

KADW310002072023



Presented on : 07-08-2023
Registered on : 07-08-2023
Decided on : 03-10-2023
Duration : 0 years, 1 months, 27 days

**IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC,
KALAGHATAGI**

PRESENT

**SRI. G.R. SHETTAR., B.com., LL.B. (Spl)
SENIOR CIVIL JUDGE & JMFC, KALAGHATAGI**

DATED THIS 03RD DAY OF OCTOBER 2023
M.A.No.02/2023

APPELLANTS/

ORL.DEFENDANTS :

1. Satappa S/o Hanamantappa Nalakar,
Age: 51 years, Occ: Agriculture,
R/o Masalikatti, Tq: Kalaghatagi.
2. Sahadevappa S/o Hanamantappa
Nalakar, Age: 49 years,
Occ: Agriculture, R/o Masalikatti,
Tq: Kalaghatagi,

[R/by Sri.S.V.B., Adv]

Vs

RESPONDENTS/

ORL.PLAINTIFFS :

1. Suresh S/o Govind Khandekar,
Age: 71 years, Occ: Agriculture,
R/o Masalikatti, Tq: Kalaghatagi.

2. Hanamanthappa S/o Budappa Nalakar,
Age: 76 years, Occ: Agriculture,
R/o Masalikatti, Tq: Kalaghatagi.

(Resp.No.1- R/by Sri. N.S.U., Adv)

(Resp.No.2- R/by Sri. M.G.C., Adv)

Date and nature of the decree or order appeal against	Against the order on I.A.No.I in O.S.No.125/2022 dated: 03.07.2023 passed by the Civil Judge and JMFC, Kalaghatagi.
Date of Institution of the appeal	02.08.2023
Date of Judgment	03.10.2023
Total Duration	Years / Months / Days 00 02 01

(G.R. SHETTAR)
SR.CIVIL JUDGE & JMFC,
KALAGHATAGI

J U D G M E N T

The appellants/defendants No.1 and 2 have preferred this Miscellaneous Appeal against the order passed by the learned Civil Judge and JMFC, Kalaghatagi on I.A.No.I U/o 39 Rule 1 and 2 of CPC dated 03.07.2023 in O.S.No.125/2022, wherein the application filed by the plaintiffs was allowed.

2. Appellants were the defendants No.1 and 2, respondent No.1 was the plaintiff and respondent No.2 was the defendant No.3 before the trial court. For the sake convenience same

rank is considered in this appeal.

3. Case of the plaintiff before the trial court was as under:

A) Plaintiff has filed the suit for declaration that he is the absolute owner of suit property by virtue of sale deed dated 06.02.1984 and for the relief of permanent injunction restraining the defendants No.1 to 3 from obstructing to his peaceful possession and enjoyment over the suit property. It is his case that defendant No.3 was the absolute owner of suit property prior to 06.02.1984 having inherited the same in family partition took place between him and his brother long back, he was in possession of the said property, the plaintiff was working as a bounded labour and doing work in the hands of defendant No.3 since his childhood and doing all the agriculture and other works. It is further contended that defendant No.3 was in need of urgent money, for that defendant No.3 and elders of the village decided to sell the suit property and the defendant No.3 has sold the suit property in favour of the plaintiff for valid consideration of Rs.8,000/- through registered sale deed dated 06.02.1984, at that time the defendant No.1 and 2 were minors and they were under the care and custody of defendant No.3 as such

said sale deed is legally binding on defendant No.1 and 2 as the sale transaction was made in the interest of the family. It is further contended that defendant No.1 and 2 even attaining the majority have not challenged the sale deed till recently as such they are not entitled to object the same.

B) It is further contended that after execution of the registered sale deed the revenue authorities ought to have entered the name of the plaintiff to the record of rights on the basis of intimation sent by the Sub-Registrar but wrongly rejected the entry contending that transaction is prohibited as per Karnataka Prevention of Fragmentation Act and Consolidation Act, 1956, however said Act was amended in 1982 and all the transaction taken place from the date of passing of the said Act have been regularized. It is further contended that after rejecting the entry, the plaintiff has challenged the said order before the Assistant Commissioner, Dharwad who has dismissed the appeal on the ground of delay, then the plaintiff preferred revision before the learned Deputy Commissioner, Dharwar, on enquiry the Deputy Commissioner allowed the revision and directed the Tahasildar, Kalaghatagi to enter the name of plaintiff,

accordingly name of the plaintiff has been mutated to the revenue records of the suit property. It is further contended that defendant No.1 and 2 filed O.S.No.100/2020 against the plaintiff which is pending for consideration. This being the fact the defendants No.1 and 2 without having any right, title or interest over the suit property started obstructing the peaceful possession and enjoyment of the plaintiff over the suit property. Hence, the plaintiff has constrained to file the suit and I.A. u/o 39 rule 1 & 2 of CPC.

4. After appearance the defendant No.1 and 2 have appeared and filed written statement and memo adopting the written statement as objection to I.A. filed by the plaintiff. These defendants have denied the suit of the plaintiff as false and contended that description of the suit property shown by the plaintiff is incorrect, the boundaries shown are false because entire land measuring 8 acres 3 guntas is ancestral and joint family property and not divided between plaintiffs till today, boundaries shown in the sale deed dated 06.02.1984 are all false. It is further contended that defendant No.3 was not the absolute owner prior to 06.02.1984 as the property is ancestral property, the

defendant No.1 and 2 have been in joint possession along with defendant No.3. These defendants have denied the contention of the plaintiff that he was working as a bounded labour in the hands of defendant No.3. It is further contended that in September-2020 they learnt that plaintiff got entered his name in the record of rights of the suit property on the basis of the order of the Deputy Commissioner, Dharwad, the alleged sale deed is illegal and sham document, defendants family had sufficient income, there was no legal necessity, plaintiff being shrewd person has created illegal sale deed to gulf the suit land, the defendant No.3 never executed the sale deed and never received the consideration as such alleged sale deed is not binding on these defendants. O.S.No.100/2022 is pending. It is further contended that alleged sale deed had created fragment during the year 1984, therefore the Revenue Inspector had rejected the Wardi as the alleged sale deed was against the provisions of Karnataka Prevention of Fragmentation and Consolidation Act 1966, said Act was amended during 1983, according to the same earlier transactions have been validated and not subsequent transactions, but alleged sale deed dated 06.02.1984 is subsequent to amendment 1983 as such the plaintiff cannot

claim any right, title or interest over the suit property on the basis of vide transfer. It is further contended that since the sale deed is dated 06.02.1984, the suit filed now is barred by limitation. Hence, suit of the plaintiff and the I.A. filed u/o 39 rule 1 and 2 CPC are not maintainable. Hence, prayed for dismissal of the suit land application filed by the plaintiff.

5. The defendant No.3 has filed written statement denying the suit of the plaintiff as false. He has contended that he is an illiterate villager, do not know reading and writing, suit property is the ancestral property of himself and defendant No.1 and 2 who are having share in the suit property. It is further contended that the plaintiff got created the sale deed when he was working in the suit property, suit property is the only property for the livelihood of the defendants family. It is further contended that plaintiff and his friends got signature of this defendant by stating that the documents are required for getting sanction of crop loan on the suit property, but he has not executed any sale deed, he had no any family necessity and not intended to sell the property. It is further contended that alleged sale deed is against the provisions of Karnataka Prevention of Fragmentation of Consolidation Act,

1966, suit is barred by limitation. Hence, prayed for dismissal of the suit.

6. After hearing both the parties the trial court has allowed the application filed by the plaintiff i.e., I.A.No.1 U/o 39 Rule 1 and 2 of CPC on 03.07.2023 and issued Temporary injunction restraining the defendants from interfering with the possession and enjoyment of the plaintiff over the suit property.

7. Being aggrieved by said order the defendants No.1 and 2 / appellants have preferred this appeal on the following grounds.

// GROUNDS FOR APPEAL //

- a. That the order of the trial court on I.A.No.1 is neither maintainable on the facts nor on law. Hence, it deserves to be set aside.
- b. That the trial court has not perused the objections and decisions on question of facts and law. The trial court has assumed and presumed that facts and law and has arrived at a wrong conclusion. Hence, the order is to be set aside.
- c. That the trial court is wrong in observing at page 5 of the order that the partition was effected between defendant No.3 and his brothers. In fact defendant No.3 has no brothers. He is the only

son to his father-Budappa. The partition was effected between defendant No.3 and his uncle during 1968, as per ME No.249. The trial court is wrong in holding that defendant No.3 is the absolute owner in possession of Sy.No.18. Defendants No.1 and 2 are sons of defendant No.3 are also joint owners of the lands.

d. That the trial court has erred in holding that the sale deed dated 06.02.1984 is binding on defendants No.1 and 2. There was no legal necessity to sell the land. The burden is on plaintiff to prove the legal necessity and it is to be proved during trial of the suit. Defendants No.1 and 2 had preferred appeal before the Asst. Commissioner, Dharwad after the order of the Deputy Commissioner.

e. That the trial court is wrong at page 8 of the order in holding that defendants have not initiated any proceedings before the D.C. to get possession of the land. It is to be noted that the sale deed was illegal and void u/sec. 6 of the Fragmentation Act, 1966. His name was not entered since 1984 till 2019. Plaintiff was not given physical possession because it was ancestral joint family property and there was no partition between defendants No.1 to 3. Unless there is partition, plaintiff cannot claim to in possession of 01 acre 20 guntas of illegal sale deed. The arguments submitted by

defendants before the trial court has not been noted and the citations have not been observed and discussed in the order. It is settled principles of law that a purchaser of joint family property cannot come in joint possession with other joint owner. He has to seek partition and take possession of his share. Therefore, the trial court has illegally referred section 39.

- f. That the trial court has erred in observing at page 10 that defendants No.1 and 2 have not produced any documents to show that the suit schedule property was notified u/sec.5 of the Act etc. The trial court has wrongly observed that the sold land was already a fragment, defendant No.3 has illegally sold only 01 acre 20 guntas in 08 acres 07 guntas which created fragment. The trial court has illegally observed that the sold land was already a fragment and wrongly relied on decision reported in **AIR 1980 KAR 166**, which facts are not at all same as this case. Hence, the order is biased to help the plaintiff.
- g. That the trial court has illegally and wrongly observed at page 4 that defendant No.3 has submitted his W.S. but he has not filed any objections to the instant application. The trial court has not properly read the order sheet dated 29.08.2022, wherein it is noted that defendant No.3 has filed W.S. along with memo to treat the

W.S. as objections to I.A.No.I. Therefore, the order of the trial court is not founded in sound principles of law, which is capricious and illegal. The reasons assigned by the trial court are all hypothecated and biased. The trial court has not applied its mind in proper perspectives and arrived at a wrong conclusion, leading to miscarriage of justice. Hence, the order is perverse and needs to be interfered by this Hon'ble court.

h. That the trial court has not understood the correct facts of the suit in ascertaining the prima facie case and balance of convenience.

8. After registering the appeal notices have been issued to the respondents, in turn respondents have appeared through their respective learned counsels.

9. Heard the arguments.

10. I have perused the entire material.

11. The points arise for my consideration are as under:

1. Whether the trial Court erred in appreciating facts and in allowing the application filed by the plaintiff U/o 39 Rule 1 and 2 CPC and thereby warrants interference by this court?

2. What Order?

12. My answers to the above points are as follows:

POINT No.1: Partly in the Affirmative

POINT No.2: As per final order,
for the following:

REASONS

13. **POINT No.1:** The appellants/defendant No.1 and 2 have contended that suit property is the ancestral and joint family property of themselves and defendant No.3, all are having share in the suit property, there was no any legal necessity for the defendant No.3 to sell the suit property, the plaintiff has created false sale deed which is against the provisions of Karnataka Prevention of Fragmentation and Consolidation Act, 1966, the alleged sale deed created fragment, for that reason only the concerned revenue inspector has rejected the requisition of the plaintiff to enter the name of the plaintiff to the revenue records of the suit property, sale deed is dated 06.02.1984 but suit is filed in 2022, there is delay in filing the suit, in fact these defendants are in possession of the suit property, plaintiff is not at all in possession of the suit property. This being the fact the trial court has wrongly allowed the application filed by the plaintiff.

14. On the other hand, it is the case of the plaintiff that he is the owner in possession of the suit property by virtue of

sale deed dated 06.02.1984, it was the duty of the revenue authority to enter the name of plaintiff to the suit property as per the intimation sent by the Sub-Registrar on the sale deed but they have wrongly rejected the mutation, then in appeal the Assistant Commissioner also dismissed the appeal, however in the revision petition, Deputy Commissioner passed order and directed to enter the name of the plaintiff, accordingly Tahasildar has entered the name of the plaintiff to the suit property, the plaintiff is in possession of the suit property but the defendants have obstructed to his possession, the trial court after considering all the aspects has allowed the application and issued temporary injunction restraining the defendants from interfering with the possession of the plaintiff over the suit property.

15. Learned counsel for the appellant has argued with force that admittedly alleged sale deed in favour of the plaintiff was made against the provisions of Karnataka Prevention of Fragmentation and Consolidation Act, 1986, though said Act was amended in 1983 wherein the transactions made earlier were regularized but not the transactions made after the amendment, admittedly alleged

sale deed dated 06.02.1984 was made after the amendment as such said sale deed is not all sustainable in the eye of law. It is further argued that admittedly the suit property is the ancestral joint family property, the defendant No.3 had no any independent right to alienate the suit property, all the defendants are having share in the suit property, moreover the defendants are in joint possession of the suit property, the plaintiff is not in possession of the suit property. In spite of filing the detailed written statement and bringing the facts to the notice of the court, the trial court has come to wrong conclusion and wrongly allowed the application. Hence, prayed for allowing the appeal by setting aside the order passed by the trial court and to reject the application filed by the plaintiff.

16. Per contra, learned counsel for the respondent No.1 has vehemently argued that it is not in dispute that plaintiff has purchased the suit property through registered sale deed for valid consideration, as per the recitals of the sale deed as on the date of suit itself possession has been handed over to the plaintiff, as per the order passed by the Deputy Commissioner name of the plaintiff is shown as owner,

Kabjedar and cultivator. It is further argued that the said Karnataka Prevention of Fragmentation and Consolidation Act 1966 has been amended in 1983 through which all the sale deeds with regard to fragment have been regularized, considering the said aspect only the Deputy Commissioner has issued direction to enter the name of plaintiff to the revenue records to the suit property. This being the fact the defendants have obstructed to the possession of the plaintiff over the suit property. The trial court after considering all the aspects and material produced by the parties has come to right conclusion and rightly allowed the application filed by the plaintiff and issued T.I. as such it need not warrants interference by this court. Hence, prayed for dismissal of the appeal with cost.

17. I have gone through the entire material carefully. As per the material available on record it is true that the sale deed dated 06.02.1984 in favour of the plaintiff created fragment which was against the provisions of Karnataka Prevention of Fragmentation and Consolidation Act, for that reason only the mutation sought for in favour of the plaintiff was rejected and the appeal filed by the plaintiff before the

Assistant Commissioner was rejected on the ground of delay. The defendants have disputed the execution of sale deed, handing over of possession to the plaintiff and claimed that the suit property is in joint possession as it is their ancestral joint family property. Though the plaintiff has claimed title to the property through the sale deed but not contended that the suit property is not ancestral property of the defendants or it was the independent property of the defendant No.3.

18. As per the available material and recitals of the alleged sale deed possession was handed over to the purchaser / plaintiff as on the date of sale deed but at the same time it is pertinent to note that the entry on the basis of sale deed was rejected in the year 1984, thereafter his name has been entered to the revenue records as per the order of the learned Deputy Commissioner in 2020, but suit is filed in the year 2022, there is a delay. On the other hand the defendants are claiming that suit property is their ancestral and joint family property, they are in possession of the suit property. Both the parties are having their own pleading and material in their favour. To decide the question, who is in actual possession of the suit property, full pledged trial is

required. Without going for full pledged trial it is not possible for the court to give any finding in favour of anybody with regard to possession over the disputed property. The interim application has to be decided on the basis of material produced at the pre-trial stage. Under such circumstances, the trial court ought to have considered the interim application along with main suit or ought to have directed the parties to maintain statusquo in respect of possession over the suit property. As per the trial court records, already issues are framed and matter is set down for evidence. The parties can peruse the matter for early disposal before the trial court. After discussing as above, I am of the opinion that it is just and proper to direct the parties to maintain statusquo in respect of possession over the suit property till disposal of the suit. Therefore, I am of the considered opinion that the order passed by the trial Court is not correct and it warrants interference by this Court. Hence, I answer the point No.1 Partly in the Affirmative.

19. Along with the appeal appellants have filed application u/o 41 rule 5(1) r/w.sec.151 CPC for staying the operation and execution of the order passed by the trial

court, the respondent No.1 has filed objection to the said application. Said application is heard along with main appeal. Since the main appeal is being disposed off, the application is also disposed off.

20. **POINT No.2**: In view of the above discussion, I proceed to pass the following:

ORDER

Miscellaneous appeal filed by the appellants/defendants No.1 and 2 is hereby allowed.

Order passed by the learned Civil Judge & J.M.F.C., Kalaghatagi on I.A.No.1 U/o 39 Rule 1 and 2 CPC in O.S.No.125/2022 dated: 03.07.2023 is hereby set aside.

Application filed by the plaintiff in O.S.No.125/2022, on the file of learned Civil Judge & J.M.F.C., Kalaghatagi, U/o 39 rule 1 and 2 r/w Sec.151 CPC is partly allowed.

Both parties are directed to maintain statusquo with regard to possession over the suit property till disposal of the suit.

No order as to cost.

Office is directed to return the trial court records along with copy of this judgment forthwith.

(This judgment is dictated to stenographer directly on computer, computerized by him, then corrected, printed and pronounced by me in the open court on this **03rd day of October, 2023**)

(G.R. SHETTAR)
SR.CIVIL JUDGE & JMFC,
KALAGHATAGI