

IN THE COURT OF THE DISTRICT JUDGE :: HAILAKANDI

Misc. Appeal No. 07/2022.

Jaifar Ali Laskar @ Banik Uddin Laskar

.....Appellant/O.P.

Versus

Mehbub Ahmed Laskar

..... Respondent/Petitioner.

**PRESENT :- Sri Sanjay Hazarika, AJS.
District Judge, Hailakandi.**

Appearance and particulars :-

For the Appellant :- Sri L.H. Mazumder, Ld. Advocate.

For the Respondent :- Sri A.S. Choudhury, Ld. Advocate.

Date of Argument :- 30.08.2023.

Date of Judgment :- 15.09.2023.

JUDGMENT

1. This present Misc. Appeal is filed by the appellant challenging the impugned order dated 30.08.2022 passed by the Ld. Civil Judge, Hailakandi in Misc. Case No. 09/2022.

2. Being highly aggrieved with the aforesaid order, the appellant has preferred the instant appeal on the following amongst other grounds: *Contd.....P/2.*

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(i). That the Ld. trial court has erred both in law as well as in facts in passing the impugned order, which is not sustainable in law.

(ii). That the Ld. trial court failed to understand the spirit of Order – XXXIX of CPC.

(iii). That the Ld. trial court failed to apply its judicious mind in passing the impugned order.

(iv). That the Ld. trial court should have considered that there exists a sale agreement between the parties and the appellant has prima facie case and the balance of convenience is also in his favour.

3. The fact leading to filing the instant appeal is that the petitioner/respondent filed a Title Suit No. 18/2022 along with Misc. Case No. 09/2022 under Order XXXIX, Rule 1, 2 & 3 read with Section 151 of CPC. The appellant's case in brief is that the defendant/opposite party entered into an agreement to sell the suit land with the appellant on 05.05.2021 and executed the Bainanama in respect of the said land on receipt of Rs.21,50,000/- as advance consideration out of total consideration amount of Rs.34,40,000/-. Further, it is submitted that the said agreement is duly executed within a period of one year on receipt of balance consideration amount for the suit land. It is also submitted that by manipulating the money

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receipts, a fresh demand has been made and accordingly, Rs.2,00,000/- was paid on 17.11.2021 and executed an extended Bainanama due to delay in obtaining NOC. The defendant/respondent has already received an amount of Rs.31,00,000/- and only Rs.3,40,000/- remained to be paid. The defendant/respondent delayed the process of sale and now trying to sell the land to another person. Thus, the appellant prayed for directing the respondent prohibiting from alienating the land to anyone else and also not to change the nature and feature of the suit land in any manner.

4. The respondent appeared and contested the proceeding by filing objection and claimed that the plaintiff did not pay the money as per terms of the agreement. The defendant till now has received an amount of Rs.4 lakh in 3 instalments. The plaintiff being their relative has put signature in good faith in the blank non-judicial paper on 05.05.2021 & 17.01.2021 and collusively prepared the so-called Biananama and hence, prayed for rejecting the prayer for injunction.

5. I have heard the submission of both the parties and also gone through the case record.

6. In order to obtain an order of injunction, the party seeking injunction must fulfil the three gold principles

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of granting injunction, i.e. prima facie case, balance of convenience and irreparable loss and injury. In the instant case, both the parties admitted about execution of Biananama and it appears that both the parties controverted about the amount of transaction taken place between the parties.

7. The facts as alleged by the appellant as well as the respondent can only be decided after recording the evidence of the parties and the question of genuineness of the money receipts can be decided after taking the evidence of the parties. From the pleadings, it appears that the defendant/respondent did not deny about the execution of the Bainanama. Though it is claimed that the Bainanama has been made illegally, but the fact remains is that there exists a Bainanama between the parties.

8. Considering the above facts, it appears that the petitioner/respondent has a prima facie case and the Ld. trial court rightly also held that the petitioner/respondent has prima facie case in his favour.

9. The Ld. trial court in the impugned judgment and order held that the balance of convenience is also in favour of the petitioner/respondent. Admittedly, the suit land is a cultivable land and the change in its nature and feature will cause inconvenience to the parties. If the

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property is alienated, there is possibility of multiplicity of the proceeding. Considering the above fact, it appears that the balance of convenience is also found in favour of the petitioner/respondent.

10. Lastly, regarding irreparable loss and injury, considering the above facts, the decision of the Ld. trial court appears to be rightly decided, which needs no interference. The Ld. trial court while allowing the petition has directed that the defendant/appellant is restrained from transferring the suit land to any other person, either by way of sale or in any other manner and also from changing the agricultural nature and feature of the suit land, in any manner, with liberty to cultivate the same in normal course without doing any act by which the value of the suit land is diminished, till disposal of the Title Suit No.18 of 2022.

11. Admittedly, the land is yet to be sold/ transferred to the petitioner/respondent and the appellant/defendant is still possessing the suit land. Therefore, the possession can not be transferred without execution of the sale deed in favour of the petitioner. However, till execution of the sale deed, the possession of the defendant/appellant cannot be disturbed in any manner. The suit land is required to be preserved till

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decision of the suit by granting an injunction. The Ld. trial court has preserved suit property from changing its nature and feature and from transferring the ownership to any other person. The existence of Bainanama clearly shows that the petitioner has prima facie case and the balance of convenience is also found in his favour, therefore, the Ld. trial court rightly passed the impugned order, which needs no interference. However, the appellant shall continue to enjoy possession till decision of the Ld. trial court.

12. In the result, the impugned order dated 30.08.2022 is upheld. The misc. appeal is found to be devoid of merit and hence, the same is dismissed.

13. The parties are left to bear their cost.

14. Send down the LCR along with the copy of this Judgment and order.

15. The Misc. Appeal is disposed of accordingly.

Given under my hand and seal of this Court on this the **15th day of September, 2023** at Hailakandi.

**District Judge,
Hailakandi.**

Dictated and corrected by me:

District Judge, Hailakandi.