

ORDER BELOW EXHIBIT NO. 15 IN R. C. S. NO. 2/2014**Ramji v/s Tikaram and other**

This is a suit for perpetual injunction. Defendant No. 1 was served and he has filed his written statement vide Exh. 19. Defendant No. 2, the daughter of defendant No. 1 has not filed her written statement. Plaintiff has moved Exh. 15 on 27.3.2014 and prayed that ad interim injunction be granted to protect the suit property as the defendants are about to sell the suit property.

2. Plaintiff has averred that defendant No. 1 is his brother. Their father Bhola Pandu Rathod was the original owner of gut No. 198 at village Mundwadi. Plaintiff and defendant No. 1 after the death of Bhola Pandu Rathod became the owners of 1 H 92 R of land each in gut No. 198.

3. Plaintiff has averred that out of his 1 H 92 R land he sold out some land. He is now in possession of 1 H 32 R of land in two different pieces in gut No. 198 at village Mundwadi. The four boundaries are as follows :

Part I :

towards the East : land of Ankush Rathod,
towards the West : nala and thereafter land of Dharku Thola,
towards the South : land of defendant Nos. 1 & 2 &
towards the North : land of Shamrao Totaram Etc.

Part II :

towards the East : land of Bhavlal and Pralhad Gobru Etc.
towards the West : land of Lahi Rathod,
towards the South : land of Seva Mansing &
towards the North : land of Kalibai Dharmu.

(hereinafter referred as suit property).

4. Plaintiff further averred that defendant No. 1 sold 61 R of land to Ankush Rathod in the year 1990. Defendant No. 1 then sold 30 R of land to Lalchand Mangu in the year 1994. This 30 R of land was then purchased by Kalibai Dharmu. Accordingly, after selling these 61 R and 30 R of land defendant No. 1 remains in possession of 1 H 1 R of land out of his 1 H 92 R in gut No. 198.

5. Plaintiff further averred that he has sold 60 R of land out of his 1 H 92 R and he remains in possession of his 1 H 32 R of land.

6. Defendant Nos. 1 & 2 in collusion with the Revenue Officer have shown less land standing in the name of plaintiff in the 7/12 extract. On the contrary, 1 H 31 R of land is shown in the 7/12 extract before the name of defendant No. 1. Thereafter, defendant No. 1 taking advantage of excess land shown before his name in 7/12 extract has taken mutation entry No. 1794 of partition and has given 1H 20 R of land in the name of defendant No. 2 i. e. daughter of defendant No. 1. On 19.12.2007 plaintiff had approached the Tahsil Office for correction of the wrong mutation entries in gut No. 198. On 31.12.2013 defendants obstructed the measurement of land by the plaintiff. Defendants are about to sell the land standing in their name. Plaintiff has also lodged a complaint with the Sub-registrar, Kannad, but the said complaint was not entertained. Hence, plaintiff has filed this application.

7. Defendant No. 1 replied the said application vide Exh. 19. He has denied the contentions of plaintiff and application. He has averred that plaintiff has sold the land in his share. The mutation entry No. 93 of gut No. 198 is in respect of heirs of deceased Ghola Pandu Rathod. He has in all 9 legal heirs, who are

not made parties to the suit. Plaintiff alone can not be the owner of half of gat No. 198. Plaintiff has not stated anything about the other legal heirs and has not approached this Court with clean hands. Defendant has not received any notice about the application filed by the plaintiff with the Tahsildar. He has, therefore, prayed that the application be rejected.

8. Considering the arguments advanced by both the sides and the rival pleadings following points arise for my consideration and I record my findings against each of them for the reasons stated below :-

POINTS	FINDINGS
i. Whether plaintiff proves prima facie case in his favour?	...No.
ii. Whether there would be irreparable loss to the plaintiff if injunction is refused?	...No.
iii. Whether balance of convenience tilts in favour of the plaintiff?	...No.
iv. What order?	...As per final order.

REASONS

9. Ld. Advocate for plaintiff argued that defendant No. 1 Tikaram Ghola Rathod had sold 61 R of land in gut No. 198 to Ankush Ramji Rathod by registered sale deed. In support of his contention he has placed on record the mutation entry No. 525 of gut No. 198. He has also relied on the index II, which reflects that Tikaram Bholra Rathod sold 30 R of land to Lalchand Mangu Chavan. Ld. Advocate for plaintiff therefore, argued that defendant No. 1 out of his share of 1 H 92 R has sold 61 R and 30 R of land. He remains in possession of 1 H 1 R. Ld. Advocate for plaintiff, therefore, further argued that defendant No. 1 Tikaram Bholra Rathod (including the land transferred by partition in favour of defendant No. 1 Yashodabai) can not be in possession of 1 H & 31 R of land in gut No. 198.

10. Ld. Advocate for defendant No. 1 argued that the boundaries of the suit property of Part II are wrongly shown by the plaintiff. To the East of this land there is land of Mohan Rathod, to the West there is land of Dharmu Tola Rathod, to the South there is land of Kalibai Dharmu Rathod and to the North there is nala. He further argued that plaintiff has not placed on record the 7/12 extract prior to 1975 and after 1998, which reflects that plaintiff is concealing something. He further argued that plaintiff had sold the land admeasuring 61 R to Ankush Ramaji i. e. his son. Thereafter, plaintiff sold another 60 R of land to Shivnath Laxman Dabke. Plaintiff also sold 60 R of land to Lahu Ramaji. He further argued that to harass and grab the land of the defendants plaintiff has now filed this suit.

11. Mutation entry No. 93 in respect of the gut No. 198 is of the heirs of deceased Ghola Pandu Rathod. As per the said mutation entry there are about 9 legal heirs. It is, therefore, not clear that as to how the plaintiff became the owner and possessor of 1 H 92 R of land. Plaintiff has not placed any other document by which he was entrusted with the suit property. It is pertinent to note that the mutation entry No. 525 is about selling of 61 R of land from gut No. 198. Further more, the index II placed on record by the plaintiff depicts that out of 3 H 84 R defendant No. 1 sold 30 R. Defendant No. 1 is the elder brother of the plaintiff. Both the mutation entries show that from the entire property defendant No. 1 has sold the land. Plaintiff has not clarified, whether the land was sold by the defendant being Karta of the family. The mutation entry No. 525 and index II do not reflect that defendant No. 1 sold those properties from his separate share. There is no mutation entry on record to show partition of the property.

12. Plaintiff has already approached the Revenue Authorities. Therefore, as equally efficacious remedy is available to the plaintiff, is not entitled for the relief of injunction. Plaintiff himself has contended that he has raised objection with the Sub-registrar office about his grievance. Even if his complaint is not entertained, he has other remedies under the Law. Protection granted under section 52 of Transfer of Property Act is sufficient to protect the interest of plaintiff. Hence, I am of the opinion that plaintiff has not made out prima facie case. Accordingly, I answer point Nos. 1 to 3 in the negative and in answer to point No. 4 pass following order :-

ORDER

- i. The application at Exh. 15 is rejected.
- ii. Costs in cause.

Date :-1.4.2014.

sd/-

(A. A. Walujkar),
Civil Judge (Jr. Divn.),
Kannad.

CERTIFICATE

I affirm that the contents of this P. D. F. file Order are same, word to word, as per the original order.

Name of the stenographer	: K. P. Shinde.
Court	: Civil Judge (JD), Kannad.
Date	: 1.4.2014.
Order signed by the Presiding Officer on	: 2.4.2014.
Order uploaded on	: 2.4.2014.