

**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC,  
HOSAKOTE AT: HOSAKOTE**

**Present; Sri Basavaraj. G. Sanadi,  
B.A L.L.B(Spl.),  
Prl. Civil judge And JMFC Hoskote**

**O.S. NO: 236-2022**

**Dated this 20<sup>th</sup> Day of March 2023**

**Applicant/  
Plaintiff** :

Sri. H.V. Krishnappa  
S/o Venkataramanappa  
Age : 69 years,  
R/at Handenahalli Village,  
Anugondanahalli Hobli,  
Hosakote Taluk,  
Bengaluru Rural District and others.

(By Sri. K.R.A., Advocate)

-V/s -

**Respondent/s  
Defendant/s**

Sri. S. Thipanna  
S/o Sonnappa  
Age: years,  
R/at Handenahalli Village,  
Anugondanahalli Hobli,  
Hosakote Taluk,  
Bengaluru Rural District and others.

(By D1 to 3 - Sri. Y.N.S., Advocate)

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**ORDER ON IA NO. I FILED UNDER ORDER 39**  
**RULE 1 AND 2 Of CIVIL PROCEDURE CODE**

The applicants/plaintiffs have filed this application with prayer to grant the relief of temporary injunction against the defendants, restraining the defendants or anybody claiming under them from putting up construction over the suit schedule property. In support of the application plaintiff no.1 has filed the affidavit and prayed to allow the application.

2. On the other hand defendants have appeared through counsel and filed written statement and prayed to treat it as objection to IA No.1. In the written statement defendants denied all the averments of the plaint and interim application as false and frivolous. Further contended the first plaintiff is one of the sons of Venkataramanappa s/o Thippegowda @ Thippanna and the said Venkataramanappa has three sons namely H.V. Krishnappa , H.V. shankarappa and H.V. Narayanaswamy. The Vekataramanappa had another elder brother namely Sonappa @ Sonnegowda who is the father of the 2<sup>nd</sup> defendant and the said Sonnappa @ Sonne gowda died on 15.11.1983. The said Sonappa @ Sonnegowda and Venkataramanappa are the sons of the Thippanna @ Thippe Gowda. The 2<sup>nd</sup> defendant is

one of the sons of Sonnappa and Sonne gowda. The said Sonappa @ Sonne gowda has three sons and two daughters. The 3<sup>rd</sup> defendant is the son of the second defendant. Sonne Gowda purchased the portion of the land bearing sy No.133 with specific boundaries measuring 30 guntas from one Patel Muddappa S/o Patel Rame Gowda for valuable consideration. The revenue records were not transferred in the name of Sonne Gowda but on the other hand, the name of Venkataramanappa S/o Thirumanna, Nagappa S/o Thippaiah are reflected in the RTC from the year 1969-70 till 1978-79. The father of the 1<sup>st</sup> plaintiff namely Venkataramappa has got entered his name in the RTC to the extent of 22 guntas of land even though there is no such extent acquired either by Venkataramanappa or by the 1<sup>st</sup> plaintiff. That in the oral partition entered into between Thippanna, Krishnappa and Shankarappa, no portion of the land was allotted to the share of the 1<sup>st</sup> plaintiff in the land bearing sy.No.133 but on the other hand, portion of the land bearing sy.No.133 measuring 12 guntas was allotted to the share of Thippanna, the elder son of Sonnappa. He was in possession and enjoyment of the portion of the land and accordingly mutation order came to be passed as per M.R. No.6/1988-99 and the said mutation order has not been challenged by the 1<sup>st</sup> plaintiff.

2(a). It is further contended that the land bearing Sy.No.133 has been surveyed and subdivided and portion of the land bearing Sy.No. 133 allotted to the share of Thippanna has been given with new sy.No.133/2. The said Thippanna out of his love and affection has executed a gift deed in favour of the 2<sup>nd</sup> defendant on 21.09.2020 in respect of the said portion of the land bearing Sy.No.133/2 measuring 12 guntas situated at Handenahalli village of Hosakote. The 2<sup>nd</sup> defendant out of his love and affection has executed another gift deed in favour of his son 3<sup>rd</sup> defendant on 02.12.2020. The defendants have put up constructions for their livelihood by investing huge amount in the property belonging to the defendants 2 and 3 and the plaintiff are no way concerned with regard to the said land belonged to the defendants 2 and 3. When there is no extent of 22 guntas acquired by the 1<sup>st</sup> plaintiff, the question of entering into a partition deed by the plaintiffs does not arise. Hence, prayed to dismiss the application.

3. The following points arise for my consideration;

1. Whether the applicant/plaintiffs have Prima - facie case in their favour?

2. Whether the balance of convenience lies in favour of applicant/plaintiffs ?
3. Whether the applicant/plaintiffs would suffer irreparable loss if the prayer for Interim injunction is rejected?
4. What order?

4. I have heard both side's argument and I have perused the documents on record.

5. My findings on the above said points are as follow;

Point No.1 : In " Affirmative"

Point No. 2 : In " Affirmative"

PointNo. 3 : In "Affirmative"

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

**: REASONS :**

6. **Point No. 1:** This is the suit filed by the plaintiffs against the defendants for the relief of Permanent injunction in respect of suit schedule

property. It is the specific contention of plaintiffs that the plaintiff no.1 is the father of the plaintiffs No.2 to 5. The plaintiff no.1 is the absolute owner of the property bearing Sy.No.133, measuring 0.2 guntas, the plaintiffs no.2 to 5 are the absolute owners of the property bearing sy.no. 133, measuring 5 guntas, each totally measuring 22 guntas, situated at Handenahalli village of Hosakote Taluk. Originally suit schedule property is the ancestral property of the plaintiffs. After the death of the father of the plaintiff no.1 the suit schedule property has been mutated in the name of the plaintiff no.1. Thereafter the plaintiffs entered into a partition and in terms of the said partition, the above said extents are allotted to the share of each plaintiffs. The plaintiffs are in peaceful possession and enjoyment of the schedule property. The plaintiffs are jointly cultivating the suit schedule property. The plaintiffs have grown eucalyptus trees in the suit schedule property. The defendant no.1 is owning the lands of the eastern side of the suit schedule property. On 16.8.2019, the defendants without having any manner of right, title or interest illegally attempted to interfere with the plaintiffs peaceful possession and enjoyment over the suit schedule property along with their henchmen and tried to encroach the portion of the suit schedule property on the eastern side and tried to put up compound wall and fencing, However the

plaintiffs resisted the illegal acts of the defendants with the help of their family members, well-wishers and friends. The defendants left the spot proclaiming that, they would come back with more men and see that they would encroach the suit schedule property. Thereafter, plaintiffs approached the jurisdictional police but police did not take any action. Hence, the plaintiffs are constrained to file this suit along with I.A No.1.

7. In support of the application, plaintiff no.1 has filed affidavit and reiterated averments of the plaint. In support of their case plaintiffs have produced the Certified copies of RTC's, copies of Mutation Registers, copy of partition deed dated 24.08.2016, copy of family tree, copy of Survey records, copies photographs and other related documents. On the other hand defendants have produced copy of registered sale deed dated 11.08.1942 and 21.09.2020, Copy of the RTC, copies of registered gift deed dated 21.09.2020 and 02.12.2020, copy of Mutation Register, copies of photographs, copy of loan agreement and other related documents.

8. Learned advocate for the plaintiffs has vehemently argued that, plaintiffs are the absolute owners and in possession of the suit property, defendants having no rights are trying to put up construction over the suit property without survey of

their property. Further argued that plaintiffs have prima-facie case in their favour. If IA is not allowed then the plaintiffs will be put into great loss and hardship and the irreparable loss will be caused to the plaintiffs, which will not be compensated in terms of money. Therefore prayed to grant the temporary injunction against the defendants by allowing the I.A. No.1 .

9. On the other hand learned advocate for the defendants has vehemently argued that defendants are in possession of their property and they have already constructed house therein. There is no property of the plaintiffs in Sy.No.133 as alleged. Further argued that plaintiffs have suppressed the material facts before the court and have not approached the court with clean hands. Further argued that plaintiffs have no prima-facie case and balance of convenience in their favour. Therefore prayed to dismiss the I.A. No.1.

10. I have carefully gone through the materials placed by both side. On perusal of materials on record it is apparent that the suit property measuring to an extent of 22 gunta in Sy.no.1 to 3 of Handenahalli Village is jointly standing in the name of plaintiffs. It is the contention of the plaintiffs that defendants are trying to put up compound wall by encroaching in the suit property without getting their property surveyed. On the

contrary it is the contention of the defendants that portion of suit property has been fallen to the share of defendant no.1 and he has executed gift deed in favour of defendant no.2 in turn defendant no.2 has executed gift deed in favour of defendant no.3. The new Survey number has been assigned to the share which was allotted to defendant no.1. Further it is the contention of the defendants that they have already constructed house therein and the plaintiffs have no any right over the property belonged to them. Further it the contention of defendants that plaintiffs have filed false suit against them. On perusal of documents placed by both parties it appears that plaintiffs have got their certain shares and so also defendant no.1 as well in the suit property bearing Sr.No.133 and 133/2 of Handenahalli Village. Further photo copies produced by plaintiffs reveal that a construction is under process and on the other hand the photocopies produced by defendants reveal that a house is standing which is completed. Further it is contention of the defendants that their portion has been allotted with new survey number and there is no property of plaintiffs in Sy.No. 133 of Handenahalli Village. But RTC of the suit property reflects the names of the plaintiffs, and since it is the contention of the plaintiffs that there is a encroachment by the defendants in their property, obviously it requires full fledged trial to find out real crux

of the case. However the documents produced by the plaintiffs and defendants are not conclusive proof, both side can adduce cogent and reliable evidence to prove their contention. This being suit for bare injunction plaintiffs have to necessarily prove the possession over the suit property irrespective of title and interference by the defendants. Obviously it needs full fledged trial, where both parties can prove their contention by leading cogent and reliable evidence. Therefore at this stage looking into facts and circumstance of the case and analyzing the materials placed before the court, it appears that plaintiffs have prima facie case in their favour. Accordingly, I answer Point No. 1 in the affirmative.

11. **Point No 2:** That now at this stage plaintiffs have the prima- facie case in their favour and the balance of convenience is also lies in favour of plaintiffs. Accordingly, I answer Point No. 2 in the affirmative.

12. **Point No 3:** As discussed above in Point No.1 and 2 the prima-facie case and balance of convenience are in favour of the plaintiffs. If the defendants are not prevented from putting up the compound wall or further construction in the suit property and if plaintiffs succeed after trial it would cause multiplicity and more hardship

to the plaintiffs. Accordingly I answer point No. 3 in the affirmative.

**13. Point No 4:** In view of my findings on Point No. 1 to 3 as discussed above, I proceed to pass the following:

**ORDER**

I.A. No. 1 filed U/o 39 Rule 1  
and 2 R/w. 151 of CPC by plaintiffs  
is hereby allowed.

Defendants or anybody  
claiming under them are hereby  
restrained from putting up  
construction over the suit property  
till disposal of suit.

No order as to cost.

(Dictated to the stenographer directly on computer,  
typed by her, revised by me and then pronounced in the  
open court, on this 20<sup>th</sup> day of March 2023)

Prl. Civil Judge and JMFC.,  
Hosakote.

**20.03.2023**

**Case called out  
(Orders on I.A.No.1 pronounced in the  
open court vide separate order)**

**ORDER**

I.A. No. 1 filed U/o 39 Rule 1 and 2  
R/w. 151 of CPC by plaintiffs is  
hereby allowed.

Defendants or anybody  
claiming under them are hereby  
restrained from putting up  
construction over the suit property  
till disposal of suit.

No order as to cost.

**Prl. Civil Judge and JMFC.,  
Hosakote.**

Case called out again.  
Issues are framed. Case is  
posted for plaintiffs evidence  
call on by 1.06.2023.

**Prl. Civil Judge and JMFC.,  
Hosakote.**

**IN THE COURT OF THE CIVIL JUDGE & JMFC., HOSAKOTE**

**O.S. NO.236-2019**

Plaintiff: Sri H V Krishnappa  
S/o Venkataramanappa and others

V/s

Defendant: Sri S Thippanna  
S/o Sonnappa and others

**ISSUES**

1. Whether plaintiffs prove that they are in actual possession and enjoyment of the suit property as on the date of suit?
2. Whether the plaintiffs further prove the alleged interference by the defendants?
3. Whether the plaintiffs are entitled the relief as sought for?
4. What order or Decree?

Date:20.3.2023

**(Basavaraj. G. Sanadi)**  
**Prl.Civil Judge & JMFC.,**  
**Hosakote.**

