

KABR500090602024



**IN THE COURT OF THE ADDL.CIVIL JUDGE & J.M.F.C.,**  
**AT : HOSAKOTE**

**PRESENT**

**SMT. CHAITRA V. KULKARNI,**  
**B.A.,LL.B., LL.M.**  
**II ADDL. CIVIL JUDGE & J.M.F.C., HOSAKOTE**

**Original Suit NO.439/2024**

**DATED THIS THE 31<sup>st</sup> DAY OF JANUARY -2025**

**PLAINTIFF :**

Sri. Chandrappa .P & another

**-Vs.-**

**DEFENDANTS :**

Sri. Kanakaraju M and others

**RANK ON I.A.NO.I**

**APPLICANT / ORI. PLAINTIFF :**

Sri. Chandrappa .P & another

**(By Sri. M.N., Advocate)**

**-Vs.-**

**OPPONENTS / ORI. DEFENDANTS :**

Sri. Kanakaraju M and others

**(By Sri.K.P.C., Advocate,)**

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**ORDER ON APPLICATION UNDER ORDER 39 RULE 1  
AND 2 R/W SECTION 151 OF CPC**

The present application has filed by the plaintiffs by seeking Temporary injunction to restrain the defendants, either by themselves or through their agents representative etc., from interfering over the Schedule Properties in any manner till disposal of suit.

2. In the annexed affidavit it is stated that, the suit schedule properties are ancestral properties of plaintiff No-2, who had initially cultivated the same since long ago. The grandfather of plaintiff No.2 i.e., N.S. Giriyappa, S/o Late Srinivasaiah and father of plaintiff No.2 late N.G.Sathyannaraya, S/o Late N.S.Giriyappa during their life time had sold to an extent of 2 acre out of 5 acre 23 guntas to plaintiff No.1 through registered sale deed and after purchasing the same he has been in peaceful

possession and cultivation of the same till date. Further stated that, the that plaintiff No-2 is the owner of the item No-2 of suit schedule property bearing Sy No. 112 measuring to an extent of 3 acre 23 guntas, situated at, Doddanallala village, Jadigenahalli Hobli, Hoskote taluk, Bengaluru rural district. The same is ancestral property of plaintiff No.2 when the plaintiff no.2 approached concerned revenue authorities with an application along with all documents pertaining to the said land and sought for change of RTC entries of the said land to his name, mean time some villagers, who are defendants, filed their objections before the revenue authorities, the concerned revenue authorities directed the defendants to produce the documents, the defendants failed to produce the documents before the concerned revenue authorities. Then defendants have filed writ petition against plaintiffs before the Hon'ble High Court of Karnataka in W.P No.24282/2024 by contending that the suit schedule properties are government properties and Late

Srinivasaiah who is none other than the great grandfather of plaintiff No.2 had gifted Sy.No.60/2, measuring 5 acre of land to government of Mysore for educational purpose on 18-05-1956. After hearing both the side The Hon'ble High Court of Karnataka dismissed the writ petition stating by observing that, there is no cause of action for the defendants to file the write petition. Further the Tahashildar Hosakote passed an order in R.R.T(DS) No.499/2024 in favour of plaintiff No.2 to transfer the revenue records in respect of Sy.No.112 measuring an extent 3 acre 23 guntas in view of inheritance, as per order of Tahashildar Hoskote the revenue records transferred in the name of plaintiff No.2. There is no document to show that, the Sy.No.60/2 is the new Sy.No.112, the said Sy.No.112, measuring 5 acre 23 guntas is the family land of the plaintiff No.2, which was originally phoded on 17.12.1949 in the Sy.No.60 and assigned the new Sy.No.112, which is measuring 5 acre 23 guntas. Further stated that, they are cultivating the suit

properties since 40 years and they have grown the mango trees, same is known to the defendants. On 18-11-2024 The defendants even though having no right, title and interest over the suit schedule properties, in order to harass them tried to interfere over the suit schedule properties and tried to dispossess them. Further, they resisted the high handed act of the defendants, and approached the jurisdictional police station, but the police directed them to approach the Civil Court, since the matter is civil in nature. Therefore they have sought to allow the present application.

3. On the other hand, the defendants have filed written statement and memo by adopting the contents of the written statement as objections to the present application by denying all the averments of the plaint and further contended that, originally, the Shanubhoga Late. Srinivasaiah was the sole and absolute owner of the property bearing Sy.No.60/2, new No.112 measuring about 5 Acre 23 Guntas, situated at Doddanallala Village,

Jadigenahalli Hobli, Hoskote Talluk, Bengaluru Rural District. Further contended that the said Shanubhog Late. Srinivasaiah has Gifted the said Property bearing Sy. No. 60/2 new No.112 measuring about 5 Acre 23 Guntas in favour the Principle Secretary to the Government under PBS for imparting education to public of the Doddanallala village vide Registered Gift deed dated 18-05-1956, from the date of Gift Deed the Schedule properties have been vacant till today and the same was not fenced, as the things stood thus, the land even though gifted to Government remained un-utilized and the plaintiffs by taking advantage of the same colluding with revenue officers obtained a Khata for the portion of the property measuring 2 acres without any legal sanctity and tried to encroach upon the said portion of the land illegally. However, the schedule property is vacant. Further contended that the villagers were trying to approach the D.C. Bengaluru Rural district, the Tahsildar Hosakote and the BEO Hosakote for developing the schedule property

and urged them to acquire the schedule property and utilize the same for the purpose for which it was intended for the benefit of the public at large. However they did not pay heed to oral request as well as the representations dated 20-07-2021 given by the villagers to acquire the said vacant land and make entries in the name of the Government and fence the land to safeguard the same from illegal encroachment.

4. Further contended that the 2<sup>nd</sup> plaintiff i.e., Vasu N.S. who claims to be the great grandson of said Srinivasaiah who was not born at the time of execution of gift deed having colluded with the revenue officers and the politicians and upon their interference has filed the Application to Transfer the Khata in his favour in respect of the schedule property, hence defendants along with 50 persons of Village have filed objections to the same, inspite of which, revenue officers have mutated khata in favour of 2<sup>nd</sup> plaintiff illegally without proper verification of Gift Deed , hence the defendants challenged the said order before

the Assistant Commissioner, Doddaballapura and obtained the order of not to alienate the schedule property. In the meantime the defendants have also filed the declaration suit (Representative suit) before the Hon'ble Prl. Civil Judge and JMFC, Hoskote and also obtained the Status-quo order dated 18-12-2024.

5. Further, they have lodged the complaint before jurisdictional Police station and the Police have given NCR to the complainant. After receiving the Notice from the Hon'ble Prl. Civil Court and JMFC, Hoskote, the plaintiffs have been trying to alienate the suit schedule property and executed the sale agreements in favour M. Obaleshwara and M. Radhakrishna dated 06-11-2024 respectively, and they have not pleaded about the same in the plaint, hence on all these grounds , they have sought to reject the application.

6. Heard both sides. Perused the materials placed on record.

7. The following points arise for my consideration :

**POINTS**

- 1) *Whether the plaintiffs have made out a prima- facie case in their favour ?*
- 2) *Whether the balance of convenience lies in favour of the plaintiffs?*
- 3) *Whether the plaintiffs would suffer loss and hardship if the application is rejected ?*
- 4) *What order ?*

8. My findings on the above points are as under :

Point No.1 : In the Affirmative,

Point No.2 : In the Affirmative

Point No.3 : In the Affirmative

Point No.4 : As per final order

for the following:

**REASONS**

9. **Point No.1 to 3**: The plaintiffs have filed the present suit for relief of permanent injunction and filed present application to restrain defendants from interfering

with the suit schedule properties. It is the case of plaintiffs that the plaintiff No.2 was cultivating the suit schedule properties and father and grand-father of plaintiff No.2 sold the portion of property to the extent of 2-A in favour of plaintiff No.1 and remaining 3-A, 23 guntas of land was remained with father of plaintiff No.2. Further averred that defendants are claiming that suit properties were gifted by one Sri. Srinivasaiah who is great grand-father of plaintiff to Government School but there is no document to show that the Sy.No.112 was gifted by the said Sri. Srinivasayya hence, suit properties belong to plaintiffs.

10. The plaintiffs have produced RTC extracts, sale deed, order passed in W.P.No.24282/24 etc. On perusal of RTC extracts produced by the plaintiffs it prima-facie show that, the suit properties are standing in the name of plaintiff No.1 and 2, they have also produced the survey records in respect of Sy.No.112 and all the documents produced by the plaintiffs clearly prima-facie establish

that plaintiffs are in the possession of their respective suit properties. Further the defendants have also produced documents such as RTC extracts, gift deed, encumbrance certificate, photographs, representations, order copy of R.A.(H) 207/24, order copy of O.S.No.364/24, agreements of sale etc. On perusal of documents produced by the defendants it prima-facie appears that, the RTC extracts are in respect of Sy.No.112 to the extent of 5-A 23-guntas from 1968-69 to till 1993-94, the 5-A 23-guntas of land was standing in the name of one Sri. Srinivasaiah S/o Sri.Giriyappa, thereafter at present the RTC shows that same is standing in the in name of said **Sri.** Srinivasaiah and plaintiff No.1, on going through the gift deed which prima-facie shows that, the gift deed was executed in respect of Sy.No.60/2 measuring 5-A and the encumbrance certificate prima-facie contains Sy.No.60/2 and 112 both and it also depicts that Sy.No.60/2 is showing for 5-A and on combined reading of boundaries shown in the gift deed and present suit properties shown

in the plaint, it prima-facie appears that the boundaries are entirely different and extent is also different, under such circumstances at this stage, it appears that even though the defendants are claiming that the suit properties were gifted by on Sri. Srinivasaiah but the survey number and the boundaries, extent are entirely different from the details shown in the gift deed hence, there are no documents to prima-facie show that the suit properties were gifted and said Sy.No.60/2 itself is Sy.No. 112.

11. Further the defendants have produced the proceedings conducted before Assistant- Commissioner wherein they claimed that the Sy.No.60/2 has assigned with new Sy.No.112, but at this stage there is no document to show that the said survey number assigned with new Sy.No. 112. Further defendants have contented that the suit properties are belonging to Government, the plaintiffs have no right over the suit properties. They have produced representations given by villagers of Doddanallal

Village wherein it is stated that the Sy.No.60/2 was originally belonging to one Sri. Srinivasahaia S/o Sri. Giryappa and he gifted the same to the Government School to the extent of 5-A, but except said representation and the gift deed, there are no documents in the name of Government School from year of alleged gift deed i.e., 1956, if at all in the year 1956 the suit properties were gifted to the Government School and same is in the possession of the suit properties, the defendants could have produced documents. Further they have produced documents of O.S.No.364/24 which has filed by the present defendants against the present plaintiffs for the relief of declaration in respect of the property bearing Sy.No.60/2 new No.112 to the extent 5-A 23-G but the alleged gift deed prima-facie reveals that only 5-A of land was gifted to the School, but the extent of the present suit properties are different, and moreover at this stage there are no documents to show that the land claiming by the

defendants as Government land itself is present suit properties.

12. It is pertinent to note that the defendants have contended that, the suit properties are Government property, if any act of the plaintiffs is grievance to the Government School then, the government could have taken action against the plaintiffs, but here the defendants have not shown how they belong to suit properties and even the suit filed by the defendants is considered, it prima-facie appears that same has filed in the capacity of individual not in the capacity of representative, if at all the defendants are having interest in the suit properties and if they fight for public at large, they would have not filed the suit in the individual capacity and the plaint of the said suit prima-facie reveals that they sought the suit property of that suit, as Government property but they have not shown, how they are interested and having right over the said suit property. Further as discussed above the plaintiffs have produced the documents to prima-facie

establish that they are in the possession of the suit properties and even though the defendants have claimed that suit properties are belonging to Government but they have failed to prove at this stage that the suit properties bearing Sy.No.112 itself is property gifted to the Government and the RTC extract produced by the defendants prima-facie reveals that the property Sy.No.112 is standing in the name of present plaintiff No.1 and said Srinivasaiah . Further there are no documents to show that the property of said Sri. Srinivasaiah which was standing in is name itself was gifted to the Government, the RTC extract produced by the defendants are in respect of Sy.No.112 and not respect Sy.No.60/2, because the alleged Gift deed was executed in the year-1956 and if at all the said Sy.No.60/2 was assigned with Sy.No.112, then the defendants could have produced documents in that respect. Further they have produced the attested copy of family tree, which prima-facie reveals that the said Sri. Srinivasaiah is grand-fatehr of plaintiff No.2 and only

because he is his grand-father it cannot be said that the gifted property is present suit properties and they have also produced the agreement of sale which prima-facie shows that Sy.No.60 has assigned with Sy.No.112 but in the gift deed the survey number mentioned is Sy.No.60/2 as already sated above the boundaries of gifted property are entirely different from the present suit properties, therefore the plaintiffs have successfully established prima-facie, that they are in the possession of the suit properties and on the other hand the defendants have not rebutted documents produced by the plaintiffs. Further, the contentions of the defendants that, suit property is of Government Property, itself prima-facie shows that they are not belonging to the suit property and even though they are concerned to the Government but in the individual capacity they do not have any right over the suit properties and it is to be mentioned that, this observation is made only in respect of present stage of the suit and to prove the main contentions of the both parties, it needs

full fledged trial and at this stage mini trial cannot be conducted. Therefore the plaintiffs have established prima-facie case and balance of convenience also leans in favour of plaintiffs, if the application will be rejected, hardship will be caused to plaintiffs. Hence, considering all these aspects of the case and totality of the circumstances, I answer the Points No.1 to 3 in the **“Affirmative”**.

13. **Point No.4** : In view of the above discussions, I proceed to pass the following....

**ORDER**

***The I.A.No.I filed by the plaintiffs U/O. XXXIX Rules-1 and 2 R/w. Sec.151 of the C.P.C. is hereby “Allowed”.***

***The defendants, their henchmen, servants, anybody claiming under them are hereby restrained from interfering with the suit schedule properties, till further order.***

***Considering the peculiar  
circumstances of the case, there  
will be no order as to costs.***

*(Directly dictated to the stenographer & typed by her, the same  
is edited, revised and corrected by me & then pronounced in the  
Open Court on this the 31<sup>st</sup> day of January-2025.)*

**(Smt. Chaitra V. Kulkarni)  
II Addl. Civil Judge & J.M.F.C.,  
Hosakote.**