

**IN THE COURT OF THE PRL. CIVIL JUDGE & JUDICIAL
MAGISTRATE FIRST CLASS AT HOSADURGA.**

PRESENT: **SRI PRASHANTH NAGALAPUR,**
 B.B.A.,LL.B.,(Hons)
 Prl. Civil Judge, Hosadurga.

THIS 10th DAY OF SEPTEMBER 2019

ORIGINAL SUIT NO.27/2019

PLAINTIFF :- Sri. R. Basavarajappa
-V/S-

DEFENDANTS :- Chief Secretary,
Govt. of Karnataka & others

BETWEEN

APPLICANT/PLAINTIFF :

Sri. Basavarajappa,
S/o Rangappa,
Aged about 56 years,
Agriculturist,
R/o Kabbinakere village,
Kasaba hobli,
Hosadurga Taluk.

AND

OPPONENTS/DEFENDANT No.7: Mahadevappa
S/o Late Dodda Basappa
@ Basappa,

Aged about 81 years,
Agriculturist,
R/o Kabbinakere village,
Kasaba hobli,
Hosadurga Taluk.

ORDER ON I.A. NO. IX

The plaintiff has filed this application U/o XXXIX Rule 1 and 2 CPC seeking an order of temporary injunction against the defendant No.7 with respect to suit schedule property.

SCHEDULE

The landed property bearing Sy.No.25/p2, new Sy.No.72, measuring 4 acres, out of which 2 acres of land partitioned in favour of plaintiff, situated at Kabbinakere village, Kasaba hobli, Hosadurga taluk, having the boundaries.

East	:-	Land belongs to plaintiff
West	:-	Land belongs to Thimmappa S/o Lakshmamma
North	:-	Land of Basappa Re.Sy.No.23
South	:-	Land of Siriyappa and remaining land of Re.Sy.No.25.

2. Facts stated by the plaintiff:-

The land Sy.No.25/2 measuring 4 acres situated at Kabbinakere village of Hosadurga Taluk, was granted in favour of the plaintiff by

the Government in the year 1978 under a grant certificate. When the said land was granted to the plaintiff, it was bearing the land Sy.No.25. After the phodi proceedings, the said land has been renumbered as Sy.No.72. The said phodi proceedings took place in the year 1978 itself. However, the concerned authorities have not done the proper allocation of survey numbers to the lands which situated in Sy.No.25. The hissas in land Sy.No.25 of Kabbinakere village were renumbered as 70 to 73. The plaintiff and his brother Earappa S/o Rangappa got partitioned the 4 acres of land between them. 2 acres of land had fallen to the share of the plaintiff. The said 2 acres of land was mutated in the name of the plaintiff on the strength of the said partition. The said 2 acres of the land is the suit schedule property.

3. The plaintiff has been in possession and enjoyment of the suit schedule property. The land of the plaintiff was notified to be acquired by the Karnataka Neeravari Nigama Ltd., (Upper Bhadra Project-10) in the year 2015. In the Gazette notification, the Government has clearly mentioned that there is difference in the possession shown in the revenue records and the actual possession of the parties in land Sy.No.25 of Kabbinakere village. The plaintiff is in actual possession of land Sy.No.72 as per the reports filed by the revenue officials and also as per the Gazette notification. The

defendant No.7 is in possession of land Sy.No.73 of Kabbinakere village. The defendant has never been in possession of land Sy.No.72 of Kabbinakere village. The defendant No.7, having no rights or possession in or over the suit schedule property and taking the advantage of the fact that the land Sy.No.72 is mutated in his name, has tried to interfere with the possession of the plaintiff. Therefore, the plaintiff has filed this application seeking an order to restrain the defendant No.7, his men, agents, servants or anybody claiming under him from interfering with his possession over the suit schedule property.

4. The contents of the objections filed by the defendant:-

The application filed by the plaintiff is not maintainable either in law or on facts. The plaintiff has filed this application with an intention to cause inconvenience, hardship and irreparable loss to the defendant No.7. The plaintiff has filed this application to drag on the proceedings and cause delay. The application filed by the plaintiff is highly belated and devoid of merits. The contents of the affidavit sworn by the plaintiff are false. The boundaries mentioned to the property in the schedule to the application are not correct. The assertion of the plaintiff that land Sy.No.25/2 is the land Sy.No.72 of Kabbinakere village is false and the said fact is concocted only for the purpose of filing the application. The plaintiff has not produced any

document to show that he is in possession of the land Sy.No. 72 of Kabbinakere village. The defendant No.7 is the owner in possession of the land Sy.No.72. The land Sy.No.25/11 is renumbered as land Sy.No.72 and the plaintiff is not at all concerned to the said land. The plaintiff with an intention to knock off the huge amount of compensation with respect to acquisition of the land by the Government, has filed this application. The notice issued by the special and acquisition officer dated 17/08/2020, it is specifically stated that the land Sy.No.72 of Kabbinakere village belongs to the defendant No.7. The plaintiff has already gained Rs.55,74,987/- wrongfully with respect to acquisition of land Sy.No.25/10 by creating forged documents. The plaintiff has been booked by the Hosadurga Police for the offences punishable under section 199, 209, 418, 420 and 423 of IPC with respect to the cheating committed by the plaintiff in the said matter. The plaintiff has not approached the Court with clean hands. The plaintiff has got no prima facie case in his favour. The balance of convenience is also not in favour of the plaintiff. The defendant No.7 will be put to hardship if the application is allowed. Therefore, the defendant No.7 has prayed for dismissal of the application.

5. Heard the learned Counsel for the plaintiff and the defendant No.7 . Perused the application, affidavit, objection, pleadings of the parties and documents produced by them.

6. The following points arise for my consideration.

1) Whether the plaintiff has made out a prima facie case?

2)Whether the balance of convenience lies in favour of the plaintiff?

3)Whether the irreparable loss will be caused to the plaintiff if temporary injunction is not granted?

4) What order?

7. My answer to the above aforesaid points are as follows:

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.

:: R E A S O N S ::

8. Point No.1 to 3:- The plaintiff has stated that the land Sy.No.25/2 of Kabbinakere village has been assigned with new number i.e., land Sy.No.72 after the phodi proceedings. The plaintiff has also stated that he is in actual possession of land Sy.No.72 of Kabbinakere village. The defendant No.7 has denied the assertion of the plaintiff and contended that the land Sy.No.25/11 of Kabbinakere village has been assigned with land Sy.No.72 after the phodi proceedings. The dispute between the parties is with respect to the question who is in actual possession of the land Sy.No.72 of Kabbinakere village.

9. The land Sy.No.25/2 measuring 4 acres was granted in favour of the plaintiff as per the grant certificate dated 03/11/1978 which produced by the plaintiff before the Court. The mutation register extract bearing No.9/1980-81 discloses that the land Sy.No.25/2 of Kabbinakere village was granted in favour of the plaintiff. The RTCs for the year 1990-91 to 1995-96 and 2018 and 2019 also disclose that the land Sy.No.25/p2 is standing in the name of the plaintiff. The plaintiff and his brother have partitioned the land Sy.No.25/2 and have got 2 acres of land each in the said partition. The mutation register extract bearing No.1/91-92 discloses that 2 acres of land was fallen to the share of the plaintiff in the partition. It is clear from the documents produced by the plaintiff that the land

Sy.No.25/2 was granted to him by the Government in the year 1978. But, the question as to whether the said land is the land Sy.No.72 of Kabbinakere village is not clear.

10. The Gazette notification dated 04/02/2016 issued by the Government of Karnataka discloses that there is difference in possession mentioned in the RTC and actual possession. It is also pertinent to note that the land Sy.No.25/1p1 has been acquired by the Government as per the notification but the plaintiff has filed this suit with respect to land Sy.No.25/p2. Though, it is mentioned by the revenue officers in some documents that the plaintiff is in actual possession of land Sy.No. 72, the fact that the Government notification and also public notice issued by the land acquisition officer on 17/08/2020 cannot be ignored at this stage of the matter.

11. The material available on record is not sufficient to form an opinion that the land Sy.No.25/2 is the land Sy.No.72 of Kabbinakere village at this stage of the matter. It requires full fledged trial to form an opinion with respect to the fact as to who is in actual possession of land Sy.No.72 of Kabbinakere village. The valuable rights of the parties are involved in the present suit. There is no prima facie material available on record to make just decision at this stage of the matter. Moreover, having clear knowledge of the facts of

the case, neither of the parties have produced the documents pertaining to the phodi proceedings or the proceedings under which the lands bearing old survey numbers were allotted with new survey numbers. Such being the case, I am of the opinion that the plaintiff has not made out a prima facie case for allowing the application.

12. In the facts and circumstances of the case, the balance of convenience does not lie in favour of the plaintiff. However, it is made clear that the balance of convenience is also not in favour of defendant No.7. There is much of ambiguity in all the documents produced by both the parties. The question of plaintiff suffering loss need not be taken into consideration in view of the finding that the plaintiff has not made out prima facie case for allowing the application. The application filed by the plaintiff is fit to be dismissed in the facts and circumstances of the case. However, it is hereby made clear to the parties in this order that the question as to who is in actual possession of the land Sy.No.72 of Kabbinakere village is subject to the out come of the suit and no inferences be drawn on the basis of this order. **Hence, I answer point No.1 to 3 in the Negative.**

13. Point No.4:- As per following:-

::O R D E R::

***The IA-IX U/o XXXIX Rule 1 and 2 CPC
filed by the plaintiff is dismissed.***

No order as to costs.

*(Dictated to the Stenographer, typed by her on computer and corrected by me,
then pronounced in the open Court on this day 10th September 2020)*

**(PRASHANTH NAGALAPUR)
Prl. Civil Judge & JMFC,
Hosadurga.**