly on the computer typed by him, corrected and pronounced by me in the open court on this the **2nd** day of **August-2022**).

(SAUMYA HOOLI)
Addl.Civil Judge & J.M.F.C.,
Basavana-Bagewadi.