



ORDER BELOW EXH. 5

1. Present application is filed by the plaintiff seeking the relief of temporary injunction against the defendant no. 1 and 2 that they shall not construct in the suit property and that they shall not obstruct the possession of the plaintiff over the suit property.

Case of plaintiff

2. Suit property is ancestral property of the plaintiff. Plaintiff has share in the suit property. Out of said suit property many portion of the suit property has been sold to the various purchasers by the plaintiff and his family members. Defendant no. 1 is one of the purchaser. Defendant no. 2 is husband of defendant no. 1. Other defendants are co-sharers. Plaintiff and defendant no. 3 to 7 in the year 2002 had filed a proceeding from measurement of sub share bearing registration no. 11/2002 to the office of Taluka Inspector of Land Records. As per the said measurement suit property was divided in sub-shares. Regarding the division of suit property in sub-shares mutation entry no. 619 was taken on 12.09.2005. However, the division of suit property was not proper and legal. Therefore, appeal was filed against the measurement and sub-division. The appeal bearing no. 334/2021 was decided on 24.08.2021. As per the decision of said appeal the measurement proceeding and the sub-division by virtue of said measurement proceeding was set-aside. Accordingly mutation entry no. 619 was also cancelled.

Defendant no. 1 and 2 by taking disadvantage of their quarrel with defendant no. 4 to 6, started RCC construction attached to the road. Since measurement proceeding and the subdivision of the suit property has been set-aside and the mutation entry is cancelled, defendants do not have any right to construct anything in the suit property. The defendant no. 1 and 2 have their dispute with defendant no. 4 to 6 regarding City Survey No. 763/2. Plaintiff tried to persuade defendant no. 1 and 2, they did not pay any heed. Since the construction initiated by the defendant no. 1 and 2 is not legal one, plaintiff has made present application.

Case of the defendants:-

3. Defendant no. 1 and 2 have strongly resisted the present application by filing their say at Exh. 22. They have denied all the averments made by the plaintiff in his application. Defendants have contended that, plaintiff has not filed present property card and assessment extract of the property on record. Predecessors of plaintiff had partitioned the suit property and in order to sale the portion of suit property, they divided the suit property in 8 shares. Out of all 8 shares predecessors of plaintiff sold 7 shares to various purchasers and for themselves they kept 8th portion or share of the suit property. Accordingly, suit property was numbered as 763/1, 763/2, 763/3, 763/4, 763/5, 763/6, 763/7 and 763/8. Out of those shares 763/2 came to the share of defendant no. 1 and 2 by way of registered sale-deed dated 25.10.1988. The measurement proceeding, the mutation entry by virtue of measurement proceeding, thereafter the

cancellation of mutation entry taken by virtue of measurement proceeding took place between the plaintiff and defendant no. 3 and 4. It was behind the back of the defendant no. 1 and 2. Defendant no. 4 to 6 tried to outrage the modesty of the defendant no. 1 when she started construction in the suit property. Therefore, defendants have prayed to reject the present application.

4. Perused the application, say at Exh. 22. Perused the documents filed. I have heard the Ld. Advocate for both the parties at length. From the rival pleadings of the parties, following points arise for my determination along-with their findings for the reasons recorded thereof.

POINTS

Sr. No.	Points	Findings
1	Whether the plaintiff proves that, he has prima facie case?	No
2	Whether the balance of convenience lies in the favour of plaintiff ?	No
3	Whether irreparable loss will be caused to the plaintiff if relief of temporary injunction is granted?	No
4	What order?	As per final order

5. To prove his case, Ld. Advocate for the plaintiff has relied on documents filed along with the list at Exh. 3. He has filed property card of the suit property dated 31.12.2020,

order dated 24.08.2021, copy of map, photographs of the suit property. On the contrary defendants have filed sale-deed dated 25.10.1988 and recent photographs of suit property.

Admitted facts -

- a) Construction by the defendants.
- b) Measurement proceeding and mutation entry no. 619.
- c) Cancellation of mutation entry no. 619.

Point no. 1

6. To prove his case, plaintiff has relied upon a copy of property card of the suit property filed by him. Upon perusal of said property card it reflects that, property no. 763/1 is possessed by various purchasers as well as the plaintiff and other defendants. Upon perusal of order dated 24.8.2021 it reflects that, mutation entry no. 619 is cancelled. From the perusal of the photographs submitted by the plaintiff it reflects that, the construction initiated by the defendant no. 1 and 2 has commenced. On the other hand perusal of the sale-deed submitted by the defendant no. 1 and 2 reflects that, suit property was purchased by their predecessor from plaintiff and his brothers by way of registered sale-deed dated 25.10.1988. Upon perusal of said sale-deed it reflects that, on the Eastern side of the suit property, property of Iqbal Yusuf Sande, on South remaining portion of property no. 763, on West remaining property of property no. 763 and on North Govt. Road. The photographs submitted by the defendant reflects that, on the Northern side of the suit property there is

road whereas on the Southern side of the suit property other houses are situated.

7. From the overall perusal of the documents submitted by the plaintiff and defendant, it reflects that, the 4 boundaries given by both the parties do not match. More particularly plaintiff is very much silent upon the sale-deed dated 25.10.1988. The record further reflects that, plaintiff has solely placed his reliance on the cancellation of mutation entry no. 619. It is admitted fact that, the measurement proceeding in the year 2002 was taken place behind the back of the defendant no. 1 and 2. It has also come on record that, the predecessor of the defendant no. 1 and 2 was not a party to the measurement proceeding in the year 2002.

8. Record further reflects that, defendant no. 1 and 2 have obtained permission from the Nagar Panchayat Shirala for the construction they have initiated. From the perusal of the say and written statement it reflects that, defendant no. 1 and 2 were restrained from making any construction in the suit property. Plaintiff while instituting present suit has strongly averred that, the sub-division of suit property has been cancelled. However, it needs to be considered that, the sale-deed dated 25.10.1988 and thereafter sale-deed dated 26.07.2017 are intact. It is also pertinent to note that, the boundaries of the suit property are specifically mentioned in sale-deed. It is not the case of the plaintiff that, the sale-deed by virtue of which defendant no. 1 and 2 are in possession is illegal one.

9. From the pleadings of both the parties, it clearly appears that, sale-deed is not denied by the plaintiff. The possession of the defendant is also not denied by the defendant. It is also the admitted fact that, the measurement proceeding was filed by plaintiff and other defendants of which defendant no. 1 and 2 were not aware. For the sake of argument, if it is considered that, the sub-division of the suit property has been cancelled, it is pertinent to note that, plaintiff is silent upon the sale-deeds which were executed by the plaintiff, other defendants and his predecessors in favour of various purchasers of the part of the suit properties.

10. It is also pertinent to note that, plaintiff has instituted present suit when defendant no. 1 and 2 started construction in the suit property as per the sanctioned plan and with the prior permission of Nagarpanchayat. Therefore, it cannot be said that, defendant no. 1 and 2 are constructing as per their convenience in the suit properties. It can not be said that, plaintiff is unaware of the possession of the defendant no. 1 and 2 over the suit property since plaintiff and other defendants were the one who sold the suit properties to the various purchasers. It is also pertinent to note that, measurement proceeding no. 11/2002 was finalized on 12.09.2005 by way of mutation entry no. 619. Said entry was challenged in the year 2021 by way of appeal 334/2021 which was decided on 24.08.2021. No particular reason is given by the plaintiff why he has challenged said mutation entry no. 619 after 16 years. At this juncture equity needs to be considered. From the say of the defendant no. 1 and 2 it

reflects that they have obtained permission for the construction on 28.10.2020. Thereafter, they were sanctioned permission for the construction as per Pradhanmantri Awas Yojana. This reflects that, plaintiff was sleeping over his right and he initiated the proceeding to challenge the mutation entry no. 619 only after the permission was obtained by the defendant no. 1 and 2 by the Nagarpanchayat. The record further reflects that, the proceeding of Sec. 145 of Code of Criminal Procedure was also initiated between the parties.

11. Even if it is considered that, the sub-division of the suit property has been cancelled then as per the sale-deeds the various purchasers of the portion of the suit property are co-sharers. By that analogy the defendant no. 1 and 2 have become the co-sharers to the present suit property. The plaintiff is prayed perpetual as well as mandatory injunction against the defendant no. 1 and 2. However, since there is no partition and defendant no. 1 and 2 have initiated their construction in the suit property, in absence of the relief of partition, the relief sought by the plaintiff can not be granted. This indicates that, plaintiff is willfully sleeping over his right.

12. In order to bring the prima-facie case on record, it is the duty of the plaintiff to show in what way defendants have obstructed or ousted him or in what way his right is affected. Plaintiff has only made an averments as to the construction initiated by the defendant no. 1 and 2 stating that, they are constructing in the suit property despite the cancellation of sub-division in the suit property. Plaintiff has

only brought document on record showing that the sub-division in the suit property is cancelled on 24.08.2021. However plaintiff is totally silent upon the previous condition of the suit property from 2005 to 2020. Even if the averments made by the plaintiff supported by an affidavit are considered, it is to be taken note that prima-facie case do not only mean the averments made by the plaintiff on record. A prima-facie case needs to be seen on record as well as it be supported by a prima-facie evidence. In present case at hands plaintiff has failed to bring on record the prima-facie case in his favour. Therefore, i answer point no. 1 in the negative.

Point no. 2

13. Balance of convenience means the comparative mischief or inconvenience caused to the parties. In arriving at prima facie conclusion, the court has to weigh the mischief likely to be caused to the plaintiff, if interim relief is refused. At the same time, it has also to compare the injury likely to be caused to the other side, if the interim relief is granted. As far as balance of convenience is concerned, it is necessary that, balance of convenience must be in the favour of granting injunction. While looking into the factor of balance of convenience, it is important to look into the inconvenience caused to both the parties. From the documents submitted by the plaintiff on record, it prima-facie appears that, plaintiff do not have prima-facie case. Prima-facie evidence submitted by the plaintiff is challenged by all the defendants. In view of that, it has already come on record that, plaintiff do not have prima-facie case. Hence, if injunction is granted in favour of

the plaintiff, then it will cause inconvenience to the defendants. Therefore, balance of convenience do not lie in the favour of the plaintiff. Accordingly, I answer point no. 2 in the negative.

Point no. 3

14. An irreparable injury means such injury which cannot be adequately remedied by damages. The remedy by damages would be inadequate if the compensation ultimately payable to the plaintiff in case of success in the suit would not place him in the position in which he was before, injunction was refused. Plaintiff has prayed that, if partition of suit properties do not take place, defendants will continue to construct the suit properties. And therefore, irreparable loss will be caused to him. It is admitted fact that, plaintiff as well as defendants are in possession of the suit properties. Even if plaintiff is saying that, irreparable loss will be caused to him, it is pertinent to note that, plaintiff do not have prima-facie case and balance of convenience do not lie in his favour. In order to avail the relief of temporary injunction, it is mandatory to satisfy all the necessary conditions. In present case at hands, plaintiff has failed to prove that, he has prima-facie case and balance of convenience lies in his favour. Therefore, I answer point no. 3 in the negative.

Point no. 4

15. Now it is crystal clear that, plaintiff do not have prima-facie case, balance of convenience do no lie in his favour and no irreparable loss will be caused to him, therefore, present application deserves to be rejected.

16. It is important to note that, before granting injunction court always keep in mind whether the injunction issued by the court is executable. Hence, on these ground present application deserves to be rejected. Hence, I pass following order.

ORDER

1. Application below Exh. 5 is hereby rejected.
2. Status-quo granted is hereby vacated.
3. Both parties to take note of the same.

(Priti A. Shriram)
Jt. Civil Judge Junior Division,
Shirala.

Date – 06/03/2023

C E R T I F I C A T E

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	:	V. S. Patil
Court	:	Jt.C.J.J.D. & J.M.F.C., Shirala
Date	:	06/03/2023
Order signed by the		
Presiding Officer on	:	06/03/2023
Order uploaded on	:	08/03/2023