

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

PRESENT:

Sri. Arun Kumar.G. B.A., LL.B.
Senior Civil Judge & JMFC,
Hosakote.

Dated this the 24th day of October – 2024

O.S.No.697/2024

Plaintiff/s : Sri.Narayanappa & Ors.

- V/s -

Defendant/s : Sri.Narayanaswamy T.S. & Ors.

i. Provision under which the application is filed.	U/o 39 Rule 1 and 2 of CPC
ii. Relief sought for	Temporary injunction.
iii. The date in which the application is filed	19-09-2024
iv. Number of the application	IA No.1
v. The date on which the objections are filed by different opponents	23-09-2024
vi. The date on which the orders were passed on the said application.	24-10-2024

Orders on I.A.No.1

The plaintiffs have filed the above application under Order 39 Rule 1 and 2 R/w Section 151 of CPC seeking an order of

temporary injunction restraining the defendants from interfering with the suit schedule property by way of putting up barbed wire fencing over the suit schedule property pending disposal of the suit.

2. In the annexed affidavit it is stated that, the plaintiffs have filed the above suit against the defendants for the relief of declaration and injunction with respect to suit schedule property. They are the absolute owners in possession and enjoyment of the suit schedule property having title over the same to an extent of 3 acres 33 guntas in Sy.No.31/1A. After the death of mother of the plaintiffs, the plaintiffs continued to be in possession and enjoyment over the same as absolute owners. Further, they have constructed four residential houses and they have put up a poultry farm, shed and they have also dug 5 borewells. Further, they have grown coconut trees, mango trees and jack fruit trees over the same. The defendants taking undue advantage of the mistakes crept in the survey records with regard to the measurement of the schedule property, have made hectic efforts to interfere with the peaceful possession of the plaintiff over the suit schedule property to grab the valuable

property by using concocted, forged and created documents. Further, they are trying to encroach the valuable 21 guntas and tried to put barbed wire fence by encroaching the said property. Hence, prays to allow the application.

3. After service of suit summons, the defendant No.1 to 3 appeared before the court and filed written statement and also filed memo to treat the same as objections to the above application and contended that the plaintiffs are in possession of the property bearing Old Sy.No.31, new Sy.No.31/1A1 measuring to an extent of 3 acres 12 guntas and Sy.No.31/1B measuring to an extent of 12 guntas, totally they are claiming for 3 acres 24 guntas but they are entitle to 3 acre 22 ½ guntas as per the sale deed of the father of the plaintiff by name Gopanna through registered sale deed dated 2-9-1965. Now, the plaintiffs are seeking declaration to an extent of 3 acres 33 guntas only on assumption because they have purchased the property to an extent of 3 acres 22 ½ guntas. Further, there is no such property is available and there is no possession of the property by the plaintiffs to an extent of 3 acre 33 guntas. Further, as per Article 58 of Limitation Act the limitation period

for filing the suit for declaration is three years. But, the plaintiffs after lapse of 49 years this suit is filed seeking the relief of declaration only with an intention to harass the defendants. Hence, prays to reject the application with costs.

4. Based upon the above contentions of the parties, following points arise for consideration of this court:

1. Whether the plaintiffs have made out prima facie case in their favour?
2. Whether the balance of convenience lies in their favour?
3. If temporary injunction is not granted who will suffer great hardship and injustice?
4. What order?

5. Both the counsels have produced their written notes of arguments. Heard and perused. On due perusal of the records, the court findings on the above points are as under:

- Point No.1 to 3 : In the Negative,
Point No.4 : As per the final order
for the following;

REASONS

6. **Point No. 1 to 3:-** These points are inter-linked with each other. Therefore, in order to avoid the repetition of facts and circumstances, they are taken together at one stretch for common discussion.

The plaintiffs have filed the above suit against the defendants for declaration and injunction with respect to suit schedule property. Further, they have filed the above application seeking an order of temporary injunction restraining the defendants from causing interference by way of putting up barbed wire fence over the suit schedule property till disposal of the suit.

7. It is the specific contention of the plaintiffs that they are in possession and enjoyment of suit schedule property having title over the same to an extent of 3 acres 33 gunas in Sy.No.31/1A. Earlier it was acquired by one Venkataramanappa @ Dodabbaiah and Venkatakrishnappa jointly on 23-6-1946 to an extent of 7 acres 5 guntas. Thereafter, they have entered into partition and phodi was also performed on 11-11-1946. In the

said phodi, 3 acres 33 guntas towards northern portion in old Sy.No.31/1 was fallen to the share of Venkataramanappa and remaining 3 acres 12 guntas in the southern side was allotted to the share of Venkatakrishnappa and they are in possession and enjoyment over the same. The defendants without having any right, title and possession have changed the katha in their names to an extent of 12 guntas by creating revenue records. But, the vendor's vendor of the defendants by name Muniyappa @ Bodappa have no right and title over the suit property by virtue of the sale deed dated 19-7-1973. Further, the defendants have not questioned the title deeds of the plaintiffs.

8. Per contra, the defendants taken a specific contention that by virtue of partition between the parties, 1 acre 22 ½ gutnas was acquired by one Budakappa who is the vendor's vendor of the defendant who gifted the same in favour of defendants and by virtue of the said gift deed, they are in possession and enjoyment over the same. Further, the plaintiffs have not made all the members as a party to the suit and also after lapse of 69 years from the sale deed they have filed this suit though they are not in possession and enjoyment of 1 acre 22 ½

guntas. Further, the plaintiffs have to prove their title over the same.

9. The plaintiffs in support of their case they have produced the copy of sale deeds, mortgage deed, gift deed and also revenue records with survey records.

10. The defendants were also produced encumbrance certificate, copy of partition deed dated 6-9-2006, RTC extracts along with photographs and the notice issued by the revenue survey authority for formation of Haddubasthu of the property bearing Sy.No.31/1B.

11. On perusal of all the above records and the encumbrance certificates produced by the defendants clearly goes to show that after purchase of the property by Venkataramanappa @ Doddabbaiah and Venkatakrishnappa on 23-6-1946 there are several sale deeds were executed between the purchasers from the year 1946 to 1979 in respect of the property bearing Sy.No.31/1.

12. As per RTC extracts produced by the plaintiff and defendants, the plaintiffs are in possession to an extent of 3 acres

12 guntas in Sy.No.31/1A1 under MR.No.25/2001-02. Further, as per RTC bearing Sy.No.31/3 an extent of 15.04 guntas is in possession and enjoyment of defendants under MRT.No.2/2024-25. Further, both the parties have also produced photographs.

13. On perusal of all the above records on prima facie clearly goes to show that the plaintiffs are in possession of an extent of 3 acres 12 guntas in Sy.No.31/1A1 and the defendants are in possession to an extent of 15.04 guntas. The plaintiffs have also questioned the sale deeds dated 9-3-1955, 7-3-1972, 14-5-1973 and the gift deed dated 16-4-1969 by filing this suit.

14. It is the specific contention of the defendants that the plaintiffs after lapse of 69 years they have filed this suit questioning the above said sale deeds. The plaintiffs have not stated any explanation regarding delay in questioning the said sale deeds in time. Furthermore, the plaintiffs have not produced any documents to show that they are in possession over an extent of 15.04 guntas or remaining extent in Sy.No.31/1A1 out of 3 acres 33 guntas.

15. As per available records there is a cloud over the title of the plaintiff in respect of the suit schedule property. Whether, they are having title and possession over an extent of 3 acres 33 guntas or not it requires a full fledged trial. Therefore, at this stage the plaintiffs have not made out any prima facie case and on available records the balance of convenience is lies in favour of defendants. If the application is allowed, more hardship would be caused to the defendants. Hence, on the above reasons, I answered point No. 1 to 3 in the “**Negative**”.

16. **Point No.4** :- In view of the aforesaid findings on point No.1 to 3, I proceed to pass the following:

ORDER

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

No order as to costs.

(Dictated to the stenographer, transcribed by her, corrected by me and then pronounced in the open court on this the 24th day of October 2024.)

(Arun Kumar.G)
Senior Civil Judge & JMFC,
Hosakote.

Order pronounced in the open court
vide separate :

ORDER

I.A.No.1 filed by the plaintiff under
Order 39 Rule 1 and 2 R/w Section 151 of
CPC is hereby rejected.

No order as to costs.

For issues and enquiry U/Sec 89 of
CPC, Call on:

Senior Civil Judge & JMFC,
Hosakote.