

IN THE COURT OF THE CIVIL JUDGE & JMFC,
AT SANDUR

:: PRESENT ::

Sri. Md. Shaiz Chouthai,

B.A.,LL.B. (Hons.), LL.M,(M.L.)

Civil Judge & JMFC, Sandur

Dated: 17th day of October 2025

O.S. No.45/2024

Plaintiff/s : Vijaya Bhaskar Nikkam,
S/o Late N.M. Venkoba Rao Nikkam,
Age: 51 years, Occu: Agriculture,
R/o Near Old KEB, Sandur town,
Sandur Taluk, Ballari District.

(By Sri. E.M.R., Advocate)

V/S

Defendant/s : Erappa S/o Late Erappa and Another

(D-1 Exparte)

(D-2 By Sri. H.M.K., Advocate)

I.A.No.II

Applicant : Vijaya Bhaskar Nikkam,
S/o Late N.M. Venkoba Rao Nikkam
(Plaintiff)

V/s

Opponents : Erappa S/o Late Erappa and Another
(Defendants)

ORDER ON I.A.No.II FILED UNDER ORDER XXXIX

RULE 1 AND 2 R/W Sec. 151 OF C.P.C.

The plaintiff has filed this application U/O XXXIX Rule 1 and 2 R/w Sec. 151 of C.P.C., seeking to restrain defendants from trespassing and dispossessing him from the suit schedule property, till the disposal of the suit.

2. The plaintiff is the absolute owner and in peaceful possession and enjoyment of the suit property bearing Sy. No.10/12, measuring 3.75 acres, situated at Sandur. According to him, his father's name was appearing in the record of rights from the year 1965 to 1973. Thereafter, from 1973 to 1985 the name of father of defendants was appearing in the record of rights. Thereafter, again from 1985 to 2000 the name of the father of the plaintiff was shown in the possession column. The father of the

plaintiff paid the revenue to the Government. After the death of his father, the plaintiff's name came to be mutated in the revenue records from 2020-21 to 2023-24. These documents, according to plaintiff, establish his ownership over the suit land.

3. It is stated that on 15.03.2024 when the plaintiff and his family members were doing agriculture activities in the suit land, the defendants made an attempt to dispossess the plaintiff which was resisted by him. He lodged complaint before the Police Station but no action was taken on his complaint. The defendants are highly political and financially influential persons and having connection with the rowdy elements. They are continuing to trespass into the suit property and tried to dispossess the plaintiff. It is further submitted that the plaintiff is openly, continuously and uninterruptedly in the possession of the suit property, and thereby perfected title by adverse possession. If the defendants succeed in their attempt to dispossess the plaintiff, he will suffer great hardship and loss. It is claimed that the plaintiff has *prima-facie* case and balance of convenience in his favour. As

such, he seeks to grant temporary injunction by allowing the application.

4. After service of summons, defendant no.2 appeared through his counsel and filed written statement and a memo to adopt the same as also objections to I.A. No. II. The defendant No.1 did not appear before the court on receipt of summons.

5. The defendant No.2 denied the entire case of the plaintiff and also the allegations of causing interference in the manner projected in the plaint. According to defendant No.2, the plaintiff has already instituted a suit against him and his elder brother in O.S. No.20/2023 seeking the relief of permanent injunction. The defendant No.2 has appeared and contested the matter by filing written statement. The plaintiff has suppressed the pendency of the suit in O.S. No.20/2023. Without reserving the liberty or obtaining leave of the court under Order II Rule 2 of CPC in OS No.20/2023, this suit is filed by the plaintiff which is nothing but an abuse of process of law.

6. Further, the plaintiff has deliberately suppressed the material fact regarding the execution of Registered Sale Deed No.622/1974-75 Dt. 24.02.1975 by the father of plaintiff by name M.N. Venkoba Rao S/o Thimmoji Rao in favour of the father of defendant No.2 by name Korachara Erappa. Since from the date of execution of the sale deed the title and interest of the suit property is conveyed to the father of defendant No.2. He was the absolute owner and in possession of the suit land. However, due to lack of awareness, the father of the defendant No.2 did not make any application for mutation of his name in the revenue records. It was for the concerned revenue authorities to mutate his name on the strength of the sale deed. Due to the mistake on the part of the revenue authorities the name of father of defendant No.2 is not mutated. By taking advantage of this fact and by suppressing the execution of the sale deed, the plaintiff by colluding with the revenue authorities changed the mutation in his name vide MR No.H14/2014-15 Dt. 09.01.2015. Thereafter, the elder brother of defendant No.2 filed Revision Appeal

No.318/2022 on the file of Assistant Commissioner, Ballari challenging the mutation in the name of plaintiff. The said Authority passed orders on 11.07.2023 and canceled the mutation in the name of the plaintiff and directed the Tahasildhar to mutate the name of the father of defendant No.2 – Erappa. The said Erappa died on 06.08.1989 leaving behind his legal heirs i.e., defendants. After his demise, the defendants are in possession and enjoyment of the suit property till date. Amongst other grounds, the defendant No.2 prays to dismiss the application.

7. Heard the argument of learned counsel for the plaintiff and defendant No.2. Perused the records.

8. The points that arise for my consideration are:-

1. Whether the applicant proves that he has *prima-facie* case in his favour to the grant the interim relief as sought for?
2. Whether the applicant proves balance of convenience in his favour?
3. Whether the applicant proves that he would

suffer irreparable loss if injunction is not granted as sought for?

4. What order?

9. My answer on the above points are as follows:-

Point No.1 : In the Negative

Point No.2 : In the Negative

Point No.3 : In the Negative

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

REASONS

10. **POINT NO.1 TO 3:-** All these points are taken together for common discussion to avoid repetition of facts and appreciation of materials on records.

11. According to plaintiff, his father was the owner of land bearing Sy. No. 10/12, measuring 3.75 acres, situated at Sandur. To this extent there is no dispute as the defendant No.2 has admitted this fact. The record of rights filed by the plaintiff in

respect of land bearing Sy. No.10/12, measuring 3.75 acres disclose the name of father of plaintiff by name N.M. Venkoba Rao. The ROR of the said land for the year 1973-74 till 1984-85, particularly in column No.12, reflect the name of the father of defendant No.2. The basis of such entries is on the strength of the Registered Sale Deed Dt. 24.02.1975. The copy of sale deed produced by the defendant No.2 clearly demonstrate that his father has purchased the land bearing Sy. No.10A (old) from the father of plaintiff. The plaintiff did not contend that his father had another land which is numbered as Sy. No.10/A. Therefore, it is the same land which is renumbered as Sy. No.10/12.

12. The plaintiff is not entitled for the relief sought in the application for one or the other reasons. *First*, the plaintiff has suppressed the fact that he has instituted suit against the defendant No.2 and his elder brother in OS No.20/2023 for the relief of permanent injunction in respect of the same property. The relief of temporary injunction now sought in the instant application is the permanent relief sought in OS No.20/2023. Due

to suppression of this material fact, the plaintiff is not entitled to the discretionary relief.

13. The defendant No.2 has filed the copy of Registered Sale Deed Dt. 24.02.1975 executed in favour of his father which establishes the right and title on the purchasers. If one goes by the sale deed, the father of the plaintiff lost the ownership over the suit property. The fact that the name of father of defendant No.2 was appearing in the cultivation column of the ROR, *prima-facie* establishes that the sale deed was acted upon.

14. It is apt to note that the Assistant Commissioner, Ballari by its order Dt.11.07.2023 has ordered for cancellation of mutation in the name of the plaintiff. By the said order the legal heirs of the purchaser – Late Erappa is ordered to be entered in the revenue records. On the strength of the said order, the name of defendant No.2 is entered in the revenue records. These documents demolishes the *prima-facie* case of the plaintiff.

15. Furthermore, it is necessary to note that, the plaintiff

is claiming ownership and possession over the suit land on the basis of adverse possession. This is what has been mentioned in the plaint. If this claim of the plaintiff is considered he invariably admit the ownership of the defendants. Even on this ground the plaintiff has no *prima-facie* case. Therefore, the plaintiff has not shown any *prima facie* case in his favour. The balance of convenience do not lean in favour of plaintiff. The plaintiff would not suffer injury if his application is rejected. The plaintiff failed show *prima facie* case in his favour. As such, I answers Point No.1 to 3 in the **NEGATIVE**.

16. **POINT NO.4:-** In view of the above findings and discussions, I proceed to pass the following:-

ORDER

IA. No.II filed by the applicant– plaintiff
U/O XXXIX Rule 1 and 2 R/w Sec. 151 of
C.P.C., is hereby rejected.

The observations made in this order shall
not come in the way of, affect or cause

prejudice to the rights of the parties to prove their case by leading evidence during the trial.

(Dictated to the stenographer, computerized by him, corrected by me and then pronounced in the open Court, on this the 17th day of October 2025)

(Md. Shaiz Chouthai)
Civil Judge & JMFC, Sandur.