

**IN THE COURT OF PRINCIPAL CIVIL JUDGE AND J.M.F.C  
AT SHIDLAGHATTA**

Dated this the 5<sup>th</sup> day of March-2020

PRESENT:

Sri Sanjukumar Pachhapure  
Pri Civil Judge and J.M.F.C  
Shidlaghatta

**OS No 369/2020**

Plaintiff/s : Sri Muddappa  
S/o. Kondappa  
Aged about 90 years  
R/at Japthi Hosahalli village  
Malamachanahalli Post  
Shidlaghatta Taluk.

(R/by Sri S.N.C Advocate)

**-V/s-**

Defendant/s: Smt Gangamma  
W/o late Narayanappa  
Aged about 65 years  
Japthi Hosahalli  
Kasaba Hobli  
Shidlaghatta Taluk  
Chickballapur District

(R/by Sri H.N.K Advocates)

**ORDER ON IA NO.1**

1. The plaintiff has filed present application under Order 39 Rule 1 and 2 of C.P.C seeking an order of temporary injunction against the defendant restraining her or anybody

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claiming through them from interfering with the peaceful possession and enjoyment of the plaintiff in the suit schedule property till disposal of the suit with respect to suit schedule property.

2. The brief facts of the plaintiff's case are as follows:-

The plaintiff has filed the affidavit in support of application. The plaintiff in his affidavit has contended that, suit schedule property is originally belongs to Sri Narayanappa who is the husband of defendant and the plaintiff purchased the plaint schedule properties in two sale deeds dated: 7.05.1974 and 10.06.1975 from the husband of defendant and from the date of purchase till today the plaintiff and his family members are in possession and enjoyment of the plaint schedule properties. And further the plaintiff and his family members raised eucalyptus trees which were ready for harvest. Further it is stated that, due to escalation of land price in and around of the area, the defendant got an eye over the suit schedule property, and the land situated at Eastern side of plaint schedule properties taking advantaged of the same the defendant and their followers are making efforts to grab the suit schedule properties.

3. Further it is stated that till today the plaintiff and his family members are in peaceful possession and enjoyment of suit schedule properties on 10.12.2020, the defendant

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without having any manner of right, title or possession of the suit schedule property is trying to trespass into the suit schedule property with the help of her followers. However with the help of the villagers and well wishers the plaintiff could able to restrain the illegal and highhanded acts of the defendnat. And on the same day the plaintiff has lodged a complaint before the jurisdictional police station but they have not registered the case and they have directed to approach the civil court. Therefore the present application has been filed.

**4.** On the other hand the defendnat had appeared before the court and has filed the objection to the application and he denied the contents of the application and also affidavit. It is contended in the objection and also written statement that, the plaintiff has approached this court by suppressing the materials facts and the suit schedule property are thoti inamthi land is in exclusive possession and enjoyment of the defendant. The husband of defendant was rendering service as thoti nowkari in the said village and Karnataka Village Offices Abolition Act 1961 was came into force, and all the lands of said office were vested in the Government thereafter necessary application was called for regrant. One Sri Channa was the Moola kartha and after his death his son-in-law Ganga name was recorded in the Barabaluthi register. And he was doing thoti nowkari in the village and cultivating the suit schedule property and he had four children's namely Sri

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Munimarappa and Gudlappa died without issues. The Yakashappa had son by name Muniyappa who was worked as Thoti Nowkari at Japthi Hosahalli Village, This Muniyappa died leaving behind his daughter Smt Narayanappa and she is also dead and last son of Kadirappa has son by name Gangappa this Gangappa was rendering service in the village office and his name was recorded in the jointly along with father Kadirappa. The Gangappa was the sole successor of above said Channa who was the moola kartha. This Gangappa died leaving behind his son Narayanappa who was rendering thoti nowkari during the time of abolition of the village office. The Narayanappa S/o Gangappa had filed necessary application under the Act, thereafter the authority has granted the land as per order dated: 20.11.1986 in the name of husband of defendant. And since from the re-grant the husband of the defendant is in the possession of land in Sy No 27 and his name was already in the records and he planted Eucalyptus tree in the land, and thereafter, after the death of the defendant his wife and children namely Smt Muniyamma, Ramesh and Devaraj have succeeded the suit property.

5. The defendant and her children were in possession and enjoyment of the plant schedule properties and their name was entered in the revenue records and also paying revenue tax. The plaintiff has no manner of right, title, interest or possession over the above said property and he was evicted from the land in proceedings held in HOA (Thoti) (R)

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No. 68/1977-78. And he was ousted from the property about 35 years back itself. And as per the mutation No 5/2009-10 dated: 24.12.2009, is invalid without having any right or interest, the plaintiff has filed application RRT C ( D) No.12/2017-18, and without hearing on the side of the defendant the Tahasildar effected mutation in favour of plaintiff and said order is not binding on the defendant. Therefore on the other reasons stated in the written statement the defendant prayed for rejection of the application.

**6.** Heard the arguments of both sides at length in great detail and perused the materials available on record.

**7.** On the basic of application and objection the following points that arise for my consideration are: \_\_\_\_\_

### **POINTS**

1. Whether the plaintiff has made out prima-facie case and balance of convenience irreparable loss if this application is not allowed?
2. What order?

9. My answer to the above points are as follows:

Point No: 1 : In the affirmative

Point No: 2 : As per the final order for the following:

## **REASONS**

**8 Point No 1:** After going through the pleading, documents available on records it clearly discloses that the plaintiff has filed the present suit for relief of permanent injunction with respect to suit schedule property against the defendant. It is specifically contended in the plaint that the plaintiff is an absolute owner and person in possession of the suit schedule property through registered sale deed dated: 07.05.1974 and 10.06.1974 from the husband of defendant and since from the date of purchase the plaintiff is in possession and enjoyment of the suit schedule properties and on the hand the defendant is trying to interfere with peaceful possession of plaintiff.

9. In support of the above said contention the plaintiff has produced the xerox copy of the registered sale deeds dated: 10.06.1974 and 07.05.1974 and have produced the RTC extract and in the present the RTC extract the name of plaintiff is appearing and earlier it was standing in the name of husband of defendant. Further the plaintiff has produced the documents 1) certified copy of sale deeds 2) 4 photos of the suit schedule properties 3) Xerox copy of appeal memo 4) Xerox copy of write petition 5) Xerox copy of order passed in HOA (R) 68/1977-78 6) Order passed in MA No. 11/1988 and typed copy of sale deeds. 7) NCR dated: 31.12.2020 8] order passed by Tahasildar dated: 16.10.2020.

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10. On the hand the defendant is claiming the property stating that, it was re-granted in favour of defendants as per order dated in HOA 68/1977-78 and according to the said order defendant is in possession the suit schedule properties.

11. In support of above said contention the defendant has produced the following documents 1) 6 photograph along with one CD 2) Decision of the Hon'ble apex court as per memo dated: 13.11.2021 3) order passed in LRN( s) /110 / 1999-2000 4) Xerox copy of G-tree 5)re- grant order 6)RTC extracts 7) tax paid receipts 8]mutationregistered extracts 9] order passed by the Assistant commissioner dated: 17.04.2017 10) NCR copy dated: 24.10.2020 11) Order sheet of O.S No. 3304/20 12) plaint copy 13) IA copy 13) order sheet of OS No.356/20 14)plaint copy 15) IA copy.

12. Over all considering the above said pleadings, documents and facts and circumstance of the case, it clearly goes to show that, the land was earlier belongs to husband of defendant and as per the document the husband of defendant has sold in favour of the plaintiff as per the registered sale deed dated: 07.05.1974 and 10.06.1974 and documents clearly shows that, the husband of defendant hand over the possession of the suit schedule properties infavour of plaintiff and thereafter recently the name of the plaintiff was entered in the revenue records.

13. On the other hand the defendant is claiming that the suit schedule property is re-granted in favour of her family but, before re-grant only the suit schedule properties were alienated by her husband infavour of plaintiff.

14. It is the well settled principle of law that, mere entry in mutation or in RTC does not confer the title to the property as claimed in case. The title should derived through a document properly stamped and registered. The single entry in the mutation regarding the title of the party in the absence of document of title cannot be relied upon. Further it is well settled law that, the mutation entries are relevant only for the purpose of the collection of the land revenue and does not create or extinguish any title in immovable property. The mutation of property in revenue records does not create nor extinguish nor it has any presumptive value on title. And it only enables the person in whose favour mutation is recorded to pay the land revenue in question.

**15.** Therefore, over all considering the above said facts and circumstance of the case the court is of the opinion that, the plaintiff has made out prima-facie possession over the suit schedule properties and also balance of convenience in his favour and further if the application is not consider at this stage ultimately plaintiff will be put to irreparable loss which cannot be compensated in terms of money. Therefore

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the plaintiff is entitled for the temporary injunction. Accordingly this court answers point No.1 in the Affirmative.

16. **POINT No.2**:- In view of my findings on point-1, this court proceeds to pass the following:-

**ORDER**

The IA No.1 filed by the plaintiff under order 39 rule 1 and 2 of CPC is hereby allowed.

The defendants are anybody acting on their behalf is hereby restrained from interfering with the peaceful possession and enjoyment of plaintiff over the suit schedule properties in any manner till pending disposal of the suit by way of temporary injunction.

No order as to cost.

(Dictated to the stenographer, typed by her, print out revised, corrected and then pronounced by me in the open court on this 5<sup>th</sup> day of March- 2021).

(Sanjukumar Pachhapure)  
Prl Civil Judge and J.M.F.C  
Shidlaghatta

(Order pronounced in open court)

(Vide separate sheet)

**ORDER**

The IA No.1 filed by the plaintiff under order 39 rule 1 and 2 of CPC., is hereby allowed.

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The defendant or anybody acting on her behalf are hereby restrained from interfering with the peaceful possession and enjoyment of plaintiff over the suit schedule properties in any manner till pending disposal of the suit by way of temporary injunction.

No order as to cost.

Prl. Civil Judge and J.M.F.C.,  
Sidlaghatta.

**ORDER**

The IA No.1 filed by the plaintiff under order 39 rule 1 and 2 of CPC., is hereby allowed.

The defendant no.2 is agents acting on behalf are hereby restrained form alienating by way of Temporary injunction, till disposal of the suit.

No order as to costs.

Prl. Civil Judge and J.M.F.C.,  
Sidlaghatta.

**ORDER**

The IA No.1 filed by the plaintiff under order 39 rule 1 and 2 of CPC., is hereby allowed.

The defendant no.2 is agents acting on behalf are hereby restrained from alienating by way of Temporary injunction, till disposal of the suit.

In view of the disposal the IA. No.5 does not arise for consideration. Hence accordingly same is disposal of suit.

No order as to costs.

Pri. Civil Judge and J.M.F.C.,  
Sidlaghatta.

**ORDER**

Sri. B.L.K. filed vakalata and also failed IA. No.8 Under order 39 rule 10 of CPC., seeking permission to impaled the present applicant has defendant no.4 to 6.

The Counsel for the plaintiff filed objection to the present application. Heard perusal the application and also objection and even the court on grown through plaint written statement available on record.

The present applicant are the children of the legal heirs present application. It appears that the present applicant are also having interest in the suit schedule property. It is well settled principle law that in suit and party's suit schedule separate possession all the party's and property is showed be included. Hence Considering the fact of circumstance of the case the court is opinion that the application is to be allowed. IA. No. 8 herby

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allowed. And present applicant implied defendants no.4 to 6.

Plaintiff is permitted to cost amendment in plaint for amendment amended and also for issue call on.

(Sanjukumar Pachhapure)  
Pri. Civil Judge and J.M.F.C.,  
Sidlaghatta.

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(Order pronounced in open court)

(Vide separate sheet)