

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

PRESENT: Smt. LAKSHMI. G.M.,
B.A., L.L.B.,
III Addl. Civil Judge & JMFC.,
Belagavi.

Dated: This, 8th day of March, 2017

ORIGINAL SUIT No.1084/2016

BETWEEN:

1. Shri. Narayan S/o Vaijappa Babi,
Age: 76 years, Occ: Agriculture,
R/o: 242, Maruti Galli, Kakati Village,
Tal & Dist: Belagavi-591113.
2. Shri. Babu @ Bhau S/o Dhaklu,
Age: 45 years, Occ: Agriculture,
R/o: 297, Maruti Galli, Kakati Village,
Tal & Dist: Belagavi-591113.

... Plaintiffs

(By Miss. V.R. Bhasme, Advocate)

AND:

1. Shri. Yallappa W/o Siddappa Desurkar,
Age: 79 years, Occ: Agriculture,
R/o: Desai Galli, Kakati Village,
Tal & Dist: Belagavi-591113.
2. Smt. Sudha W/o Laxman Hattikar,
Age: 40 years, Occ: Household,
R/o: Desai Galli, Kakati Village,
Tal & Dist: Belagavi-591113.
3. Shri. Sadashiv S/o Narayan Desurkar,
Age: 48 years, Occ: Coolie,
R/o: Desai Galli, Kakati Village,
Tal & Dist: Belagavi-591113.

4. Shri. Gajanan S/o Narayan Desurkar,
Age: 46 years, Occ: Coolie,
R/o: Desai Galli, Kakati Village,
Tal & Dist: Belagavi-591113.
5. Shri. Baswani S/o Narayan Desurkar,
Age: 44 years, Occ: Coolie,
R/o: Desai Galli, Kakati Village,
Tal & Dist: Belagavi-591113.

... Defendants

(D-1 to D-4 Exparte,
D-5 to 7 by Shri. Ashoka Halagali, Advocate)

ORDER ON I.A.No.I

The I.A.No.I filed by the plaintiffs under Order XXXIX Rule 1 and 2 R/w. Section 151 of C.P.C. restraining the defendants No.1 to 7, their agents, servants or anybody acting on their behalf from interfering in the peaceful possession and enjoyment of the suit property till disposal of the suit accompanying with affidavit duly sworn by the plaintiff No.1.

2. It is averred by the plaintiff No.1 that, they have filed top noted suit for Permanent Injunction against the defendants No.1 to 7. It is further submitted by the plaintiff No.1 that, plaintiffs are in lawful possession and enjoyment of entire property bearing V.P.C. No.868 as the owners. The above said property purchased by father-in-law of plaintiff No.1 and his brother Irappa long back i.e. on 7/1/1960. It is further submitted

by the plaintiff No.1 that, his father Shri. Vaijappa S/o Balappa Babi purchased the suit open plot about more than 70 years ago. Hence, defendants have no right of any kind over the entire area of 5 Gunthas in R.S.No.31/2 of Kakati village. The defendants No.1 to 5 without having any right, title and interest in the suit property, are claiming to be the owners and trying to disturb their peaceful possession and enjoyment over the suit schedule property. Hence, prays to allow the said application.

3. On the other hand the defendants No.6 & 7 have filed objection cum written synopsis for extension of T.I. But, the said defendants failed to file objections to I.A.I. Under Order 39 Rule 1 & 2 of C.P.C.

4. Heard both side.

5. Based on the above said pleadings, the following points are arises for my consideration;

POINTS

1. Whether the plaintiffs have made out prima facie case?
2. Whether the plaintiffs prove the balance of convenience lies in their favour?
3. Whether the plaintiffs prove that, if T.I. is not

granted in their favour, they will be put into great hardship and inconvenience?

4. What order?

6. My answers to the above said 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 the final order, for the following;

:REASONS:

7. **POINT No.1:-** The plaintiffs have filed this suit for declaration and consequential relief of Permanent Injunction. It is contended by the plaintiffs that, the suit property is the ancestral property of the plaintiffs. The suit property was purchased by one Shri. Vaijappa S/o Balappa Babi and he was in possession of the same and his name came to be entered in revenue records. The suit property was used for the purpose of storing the hay stack for the cattle and also for making cow dung cakes. After the death of Vaijappa his two sons by name Dhakalu and Narayan came to entered in the revenue records and accordingly, they were using the suit property and in possession of the suit property accordingly. It is further contended by the plaintiffs that, Dhakalu and Narayan both were

residing in the ancestral house and perusing their avocation using the suit property. Dhakalu expired on 4/5/1974 leaving behind his widow and only son Babu @ Bhau. The name of Dhakalu came to be deleted and name of his widow and son came to be entered. Subsequently the name of widow Smt. Renuka came to be deleted upon the varadi and the name of plaintiff No.2 Babu @ Bhau along with Shri. Narayan came to be retained in the revenue records as owners and as they are in lawful possession and enjoyment of the suit property. It is further contended that, defendants are the strangers to the family of the plaintiffs. Without having any right, title and interest are disturbing and interfering in the peaceful possession over the suit property. In order to establish their contention, the plaintiffs have filed record of rights of suit property, wherein the name of Babu @ Bhau Dhakalu and Narayan Vaijappa name are appearing as varasa. Further the plaintiffs have furnished the Kadakhodi extract of R.S.No.31/2 from 1965 to 2002, wherein the name of plaintiffs No.1 & 2 are appearing jointly. Further the plaintiffs have furnished the record of rights of suit property from the year 1978 onwards, wherein the names of plaintiffs No.1 & 2 are appearing. Further the plaintiffs have furnished Diary Extracts of mutation entry

Nos.1538, 2162, 105 and 1182 which are in Marathi language. Since, the plaintiffs have not furnished the translation copies the said mutation extracts cannot be looked into. Further the plaintiffs furnished a letter issued to Panchayat Development Officer, Kakati, Belagavi regarding entry/mutation of names in office records in respect of the property bearing survey No.31/A Hissa 2. On perusal of the said letter dated 4/10/2016, it is noted that, the plaintiff No.2 has moved an application to the said Panchayat Development Officer in order to bring into knowledge that, some of the miscreants are trying to enter their names in the Panchayat records by producing false and bogus documents in respect of the said property. Hence, if any application made before the competent authority seeking prayer to bring into notice to the plaintiff No.2 and to give an opportunity to file objections.

8. In spite of giving sufficient opportunity, the defendants No.6 & 7 though appeared through their counsel, have not filed any objections to the said interim application nor filed written statement. Though defendant No.5 appeared through his counsel has not chosen to file objections to the said interim application and written statement. Hence, it could be

noted that, though they have knowledge, have intentionally not opted to file objections. But the defendant No.6 & 7 have filed objections to the extension of Temporary Injunction order which was passed earlier on 27/10/2016. Further the counsel for the defendants No.6 & 7 vehemently argued that, the counsel for the plaintiffs has not extended the Temporary Injunction order, the same cannot be considered on the next hearing date. Though the defendant No.6 & 7 had notice that, the said case is posted for hearing on I.A.I have not opted to hear on I.A.I. or tried to vacate the order passed by this court on 27/10/2016. Hence, it goes to show that, the defendants have no objection to grant Temporary Injunction to the plaintiffs till disposal of suit.

9. On perusal of the materials and documents furnished by the plaintiffs, it goes to show that, plaintiffs are in possession and enjoyment of the suit property since from 1982 onwards. Further the plaintiffs have furnished the record of right of 2016-17. The name of plaintiffs No.1 & 2 are appearing over the suit property. Since the suit is one for bare injunction suit, prima-facie possession has to be looked into. On perusal of the records, it goes to show that, plaintiffs are in possession over the suit property. **Hence, I answer Point No.1 in**

Affirmative.

10. **POINT No.2:-** As I answered point No.1 in Affirmative and the plaintiffs have establish at this stage that, they are in possession and enjoyment of the suit property, the balance of convenience leans in their favour. Since the defendants have not opted to file objections and written statement, the balance of convenience in their favour cannot be considered. **Hence, I answer point No.2 in Affirmative .**

11. **POINT No.3:-** As I answered points No.1 & 2 in Affirmative, if the said application is not allowed in favour of the plaintiffs, there are likely to cause great hardship to the plaintiffs, which cannot be compensated in terms of money. **Hence, I answer point No.3 in Affirmative.**

12. **POINT NO.4:-** For the foregoing reasons, I proceed to pass the following;

: O R D E R :

I.A.No.1 filed by the plaintiffs under Order 39 Rule 1 and 2 R/w. Section 151 of C.P.C. is hereby allowed.

The defendants No.1 to 7, their agents, servants or anybody acting on their behalf are hereby restrained from interfering in the peaceful possession and enjoyment of the suit property till disposal of the suit.

(Dictated to the Stenographer directly on computer, typed by her, corrected by me and then pronounced in the open Court on this the 8th day of March, 2017)

Sd/-

(Smt. Lakshmi G.M.)
III Addl.Civil Judge & JMFC, Belagavi.