



**WP No. 109761 of 2016**

**IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH**

**DATED THIS THE 21<sup>ST</sup> DAY OF OCTOBER, 2022**

**BEFORE**

**THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ**

**WRIT PETITION NO. 109761 OF 2016 (GM-CPC)**

**BETWEEN:**

SHRI ALLABAKSH  
S/O MAULASAB UKKALI,  
AGED ABOUT: 62 YEARS,  
OCC: AGRICULTURE and BUSINESS,  
R/O NAUBAG KARADI COLONY,  
VIJAYPUR, DIST: VIJAYPUR

...PETITIONER

(BY SRI. V M SHEELVANT, ADVOCATE)

**AND:**

SHRI.IMAM HUSSAIN  
S/O KHADARBASHA ALMELKAR,  
AGED ABOUT: 44 YEARS, OCC: BUSINESS,  
R/O: KRISHNA NAGAR,  
DARBAR GALLI, VIJAYPUR,  
DIST: VIJAYPUR.

...RESPONDENT

(BY SRI. S S PATIL AND MAHANTESH R PATIL, ADVOCATE)

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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED:10.08.2015 PASSED BY THE PRINCIPAL SENIOR CIVIL JUDGE, ATHANI AT: ATHANI, DIST:BELAGAVI IN O.S.NO.121/2013 ON I.A.NO.1/2016 AT VIDE ANNEXURE-A AND THE ORDER DATED:22.09.2016 PASSED BY THE VII ADDITIONAL AND DISTRICT JUDGE, BELAGAVI SITTING AT CHIKKODI IN MISCELLANEOUS APPEAL NO.69/2015 PRODUCED AT VIDE ANNEXURE-B.



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THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

1. The petitioner is before this Court seeking for the following reliefs:

- i. *Issue a writ in the nature of certiorari or any other appropriate writ, order or direction and quash the impugned order dated 10.08.2015 passed by the Principal Senior Civil Judge, Athani At: Athani, Dist: Belagavi in O.S.No.121/2013 on I.A.No.1/2016 at vide Annexure-A and the order dated 22.09.2016 passed by the V!! Additional and District Judge, Belagavi sitting at Chikkodi in Miscellaneous Appeal No.69/2015 produced at Annexure-B.*
- ii. *Pass such other order/orders as this Hon'ble Court deems fit including the cost of this Writ Petition, in the interest of justice and equity.*

2. The suit in O.S.No.121/2013 had been filed seeking for the following reliefs:

- 2.1. *Declare that plaintiff is joint owner and in possession of suit land bearing Sy.No.992/1A present Sy.No.992/1A/1 measuring 04 00 guntas assessed at Rs.1-78 ps of Athani in consequence directing the defendant hand over the possession of half share in the suit land to plaintiff.*
- 2.2. *Award the costs of the suit.*



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2.3. *Permitted to amend the plaint as and when required.*

2.4. *Any other reliefs deemed fit may be granted.*

3. In the said suit, an application under Order XXXIX Rules 1 and 2 of CPC has been filed seeking for the following relief:

*“For the reasons stated in the accompanying affidavit it is most humbly prayed that, the Hon’ble Court be pleased to issue ex-parte temporary injunction against the Defendant and his agents restraining him from transferring, alienating, mortgaging, creating gift or of any right and changing the nature of the suit land bearing Sy.No.992/1A measuring 4 acres 00 guntas assessed at Rs.1.78 ps. of Athani village until the disposal of this suit and solicit the urgent orders with special belief in the interest of justice.”*

4. Upon service of notice, the same came to be objected and the trial Court vide its order dated 10.08.2015 dismissed the said application for the following reasons:

4.1. That the application under Order XXXIX Rules 1 and 2 was made seeking for multiple prayers whereas in terms of Rule 23 of Civil Rules of Practice, 1967, there has to be separate application in respect of each distinct prayer, as such, the application is not maintainable.



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- 4.2. Secondly, the vendor of the defendant, with whom agreement has been entered into between the plaintiff and defendant to purchase the property, had not been made a party to the proceedings.
- 4.3. Thirdly, the agreement of sale was in respect of survey No.992/1A/1 whereas the sale deed has been executed in respect of survey No.992/1A and therefore, there is a doubt as regards the property which is the subject matter of the proceedings.
5. Aggrieved by the same, the petitioner had filed Misc.Appeal in M.A.No.69/2015, which came to be dismissed vide order dated 22.09.2016.
6. The first Appellate Court dismissed the said appeal on the ground that the defendant is stated to be in judicial possession and enjoyment of the property and has obtained conversion of the land from agricultural to non-agricultural purposes and as such, no injunction could be granted. An interim injunction could only be granted to protect the possession of the party as regards which such a person has



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to establish *prima facie* possession over the property. A perusal of the sale deed executed in respect of defendant does not indicate that the sale deed ought to have been executed in favour of the plaintiff.

7. It is aggrieved by the said order that the petitioner is before this Court.
8. The trial Court by referring to Rule 23 of the Civil Rules of Practice, 1967 has come to a conclusion that each distinct prayer of distinct application is required to be made. The prayer sought for in the application filed under Order XXXIX Rules 1 and 2 of CPC has been extracted herein above. The use of the word distinct in Rule 23 would mean that the said prayer has to be distinct from each other and not consequent or dependent on the prayer sought for.
9. The application filed in the present matter seeking for injunction, restraining the defendant from transferring, alienating, mortgaging, creating gift or any right in changing nature of the suit land, in my considered opinion would not amount to distinct prayers being sought for since all the said



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prayers are related to each other and filing of the single application seeking for a said relief would not be in violation or come within a mischief of Rule 23 of the Civil Rules of Practice, 1967.

10. Furthermore, it would be required to be observed that, procedure is only an handmaiden of justice and merely on account of a procedural violation none of the Courts ought to deny relief to a party that he may be entitled to. The Courts have held that even if the provision in the particular application is not properly shown and/or the reliefs are not properly worded, the Court should have adequate and sufficient powers to mould the relief to come within the purview of the particular provision as also make available relief which is required to be granted in the particular said facts. If at all the trial court were to be of the opinion that there are distinct reliefs which are sought or under a single application an option ought to have been provided to restrict the prayer to one distinct one, reserving liberty to file another application for the other distinct prayer. It is only if the option



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was not exercised by the applicant that the application could have been dismissed.

11. As regards, the contention that the vendor has not been made a party and or the property description is incorrect, I am of the considered opinion that the same would have been a matter of trial when *prima facie* case is established by a party to a litigation. It is required that the property/ subject matter of the said litigation is protected and preserved in *status quo* so as to be made available to the plaintiff if he succeeds. Of course in the event of the plaintiff not succeeding, suitable costs may be imposed on the plaintiff for having filed a false suit.

12. in matters relating to suit for declaration where the prescribed court fee is paid and injunction order sought to preserve the property and protect the same from alienation, in the event of alienation being made, the very subject matter of the suit would be lost as also it would result in multiplicity of proceedings. In such circumstances, I am of the considered opinion that the rejection of the relief sought for



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by plaintiffs by the Trial Court as also by the 1<sup>st</sup> Appellate Court is not proper. As such, both the said orders would require to be set aside. Hence, I pass the following:

ORDER

- i. A certiorari is issued.
- ii. The order dated 10.08.2015 passed by the Principal Civil Senior Judge, Athani in O.S.No.121/2013 on I.A. 1/2016 at Annexure-A is hereby quashed.
- iii. The order dated 22.09.2016 passed by the VII Additional and District Judge, Belagavi sitting at Chikkodi in Misc.Appeal No.69/2015 at Annexure-B is quashed, consequently I.A. 1/2016 filed in O.S.No.121/2013 is allowed.
- iv. The defendant is restrained from transferring, alienating, mortgaging, creating gift or any right of changing the nature of the suit land namely Survey No.992/1A measuring 4 acres at Athani Village till disposal of the suit.





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- v. Considering the suit is of the year 2013 the Trial Court is directed to dispose the matter at the earliest at any date within nine months from the date of receipt of certified copy of this order.
- vi. The submission made by Sri. V.M.Sheelvant, learned counsel for the petitioner/s and Sri. Nandish M. Patil, learned counsel for the respondent/s upon instructions of their counterpart advocates and their clients that they will co-operate with the Trial Court for expediting the disposal of the matter without seeking for any unnecessary adjournments is placed on record.

**Sd/-  
JUDGE**

gab / RH  
List No.: 1 SI No.: 11