


<u>MHKO190003042019</u> 	<u>ORDER PASSED BELOW EXH.5</u> IN <u>R.C.S No.58/2019</u> <u>Nasruddin Babalal Mulla Vs. Anwar Imam Mullani</u> <u>etc.3</u> (Date:11/07/2024)
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The plaintiff has filed the present application under Order XXXIX Rule 1 and 2 of the Civil Procedure Code, to grant relief of temporary injunction against defendants.

Description of suit property :

2. The House property bearing C.S.No.729 admeasuring 168.1 Sq. meters situated at Mouje Sarawade, Tal. Radhanagari out of which 84.05 Sq. meters is the subject matter of present application. (Herein after referred as the 'suit property').

Brief facts of the application:

3. The plaintiff contended that the suit property originally belonged to his grandfather deceased Miyalal Appa (Appalal) Mullani (Mulla). In the year 1960, the grandfather of the plaintiff moved to Nipani, Tal. Chikkodi, Dist. Belgum and settled there. In Karnataka Government record, the name of grandfather of the plaintiff was recorded as Miyalal Appalal Mulla. He died on 19/08/1967 at Nipani. The said Miyalal left behind him a son Babalal Miyalal Mulla. The said Babalal died on 19/07/2006 at Nipani. He left behind him the plaintiff and other two sons by name Salim and Munir. Munir is also expired and he left behind two sons by name Mohsin and Yasin. The plaintiff came to know that deceased Miyalal owns property at Sarawade. On enquiry, the plaintiff got knowledge that he is having share in the suit property. The plaintiff got

knowledge that defendants and their brothers misled the revenue authorities and projected themselves as heirs of Miyalal Appa Mullani and got mutated their names to enquiry register of suit property.

4. It is further case of the plaintiff that defendants and their brothers are not heirs of deceased Miyalal Appalal Mulla (Mullani). The father of the plaintiff namely Babalal was only heir of deceased Miyalal Appalal Mulla. Defendants, in collusion with each other, executed illegal sale deed Nos.491/2009, 599/2009 and 220/2018 in relation to the suit property. Defendants have got mutated their names to the suit property. There is possibility that defendants may alienate the suit property to third person and they may demolish old house situated in the suit property. Hence, the plaintiff prayed that the application may kindly be allowed.

5. Defendants filed their say at Exh.14 and denied all the contentions in the present application. Defendants contended that the application is false and frivolous. Defendants specifically denied that the suit property was mutated in the name of grandfather of the plaintiff. Defendants further denied that the plaintiff is having right and share in the suit property.

6. It is further contention of defendants that in the year 1977, city survey scheme was implemented in Sarawade and accordingly enquiry was conducted. The Enquiry Officer from the City Survey Office considered the factual position and documents of the suit property and accordingly, the names of predecessor of defendants were mutated to the suit property. In the said enquiry, the right of predecessor of the plaintiff was not established. In fact, the predecessor of the plaintiff was not residing at Sarawade. Therefore, the question of his rights in the suit property does not arise. There is no relation of the plaintiff with defendants. Miyalal Appalal

Mullani is not from the family of defendant. Imam Mullani was predecessor of defendants and he owned the suit property. He was having one brother by name Miyalal and he died as a bachelor. Imam Mullani was only heir of his deceased brother. The plaintiff is taking advantage of similarity in the names and without any right, he has filed the false suit and false application. Defendant No.1, for the legal necessity of the family, alienated the suit property in favour of defendant No.2 and the plaintiff is having no right to challenge the said sale deed. Defendant No.2 is the owner and possessor of the suit property and he is paying taxes of the same. Lastly, defendants prayed that the application may kindly be rejected.

7. Heard both sides at length.

8. Following points arise for my determination. I have recorded my findings thereon for reasons given below.

Sr. No.	POINTS	FINDINGS
1.	Does the plaintiff prove that he is having prima-facie case?	In the affirmative.
2.	Does the plaintiff prove that the balance of convenience lies in his favour ?	In the affirmative.
3.	Does the plaintiff prove that irreparable loss would be caused to him, if temporary injunction is not granted ?	In the affirmative.
4.	What order?	As per final order.

9. The plaintiff has filed on record City Survey extract of the suit property at Exh.3/1, enquiry register extract at Exh.3/2, copies of three sale deeds at Exh.3/3 to Exh.3/5, an unregistered mortgage deed at Exh.22/1, the notice about loan repayment at Exh.22/3, receipts of payment of taxes at Exh.22/3 and 22/4.

10. Defendants have not filed any document on record.

SUBMISSIONS:-

11. The Ld. Counsel for the plaintiff and the Ld. Counsel for defendants advanced their argument as per the respective pleading of parties.

: REASONS :

AS TO POINT NOS.1 TO 3:

12. It is the case of the plaintiff that Miyalal Appalal Mullani (Mulla) is his grandfather. The said Miyalal is expired. The Miyalal was having only son Babalal. Babalal is also expired. The plaintiff is son of Babalal. Miyalal is having share in the suit property. Defendants misleded the revenue authorities and got mutated their names to the suit property. There is apprehension to the plaintiff that defendants may alienate the suit property or they may demolish the house situated in the suit property.

13. Defendants contended that the plaintiff or deceased Miyalal are not their relatives.

14. In the City Survey extract Exh.3/1, there is entry "Ancestral" in it. The name of defendant No.2 is mutated in it. In the enquiry register Exh.3/2, it is mentioned that Imam and Miyalal Appa Mullani were owners of the suit property. It is the case of the plaintiff that Miyalal was shifted to Nipani in the year 1960, therefore, it is nothing but obvious that he was not present at the time of City Survey enquiry.

15. The plaintiff has filed original unregistered mortgage deed at Exh.22/1. The said mortgage deed is in relation to the ancestral house situated at Mouje Sarawade. The said mortgage deed appears to be executed by Miyalal Appaso Mulla in favour of Imamso Appaso Mulla and the date of it is 20/11/1961. In the said mortgage deed, the property of Malvi shown towards Northern side of mortgage property. In all three sale deeds (Exh.3/3 to 3/5), the property of Malvi shown towards Northern side of suit property i.e C.S.No.729.

16. Though, defendants denied their relation with the plaintiff, but the plaintiff has filed original mortgage deed of the year 1961 which was executed between Imamso and Miyalal Appaso Mulla. The mortgage deed produced on record prima-facie shows that triable question exists in the present matter. In such circumstances, the plaintiff proves that he is having prima-facie case.

17. As far as the balance of convenience is concerned, the suit property is standing in the name of defendant No.2 and the plaintiff is having apprehension of alienation of the suit property. So also he is having apprehension that defendants may demolish the house situated in the suit property. Considering the apprehension expressed by the plaintiff, the balance of convenience appears to lie in his favour. In such circumstances, if the temporary injunction is not granted, then it would cause irreparable loss to the plaintiff. Hence, I answered point Nos.1 to 3 in the affirmative.

AS TO POINT NO.4 :

18. In view of the above said discussion and my findings on point Nos.1 to 3, the application deserves to be allowed. In the result, I pass following order.

- ORDER -

1. The application below Exh.5 is hereby allowed.

2. Defendant Nos.1 to 3 are hereby temporarily restrained from alienating the suit property and changing its nature till final disposal of the suit.

3. Costs in main cause.

Date:11/07/2024

(D. M. G. Malidwale)
Civil Judge Junior Division,
Radhanagari.