

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**

Plaintiff: 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

Defendant: 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. 3 FILED U/O.39 RULE 1 AND 2 R/W OF  
CIVIL PROCEDURE CODE.**

The plaintiff has filed this application under order 39 rule 1 and 2 R/w section 151 of Civil Procedure code praying to pass temporary injunction restraining the defendant from alienating and creating any third party interest on the plaint schedule 'B' property. Till pending disposal of the suit.

**Schedule 'B' property**

All that piece and parcel of the land bearing Sy. No. 58/3, measuring bit of land approximatley 0.01 gunta or 35X25=875 Sq, feet out of 0.04 guntas, situated at Kengal Kempohalli Village, Sompura Hobli, Nelamangala Taluk and Bengaluru Rural District bounded on as fallows:

East : Property of Late Sri. Krishnaiah (Road),  
West : Property of Late Venkataramanaiah  
North : Property of Late Venkataramanaiah,  
South : Property of the same schedule.

2. In the annexed affidavit to the application the plaintiff has sworn that the plaint averments may be read as part and parcel of this affidavit to avoid repetition of facts. It is further stated that the plaintiff is the absolute owner and in possession and enjoyment of plaint schedule A property. The entire land of Sy.No.58/3 measuring 23 gunta situated at Kengal Kempohalli Village, Sompura Hobli, Nelamangala

Taluk, has been in possession of grandfather of the plaintiff by name Late. Thimmappadasaiah and further divided to one late. T Papegowda, Balakrishna minor guardian late. Sri. Thimmappadasaiah and Late. Sri. Krishnaiah, with an extent of 4 guntas, 13 guntas, 4 guntas and 2 guntas respectively, also mutated the revenue records. Out of which the share of late T. Papegowda measuring 4 gunta property belonging to the plaintiff and by the way of ancestral share, the plaintiff is enjoying the ownership and possession till date. A partition suit is pending before the Hon'ble Prl. Senior Civil Judge and JMFC Nelamangala in O.S. No.335/2015 and this property bearing Sy.N.o 58/3 is involved measuring 0-04 guntas and 0-02 guntas belonging to Late Sri.Krishnaiah and the property in dispute is nowhere relevant to the plaintiff schedule property and the same has been mislead by the plaintiff of the suit number OS.No.335/2015 i.e., Smt. Bhagyalakshmi & another before the Hon'ble Senior Civil Judge & JMFC Nelamangala. The interim order also is granted by the Hon'ble court on the whole Sy.No.58/3 leading to the fact that to not getting the records mutated in the name of legal heirs of one Late Sri.T. Papegowda and hence in the said suit and

the Hon'ble Court also granted the interim order. The above named plaintiff is also a party as a Defendant No.2 for different schedule property in the mentioned case and is still pending for adjudication.

3. It is further stated that on 01.09.2023 the plaintiff was shocked and surprised to know that defendant along with some unknown persons had been damaging plaint 'B' schedule property out of plaint 'A' schedule property and the same was reported to the plaintiff by his relatives immediately, but plaintiff couldn't visit the place because he was out of station for some urgent work and on 06.09.2023 the plaintiff came to the schedule A property to know about the damages. The defendant being a Police Officer working as ASI in Hebbal Police Station limits in Law & Order with the influence and using the power along with his supporters, the defendant has entered into the bit of land measuring 35 feet X 25 feet approximately 0-01 gunta which is situated in the schedule 'B' property out of schedule 'A' Property and the defendant has disposed the 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 made disposed the Plaintiff by way of trespass in 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 and there are making further move to trespass the schedule 'A' property also. The complaint also filed before the jurisdictional Police Station at Dabaspeta. The police also support to the defendant as a colleague. In view of the same the plaintiff has established the prima facie case and balance of convenience lies in his favour. If the application is not allowed the plaintiff will be put to irreparable loss. Hence, on all these grounds prayed to allow the application.

4. On the other hand, after service of summons the defendant has appeared through his counsel and filed written statement and memo praying to treat the written statement as objection to this application. In the written statement the defendant has denied the entire case of the plaintiff has not maintainable either in law or an facts. It is further submitted that there is no cause of action for this suit and this suit is filed on imaginary cause of action. The present market value of the property is more than Rs.20,00,000/- and the present

suit has to be filed before the proper court for the relief of declaration. The relief sought in the plaint is vague one, relief sought only in respect of 'B' schedule property and same is not maintainable, unless the proper relief has to sought for declaration and possession of the property. Without their being any declaration relief the suit 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. The plaintiff herein has no right to file a present suit, neither the plaintiff being the owner in respect of Sy.No.58/3 measuring 04 guntas of land, which is situated at Kengal Kempohalli Village, Sompura Hobli, Nelamangala Taluk. There was no document placed by the plaintiff to substantiate that the plaintiff being the owner of the property in respect of Sy.No.58/3.

5. It is further submitted that Thimmappa had got three sons by name Gangathimmaiah, Thimmappadasappa

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 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 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: Channarangaiah was shown. As per the partition the mutation was effected MR 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. 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, the Panchayathi has taken over the property to the Panchayath limits and effected the Khatha bearing No.220/58/3 and by demolishing old structure which was existed more than 30 years. After demolishing the ground floor, RCC roofed house building was constructed in the year 2007-08 measuring 15.24 meter X 18.288 meter approximately 60X50 feet 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 is in possession and enjoyment of the same along with remaining portion. The revenue documents which stands in the name of the father of defendant. During the life time of K.G.Venkatappa, he has bequeathed the property through registered Will dated: 07-11-2018 in favour of this defendant to an extent of property

measuring 08 guntas of land in Sy.No.58/3 in respect of property bearing Khanesumari No.73 & 74. As per the Will the mutation was also been effected in the name of the defendant and Khatha was also been effected and revenue documents are acted in the name of defendant and he was in possession and enjoyment of the same as an absolute owner.

6. It is further submitted that 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 Civic amenities. The extent allotted to the defendant family 0.08 guntas reduced to 6 ½ guntas and the said extent was utilized for formation of road. These facts were not been pleaded by the plaintiff, the reasons best known to him. There was no such land is in existence as claimed by the plaintiff to an extent of 0-04 guntas of land. 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 extract other purchasers were also been there as Balakrishnaiah minor guardian Ramakka, K.T.Balakrishna S/o Thimmadasappa. But the plaintiff has not made all interested

parties to the proceedings. Moreover, as could be seen from the RTC column No.11 there was a reference in O.S.No.335/2015, the Hon'ble 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 the present suit for mandatory injunction is not maintainable. The plaintiff 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 to initiate the present proceedings. The surveyor which is conducted by the survey dated: 06-09-2023 for property bearing Sy.No.58/3 measuring 00-23 guntas 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.I this defendant name Nataraj.K.V. S/o K.G. Venkatappa 2½ guntas, block No.II K.T. Balakrishna S/o Thimmappa Dasappa 3½ guntas, Narayanappa S/o Late. Thimmadasappa 0-04 guntas, block No.IV Nataraj K.V. S/o K.G. Venkatappa 0-04 guntas this defendant, block No.V K.T. Balakrishna S/o Thimmadasappa 0-

09 guntas. According to the recent survey sketch this defendant is in possession of only 6 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 property 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 at no point of time plaintiff nor Papegowda are in possession of the property as claimed in the present suit. Towards southern side of defendant property bearing Sy.No.58/3 the 2 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 Khanesumari numbers and the said properties are located towards southern side of Sy.No.58/3 and this defendant has constructed the property in Khaneshumari 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. By taking relevant necessary license from the authorities three floor building was constructed and Khanesumari 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. There was no encroachment made by the defendant has contended by the plaintiff. On all these grounds prayed to dismiss the application.

7. 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 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 as prayed is not granted?
4. What order?

8. Findings of this court 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:** These points are interlinked with each other and they are taken up together for common discussion to avoid the repetition of facts and discussion.

10. The plaintiff has filed this suit for the relief of mandatory injunction to remove the legal structure constructed by the defendant on the schedule 'B' property, for possession of plaint 'B' schedule property and such other reliefs. Through the instant application the plaintiff has sought for temporary injunction by restraining the defendant from alienating and creating third party right over to the plaint 'B' 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.

11. 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.

12. 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 alienating and creating third party right over the plaint 'B' 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 Giryappa. 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 guntas 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 guntas and 0.02 guntas 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. To ascertain the real fact full fledged trial is required. Since this is suit for possession of plaint 'B' schedule property U/sec.6 of Specific relief Act, if the defendant alienated or created any third party right over the B schedule property it will be caused for multiplicity of proceedings. Therefore at this stage this court is of the opinion that the plaintiff has established prime facie case and balance of convenience lies in his favour and also proved that he would be suffer irreparable loss and injury, if an order of temporary injunction is not granted in his favour. Accordingly, with these observations this court has answered point No.1 to 3 in the Affirmative.

13. **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.III filed by the plaintiff  
under Order XXXIX Rule 1 and 2 of

R/w.Sec.151 of Civil Procedure Code is hereby allowed.

The defendant is hereby restrained by an order of temporary injunction from alienating and creating third party interest on the schedule 'B' property in any manner till disposal of the suit.

In view of the facts and circumstance of the case, no order as to costs.

(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.**