

**ZIN THE COURT OF THE PRL., CIVIL JUDGE & JMFC.,
AT CHINTHAMANI**

**PRESENT: SRI. SHIVAKUMARA G.J, B.A.L.L.B.
Prl. Civil Judge & J.M.F.C.,
Chinthamani.
O.S. No 289/2020**

Dated on this the 12th day of January 2021.

PLAINTIFFS:-

S. Venkatarayappa,
S/o Venkataswamy,
Aged about 81 years,
R/o Peramachanahalli Village,
Kaiwara Hobli, Chintamani Taluk,
Chikkaballapur District.
(By Sri. P.S.B. Advocate)

V/s

DEFENDANTS:-

1. P.M. Narayanaswamy,
Aged about 60 years,
2. M. Busappa,
Aged about 58 years,
3. P.M. Ashwathappa,
Aged about 47 years,
4. Subbarayappa,
S/o Eerabhadrappe,
Aged about 65 years,
5. Munishamappa,
S/o Eerabhadrappe,
Aged about 60 years,
6. Subramani,
S/o Eerabhadrappe,
Aged about 55 years,

Defendants 1 to 3 are sons
Chikka Muniyappa,
R/o peramachanahalli,
Kaiwara Hobli,
Chintamani Taluk,
Chikkaballapura District.

(By Sri. K.C.V. Advocate)

ORDERS ON IA.NO.I

The plaintiff has filed this application U/o. XXXIX Rule 1 & 2 of C P C to against the defendants restraining them or their agents, servants, assigns, contractors, coolies, relatives or anyone claiming under them from illegally harvesting the tamarind usufructs in the tamarind tree situate on the plaint schedule property till disposal of the suit.

2. Brief case of the plaintiff is as under:

The suit property item no.1 and 2 situated at Peramanchanalli village, chintmanai Taluk, the item no.1 is vacant land consisting of tamarind tree, the plaintiff stated that Munivenkatamma D/o Busappa is a absolute owner of vacant land consisting of tamarind tree. Smt. Munivenkatamma purchased the suit item no.1 under registered sale deed dated 25.12.1955, after the purchase smt Munivenkatamma got changed the khatha in her name, she was died on 02.12.1996 after the death of Munivenkatamma the plaintiff is in peaceful possession and enjoyment over the suit schedule property. The plaintiff further stated that on 10.01.1967 mother of the plaintiff Munivenkatamma and Chikkamuniyappa have jointly purchased the item no.2 and plaintiff and defendants are in joint possession of the same

are entitled half share in the suit schedule property. The defendants father has mis represented the Panchayath authorities and got khatha in his name as pawathivarasu, The defendants have no right, title or interest over the suit schedule property. On November 2020 defendants are threatening to collect the usefructs, illegally inspite of the order passed by the Taluk Executive Officer on the basis of concocted and created documents, Therefore the plaintiff has filed the suit and sought for temporary injunction till disposal of this suit.

3. The defendants have filed the written statement and filed the objections to IA No.I. In the objections defendant have denied the all averments made by the plaintiff in the application. Further the defendants submitted that the plaintiff is not alone legal heir of Late Smt. Munivenkatamma. Late Munivenkatamma was having daughter by name Smt. Muddamma and son by name S.Venkatarayappa the plaintiff. The defendant no.1 to 3 are children of Smt. Muddamma. The defendant no.1 to 3 are successors of Smt. Muddamma who died in the year 2017. There are no any panchayath documents in the name of plaintiff at any point of time and panchayath documents is in the name of defendants mother Smt. Muddamma. The plaintiff is not possession of suit properties. The suit item no.1 which contain tamarind tree is not in possession of plaintiff. No document to that effect. The defendant no.1 to 3 are in possession of suit item no.1. They have built cattle shed and using the same for cattle and for storing agricultural implements. The photos produced by defendant's shows the same. The plaintiff has wrongly described the property as vacant site with tamarind tree.

There is no prima-facie case in favour of plaintiff as no documents standing in his name at any point of time. Hence suit is not maintainable. Therefore the defendants have prayed for dismissal of the application.

4. Heard arguments. Perused the records.

5. The following points arise for the consideration of this court:-

POINTS

1. Whether the plaintiff has made out a prima-facie case for granting temporary injunction?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff will suffer irreparable loss, if injunction is not granted?
4. Whether the plaintiff is entitled for the relief of Injunction as prayed for?
5. What order?

6. My answer to the above points is as under:-

Points No.1 - In the **Negative**,
Points No.2 - In the **Negative**,
Points No.3 - In the **Negative**,
Points No.4 - In the **Negative**,
Point No.5 - As per final order,

for the following:-

REASONS

7. Points No 1 to 4:- All these points are interconnected to each other, hence taken for discussion together.

The plaintiff filed the suit against the defendants for the relief of declaration of title by virtue of registered sale deed

dated:25.12.1955 and further seeking the relief of half share partition and consequential relief of the permanent injunction. The Plaintiff contention is that the Khatha No 84 item No 1 an extant of East to west 16 yard and North to south 18 yard vacant land consisting of a tamarind tree of Perumachanhalli Village, Chinthamani Taluk is originally purchased by the Munivenkatamma D/o Busappa was purchased through registered sale deed dated: 25.12.1955 and Item No.2 Khatha no 85 being vacant space and a small house totally measuring East to west 18 yard North to south 16 ½ yard Peramachanahalli Village, Chinthamani Taluk was jointly purchased by the plaintiff mother Munivenkatamma and Chikkamuniyappa under the Registered Sale Deed dated :10.01.1957.

8. As per the defendants pleadings the defendants are also admitted fact that the Munivenkatamma and Chikkamuniyappa is the Absolute owner of the suit schedule property, defendants contention is that the Munivenkatamma had two children namely plaintiff Venkatarayappa and One Muddamma, Muddamma is non other than defendants mother, plaintiff father and defendants are the joint family members of the munivenkatamma's. But the plaintiff have not pleaded this facts, simply he stated that the defendants father has misrepresented to the panchayath authorities and got mutation entries changed into his name in the stlye of Pavuthivarasu. The defendant has produced the copy of the appeal memo filed before the Executive officer Taluk Panchyath Chitnamani. As per the documents the plaintiff/petitioner has categorically admitted the facts that he and Mudamma are the children of Munivenkatamma, but he

plaintiff suppressing the material facts before this court. On perusal of the documents and on prima facie plaintiff has not produced a single piece documents that he is in possession and enjoyment over the suit properties and the existnece of the tamarind tree in the suit property. Thus these facts involves crucial question of law and facts, and title of both parties is strongly disputed by each other. Even to decide prima facie possession all the documents shall be looked into. Plaintiff is allege that the revenue records are altered and created. Hence possession cannot be ascertain at this stage without leading any evidence. For these reasons I deem it appropriate to dismiss the present application and to proceed with the matter. Therefore, I answer the points No.1 to 4 in the Negative.

9. Point No.5:- In view of the answers to point No.1 to 4, I will proceed to pass the following:-

ORDER

The applications filed by the plaintiff **U/o. XXXIX rule 1 & 2** of C P C are hereby Rejected.

The TI order granted on 01.12.2020 is hereby vacated.

No order as to cost.

(Typed by me and corrected and initialed by me and then, pronounced in the open court on this **12th day of January 2021**)

(SHIVAKUMARA G.J)
Prl. Civil Judge & JMFC.,
Chinthamani.

ORDER PRONOUNCED IN THE OPEN COURT
(Vide Separate Order)

O R D E R

The applications filed by the plaintiff **U/o. XXXIX rule 1 & 2** of CPC are hereby Rejected.

The TI order granted on 01.12.2020 is hereby vacated.

No order as to cost.

(SHIVAKUMARA G.J)
Prl. Civil Judge & JMFC.,
Chinthamani.

