

Order Below Exh 05 in R.C.S. No.102/2018

[Shri. Kalappa Ogyappa Talli Vs Shri. Ramchandra Nandyappa Bharamgound]
(CNR NO.MHSN080006072018)

1. This application has been filed by plaintiffs u/o 39 Rule 1 and 2 of the Civil Procedure Code restraining defendants from causing obstruction to the peaceful possession of plaintiffs over the suit properties.

In short, facts of this application are as under :-

2. Description of properties situated in village Karajagi, Taluka-Jath, District-Sangli, is as under :-

Sr.No.	Gat No/S.N.	Area H.R	Pot Kharab	Assessment Rs.Paise.
1	Old S.N.536 Gat No.407	12.18 0.05	0.65	15.00
2	Old S.N.535/1 Gat No.406/1	1.95	0.03	4.00
3	415/2	Out of 2.82 0.05 land	0.13 0.00	3.48

Including well, 5 H.P. motor and pipe line situated in the S.N. 407. Herein after called as “disputed property”.

3. It is case of plaintiff that, on 23.04.1996, mortgage by conditional sale was executed for Rs.3,00,000/- between father of plaintiff, late Kallappa Talli and step mother, Bhagavva Somanna Talli of Late Nigavva Nandyappa Bharamgound and on same date possession was handed over to the plaintiffs. On or after that date, plaintiffs are

cultivating disputed property by taking various crops. At the time of execution of mortgage by conditional sale, it was agreed between parties that predecessor of defendant should redeemed disputed properties within 3 years from the date of deed by paying Rs.3,00,000/-. In case of non-compliance of above said condition sale become absolute and plaintiffs shall continue their possession over disputed properties without any kind of interruption from the other side.

4. It is further averred by plaintiff that, mortgage amount of Rs.3,00,000/- did not paid by late Bhagavva Somanna Talli within 3 years from the date of execution of mortgage deed. Father of plaintiff late Kallappa requested her to redeem disputed property by paying Rs.3,00,000/- but because of bad economical condition Bhagavva Talli told him to continue his possession as owner of the disputed land. After that, plaintiff father developed disputed properties within 10 to 15 years. Late Ningavva Nandyappa Bharamgound has instituted R.C.S. No. 109/2016 against plaintiffs for relief of redemption of mortgage by conditional sale dt. 23.04.1996 and for possession of disputed properties. This suit is still pending. Now defendants are trying to take possession forceably. Defendants are causing obstruction to the peaceful possession of plaintiff over the disputed properties. According to plaintiffs, they have prima-facie case and balance of convenience lies in their favour. If defendants are not restrained from causing obstruction to the peaceful possession of plaintiffs, then it would cause irreparable loss not compensated in terms of money.

5. Defendant no.1 to 4 have filed say at exh.21 and denied all the contentions made in the application. It is contention of the defendants that, suit is not tenable. Description of disputed properties is incorrect and boundaries are not given in the plaint as well as in the application. According to defendant, it is not true that plaintiffs had spent huge amount for development of disputed properties within 10 to 15 years. It is not true that, defendants are causing obstruction to the possession of plaintiffs. No cause of action accrued for institution of this suit. Plaintiffs have no prima-facie case, Balance of convenience lies in favour of defendants. Hence prays for rejection of application.

6. Heard Advocate Shri. R.S. Shinde for plaintiff and Advocate for defendants Shri. N.B. Patil. Following points arise for my determination. I have noted those points below with findings thereon and reasons given thereunder :-

Sr.No.	Points	Findings
1.	Whether plaintiffs have prima-facie case ?	Yes
2.	In whose favour balance of convenience lies?	In favour of Plaintiffs
3.	Is irreparable loss would cause to plaintiffs by rejection of this application ?	Yes
4.	What Order ?	As per final order.

REASONS

7. In support of case, plaintiff has relied upon khata extract of S.N. 415/2 (exh.8), 7×12 extract of S.N. 415/2 (exh.9), khata extract of S.N.407 and S.N. 406/1 (exh.10), 7×12 extract of S.N. 406/1 (exh.12) mortgage by conditional sale dt.23.04.1996, power of attorney, complaint filed by plaintiff in Police Station, exh.1 of R.C.S. No.109/2016, complaint dt. 08.05.2018 filed by plaintiff, notice issued by Police Station Umadi to plaintiff and photographs.

8. Defendants have filed on record supporting affidavit of witness Aajarao Baburao Patil and Anand Balasaheb Patil.

As to Points No. 1 to 3 :-

All these points are interlinked with each other, so to avoid repetition discussed together.

8. Advocate for plaintiff submitted that, it is case of plaintiff that, on 23.04.1996, mortgage by conditional sale was executed for Rs.3,00,000/- between father of plaintiff, late Kallappa Talli and step mother, Bhagavva Somanna Talli of Late Nigavva Nandyappa Bharamground and on same date possession was handed over to the plaintiffs. On or after that date, plaintiffs are cultivating disputed properties by taking various crops. It was agreed between parties that disputed properties should be redeemed within 3 years by paying Rs.3,00,000/-. In case of non-compliance of above said condition then sale become absolute and plaintiffs shall continue their possession over

disputed property without any kind of interruption from the other side. It is further averred by plaintiffs that, mortgage amount of Rs.3,00,000/- did not paid by late Bhagavva Somanna Talli within 3 years from the date of execution of mortgage deed. Father of plaintiffs late Kallappa requested her to redeem disputed properties by paying Rs.3,00,000/- but because of bad economical condition Bhagavva Talli told him to continue his possession as owner of the disputed properties. After that, plaintiff father developed disputed land. Late Ningavva Nandyappa Bharamground has instituted R.C.S. No.109/2016 against plaintiffs for relief of redemption of mortgage by conditional sale dt. 23.04.1996 and for possession of disputed properties. This suit is still pending. Now defendants are trying to take possession forceably. Defendants are causing obstruction to the peaceful possession of plaintiffs over the disputed properties. According to plaintiffs, they have prima-facie case and balance of convenience lies in their favour.

9. Advocate for defendants submitted that suit is not tenable. Description of disputed properties is incorrect and boundaries are not given in the plaint as well as in the application. It is not true that plaintiffs had spent huge amount for development of disputed properties within 10 to 15 years. It is not true that, defendants are causing obstruction to the possession of plaintiffs. No cause of action accrued for institution of this suit, so suit is itself not-tenable.

10. Mortgage by conditional sale deed is filed at exh.3/6. It is dt.23.04.1996 and executed between Kallappa Ogyappa Talli and

Shrimati Bhagavva Somanna Talli. It is pertinent to note here that mortgage by conditional sale deed was the executed in respect of S.N.535/1 and S.N. 536. It includes separate well situated in S.N. 535/1 with 5 H.P. electric motor. Rs.3,00,000/- was agreed amount between parties. It was decided between parties and written in the deed that if Bhagavva Talli did not redeemed mortgaged properties within 3 years, then plaintiffs father got right to cultivate mortgaged properties as a owner. Then plaintiffs names were enrolled as owner in the ownership column of the disputed properties. Documentary proof on record prima-facie shows that plaintiffs have possession over disputed properties as owner after non-fulfillment of condition of repayment of mortgage amount Rs.3,00,000/- by Bhagavva Talli to Kallappa Talli within 3 years from the date of mortgage deed. Nothing is on record which shows that mortgage amount of Rs.3,00,000/- was repaid within 3 years. On the contrary exh.1 of R.C.S. 109/2016 filed at exh.3/9 shows that suit for redemption was instituted by legal heirs of Bhagavva Talli against legal heirs of Kallappa Talli. In that suit, defendants claimed relief of recovery of possession of S.N. 406/(1) (old S.N.535/1) and S.N. 407 (old S.N. 536) from the legal heirs of Kallappa Talli. It shows that plaintiffs have possession over the disputed properties. Therefore, affidavits of witness filed by defendants are not reliable and doesn't inspire confidence. Documentary evidence prima-facie shows plaintiffs possessions. Therefore, I hold that plaintiffs have prima-facie case and balance of convenience lies in their favour. In such a case, plaintiffs will suffer irreparable loss not the defendants. Hence, I answer point no.1 and 3 in the affirmative and point no.2 in

accordance with it and for point no.4, proceed to pass following order.

ORDER

1. Application is allowed.
2. Temporary injunction is granted against the defendants restraining them from causing obstruction to the peaceful possession of plaintiffs over the disputed properties till final decision of the suit.
3. Costs shall follow cost in cause.

Jath.
Date : 15.10.2018

Sd/-
(Sou. S.R. Patil)
Civil Judge (J.D.), **Jath.**

I affirm that the contents of this P.D.F. file order are same word for word as per original judgment.

Name of steno : Shri. S.B.Yadav,

Name of court : Sou. S.R. Patil
Civil Judge (J.D.) & J.M.F.C., Jath.

Date : 15.10.2018

Judgment signed by Presiding Officer on : 18.10.2018

Judgment uploaded on : 30.10.2018