



**IN THE COURT OF CIVIL JUDGE AND JMFC,
KITTUR.**

PRESENT: Smt. Farha Begum Sayed,
B.A, LL.B,
Civil Judge & JMFC, Kittur.

Dated on this 21st day of July, 2023.

O.S. No.26/2022

1. Shri. Tammanna S/o Jinnappa Kyatanavar
Age: 48 years, Occ: Agriculture,
2. Shri. Ashok S/o Jinnappa Kyatanavar
Age: 44 years, Occ: Agriculture,
3. Shri. Adappa S/o Jinnappa Kyatanavar
Age: 39 years, Occ: Agriculture,

All are R/o: Tigadolli,
Tq: Kittur, Dist: Belagavi.

.....plaintiffs.

(By Sri.S.R.Hiremath, Advocate)

V/s.

1. Shri. Ashok S/o Kallappa Kyatanavar,
Age:55 years, Occ: Agriculture,
2. Shri. Kuberappa S/o Kallappa Kyatanavar,
Age:65 years, Occ: Agriculture,
3. Shri. Paris S/o Kallappa Kyatanavar,
Age: 63 years, Occ: Agriculture,
4. Shri. Jinnappa S/o Kallappa Kyatanavar,
Age: 60 years, Occ: Agriculture,



5. Shri.Sachin S/o Ashok Kyatanavar,
Age: 26 years, Occ: Agriculture,
6. Shri. Chetan S/o Ashok Kyatanavar,
Age: 23 years, Occ: Agriculture,

All are R/o: Tigadolli,
Tq: Kittur, Dist: Belagavi.

7. Shri.Vijay S/o Dharmoji Kadabi,
Age: 70 years, Occ: Agriculture,
R/o Vaddebail,
Tq: Khanapur, Dist: Belagavi.

.....Defendants.

(By Sri.S.D.Bogur, Adv.)

PARTIES IN I.A.NO.I

1. Shri. Tammanna S/o Jinnappa Kyatanavar
& others

...Applicants/plaintiffs

Vs.

1. Shri. Ashok S/o Kallappa Kyatanavar
& others

...Opponents/Defendants.

PARTIES IN I.A.NO.II

1. Shri. Ashok S/o Kallappa Kyatanavar
& others

...Applicants/Defendants.



Vs.

1. Shri. Tammanna S/o Jinnappa Kyatanavar
& others

...Opponents/plaintiffs.

ORDER ON I.A. No. I & II

The plaintiffs have filed I.A.No.I U/O XXXIX Rule 1 and 2 seeking ad-interim order of temporary injunction to restrain the defendants, their agents, servants, from disturbing the peaceful possession, use and enjoyment of the suit property till disposal of the suit.

2. In support of I.A.No.I, the plaintiffs sworn to affidavit stating that they have filed this suit for Declaration and Permanent Injunction over suit property. The suit property was belonging to one Tammanna Appanna Kyatanavar, subsequently the name of their father came to be mutated to the suit property. The suit property VPC No.334 measuring 320 sq. yards later renumbered as VPC No.348 and their father name is appearing since long time. Adjacent to their land, land of plaintiffs bearing VPC No.349 is situated over which a house was constructed by their father which is fenced and plaintiffs are in actual possession, use and enjoyment of the suit property. That the defendants are owners of VPC No.347 measuring 160 sq. yards, situated towards eastern side



of suit property, which earlier belongs to father of defendants No.1 to 4. Defendants No.2 and 3 and their brother one Channappa had filed O.S.No.121/1996 before Civil Judge, Bailhongal against the father of plaintiffs in which they contended that they were digging foundation to put up cattle shed in VPC No. 347. In the said suit the father of plaintiffs filed written statement contending that VPC No.347 owned by present defendants no.1 to 4 is measuring 160 sq. yards and not 320 sq. yards and VPC No.348 measuring 320 sq.yards which is in his actual possession and the said suit filed by present defendants no.2 and 3 was dismissed holding that they failed to prove their ownership over VPC No.347 measuring 320 sq. yard. It is further stated in the affidavit that against the said judgment present defendants no.2 and 3 preferred R.A.No.20/1999 preferred before Sr.Civil Judge, Bailhongal, which is also dismissed. Under the circumstances in the first week of January all of a sudden the defendants came to the suit property with JCB and labours and attempted to make illegal trespass over the suit property and inspite of protest they damaged the suit property. Though the defendants are having knowledge that they have no right, title and interest, are making false claim over suit property. It is further stated that they have got prima facie case and balance of convenience lies in their



favour. If the Hon'ble Court grant ad-interim order of temporary injunction as prayed in the application no loss or hardship will cause to defendants. On the other hand if not granted the plaintiffs will be put into great hardship and inconvenience.

3. The defendants filed objections contending that in 1958 the measurement of VPC No.348 and 347 were shown as 100 sq. yards each as per Panchayat records and during 1961-62 measurement of VPC No.348 and 347 was shown as 320 and 160 sq. yards respectively and during 1967-68 the measurement of said lands is shown as 320 sq. yards each. The plaintiffs had sold the part of suit property i.e., 16ft x 100ft area to one Tammanna Kyatanavar and even after the said sale, extent of plaintiffs' land has remained as 320 sq. yards and only on the basis of panchayat records they are claiming said extent. It is further contended that the plaintiffs taking undue advantage of order in O.S.No.121/1996 are trying to grab the property by filing present false suit. Defendants are paying tax to the panchayat on VPC No.347. The plaintiffs have no right, title or interest over VPC No.347 and the plaintiffs have no prima facie case, balance of convenience is also not in their favour. Hence, prayed to dismiss I.A.No.I.

4. The defendants have also filed I.A.No.II U/O XXXIX Rule 7 of CPC seeking appointment of commissioner to



inspect and measure G.P.No.347 and 348 to preserve properties.

5. In support of the said application the defendants have sworn to the affidavit that they are owners of G.P.No.347 measuring 320 sq. yards and the plaintiffs are also claiming that they are owners of VPC No.348 measuring 320 sq. yards. It is further sworn that plaintiffs are falsely claiming that defendants are owners of 160 sq. yards though we are lawful owners of 320 sq. yards. Hence, it is necessary to appoint Court Commissioner to inspect and measuring G.P. No.347 and 348 for proper adjudication and to decide the matter on merits.

6. The plaintiffs have filed objection to I.A.No.II denied the averments of affidavit in support of I.A.No.II. There is no scope for appointment of Court Commissioner for measurement U/O XXXIX Rule 7 of CPC. The defendants cannot file such application in the initial stage and they have to establish their case independently by leading evidence and if there is any ambiguity then the defendants may file such application. In O.S.No.121/1996, the Hon'ble Court has clearly held that present defendants are the owners of G.P.No.347 measuring 160 sq. yards and it further held that the present defendants have failed to prove that they are owners to the extent of 320 sq. yards and even R.A.No.20/1999 assailing the judgment and



decree came to be dismissed. Hence, the above application is not maintainable and liable to be dismissed.

7. On the basis of pleadings of the parties and documents produced, following Points arise for my consideration:

Points for consideration on IA No.I

1. Whether the plaintiffs have made out a prima-facie case for grant of temporary injunction?
2. Whether the balance of convenience lies in favor of the plaintiffs?
3. Whether the plaintiffs will be put to irreparable injury, if an order of Temporary Injunction is not granted?
4. What Order?

Points for consideration on IA No.II

5. Whether the defendants have made out a case for appointment of Court Commissioner?
6. What Order?
7. My answer to the above Points are as under:

Points No.1 to 3 : In the Affirmative
Point No.5 : In the Affirmative
Point No. 4 & 6 : As per final order,
for the following:



-:: R E A S O N S ::-

8. **Point No.1 to 3 & 5 :-** I have taken these points together for common discussion as these points are inter-related. The plaintiffs have filed the suit for the relief of declaration and consequential relief of injunction. The plaintiffs have contended that they are the absolute owners in possession of suit schedule property. That the defendants by taking undue advantage of their names being appearing in the Revenue records and being the owners of adjoining land, trying to interfere with the peaceful possession of plaintiffs over the suit schedule properties.

9. The plaintiffs have contended that, the schedule property measures 320 sq. yards and the property of the defendants bearing No. 347 measure 160 sq. Yards. That though the defendants have the knowledge of same, they claims rights over 320 sq. Yards thereby trespassed in the suit schedule property. Hence, plaintiffs has filed the present application seeking the suitable reliefs.

10. On the other hand the defendants have contended that the suit of the plaintiffs is false and denied the claim of the plaintiffs. It is the case of the defendants that the property of defendants also measure 320 sq. yards. The defendants submitted that



during 1958 suit schedule property and defendants' property was measuring 100 yards. That in 1961-62 plaintiffs property was measuring 320 sq. Yards and defendants property was measuring 160 sq. Yards as per the records. That again in 1967-68 both properties were measuring 320 sq. Yards as per records. Hence, defendants claims that their property also measures 320 sq. Yards but it is wrongly mentioned as 160 in the records. Hence, with other contentions the defendants prays to dismiss the applications.

11. The plaintiffs in support of their case have filed the certified copy of judgement in O.S. No. 121/1996 and judgement copy in R.A. No. 20/1999, plaint in written statement in said suit, VPC extract of property bearing No. 348, VPC extract of property bearing No. 338, photos and CD.

12. The defendants have filed VPC extract of property bearing No. 333, VPC extract of property bearing No. 347, letter to PDO Tigadolli Gram Panchayat, VPC extract of property bearing No. 496 & 497, VPC extract of property bearing No. 333 & 334, VPC extract of property bearing No. 347 & 348, tax paid receipt, resolution and permission to construct building etc.,

13. I have carefully perused the available materials on records and also heard both the sides. The plaintiffs claims that they are the owners of property bearing No.



348 which is measuring 320 sq. yards the plaintiffs have filed VPC extract of property bearing No. 348 having extent of 320 sq. yards for the year 2022-23. Hence, as per said records plaintiffs have the land to the extent of 320 sq. yards but the defendants have denied the same. The plaintiffs have also relied upon the judgement in O.S. No. 121/1996 which had been filed by the defendants against the father of plaintiff and others wherein the Hon'ble Court was pleased to held that the defendants have failed to prove that their property measures 320 sq. yards and thereby dismissed their suit.

14. The defendants also filed the old Revenue records wherein different property numbers and different measurements have been mentioned. On perusal of Judgement in O.S.No. 121/1996 it is observed that old property No. 333 is renumbered as 347 and property number 334 has been renumbered as 348. That in 1960-61 property bearing No. 333 was measuring 160 yards and property bearing No. 334 was measuring 320 yards. That in 1962-68 as per records both properties were shown having extent 320 sq. yards. Later again in 1988-89 also both properties were shown to have extent of 320 sq. yards. In 2014-15 also both properties were shown to have extent of 320 sq. yards. It is also seen that the Tigadolli Gram Panchayat has also issued license to construct a building in



property bearing No. 347 and in the said license extent of property is shown as 320 sq. yards.

15. But as per Judgement in O.S. No.121/1996, it has been held that defendants in this case were not able to prove that their property measures 320 sq. yards. The another important point that both the parties have not filed any mother document to show that how they have acquired the said properties. Both parties rely upon only those revenue records which bears different extents in different years.

16. The defendants have also argued that in 1958 both the properties were measuring 100 yards and later the properties were shown as 320 sq. yards and 160 sq. yards. But, if both the properties has been measuring 100 sq. yards then on what bases the Revenue department entered 320 sq. yards to the records of property bearing No. 348 and only 160 yards to property bearing No. 347. Under such circumstances defendants claims that only after conducting the survey the actual extent of properties can be revealed . It is also argued that from bear eyes if one can see the suit schedule properties, both properties are having the same extent but in Revenue records it differs hence, a survey has to be conducted.

17. But at this stage, in view of aforementioned facts it appears that the suit schedule property has always



been measuring 320 sq. yards and it is the property of defendants which has different measurements. As per the documents filed by the plaintiffs, suit schedule property prima facie is measuring 320 sq. yards and plaintiffs claims that defendants are trespassing over the same. That in such circumstances, plaintiffs will be put into greater hardship and the same may lead to the multiplicity proceedings and will also defeat the plaintiffs' legitimate claim. Hence, plaintiffs has sought for the Temporary injunction restraining the defendants from trespassing in the Suit Schedule property.

18. I have referred Cases in which temporary injunction may be granted.- Wherein any suit it is proved by affidavit or otherwise-

A. That any property in dispute in a suit in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

B. That the defendant threatens or intends to remove or dispose of his property with a view to defrauding his creditors,

C. That the defendant threatens to dispossess the plaintiffs or otherwise the plaintiffs or otherwise cause injury to the plaintiffs in relation to any property in dispute in the suit.



19. The Court may grant a temporary injunction to restrain such act, or make such order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property (or dispossession of the plaintiffs, or otherwise causing injury to the plaintiffs in relation to any property in dispute in the suit) as the Court thinks fit, until the disposal of the suit or until further orders.”

20. On the basis of above provision of law, the plaintiffs’ claim that the subject matter of the Suit would be damaged during the pendency of the suit to defeat the claim of the plaintiffs holds water. Hence, I am of the view that at this stage the plaintiffs have made out prima facie case against the defendants with respect to relief claimed in the IA No.I. But, it is not enough, that plaintiffs makes out a prima facie case, further, plaintiffs has to show that the balance of convenience. The Court has to consider to whom more hardship or inconvenience would be caused. It is seen that plaintiffs have made out prima facie case that they are in actual possession of 320 sq. yards and it is also undisputed fact that the defendants are intending to put up a permanent structure in their land which is adjoining to the land of plaintiffs. Hence, it is necessary to protect the possession of plaintiff as sought in the plaint and the I.A. No. I. Hence, even if the Temporary



Injunction is granted no hindrance and no more hardship will be caused to the defendants. If the injunction is not granted, the defendants by taking undue advantage of the same may cause interference or trespass in any manner. The same may lead to multiplicity of the proceedings and would also defeat the purpose of filing this suit. Therefore the grant of temporary injunction will be just and necessary to avoid any irreversible consequences by the time the suit is disposed off. Therefore, it appears that more hardship would be caused to the plaintiffs. Consequently, the plaintiffs does show the existence of the prima facie case, Balance of convenience with respect to relief claimed in IA No.I. But, the view expressed is only tentatively without prejudice to both the parties. Further, as per the records filed it is also necessary to appoint a Court Commissioner to measure the property to know the actual extent of lands. Hence, I.A.No.II also deserves to be allowed in the interest of justice and equity. **Hence, I answer point No.1 to 3 and 5 in the Affirmative.**

21. **POINT No.4 & 6:** In view of above discussion and conclusion arrived at point No. 1 to 3 and 5, the IA No.I and II filed the plaintiffs and defendants deserves to be allowed. **Accordingly, I proceed to pass the following.**



-:: O R D E R ::-

I.A. No. I filed by the plaintiffs Under Order XXXIX rule 1 and 2 of CPC is hereby allowed.

The Defendants, their agents, servants or anybody acting under defendants are hereby restrained from disturbing the peaceful possession, use and enjoyment of the Suit Schedule property by the plaintiffs in any manner till disposal of the suit.

I.A. No. II filed by the defendants Under Order XXXIX rule 7 of CPC is hereby allowed.

The defendants shall take steps in appointing the Court commissioner.

No order as to costs.

(Dictated to the Stenographer, directly on Computer and typed by him. The same is corrected and then pronounced by me in Open Court on this 21st day of July, 2023)

(Smt. FARHA BEGUM SAYED)
**Civil Judge & JMFC.,
Kittur.**

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