

KABG040021012019



**IN THE COURT OF I ADDL. CIVIL JUDGE AND JMFC
AT BELAGAVI.**

**Presided Over by GURUPRASAD C. B.A.L., LLB.,
I Addl. Civil Judge & JMFC.,
Belagavi.**

Dated, on this 4th day of September, 2024

ORIGINAL SUIT No.817/2019

Between:

1. Basavant Laxman Kittur,
Age: 40 years, Occ: Agriculture,
R/o: Kallehol, Tal & Dist: Belagavi.

... PLAINTIFF

-AND-

1. Prakash Madhu Patil,
Age: 59 years, Occ: Agriculture,
R/o: Kallehol, Tal & Dist: Belagavi.
And another.

... DEFENDANTS

ORDER ON I.A.I

Between:

1. Basavant Laxman Kittur

... Plaintiff

(By Shri. S.G. Kakatkar, Advocate)

-AND-

1. Prakash Madhu Patil
and another.

... Defendants

(By Shri. A.V. Deshpande, Advocate)

ORDER ON I.A.I UNDER ORDER XXXIX RULE 1 AND 2
R/W SECTION 151 OF CPC

The plaintiff has filed this I.A. seeking an order of temporary injunction to restrain the defendants from interfering with his possession over the suit schedule property till the disposal of the suit.

2. In the affidavit annexed to the application, it is averred that he is the owner in possession of the suit schedule property. He is paying taxes to the concerned authority, and he has made developments in the suit schedule property by investing a huge amount.

3. It is averred that the propositus of the plaintiff, Megho S/o Nago Kittur, died, leaving behind his two sons, Monappa and Laxman. Monappa died in the year 2020, leaving behind his wife Smt. Parvati and two sons, namely Laxman and Parashram. Laxman, the son of Megho S/o Nago

Kittur, died, leaving behind Pundalik and Basavant. The said Basavant is the plaintiff herein.

4. It is further averred that after the death of Megho S/o Nago Kittur, the legal heirs of Megho S/o Nago Kittur have not transferred the records of the suit schedule property in their names. However, by submitting a waradi, the records of the suit schedule property have been transferred in the name of the plaintiff.

5. It is further averred that the propositus Megho S/o Nago Kittur was the tenant of the suit property, i.e., one acre of land. On the advent of the Karnataka Land Reforms Act, he had filed Form No. 7. After enquiry, suit property was granted in favour of Megho S/o Nago Kittur. Form No.10 is also issued in the name of Megho S/o Nago Kittur. Therefore, Megho S/o Nago Kittur was the owner in possession of the suit schedule property. After the death of Megho S/o Nago Kittur, his legal heirs and now the plaintiff is in possession of the suit schedule property.

6. It is further averred that the defendant, without having any right over the suit schedule property, is trying to disturb the possession of the suit schedule property. He has also tried to trespass over the suit schedule property and remove boundary stones. Therefore, the plaintiff was

constrained to file the suit as well as I.A. for the aforementioned reliefs.

7. The plaintiff has pleaded that he has a *prima facie* case, the balance of convenience lies in his favour, and irreparable loss will be caused to him if the I.A. is rejected. Accordingly, he prayed to allow the application.

8. After the institution of the suit, summonses were issued to the defendants. The defendants entered appearance, filed written statement and contested the suit.

9. In the written statement, defendants have denied the relationship of plaintiff with Megho S/o Nago Kittur. They have denied that the Megho S/o Nago Kittur was the owner in possession of the suit schedule property. They have denied that Megho S/o Nago Kittur had been granted the suit schedule property by the Land Tribunal.

10. It is the case of the defendant that they are the owners of the larger extent of the property in R.S.No.387. They are in possession of the suit schedule property. Originally, R.S.No.387 belonged to Vithal Devappa Patil and Madhu Devappa Patil. Vithal Devappa Patil died issue less, and Madhu Devappa Patil died, leaving behind him his wife and daughter, i.e., the present defendants. Since Vithal Devappa Patil died issue less, defendants had filed O.S.No.

120/2011 for declaration that they are the class-II heirs of the Vithal Devappa Patil. The decree was granted. Thereby, defendants have inherited the property of Vithla Devappa Patil and Madhu Devappa Patil.

11. It is further averred that, in the year 1974, Megho S/o Nago Kittur filed Form No. 7, and the Land Tribunal granted Form No. 10 in the year 1981. However, Megho S/o Nago Kittur died in the year 1978. Therefore, the form No.10 issued in the name of Megho S/o Nago Kittur has no consequences.

12. It is further averred that the plaintiff, claiming to be the family member of Megho S/o Nago Kittur, has created some documents. Therefore, the plaintiff has no rights over the suit properties. Accordingly, defendants prayed to dismiss the application.

13. Heard. Perused all materials available on record.

14. Now the points that arise for consideration are as follows;

1. Whether the plaintiff has made out a *prima facie* case?
2. Whether the balance of convenience lies in favour of plaintiff?

3. Whether irreparable loss will be caused to the plaintiff if the injunction is refused?
 4. What order?
15. My answer to the above points are as hereunder:

Point No.1: In the affirmative

Point No.2: In the affirmative

Point No.3: In the affirmative

Point No.4: As per the final order
for the following:

REASONS

16. **Point No.1:-** Plaintiff claims that he is the lenieal descendant of the propositus Megho S/o Nago Kittur. Lat Megho S/o Nago kittur appears to have filed Form No. 7 in respect of the suit property in the year 1974. After the enquiry, the Land Tribunal had granted the suit property in favour of Megho S/o Nago Kittur. Form No.10 is also issued in the name of Megho S/o Nago Kittur. Therefore, *prima facie*, Megho S/o Nago Kittur appears to have acquired right over the suit schedule property.

17. It is not the case of the defendants that Megho S/o Nago Kittur had no right in respect of the suit schedule

property. They also admit the filing of Form No. 7 and issuance of Form No. 10 in favour of Megho S/o Nago Kittur.

18. In fact, the defendants claim to be the legal heirs of the landlord of the suit schedule property. Once the land has been vested with the government on the advent of the Karnataka Land Reforms Act, the legal heirs of the landlord have nothing to say or do not have any right over the such property.

19. The contention of the defendants No. 1 and 2 is that, as of the date of the issuance of Form No. 10, Megho S/o Nago Kittur was no more. Therefore, the form No. 10 issued has no consequences under the law.

20. On filing of Form No. 7, an enquiry will be held and a judgement will be pronounced granting rights over the properties by the Land Tribunal. Issuance of Form No. 10 is the formality of confirmation of grant, already granted to the tenant.

21. It is probable that after the order of the Land Tribunal, Megho S/o Nago Kittur had paid the upset price or price fixed by the Land Tribunal and applied for Form No. 10. However, as of the date of issuance of Form No. 10, Megho S/o Nago Kittur might have died. *Prima- facie*, it does not vitiate the entire proceedings of the Land Tribunal. It does not

also mean that the said property would revert back to the landlords. It may be just a technical error or a mistake. As the land has already been granted in favour of Megho S/o Nago Kittur, the subsequent development of the death of the grantee has no consequences.

22. Furthermore, the question of whether the issuance of Form No. 10 to a dead person would vitiate the entire proceedings or not is a matter of merit. It shall be dealt with after the trial of the suit. At the time of dealing with this application or on a *prima facie* case, such an issue cannot be considered elaborately. Therefore, I am of the opinion that the objection raised by the defendants about the death of the Megho S/o Nago Kittur cannot fatalize the case of the plaintiff.

23. It appears that, after issuance of Form No. 10, the RTC of the suit schedule property has been changed in the name of the plaintiff. There are sufficient records to show that the plaintiff is in possession of the suit schedule property as of the date of the suit. Therefore, I am of the opinion that the plaintiff has made out a *prima facie* case. **Accordingly, point No.1 is answered in the affirmative.**

24. **Point No.2 and 3:** Since these points are interlinked with each other and they form part of the same

transaction, they are taken up together for common discussion to avoid the repetition of facts.

25. The defendants have denied that the plaintiff is in possession of the suit schedule property. However, plaintiff has *prima facie* shown before the court that he is in possession of the suit schedule property. It appears that there are proceedings before the revenue authorities with regard to the mutation and RTC of the suit schedule property. Thus, the apprehension of the plaintiff that the defendants are trying to trespass into the suit schedule property and trying to disturb the possession of the plaintiff over the suit schedule property appears to be reasonable.

26. Under the above circumstances, if the injunction is not granted, the possession of the plaintiff will be disturbed, and great loss and hardship will be caused to the plaintiff. On the other hand, if the injunction is granted, no hardship or inconvenience will be caused to the defendants. **Accordingly, points No. 2 and 3 are answered in the affirmative.**

27. **Point No.4:-** In view of the above discussion, I proceed to pass the following:

ORDER

I.A.I filed by the plaintiff under Order XXXIX Rule 1 and 2 R/w section 151 of CPC is hereby allowed.

Defendants are hereby restrained from interfering and obstructing the peaceful possession of the plaintiff over the suit schedule property till the disposal of the suit.

(Dictated to the Stenographer, typed by her and the transcript revised and corrected by me and pronounced in the open Court, on this 4th day of September, 2024).

(GURUPRASAD C.)

I Addl. Civil Judge & JMFC,
Belagavi.