

IN THE COURT OF ADDITIONAL CIVIL JUDGE & JMFC,
AT :INDI

-PRESENT-

HULUGAPPA D.
B.A., LL.B.
Additional Civil Judge & JMFC, Indi.

Dated this the 27th day of November 2020

Original Suit No.418/2017.

Plaintiffs:

1. Lalasing S/o.Ramasing Rajaput,
Age: 52 years, Occ: Agriculture,
R/o.Chadachan, Tq: Indi, Dist: Vijayapura,
and others.

(By Sri.JRK/S.P.Patil, Advocate)

-Versus-

Defendants:

1. Ganadhar S/o.Vardhaman Muttin,
Age: 50 years, Occ: Agriculture,
R/o.Chadachan, Tq: Indi,
Dist: Vijayapura **and others.**

(By Sri.S.G.Kulkarni, Adv for D-1)
(Defendant No.2 : Exparte.)
(By Sri.S.L.Nimbaragimath, Adv for D-3)

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I.A.No.I**Applicants/Plaintiffs:**

1. Lalasing S/o.Ramasing Rajaput,
Age: 52 years, Occ: Agriculture,
R/o.Chadachan, Tq: Indi, Dist: Vijayapura,
and others.

-Versus-

Opponents/Defendants:

1. Ganadhar S/o.Vardhaman Muttin,
Age: 50 years, Occ: Agriculture,
R/o.Chadachan, Tq: Indi,
Dist: Vijayapura **and others.**

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ORDERS ON I.A.NO.I FILED U/O.39 RULES 1 AND 2 OF CPC.

The instant application has been filed by the plaintiffs praying to pass an order of temporary injunction against the defendants restraining them from obstructing in the peaceful possession and enjoyment of plaintiffs' land bearing Sy.No.161/1 measuring 09-acres 36-guntas situated at Chadachan village, Tq: Indi, Dist: Vijayapura, pending disposal of the suit.

2. The application is supported with the affidavit duly sworn to by the plaintiff no.1, who contends that the plaintiffs are the sons and grand sons of deceased Vithalsing Rajaput. The land Sy.No.161/1 is situated at Chadachan village, Tq: Indi., which is

purchased by deceased Vithalsingh Rajaput on 19.11.1947 for consideration amount of Rs.2,000/- vide ME No.1237. Since from the date of purchase, the plaintiffs are in possession, use and enjoyment of the suit land. Now the defendants are unnecessarily without having any kind of right over the suit property, they are trying to obstruct the peaceful possession and enjoyment of the suit land. It is further contended that if this I.A. is allowed, no loss or injury will be caused to the defendants. On the contrary, if this I.A. is not allowed, the plaintiffs will be put to heavy and irreparable loss. The plaintiffs have made prima-facie case and balance of convenience lies in their favour. Upon all these grounds, plaintiffs prayed for allowing the instant application.

3. On the other hand, the defendant no.3 has filed memo adopting his written statement as objections to the instant application. It is contended that the suit land is neither ancestral nor joint family property of the plaintiff. The plaintiffs are not in possession of the suit land. The land Sy.No.161 is the self acquired property of Vithalsing. Sy.No.161/1 measuring 10-acres 19-guntas has been kept in the name of defendant no.3.

Thereafter, he sold the same to one Mahadev Dhaithan. Hence, the said Mahadev became absolute owner. The plaintiffs no.1 to 5 have no any right or share and plaintiff no.6 has no share in the suit land. Since from the year 1954, defendants no.2 and 3 are in actual possession and enjoyment of the suit land. Hence, the question of obstructing peaceful possession and enjoyment of the suit land does not arise. The plaintiff has not made the purchaser as a party in this suit. Hence, this suit is not maintainable for non joinder of necessary party. The plaintiffs have not made out prima-facie case. The balance of convenience lies in favour of this defendant. Upon all these grounds, the defendant no.3 has prayed to dismiss the instant application.

4. Further defendant no.1 has filed written statement adopting the same as objections to the instant application. It is contended that originally the suit property was intact and was under the ownership of Gourawwa, Gurawwa and Dhanawwa and the same was sold to one Vithalsing in the year 1947. The said Vithalsing sold the eastern portion measuring 10-acres 19-guntas which was numbered as Sy.No.161/2 to one Gurapadappa Daitan

i.e. father of defendants no.2 and 3. In the year 2004, Shivalingappa sold a portion of measuring 02-acres 00-guntas out of Sy.No.161/3 to one Mahadev Patil. The ADLR has effected pot hissa measurement and Sy.No.161/1, Sy.No.161/2 and Sy.No.161/3 were renumbered. Form the date of purchase, this defendant is in lawful possession and enjoyment and now the said portion measuring 02-acres 00-guntas is converted into N.A., which is part of suit property. The suit of the plaintiffs is not maintainable for want of pecuniary jurisdiction. The plaintiffs have no any title or interest in the suit property. Upon all these grounds, this defendant no.1 has prayed to dismiss the instant application.

5. I have heard the learned counsel for the plaintiffs and defendants and perused the material available on record.

6. The following points that arise for consideration.

1. Whether the plaintiffs have made out a prima facie case?
2. Where does the balance of convenience lies?
3. Whether irreparable loss and injury would be caused to the plaintiffs if an order of temporary injunction is not granted?

4. What order?

7. My answer to the above points are as follows:-

Point No:1. In the negative.

Point No:2. In favour of defendants.

Point No:3. In the negative.

Point No:4. As per final order,

for the following:-

REASONS

8. **Point No:1 to 3:-** In order to avoid repetition of facts, these points have been taken up together for common discussion.

Both the learned counsels for the plaintiff and defendants have canvassed their arguments reiterating the averments what are stated by them in their respective application and objection thereto.

9. It is specific contention of the plaintiffs that they are the absolute owners and in possession of the suit property. The suit property was originally belong to one Vithalsing S/o.Marutising Rajaput, as he had purchased the suit property from one Gourawwa, Gurawwa and Smt.Nagawwa on 19.11.1947 for sale consideration of Rs.2,000/-. Since from the date of

purchase of the suit property, the plaintiffs are in possession, use and enjoyment of the suit property. Now the defendants without having any right over the suit property are trying to obstruct the possession of the plaintiff.

10. Temporary injunction can be granted if the case is covered by three principles, namely 1) on making out a prima-facie case, 2) on showing balance of convenience in applicants' favour, in that refusal of injunction would cause greater inconvenience to them and 3) whether on refusal of injunction they would suffer irreparable loss.

11. In order to make out a prima-facie case, the plaintiff no.1 has filed an affidavit duly sworn to by him along with instant application and also produced as many as 05 documents. I have carefully gone through the documents produced by the plaintiffs. The RTC extract for the year 2016-2017 pertaining to suit property bearing Sy.No.161/1 measuring 02 acres 00 guntas stands in the name of the defendant no.1. The RTC extract for the year 2016-2017 pertaining to suit property bearing Sy.No.160/3 measuring 07 acres 36 guntas stands in the name of

the defendants no.2 and 3 jointly. The plaintiffs have also produced the mutation extracts pertaining to the suit properties. On the other hand, in support of their contentions, the defendant no.1 has also produced as many as 38 documents.

12. The temporary injunction sought for in the instant application is against the defendants retraining them from causing obstruction in possession and cultivation of suit property. So far as possession is concerned, the plaintiff has pleaded in his plaint that since from the date of purchase of the suit property from one Vithalsing S/o.Marutising Rajaput. They are in possession of the suit property. On perusal of the RTC extracts and sale deeds and mutation extracts pertaining to the suit properties, there are many transaction took place since from the year 1955. ME No.1237 and ME No.1238 would prima-facie show that, one Vithalsing S/o.Marutising Rajaput has purchased the suit property bearing Sy.No.161 from one Gourawwa, Gurawwa and Smt.Nagawwa on 19.11.1947 for sale consideration of Rs.2,000/- and on the same day he has sold out part of the suit property bearing Sy.No.161/2 measuring 10-acres 19-guntas to one Gurupadappa Siddappa

Daitan. On perusal of ME No.1580, it prima-facie shows that Vithal S/o.Marutising Rajaput has sold out the suit property bearing Sy.No.161/1 to one Mahadev Gurupadappa Daitan in the year 1955 for consideration amount of Rs.2,900/-. Since the year 1955 till date the said ME Nos.1238 and 1580 are not challenged by the plaintiffs or any other interested persons. The present suit has been instituted by the plaintiffs in the year 2017. Further at this stage, no document has been produced by the plaintiffs to prima-facie establish their possession over the suit properties. The suit properties stand in the names of other defendants as discussed supra. Such being the facts, if an temporary injunction sought for the present application is granted, then the defendants who are owners of suit properties will definitely put to inconvenience.

13. Further as the suit of the plaintiff is for declaration of title, till the plaintiff is declared to be entitled to the relief of declaration, at this stage, the rights of the plaintiffs cannot be ascertained. Therefore, in the facts and circumstances of the present case, the contention raised on behalf of parties can be

decided only after leading the evidence by them when case comes to the trial. On going through the entire material placed by the plaintiffs, at this stage, it does not make out the prima facie case to grant discretionary relief of temporary injunction, as prayed by the plaintiffs.

14. As such, on bare analyses of the document as well as pleadings of the parties, at this stage, I am of the opinion that the plaintiffs have failed to show the prima-facie case in their favour. Accordingly, I answered **point No.1 in the negative.**

15. **Points No.2 & 3:-** It is the contention of the plaintiffs that if the instant application is allowed no loss or injury will be caused to the defendants. On the contrary, if instant application is not allowed, the plaintiffs will be put to heavy and irreparable loss, which cannot be compensated by any means. As discussed above, plaintiffs have failed to make out prima-facie case for grant of discretionary relief of temporary injunction. At this stage, I have gone through the decision of Hon'ble High Court of Karnataka reported in **ILR 1989 KAR 1701** in the case of **Sri.Gowrishankar Swamigalu Vs. Sri.Siddagangamath.** In

the said decision, the Hon'ble High Court of Karnataka has held that if there was no prima-facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the court, further question of balance of convenience and irreparable loss need not be considered. Since the plaintiffs have failed to make out a prima-facie case, in view of the above said decision of Hon'ble High Court of Karnataka, the question of balance of convenience and irreparable loss or injury cannot be considered.

16. Before parting with my discussions, I shall make it clear that the opinion expressed by me is only on the basis of the prima-facie consideration of material on record and it is only for disposal of the instant application. Both the parties shall not take benefit of these observation during final disposal of this case. Accordingly, I answer **points No.2 and 3 in the negative.**

17. **Point No.4** :- In view of my findings and discussion on points No.1 to 3, I proceed to pass following:-

ORDER

I.A.No.I filed by the plaintiffs under Order 39 Rules 1 and 2 of CPC is hereby dismissed.

Under the facts and circumstances of the case,
there shall be no order as to cost.

(Dictated to the stenographer directly on computer, corrected,
signed and then pronounced by me in the open court on this 27th
day of November, 2020)

(Hulugappa D.)
Addl. Civil Judge and JMFC, Indi.