

**IN THE COURT OF III ADDL.CIVIL JUDGE & JMFC,
BELAGAVI**

PRESENT: SMT. SUJATHA A.B.

B.A.L, LL.B.

**III Addl. Civil Judge & JMFC,
Belagavi.**

DATED: THIS 09th DAY OF OCTOBER, 2018

ORIGINAL SUIT NO.987/2018

BETWEEN:

1. Sri Suresh Laxman Devarmani
Age: 65 years, Occ: Agri & pensioner,
R/o: Uchagaon village,
Tal & Dist: Belagavi and others.

... Plaintiffs

(By Sri K.B. Hannurkar, Advocate)

AND:

1. Shri Nilu Govind Kamble,
Age: 67 years, Occ: Agriculture,
R/o: At bachi Post Turmuri village,
Tal & Dist: Belagavi and others

... Defendants

(By Shri M.M. Khanaganni, Advocate for D.1 to 4)

ORDER ON I.A.No.I

This application filed by the applicant/plaintiff under Order XXXIX Rules 1 and 2 R/w section 151 of CPC, to grant interim injunction by restraining the opponents/defendants

from disturbing the lawful possession of the plaintiffs in the suit land, till the disposal of the suit.

2. In the affidavit filed in support of the I.A. the plaintiff contends that late Dongaru Rama Devarmani was the original propositus of the family of the plaintiffs. Since after his death his son sri. laxman dongaru devaramani name came to be entered. Further said laxman dongaru devaramani had died by leaving behind his 4 sons, accordingly their names are appeared in ROR as owners since stated that the suit property is the agricultural land and it is an ancestral property of the plaintiffs. Hence contended that the name of the plaintiffs are appearing in the record of rights as owners and they are absolute owner and in possession of the same. According to the plaintiff defendants have no right, title and interest over the suit land. But on 16.07.2018, the defendants have disturbed the possession of the plaintiffs from the suit land. As a result plaintiff approached the concerned police, but same went in vein. Hence without any efficacious remedy,

the plaintiffs have filed the present suit along with this application and pray to allow the application.

3. On the other hand, the defendants have appeared through their counsels by filing the written statement cum objections to the said application.

4. Defendant no.1 has filed the objections to the said application and denied the averments of the application. It is stated that the defendants are the owners and they are in lawful possession of the land since the same is their ancestral property and they are claiming the same from time immemorial. It is stated that the plaintiffs have not produced any documents to show that they are in possession of the suit land. It is further stated that it is settled proposition of law that mere entry of the names in the record of rights does not create any title in the property. Similarly defendant also contended that since both interim relief as well as final relief are same. hence contended that application is not maintainable and accordingly prays for rejection of the suit.

5. Heard arguments from both sides. Perused the materials available on record.

6. The learned counsel for the plaintiff has relied upon the following decisions:-

1. (2010) 5 KLJ 432

7. The learned counsel for the defendants has relied upon the following decisions:-

1. (2017) 2 Supreme Court cases 454
2. (2012) 9 Supreme Court cases 552
3. 2009(2) KLJ 385
8. The points that would arise for my consideration

are:-

(1) Whether the plaintiffs have made out a prima facie case to grant temporary injunction as sought?

(2) Is the balance of convenience lies in favour of plaintiffs?

(3) Whether the plaintiffs will be put to irreparable loss and

***injury in the event of refusal of
temporary injunction sought?***

(4) What order?

9.My findings on the above Points are as follows:

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : In the Affirmative

***Point No.4 : As per final orders
For the following:***

REASONS

10. Points No.1 to 3:- Since these Points involve for common discussion, to avoid repetition of facts, they are taken together for consideration.

11. It is the specific contention of the plaintiffs that they are the absolute owners of the suit properties and same was their ancestral property. Further defendants are no way concerned to the same, but trying to interfering and disturbing the possession of plaintiffs over the suit property by causing obstruction to carrying the agricultural operations. Hence prayed to allow the application.

12. On contrary the defendants denied the contentions of plaintiffs and contended that they are in possession of the suit property as absolute owner and the same is their ancestral property from time immemorial. Moreover since no documents have been produced by plaintiff except ROR to show their possession. Hence prayed to dismiss the present application.

13. The plaintiffs in order to support their contention have produced the record of rights of the suit property for the year 1991-92, 2013-14 and 2017-18. On perusal of the said record of rights, the RS.No.40/30 which measures 01 acre 06 guntas which is standing in the name of the present plaintiffs in the column no.9 and 12 as owners and possession holders. Further on perusal of column no.10 it depicts that they acquired possession over the same by way of ancestral dated 01.09.2011. Moreover recent record of rights also shows the same fact.

14. It is observed that on the other hand, the defendants contended themselves as absolute owner. But none of the

documents have been produced by them to support the same. Further, it is noted that the defendant has produced the record of rights of Sy.No.40/30(34), but the suit property is corresponds to RS.NO.40/30. Moreover said R.S.No.40/30(34) is measuring 8 guntas. As a result it shows different measurement with respect to suit property. Hence though defendant's names are seen in the said documents, which cannot be considered since suit property Sy.No.40/30. Hence how said ROR relates to present suit is not clear.

15. It is the contention of plaintiffs that after the death of propositor Shri Dongaru Rama devaramani his son Laxman Devaramani had acquired the suit property, correspondingly after his death same was succeeded by his legal heirs including plaintiff and his brothers. in order to support the above contention they produce the series of ROR's from the year 2011 to recent date and it demonstrates that R.S.No.40/30 measuring 1 acre 6 gunta was standing in the name of plaintiffs. Similarly defendants also produced some ROR's which corresponds to the year of 1975 in which suit

properties standing in the name of legal heirs of laxman dongaru devaramani as per M.E.No.3430. similarly names of legal heirs of laxman dongaru devaramani is seen all the way.

16. It is pertained to note that defendant himself produced mutation entry No.3430 and its translation copy. On perusal of the same, after the death of the said Shri Dongaru Rama Devermani as per the wardi given by the Bharmma, the present plaintiffs name was entered in RS.No.40/30 along with the some other properties for the year 1980. Further, the defendant has also produced mutation entry of RS.NO.4503 and its translation copy in that one Kallavva Bharmma Devermani has given wardi and as per the order of Tahsildar in RTS.CR-03-08 her name was entered in the suit property along with the some other properties. On perusal of the genealogy tree, furnished by the plaintiff there is no mentioning of who is one Bharmma Dongaru Devermani. But since the present suit is only for permanent injunction. Moreover, the plaintiffs have seeking the relief of temporary injunction against the defendant so it is sufficient for the

court to consider the prima facie possession over the suit property. Hence plaintiff seems to be having prima facie possession over the suit property.

17. Further it is noted that plaintiff in order to show the interference from the defendant has produced the acknowledgment given by the Kakati police station belagavi and endorsement to that effect, the plaintiff has also produced the PT sheet of Sy.No.40/30 at this stage, whether the suit property belongs to the plaintiff or not and to consider that the same will requires full fledged trial. The learned counsel for the defendant vehemently argued that mere entry in the record of rights is not proof of title, but in this case, the plaintiff is not claiming any type of title nor seeking any declaratory relief. Since the record of rights having presumptive value.

18. In light of the above, since defendant has failed to produced any documents to back their claims. Similarly they have also not taken any contention about whether plaintiffs

are belongs to the Devermani family or not. Because in the record of rights the Dongaru is having two surnames as Mahar as well as Devermani. Whether the Mahar Dongaru Rama or Dongaru Rama Devermani were one and the same or not it will be considered at the appropriate stage. On perusal of the recent record of rights, it is sufficient to hold that the plaintiffs names are appearing. So all these aspects prima facie clearly supports the contention of the plaintiffs that they are in possession of the suit property. Moreover in such circumstance if present application is rejected plaintiff is one to subject to put into inconvenience and hardship. But on the other hand if the present application is allowed no such prejudice would be caused to defendants. ***Accordingly, I answer Points No.1 to 3 in the Affirmative.***

19. **Point No.4:-** In view of the reasons assigned above, I proceed to pass the following;

ORDER

The I.A.No.1 filed by the plaintiff under Order XXXIX Rule 1 and 2 of C.P.C., R/W section 151 of C.P.C., is allowed.

Consequently, the defendants are hereby restrained by issuing temporary injunction from disturbing the possession of the plaintiffs over the suit land, till the disposal of the suit.

No orders as to costs.

(Dictated to the Stenographer, transcribed and typed by her, revised & corrected by me and then pronounced in the open Court on this the 09th day of September, 2018)

sd/-

**(SMT. SUJATHA A.B.)
III Addl. C.J. & JMFC, Belagavi**