

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 30TH DAY OF OCTOBER , 2024

BEFORE

THE HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

MFA NO.201614 OF 2024 (CPC)

BETWEEN:

1. BALAJI S/O LATE MAHADU KADAM,
AGED ABOUT 52 YEARS,
OCC: AGRICULTURE,
R/O: DONGARGAON VILLAGE,
TALUKA: AURAD-B,
DISTRICT: BIDAR.
2. KISHAN S/O LATE MAHADU KADAM,
AGED ABOUT 48 YEARS,
OCC: AGRICULTURE,
R/O: DONGARGAON VILLAGE,
TALUKA: AURAD-B,
DISTRICT: BIDAR.
3. MARUTI S/O LATE MAHADU KADAM,
AGED ABOUT 45 YEARS,
OCC: AGRICULTURE,
R/O: DONGARGAON VILLAGE,
TALUKA: AURAD-B,
DISTRICT: BIDAR.

...APPELLANTS

(BY SRI RAVI B. PATIL, ADVOCATE)

AND:

1. SANJUKUMAR
S/O RAGHUNATHRAO KULKARNI,
AGED ABOUT 50 YEARS,
OCC: AGRICULTURE & SERVICE,
R/O: DONGARGAON VILLAGE,
TALUKA: AURAD-B,
DISTRICT: BIDAR-585326.
2. SATISH S/O RAGHUNATHRAO KULKARNI,
AGED BOUT 46 YEARS,
OCC: AGRICULTURE,
R/O: DONGARGAON VILLAGE,
TALUKA: AURAD-B,
DISTRICT: BIDAR-585326.
3. SUNIL S/O RAGHUNATHRAO KULKARNI,
AGED ABOUT 42 YEARS,
OCC: AGRICULTURE,
R/O: DONGARGAON VILLAGE,
TALUKA: AURAD-B,
DISTRICT: BIDAR-585326.

RESPONDENTS**(BY SRI ARUNKUMAR AMARGUNDAPPA, ADVOCATE)**

THIS MFA IS FILED U/O XXXXIII RULE 1 (R) OF CPC ACT,
PRAYING TO, A) CALL FOR THE RECORDS IN OS NO.9/2024 ON
THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC AT AURAD-B.
B) SET ASIDE THE IMPUGNED ORDER DATED 22-04-2024 PASSED
ON I.A NO.I IN OS NO.9/2024 GRANTING INTERIM ORDER OF
INJUNCTION RESTRAINING THE APPELLANTS/DEFENDANTS FROM
ALLEGED INTERFERING IN THE SUIT SCHEDULE PROPERTY, AS

ILLEGAL AND ARBITRARY. C) PASS AN ORDER AS TO COSTS OF THE PRESENT APPEAL.

THIS MISCELLANEOUS FIRST APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 28.10.2024, THIS DAY JUDGMENT WAS PRONOUNCED THEREIN, AS UNDER:

CORAM: HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

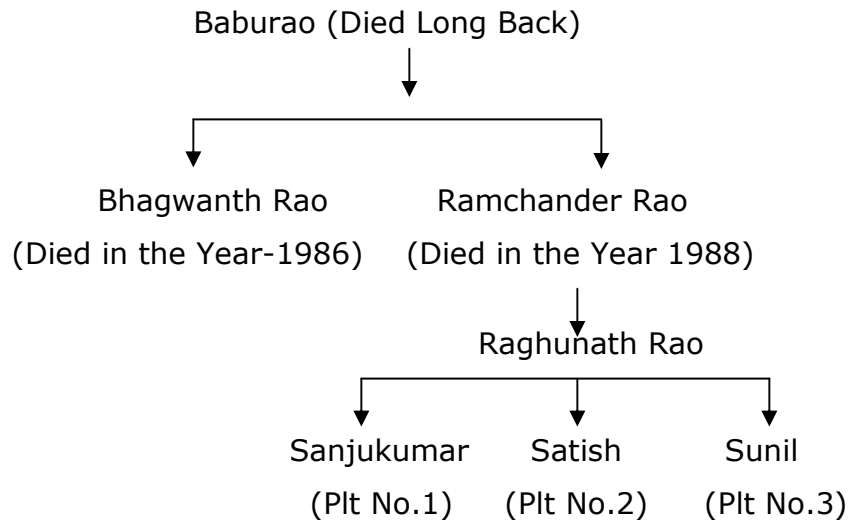
C.A.V. JUDGMENT

(PER: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM)

The captioned appeal is by the defendants, who have questioned the interim injunction granted by the Court below by allowing the application filed in I.A.No.I under Order XXXIX Rules 1 and 2 of CPC.

2. For the sake of brevity, the parties are referred to as per their rank before the Trial Court.

3. Before this Court duels up the order under challenge, this Court deems it fit to cull out the family tree of the plaintiffs, which has a direct bearing on the claims made by the respective parties. The family tree is as under:



4. The plaintiffs have instituted a suit to declare that they are the absolute owners of Sy.Nos.7/*/1/A, 7/*/1/B and 7/*/1/C all measuring 4 acres 32 guntas each. The plaintiffs are tracing title over entire extent of land in Sy.No.7 by placing reliance on the preliminary decree drawn in partition suit bearing O.S.No.52/1963 followed by the handing over the possession in executing proceedings measuring 14 acres 15 guntas towards eastern side of Sy.No.7 which totally measured 28 acres 31 guntas. The plaintiffs contend that their grandfather namely, Ramchander Rao along with his brother Bhagwanth Rao had $\frac{1}{2}$ share in entire extent of 28 acres 31 guntas. The plaintiffs therefore assert that in a

partition suit, their grandfather Ramchander Rao was allotted eastern $\frac{1}{2}$ portion measuring 14 acres 15 guntas. The plaintiffs therefore, contend that the defendants' father namely, Mahadu Kadam, who was party to the partition suit has no semblance of right in the suit schedule properties and having suffered a decree in a partition suit. The present defendants herein cannot assert title over the property in question.

5. *Per contra*, the defendants on receipt of summons, tendered appearance and filed written statement and stoutly denied the entire averments made in the plaint. The defendants on the contrary contended that post preliminary decree drawn in partition suit, the plaintiffs' father Raghunath Rao has sold 5 acres 25 guntas in eastern portion that was allotted to the plaintiff grandfather Ramchander Rao. The defendants also set up title based on a registered sale deed dated 07.12.1959 executed by Bhagwanth Rao, who had $\frac{1}{2}$ share in entire extent measuring 28 acres 31 guntas. Referring to this sale deed, the

defendants asserted that their father purchased 8 acres in the eastern portion and apart from this sale deed, the defendants' father also produced 5 acres 25 guntas and therefore asserted that they are the owners to an extent of 13 acres 25 guntas in Sy.No.7 totally measuring 28 acres 31 guntas.

6. The application filed by the plaintiffs in I.A.No.I under Order XXXIX Rules 1 and 2 of CPC was seriously contested by the defendants by filing objections.

7. The learned judge referring to the decree passed in O.S.No.52/1963 and also taking cognizance of certified copy of bailiff's report in E.P.No.21/1970 and panchanama has come to the conclusion that the plaintiffs have succeeded in substantiating that they are in exclusive possession of eastern $\frac{1}{2}$ portion measuring 14 acres 15 guntas. While examining the sale deed set up by the defendants, the Trial Court was of the view that the sale deed obtained by the defendants' father from plaintiffs' father in 1974 needs to be

tested during trial. Referring to RTCs and the preliminary decree drawn in O.S.No.52/1963 as well as O.S.No.9/1973, the Trial Court has come to the conclusion that the plaintiffs have made out a *prima facie* case and therefore, they are entitled to seek protection at the hands of this Court.

8. Heard the learned counsel for the defendants and learned counsel for the plaintiffs.

9. This Court has given its anxious consideration to the pleadings of the parties and also *prima facie* materials on which the plaintiffs and the defendants have placed reliance. Learned counsel appearing for the plaintiffs has filed synopsis on 21.10.2024 and has placed on record the pleadings as well as the *prima facie* materials.

10. Before this Court proceeds further, this Court deems it fit to take cognizance of the sale deed executed by the plaintiffs' father on 17.09.1974. The boundaries would be relevant and therefore this Court deems it fit to cull out. The relevant portion of the sale deed:

"SALE DEED (For Rs.3,000/-)

THIS DEED OF SALE EXECUTED ON THIS THE 17TH DAY OF SEPT. 1974 AT AURAD by Raghunath s/o Ramchander Patwari, caste Brahiman, aged 25 years, Occ. Agri. R/o Dongergaon, Tq. Aurad, Dist. Bidar, hereinafter called the "Alienor-Transferor-Executant" in favour of Shri Mahadu s/o Vithoba, Kadam, caste Maratha, Aged 40 years, Occ. Agri. R/o Dongergaon, Tq. Aurad, Dist. Bidar, hereinafter called the "Alienee-Transferee".

I, the above named, Alienor do own and possess land Sy.No.7 measuring 5 acres 25 guntas R/A Rs.3-00, situated at village Dongergaon, Tq. Aurad, Dist. Bidar bounded as under. I had purchased this land from one Bhagwanthrao, through registered sale deed No.1034/74-75 1129 dt. 16-7-74 of Sub-Registrar's office, Aurad.

In the east – Land of Ramchander s/o Baburao
Patwari pertaining to court decree
Sy.No.52/63 measuring 14 acres
15 guntas

In the west – Land of Baliram s/o Sambha

In the north– Land of Tulsiram s/o Hanmanth Mogle

In the south – Land of Kashiram s/o Baliram"

11. Contrary to the sale deed executed by the plaintiffs' father, the plaintiffs are asserting that pursuant to the decree passed in partition suit and after demise of their grandfather Ramchander Rao, it is asserted that the plaintiffs' father Raghunath Rao succeeded to the property and after his demise, they have affected the partition in three portions. This Court deems it fit to cull out the schedule annexed to the plaint:

"PLAINT SCHEDULE OF SUIT PROPERTIES"

1. *Land Sy. 7/*/1/A measuring 04-acres 32-guntas, situated at Dongargaon, tq. Aurad, belonging to Plaintiff No.1 Sanjukumar, bounded by;*
East: Road
West: land of Plaintiff No.2 Satish Kumar
North: land of Motiram s/o Tulsiram
South: land of Shivaji s/o Navanath

2. *Land Sy. No 7/*/1/C measuring 04-acres 32-guntas, situated at Dongargaon, tq. Aurad, belonging to Plaintiff No 2 Satish, bounded by:*
East: land of Plaintiff No. 1 Sanjukumar
West: land of Plaintiff No.3 Sunil Kumar
North: land of Motiram s/o Tulsiram
South: land of Raghunathrao s/o Ramchander Rao

3. *Land Sy. No 7/*/1/B measuring 04-acres 31-guntas, situated at Dongargaon, tq. Aurad-B, belonging to Plaintiff No.3 Sunil Kumar, bounded by:*

East: land of Plaintiff No.2 Satish Kumar

West: land of Raghunathrao s/o Ramchander Rao

North: land of Motiram s/o Tulsiram

South: land of Raghunathrao s/o Ramchander Rao”

12. The plaintiffs have presented a case that their grandfather, Ramchander Rao, was allotted 14 acres and 15 guntas pursuant to a preliminary decree in O.S.No.52/1963. The dispute, however, centers around the sale of a portion of this land, which the defendants claim was sold by the plaintiffs' father through a registered sale deed dated 17.09.1974. The defendants, in their written statement, specifically pleaded that 5 acres and 25 guntas in Sy.No.7 were sold to their father. The boundaries in the sale deed confirm that this portion was part of the land initially allotted to Ramchander Rao.

13. Despite this, the Trial Court granted an interim injunction in favour of the plaintiffs under Order XXXIX Rules

1 and 2 of the CPC, relying primarily on the plaintiffs' claim that they were in possession of the entire 14 acres and 15 guntas. The plaintiffs produced revenue records, particularly RTC entries, to support their claim of possession. However, the defendants effectively countered this claim by producing the 1974 sale deed, which clearly shows that 5 acres and 25 guntas had been sold to their father. This sale deed, duly executed by the plaintiffs' father, is a key document that directly impacts the plaintiffs' claim to the entire land.

14. Upon re-examining the materials on record, this Court is of the view that the defendants have successfully raised a *prima facie* rebuttal, demonstrating that the plaintiffs are not in possession of the entire 14 acres and 15 guntas. The sale deed executed in 1974 indisputably transferred 5 acres and 25 guntas to the defendants' father, and the boundaries mentioned therein corroborate this transfer. The Trial Court, while granting the injunction, failed to appreciate the significance of this sale deed and instead relied on revenue records, which are of limited evidentiary

value in determining possession when contrasted with a registered sale deed.

15. The Supreme Court in ***Suraj Bhan v. Financial Commissioner***¹ held that revenue entries are primarily for fiscal purposes and cannot confer title or possession. This principle should have guided the Trial Court, but instead, it placed undue reliance on the RTC entries produced by the plaintiffs. The registered sale deed of 1974 is a stronger piece of evidence that indicates that the plaintiffs are not in possession of the entire extent of land, as claimed.

16. The Trial Court's observation that the sale deed obtained by the defendants can only be scrutinized during a full-fledged trial is contrary to the principles governing interim injunctions. In matters of temporary injunctions, *prima facie* materials are critical, and the sale deed in this case was strong enough to counter the plaintiffs' claim. The defendants have successfully demonstrated, based on *prima facie* evidence, that 5 acres and 25 guntas

¹ (2007) 6 SCC 186

were sold from the larger portion of 14 acres and 15 guntas, thereby undermining the plaintiffs' claim to an injunction over the entire land.

17. Therefore, this Court finds that the Trial Court's reliance on the plaintiffs' revenue records, while ignoring the more substantial documentary evidence produced by the defendants, amounts to a misreading of the *prima facie* materials.

18. The impugned order passed by the Trial Court clearly suffers from perversity, as it misreads and misappreciates the *prima facie* evidence on record. The Trial Court's undue reliance on revenue records, while overlooking the crucial registered sale deed dated 17.09.1974 produced by the defendants, amounts to a serious error in its exercise of discretion. The sale deed *prima facie* shows that a portion of the disputed land, measuring 5 acres and 25 guntas, was sold by the plaintiffs' father to the defendants' father, which effectively rebuts the plaintiffs' claim of possession over the

entire 14 acres and 15 guntas. Given the perverse findings of the Trial Court and its failure to properly appreciate the *prima facie* materials, this is a fit case for interference under Order XLIII Rule 1(r) of the CPC, warranting reversal of the interim order.

19. The Trial Court's order granting the injunction is unsustainable in law and must be reversed.

20. For the reasons stated above, the appeal is allowed, and the interim injunction granted by the Trial Court is set aside. Consequently, the application filed by the plaintiffs under Order XXXIX Rules 1 and 2 of the CPC stands rejected.

**Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE**

RSP
CT: SW