

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 2<sup>nd</sup> day of September, 2024**

**ORIGINAL SUIT NO.514/2023**

Plaintiffs: Sri. Ravi B. P. @ Balakrishna,  
S/o. Late Sri. T Papegowda @ papaiah,  
Aged about 54 years,  
R/at 1834, 6<sup>th</sup> main Raod,  
D Block, 2<sup>nd</sup> stage,  
Rajajinagar,  
Bangalore- 560 010.

**(By Sri , G N D Advocate]**

V/s

Defendants: Sri. K. V. Nataraj,  
S/o. Late Sri. K. G. Venkatappa,  
Aged about 51 years,  
R/at Kengalkempohalli village,  
Sompura Hobli, Nelamangala Taluk,  
Bangalore Rural District – 562 111,

**(By Sri , G K N Advocate)**

**ORDERS ON I.A.NO. 2 FILED U/O.39 RULE 1 AND 2 R/W**  
**OF CIVIL PROCEDURE CODE.**

The plaintiff has filed this application praying to pass an order of interim injunction by restraining the defendant and his servants, agents or anybody acting under him from interfering to the application/plaint A schedule property. The description of schedule property is as here under.

**Schedule 'A' property**

All that piece and parcel of the land bearing Sy. No. 58/3 measuring 0-04 guntas, situated at Kengalkempohalli Village, Sompura Hobli, Nelamangala Taluk and Bengaluru Rural District bounded on as follows:

East : Property of Late Sri. Krishnaiah (Road),

West : Sri. Balakrishna (Property of Late Sri.  
Venkataramanaiah)

North:Property of Late Sri. Venkataramanaiah,

South: Property of Late Sri. Channarangaiah.

2. In the annexed affidavit to the application the plaintiff has sworn that the contents of the plaint, documents and affidavit are read as part and parcel of this affidavit to avoid repetition of facts. Originally father of the plaintiff was the absolute owner and in possession of schedule property and same was acquired through partition. Accordingly revenue documents mutated in the plaintiff father name. Since

the date of the partition plaintiff's father and their family members are in possession and enjoyment over schedule "A" property. On 01-09-2023 plaintiff was shocked and surprised to know that defendant along with some unknown persons had been damaging Schedule B property out of schedule A property and the same issue was reported to plaintiff by his relatives immediately he couldn't visit the place because he was out of station for some urgent work and thereafter on 06-09-2023 plaintiff came to schedule A property to know about the damages.

3. It is further stated that, the defendant being a police officer working as ASI in Hebbal police station limits in Law and Order with the influence and using the power along with his supporters the defendant has entered into the bit of land measuring 35ft X 25ft approximately 0-01 gunta which is stated in the schedule B property out of schedule A property and the defendant as disposed plaintiff from the schedule B property with the use of official power and his supporters using muscle power with other people to enter the Schedule "B" property. The defendant has disposed plaintiff from the schedule B property and made damages to the schedule B property by way of unauthorized construction of the building

and continuing the construction work. Hence this application. The plaintiff has made out prima facie case and balance of convenience lies in his favor. No prejudice and hardship would be caused to defendant if this application is allowed, per contra grave prejudice, hardship, irreparable loss, injury will be caused to plaintiff if this application is not allowed. Hence, on all these grounds prayed to allow the application.

4. On the other hand the defendant has filed memo praying to treat the written statement as objection to this application. In the written statement defendant has denied the entire case of plaintiff as false and frivolous. It is further submitted that the plaintiff neither the owner nor in possession of the schedule property at no point time and filed this false and frivolous suit only in order to harass and grab the property of defendant by one or the other way. The suit is pending before the Hon'ble senior Civil Judge and JMFC at Nelamangala in O. S. No. 335/2015 is not within the knowledge of the defendant in respect of Sy. No. 58/3 measuring 0-04 guntas and 02 guntas, belongs to Krishnaiah. This court has no territorial jurisdiction to try the matter the value of the property is more than Rs. 20,00,000/-(Twenty lakhs only) the present suit has to be file before the proper

court for the relief of declaration and on this score also the present suit is not maintainable.

5. It is further submitted that, the relief sought in the plaint is vague one the relief sought in the plaint is only in respect of B schedule property and the same is not maintainable unless the proper reliefs has to sought for declaration and possession of the property without there being any declaration and possession of the property without there being any declaration relief the suit is for mandatory injunction is not maintainable. The plaintiff has no independent right to file a present suit though the Papegowda has got children by name Annapoorna, Kirana and Prakash are the legal heirs of Papegowda but they have not given any authorization nor party to the proceedings and at this stage the suit is not maintainable for mandatory injunction. Thimmappa had got three sons by name Gangathimmaiah, Thimmappa Dasappa and Mudalagiriyappa the property originally belongs to the Thimmappa S/o Beerappa which shows in the Index of land and his three children have partitioned the properties the Gangathimmaiah's children by name Krishnaiah and K. G. Venkatappa have got it obtained 0-12 guntas of land and in the 0-12 guntas of land the

defendant father K. G. Venkatappa acquired to an extent of 0-08 guntas of land and the children of Thimmappa Dasappa by name Papegowda, Narayanappa, Balakrishnaiah have jointly allotted to an extent of 0-11 guntas of land and as per the earlier mutation which were effected and in the said partition K. G. Venkatappa is allotted to an extent of 0-6 guntas instead of 0-08 guntas of land and survey number was also wrongly shown as Sy. No. 38/1 instead of Sy. No. 58/3. But the schedule which referred in the partition extract is correct which reads towards East: Thimmappa Dasaiah, West: Krishnaiah, North: Krishnaiah, South: Channaragaiah was shown and as per the partition the mutation was effected M. R. No. 4/2000-01 in the name of K. G. Venkatappa S/o Gangathimmaiah to an extent of 0-08 guntas of land the revenue records which clearly speaks about the ownership and extent of the land which was acquired by the father of the defendant by name K. G. Venkatappa from day one of the partition. The defendant father was enjoying the property as an absolute owner.

6. It is further submitted that, in view of the developments which were taken place in the locality that to industrial area of Sompura is adjacent to this village and also

the larger extent was developed and in view of the developments, the panchayathi has taken over the property to the panchayath limits and effected the katha bearing No. 220/58/3 and by demolishing old structure which was existence more than 30 years, and after demolishing the same the ground floor RCC roofed house building was constructed in the year 2007-08 measuring 15.24 meter\*18.288 meter approximately 60\*50 totally measuring 3000 Sq, feet that was identified by the panchayathi and effected the khatha bearing No. 150300702200220079 and collected the taxes to the said panchayath regularly and the defendant are in possession and enjoyment of the same along with remaining portion. The revenue document which stands in the name of this defendant father by name K. G. Venkatappa and during the life time of K. G. Venkatappa has bequeathed the registered will in favour of this defendant, will was executed on 07-11-2018 in favour of this defendant the said document is also registered before the sub Register office to an extent of 08 guntas of land om Sy. No. 58/3 towards Eastern side : Balakrishna property, West by : Balakrishna and Narayanappa, North by : Road and South by : Mataraj K. V. this defendant in respect of property bearing Khanesumari No. 73&74. Mutation was also been effected in

the name of the defendant in M.R. H22/2018-19 and Khatha was also been effected and revenue documents are acted upon in the name of defendant and he was in possession and enjoyment of the same as an absolute owner, the land bearing Sy. No. 58/3 is not comes under the agricultural status and it was developed very long back by forming road, drainage and other Civil amenities in the said survey number and entire extent of Sy. No. 58/3 measuring 0-23 guntas is not existence as per the revenue entries, but the roads were also been formed in the said Sy. No. 58/3 the extent allotted to the defendant family 08 guntas and reduced to 6 ½ guntas and the said extent was utilized for formation of road, these facts wre not been pleaded by the plaintiff the reasons best known to him there was no such land was in existence has claimed by the plaintiff to and extent of 0-04 guntas of land and portion of the property was encroached for formation of road the present suit filed as against the defendant is not at maintainable and same has to be dismissed with exemplary costs.

7. It is submitted that the total extent of the land in Sy. No. 58/3 the plaintiff is only chosen the defendant as a party to the proceedings. As could be seen from the RTC column No.11

there was a reference in O.S.No.335/2015, the column No.11 there was a reference in O. S. No. 335/2015, the senior Civil Judge was granted order of injunction that was incorporated in the RTC extract. When though there is a litigation in respect of whole extent of 0-23 guntas in Sy. No.58/3 is under dispute, when such being the case the present suit for mandatory injunction is not at all maintainable unless and until made all the parties to this proceedings or otherwise the plaintiff who is the party to the said proceedings as defendant No.2 and he has to adjudicate the matter by filing counter claim in the said suit and there is no need or necessities to initiate the present proceedings by misrepresenting false suit was filed as against the defendant and the same is not maintainable. The plaintiff has filed the false suit by misrepresentation and suppression of material facts though one more litigation in O.S.No.271/01 which was filed before this court in respect of Sy.No.58/3 total extent including other 47 items and the said suit is also been pending before this court. The said facts is also well within the knowledge of the plaintiff and the plaintiff has filed the false and frivolous suit to make a wrongful gain and harass the defendant by one or the other way. The survey which was conducted by the surveyor dated 06-09-2023 the survey was

conducted to whole extent of Sy. No. 58/3 measuring 00-23 guntas was measured the total extent as per the RTC extract which was shown in the left column and as per the possession the sketch was prepared which was shown in right side to the said sketch. The block No. 1 to 5 were shown in the said sketch, block No.1 this defendant name Nataraj K.V. S/o venkatappa 2 ½ guntas, block No.2 K.T.Balakrishna S/o Thimmadasappa 0-09 guntas according to the recent survey sketch which reveals that this defendant is in possession of only 06 ½ guntas of land instead of 0-08 guntas of land when such being the position, question of encroachment made by the defendant over the 'A' schedule and 'B' schedule properties is not at all maintainable. But the recent survey dated 06-09-2023 in the block wise divided in the said sketch the Papegowda's name was not find place including the plaintiff and question of claiming their ownership and possession based on the blank paper and no point of time plaintiff nor Papegowda are in possession of the property has claimed in the present suit and without there being any possession of 'A' schedule property and the question of encroachment on the 'B' schedule property will not arise and the plaintiff has to ascertain their property has claimed in the present suit by

filing comprehensive suit for declaration and possession by making all necessary parties to the proceedings.

8. It is submitted that towards southern side of defendant property bearing Sy.No. 58/3 the two properties bearing Khaneshumari No.73/2 and 74 properties were also been existence and those properties were developed by constructing the RCC roofed house 3 floors on the above said Khaneshmari numbers and the said properties are located towards southern side of Sy. No. 58/3 and this defendant has construct the property in Khaneshmari No. 72/3, panchayathi Khatha No.169/1/72/3, PID No. 150300702200200119 by taking loan from the Canara Bank, Kuluvanahalli Branch and in respect of Khaneshumari No.73 and 74 is also adjacent properties to the Sy.No. 58/3, Khaneshumari No.73 measuring 29X59 feet and by taking relevant necessary license from the authorities three floor building was constructed and Khaneshmari No.74 earlier it was stone roofed house measuring 35X35 feet now it is constructed 3 floor building is completed and accordingly the defendant is in possession of the property as an absolute owner and there was no encroachment made by defendant has contended by the plaintiff at no point of time, the plaintiff was and is in

possession of the property being owner and no such document produced before the court to prove the case on hand. Under the facts and circumstances stated above the suit of the plaintiff has to be dismissed with exemplary costs and the schedule mentioned in the plaint is not correct and the boundaries to schedule mentioned in 'A' and 'B' schedule properties is also wrong. No such existing property has claimed by the plaintiff. Hence on all these grounds prayed to dismiss the application.

9. Heard both sides and perused the materials on record. the following points arise for my consideration:

1. Whether the plaintiff has made out a prima-facie case?
2. Whether the plaintiff proves that the balance of convenience lies in his favour?
3. Whether the plaintiff establishes that he would be put to irreparable loss and injury if temporary injunction is not granted?
4. What order?

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

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**

11. **POINT No.1**:-In order to consider the application under Order XXXIX Rule 1 & 2, the Court should satisfy three ingredients namely, prima-facie case, balance of convenience and irreparable injury to the plaintiff if injunction is not granted. The existence of a prima facie goes in the matter of granting injunction is really the harbinger or the all clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself. But if there was a prima facie case then other consideration governing the grant of injunction would come into play and will also have to be evaluated before granting or refusing the injunction. In other words the existence of a prima facie case or even a very strong prima facie case does not permit leap-frogging by the plaintiffs directly to an injunction without crossing the other hurdles in between. Even granting that the plaintiff has an invincible prima facie case, he will not be entitled ex debitaie justilciae, to the grant of an injunction, unmindful of other

consequences. If the consequences of granting an injunction are detrimental in nature then an injunction will not be granted even though the plaintiff might have an unbeatable prima facie case. Keeping these principles I would like to discuss the facts of the present case on hand.

12. The plaintiff in order to succeed in this application has to prove prima facie case in his favour and balance of convenience which has to be in favour of the plaintiff and also he is called upon to prove the irreparable loss and injury, which would be caused to him if this application is rejected. With this basic principles in mind, now let me analyze the factual matrix on the basis of materials placed on record.

13. On perusal of pleadings of both parties, application and annexed affidavit and objection of defendant, it reveals that this suit is filed by the plaintiff for the relief of mandatory injunction, vacant possession and such other reliefs. Through the instant application the plaintiff prayed to restrain the defendant from interfering to the plaint 'A' schedule property. It is the specific case of the plaintiff that the plaint 'A' schedule property has been allotted to the share of his father T. Papegowda and he is no more. The plaintiff has inherited the plaint 'A' schedule property and he is in possession and enjoyment of schedule 'A' property as absolute owner. The defendant has no manner of right over the schedule 'A' property. Despite of the same the defendant has encroached plaint 'B' schedule property which is part and parcel of plaint 'A' schedule property and constructed the building therein. Now the defendant also trying to interfere and dispossess the plaintiff from the plaint 'A' schedule property also. Hence this application. On the other hand the defendant is denied the title and possession of the plaintiff over the plaint schedule properties. It is the specific case of the defendant that, he is in possession of property bearing Sy.No. 58/3 measuring 6 ½ guntas only and he has not encroached plaint 'B' schedule

property as alleged by the plaintiff. The suit is not maintainable without there being relief of declaration of title. Hence sought for dismissal of the application.

14. I have gone through the entire case papers, IA, objection and documents available on record. The plaintiff has filed the suit for mandatory injunction and vacant possession. Through the instant application sought for temporary injunction praying to restrain the defendant or his agents from interfering to the possession of plaintiff over the plaint 'A' schedule property. At this stage on perusal of documents available on record there is no dispute that one Thimmappa had got 3 sons by name Gangathimmaiah, Thimmappadasappa and Mudala Giriyappa. The property bearing Sy.No. 58/3 measuring 0.23 guntas belongs to the Thimmappa S/o Beerappa and same has been partitioned among his three children, The Gangathimmaiah's children by name Krishnaiah and K.G. Venkatappa had got 0.12 guntas of land and out of 0.12 guntas of land father of defendant K.G.Venkatappa acquired to an extent of 0.08 guntas of land and the children of Thimmappadasappa by name Papegowda, Narayanappa, Balakrishnaiah have jointly allotted to an extent of 11 guntas of land. On perusal of index of land it depicts that father of the plaintiff had got allotted property bearing Sy.No.58/3 measuring 0.04 guntas. On perusal of RTC extract also depicts that the property bearing Sy.No.58/3 measuring

0.04 guntas stands in the name of T. Papegowda who is the father of plaintiff. But on perusal of RTC extract for the year 1997-98 and 1998-99 depicts that property bearing Sy.No.58/3 measuring 0.04 guntas stands in the name of T. Papegowda who is the father of the plaintiff and property measuring 0.23 gunta stands in the name of K.G. Venkatappa S/o Gangathimmaiah who is the father of defendant which is against to the measurement of original property. The property measuring 0.13 gunta and 0.02 gunta stands in the name of Balakrishnaiah minor guardian Thimmappadasaiah and Ramakka, measuring 0.04 guntas stands in the name of Narayanappa S/o Thimmappadasaiah and 0.15 gunta stands in the name of K.T. Balakrishna S/o Thimmappadasappa. Admittedly original property bearing Sy.No.58/3 measuring 0.23 gunta but the as per this RTC extracts total measuring 1 Acre 0.04 gunta was shown against to the original property which was in existence.

15. Further as per the pleadings of the plaint itself the plaintiff pleaded that the defendant has encroached plaint 'B' schedule property which is part and parcel of plaint 'A' schedule property. Therefore at this stage it is clear that the plaintiff is not in possession of entire plaint 'A' schedule

property. The plaintiff also sought for possession of plaint 'B' schedule property which is part and parcel of plaint 'A' schedule property. Under such circumstances the question of the plaintiff is in possession of entire plaint 'A' schedule property does not arise. Therefore, at this stage this court is of the opinion that the plaintiff has failed to made out prima facie case in his favour. Accordingly, with these observations this court has answered point No.1 in the Negative.

16. **Points No.2 and 3:** These points are taken up together for common discussion to avoid repetition of facts. As the plaintiff has failed to establish a prima-facie case in his favour these two points do not survive for consideration as Prima facie case is harbinger to other considerations. In this regard it would be relevant to refer to the decision rendered by **Hon'ble High Court Of Karnataka In Gowrishankar Swamigalu V/s. Siddhaganag Mutt & Ors reported in ILR 1989 KAR 1701**, wherein the Hon'ble High Court of Karnataka held as follows:-

***"...The existence of a prima facie case in the matter of granting injunction is really the harbinger or all the clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If***

***there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself..."***

Accordingly, with all these observations, this court has answered point No.2 and 3 in the 'Negative'.

17. **Point No.4:** In view of the reasons and discussions made in Points No.1 to 3 , I proceed to pass the following :-

**ORDER**

The I.A.No.II filed by the plaintiff under Order XXXIX Rule 1 and 2 of R/w.Sec.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 2<sup>nd</sup> Day of September, 2024).

**(Deepu.M.T.)  
Prl. Civil Judge & JMFC  
Nelamangala.**