

**IN THE COURT OF THE ADDL. CIVIL JUDGE AND
JMFC, INDI.**

-PRESENT-

**DEVARAJU H.R.
B.A., LL.B.
Additional Civil Judge & JMFC, Indi.**

Dated this the 18th Day of January, 2023

Original Suit No.496/2022

PLAINTIFF:-

1. Smt. Sujata W/o Siddram Tillihalli & others.

(By Sri. N.K.N., Advocate)

V/S

DEFENDANT:-

1. Sri.Laxman s/o Tukappa Talawar

(By Sri. S.K.R., Advocate)

I.A. NO. II

APPLICANTs/Plaintiffs:

1. Smt. Sujata W/o Siddrama Tillihalli,
Age: 35 years, Occ: H.H.work,
R/o Tidagundi, Tq & Dist: Vijayapura.

**Now at Kanakadas Badawani, Vijayapura
and others**

V/S

RESPONDENT/ Defendant:

- 1. Sri.Laxman S/o Tukappa Talawar,
Age: 75 years, Occ: Agriculture,
R/o Horti, Tq: Indi, Dist: Vijayapura.**

ORDERS ON I.A.NO.II

The plaintiffs have filed this interim application under order 39 Rule 1 and 2 of C.P.C for seeking temporary injunction against the defendant to restrain the defendant, his family members, agents, servants or anybody claiming through him from interfering with the use and enjoyment of the suit schedule property bearing Sy.No.369/*/9 measuring 02 acres 04 guntas situated at Horti village of Indi taluka till the pending disposal of the present suit.

2. The plaintiff No.1 in her affidavit annexed to this application has stated that, the plaintiff No.2 to 4 are her children. Plaintiffs are the absolute owners in lawful possession and enjoyment of the suit schedule property

bearing Sy.No.369/*/9 measuring 02 acres 04 guntas bounded on East-land Sy.No.369/*/10 and Sy.No. 369/*/6, west-land Sy.No.369/*/3, South-land of Sangappa Talawar and North-land Sy.No.369/*/4. Her husband namely Siddram S/o Chandrashekar Tillihalli had purchased the above said property from defendant on 08.06.2012. The defendant has executed the registered sale deed in favour of Siddram S/o Chandrashekar Tillihalli. Ever since date of registration of sale deed he was in possession of the suit schedule property. After his demise, the plaintiffs are in possession of the suit schedule property as his legal heirs. The khata of the suit schedule property got mutated into the name of the plaintiffs as per M.E.No.H72/2014-15 dated 24.03.2015. The defendant has no rights, title or interest over the suit schedule property. In spite of it, he is trying to obstruct the peaceful possession and enjoyment of the plaintiffs. Hence, they have filed the present suit along with this application.

3. The plaintiffs further submit that they have made out a prima-facie case and balance of convenience

lies in their favour, if this application is not allowed much hardship would cause to them. Hence, prays for allow the application as prayed.

4. Per contra, the defendant has filed his detailed objection to the present application and contended that, in the year 2012 he has executed the nominal sale deed in favour of husband of the plaintiff No.1 with respect to suit schedule property for his family necessity and medical expenditure of his wife. The said Siddram S/o Chandrashekar Tillihalli, who is the husband of plaintiff No.1 was died in the year 2015. Thereafter, plaintiffs have created the khata into their names. The defendant is in possession of the suit schedule property. On the basis of the nominal sale deed the plaintiffs have created khata into their names. If this application is allowed much hardship would cause to him. Hence, prays for reject the application.

5. Heard both sides and perused the available materials on record.

6. The following points arise for the consideration of this Court;

1. Whether the plaintiffs/applicants have made out *prima-facie* case?

2. Whether the balance of convenience lies in favour of the plaintiff?

3. Whether the plaintiff will be put to great hardship and irreparable loss if temporary injunction as prayed for

4. What order ?

7. My answer to the above points are 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

8. Point No 1 : It is the case of the plaintiffs that, husband of the plaintiff No.1 namely Siddram S/o Chandrashekar Tillihalli has purchased the suit schedule property from defendant through registered sale deed dated 08.06.2012 for valuable sale consideration. Ever since date of registration of sale deed the husband of the plaintiff No.1 was in possession of the suit schedule property. After the demise of her husband katha of the suit schedule property got mutated into the names of the plaintiffs as his legal heirs. The defendant has no right, title or interest over the suit schedule property. In spite of it, he is trying to interfere with their possession. Hence, prays for allow the application.

9. The learned counsel for the plaintiffs has argued that, the defendant has already executed the registered sale deed in favour of husband of the plaintiff No.1 and father of the plaintiff No.2 to 4 by name Siddram S/o Chandrashekar Tillihalli on 08.06.2012. Ever since date of registration of the sale deed plaintiffs are in

possession of the suit schedule property. The defendant has no rights, title or interest over the suit schedule property to obstruct the plaintiffs to use and enjoyment of the suit schedule property. If temporary injunction is not granted much hardship would cause to the plaintiffs. Hence, prays to allow the application.

10. The plaintiffs in support of their contention have furnished recent RTC extract of the suit schedule property, wherein it appears that, khata of the suit schedule property jointly stands in the name of plaintiffs herein. Further they have furnished mutation extract bearing M.R.No.H-72/2014-15, wherein it appears that, khata of the said property got mutated into the name of the plaintiffs by way of warsa. Further they have furnished copy of the registered sale deed dated 08.06.2012, wherein it prima-facie appears that, defendant has executed the registered sale deed in favour of deceased husband of plaintiff No.1 and father of plaintiff No.2 to 4 by name Siddram S/o Chandrashekar Tillihalli.

11. It is the contention of the defendant that, he has executed nominal sale deed in favour of deceased husband of the plaintiff No.1. On perusal of the entire objection filed by him it is not indicated for what purpose and for what amount he was executed the nominal sale deed in favour of deceased Siddram S/o Chandrashekar Tillihalli. Further on perusal of the sale deed it prima facie reveals that, the defendant has received an amount of Rs.68,000/- as consideration. On very same day he delivered the possession of the suit schedule property to deceased Siddram S/o Chandrashekar Tillihalli. Till now the defendant has not challenged the said sale deed. The question is whether the defendant has executed the nominal sale deed or not is a subject matter of the trial. At this stage, plaintiffs have furnished relevant documents to establish prima facie case. Hence, they proved triable case before this court. Hence, **I hold point No.1 in the Affirmative.**

12. POINT NO.2 AND 3: Since these points are inter-related to each other I have taken up together for my common discussion in order to avoid repetition of facts and findings.

13. The plaintiff No.1 in her affidavit annexed to this application has stated that, when she has started to construct house in the suit schedule property, the defendant is trying to obstruct their possession over the suit schedule property. If temporary injunction is not granted much hardship causes to the plaintiffs, because they have furnished photo copy of the house constructed by them. It shows that, they have already constructed substantial building in the suit schedule property, if court reject the application it causes loss and hardship to the plaintiffs. Further there are chances to obstruct the plaintiffs to enjoy the suit schedule property. Hence, I am of the opinion that, if temporary injunction is not granted much hardship causes to the plaintiffs rather than

defendant. Hence, **I hold point No.2 and 3 in the Affirmative.**

14. POINT NO.4 :- On above made discussions on points No.1 to 3, this court proceeds to pass following:-

ORDER

I.A.No.II filed by the plaintiffs under order 39 rule 1 and 2 of CPC is hereby allowed with cost.

Consequently, defendant, his family members, agents, servants or anybody claiming through him are hereby temporarily restrained from interfering with the peaceful possession and enjoyment of the plaintiffs over the suit schedule property bearing Sy.No.369/*/9 measuring 02 acres 04 guntas situated at Horti village of Indi taluka

**till pending disposal of the present
suit.**

*(Dictated to Stenographer, transcribed and typed
by her, corrected and then pronounced by me, in the
open Court on this the **18th** day of **January-2023**)*

(DEVARAJU H.R.)
Addl Civil Judge and J.M.F.C.,
Indi.