

KABR610137582023



**IN THE COURT OF PRINCIPAL CIVIL JUDGE & J.M.F.C. AT
NELAMANGALA**

Present: Sri.Deepu M.T. B.A.L, LL.B.
Prl. Civil Judge & J.M.F.C.,
Nelamangala.

Dated this 10th day of January, 2025

ORIGINAL SUIT NO.484/2023

Plaintiffs: 1. Sri. Venkataramaiah,
S/o. Late Govindappa,
Aged about 60 years,
R/o Vaderahalli Village,
Dasanapura Hobli,
Bangalore North Taluk,
Bangalore Urban District.

(By Sri , A.S., Advocate]

V/s

Defendants: 1. Sri. V.G. Jayaramaiah,
S/o. Late Gangappa,
Aged about 48 years,
2. Sri. V. Harsha Jayaram,
S/o. V.G. Jayaramaiah,
Aged about 26 years,

3. Sri. V. Yatheen Jayaram,
S/o. V.G. Jayaramaiah,
Aged about 24 years,

All are R/o Vaderahalli Village,
Dasanapura Hobli,
Bangalore North Taluk,
Bangalore Urban District.

4. The development Officer,
Huskur Grama Panchayathi,
Dasanapura Hobli,
Bangalore North Taluk,
Bangalore Urban District.

(By Sri Y.H.P., Advocate)

ORDERS ON I.A.NO.4

The plaintiff has filed this application under order 39 rule 7 of Civil Procedure Code praying to appoint Panchayath Development Officer concerned to discover, inspect the extents of property of plaintiff for fair disposal of suit, as it is required necessarily in the ends of justice and equity.

2. In the annexed affidavit to the application, the plaintiff has sworn that the plaintiff has filed this suit for the relief of declaration and injunction against the defendants.

The plaintiff prayed that their total property consisting of east to west 60, north to south 17.6 feet in total 1056 square feet. It is utilized by plaintiff ancestors for (Hittalu) back yard, Hay stock, Garbage pit and other reasons and same is known to defendants. Where as the documents produced by plaintiff i.e., demand register extract shows extent as 25 X 30 feet. The plaintiff is in peaceful possession of property urged as 60 X 17.6, total measuring 1056 square feet physically. The said extents are totally denied by defendants illegally. The defendants are fabricated documents and claimed that plaintiff are not possessed said extent i.e., 1056 square feet. The extent mentioned in the demand register, extent claimed in plaint, the extent physically enjoying is not admitted by defendants. The defendants have no locus standi to deny plaintiff extents. The plaintiff is poor villager and could not able to maintain documents to show the extent one as claimed as per enjoyment of plaintiff. The authorities mentioned extents to the reasons best known to them. Moreover, extent is made for payment of taxes specifically. This could not be grounds to other side to deny claim of the plaintiff. In order to substantiate claim of the plaintiff in IA under order 39 rule 1 and 2 of Civil Procedure Code the

present application requires to be consider. The present application is necessary to allow for fair disposal. If the application is allowed no hardship will be caused to the other side. Hence, on all these grounds prayed to allow the application.

3. On the other hand the defendants have resisted this application by filing objection stating that the application is not maintainable either in law or an facts. It is further submitted that the defendant No.1 is the father of the defendant No.2 and 3 and defendant No.2 and 3 were jointly got registered gift deed dated 05.03.2020 from defendant No.1 with respect to gramatana property janjer No.43 and Serial No.43 measuring to an extent of east to west 100 feet and north to south 50 feet. The said property was mutated E-khata in favor of defendant No.2 and 3 and they also got the gift deed in another property from defendant No.1 i.e., gramatana property janjer No.108/108 measuring to an extant of east to west 85 feet and north to south 40 feet and also got mutated the E-khata in the office of the defendant No.4. Further the defendant No.2 and 3 were got the gift deed from the defendant No.1 on the same day and they

were in peaceful possession and enjoyment of the said properties and the said two properties are vacant properties. The defendant No.2 and 3 were fixed the stone pillar with respect to the above said properties boundary without any disturbance but the above said plaintiff was trying to grab the defendants valuable properties without any right, title, interest or possession over the said properties. The present plaintiff is no way connected with the defendants family and they are strangers to the defendants family and also above said properties.

4. It is further submitted that the above mentioned properties were purchased by the defendant No.1 with respect to gramatana property No.43/43 measuring to an extent of east to west 100 feet and north to south 50 feet was purchased from V.N Nagaraju @ V.N Naganna and others through sale deed dated 25.02.2009. The defendant No.1 was purchased another property bearing No.108/108 measuring to an extent of east to west 85 feet and north to south 40 feet from Narasimhaiah through registered sale deed dated 13.08.2009. According to the sale deed the said properties were mutated to the name of the defendant No.1 by the

defendant No.4. The above said properties are self-acquired properties of the defendant No.1 and subsequently the defendant No.1 was executed the gift deed in favor of the defendant No.2 and 3 and accordingly katha of said properties mutated to the name of defendant No.2 and 3 and they are in possession of said properties. The defendant No.2 and 3 are the absolute owners in possession of the said properties by virtue of gift deed. But as per the plaint schedule and contention taken by them they were narrated in Schedule property old khata No 27/3 and new No.53/53 is their property and they were mentioned the measurement east to west 60 feet and north to south 17.6 feet, further there is no document to show the ownership of the plaintiff as per measurement mentioned by them in their plaint. There is no single piece of document to show the ownership of the plaintiff. But the plaintiff were simply filed the false suit against these defendants for wrongful gain and also they were trying to interfere with the possession of defendants over the above mentioned properties. The plaintiff sought for appoint a court commissioner i.e., defendant No.4 in this suit, but the plaintiff trying to manipulate and to fill up the lacuna filed this application. Since the evidence is not completed the

present application is not maintainable. Hence, on all these grounds prayed to dismiss the application.

5. Heard both sides and perused the materials on record. the following points arise for consideration of this court:

1. Whether the plaintiff has made out grounds to allow the application?
2. What order?

6. Findings of this court on the above points are as under

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|------------|---|---------------------------------------|
| Point No.1 | : | In the Negative, |
| Point No.2 | : | As per final order for the following: |

REASONS

7. Point No.1: The plaintiff has filed this suit for the relief of permanent injunction against the defendants. Through the instant application the plaintiff have sought for an order of appoint Panchayath Development Officer concerned to discover inspect the extent of property of plaintiff for fair disposal of suit. In the annexed affidavit the plaintiff deposed that he is in possession

of property consisting of east-west 60, north-south 17.6 feet in schedule in total 1056 square feet. But as per demand registered extract shows extent as 25X30 feet only. Hence its required to appoint Panchayath Development Officer to measure the property. The defendants have denied the application as the evidence is not completed and defendant No.4 is the Panchayath Development Officer in this suit and hence the application filed by the plaintiff is not maintainable.

8. I have perused the case papers interim application, objection and materials available on record. Before considering the application it is just and necessary to call out the provision of order 39 rule 7 of Civil Procedure Code which reads as follows :

Order 39 rule 7 : Detention, preservation, inspection, etc., of subject- matter of suit-

1. **The court may on the application of any party to a suit, and on such terms as it thinks fit,-**
 - (a) **make an order for the detention, preservation or inspection of any properties which is the subject-mater of**

such suit, or as to which any question may arise therein :

(b) for all or any of the purposes aforesaid authorize any person to enter upon into any land or building in the possession of an other party to such suit; and

(c) for all or any of the purposes aforesaid any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

- 2. The provisions as to execution of process shall apply, mutatis mutandis to persons authorized to enter under this rule.**

On perusal of the aforesaid provision as spelt out in 39 rule 7 of Civil Procedure Code only under special circumstances, exceptional cases, detention, preservation and inspection of the subject matter of the suit, subject to the terms and conditions as court deems fit make necessary order. On the background of the

object and purpose of 39 rule 7 of Civil Procedure Code, on careful perusal of the entire record and other relevant papers, it reflects that in the affidavit annexed with the present application, the plaintiff on oath admitted that their demand register extract shown property measuring 25X30 feet, but they claimed as they are in possession of property measuring east-west 60 feet north-south 17.6 feet in total 1056 square feet. The burden is on the plaintiff to prove that he is in possession of aforesaid measurement of property. For that reason at this stage this court cannot appoint Panchayath Development Officer to measure the property. Moreover, the reliefs sought by the plaintiff and this application is not come under the purview of order 39 rule 7 of Civil Procedure Code. The relief claimed by the plaintiff in this application has to measure the property of the plaintiff does not include in the order 39 rule 7 of Civil Procedure Code.

9. On the other hand the defendants have denied the application as the evidence is not completed in this case. Ofcourse if the present application is allowed it amounts to collection of evidence. Admittedly the defendants have not sought any relief in this suit. Therefore entire burden lies upon the plaintiff. Since this is suit for declaration and permanent injunction, at this stage appointment of Panchayath Development Officer concerned to discover, inspect the extent of property of plaintiff does not arise.

If the application is allowed it is clearly amounts to collection of evidence. Since the plaintiff has contended that he is in possession and enjoyment of plaint schedule property as narrated in the application, plaintiff has to establish the same. Since the evidence of both parties is not completed at this stage the present application is not maintainable.

10. Further learned counsel for the plaintiff has relied on decisions i.e., 2023(1) ICC 443 between Tapas Purkait and others V/s Panchanan Kayal and others, 2023 (1) ICC 447 between Dayaram V/s Laxmi Agarwal, 2023(3) ICC 668 (Cal) between Krishna Sharma V/s Maya Mukherjee and others and 2017 (5) KCCR 434 between Smt. Doddakakkamma @ Akkamma V/s Lakkanna and another. I have perused the aforesaid decisions relied by the plaintiff. The facts and circumstances of present suit and aforesaid decisions are totally different. Moreover, the prayer sought by the plaintiff in this application does not comes under the order 39 rule 7 of Civil Procedure Code. Under such circumstances with due respect to the aforesaid decisions this court is of the opinion that the aforesaid decisions are not applicable to the present case on hand. Therefore, this court is of the opinion that the plaintiff has not made out grounds to allow the application. With these observations, this court has answered point No.1 in the 'Negative'.

11. **Point No.2:** In view of the reasons and discussions made in Points No.1 , this court proceed to pass the following :-

ORDER

The I.A.No.4 filed by the plaintiff under Order XXXIX Rule 7 R.w section 151 of Civil Procedure Code is hereby dismissed.

In view of the facts and circumstances of the case, no order as to cost.

(Dictated to the Stenographer directly on computer, transcribed by her on computer, same is corrected and then pronounced by me in the open court on this the 10th Day of January, 2025).

(Deepu.M.T.)
Pri. Civil Judge & JMFC
Nelamangala.