

IN THE COURT OF THE CIVIL JUDGE & J.M.F.C.,
MOLKALMURU

PRESENT: Sri.Shrishail.B.Bagadi, B.Com., LL.B (Spl).
 Civil Judge & J.M.F.C,
 Molkalmuru.

Dated this the 13th day of February, 2019

O. S. No.230/2018

<u>PLAINTIFF:</u> Smt. Kyathamma W/o Basavaraj aged about 36 years Agriculturist R/o Yadalagatte Village Challakere Taluk Chitradurga District. (Reptd by Sri.T.S.R., Adv)	V/s	<u>DEFENDANTS:</u> 1. Manjanna S/o Hotte Chikkanna aged about 45 years 2. Smt. Lakshmidevi W/o Manjanna aged about 42 years 3. Smt. Thimmakka W/o Jادیappa aged about 50 years All are agriculturists, residing at Yadalagatte Village, Challakere Taluk, Chitradurga District. (Reptd by Sri.G.V.C., Adv)
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PARTIES TO IA NO.1

<u>APPLICANT/PLAINTIFF:</u> Smt. Kyathamma W/o Basavaraj aged about 36 years	V/s	<u>OPPONENT/DEFENDANT:</u> 1. Manjanna S/o Hotte Chikkanna aged about 45 years and two others
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ORDERS ON IA NO.I

The plaintiff has filed I.A.No.1 U/o 39 Rule 1 and 2, R/w Section 151 of CPC., praying to grant ad-interim temporary injunction against the defendants restraining them from interfering in the peaceful possession and enjoyment of the plaintiff over the suit schedule property till disposal of this suit.

2. The plaintiff in her sworn affidavit accompanied with interim application stated that she has filed this suit against the defendants for the relief of permanent injunction in respect of house and open site bearing Khatha No.417/221/P measuring East-west 5.20 meter, North-south 7 Meter. It is further stated that, the suit property is the ancestral property and she has been enjoying the property as absolute owner in possession without their being any obstruction from anybody in the suit property, she has constructed a

residential house towards southern side of the open site and left open space in front of house as Waranda and she has been enjoying the property as absolute owner and also paying the taxes to the Government regularly and also got E-Swathu document from the Panchayath authorities wherein her name is reflected as absolute owner in possession of the suit property. This being the case, the defendants who are stranger to the family of plaintiff trying to obstruct her peaceful possession and enjoyment over the suit property. In this regard, she has convened the Panchayath before elderly person of the society and got advised the defendants not to put any obstruction in the plaintiff's peaceful possession and also approached local Police for their intervention, but all the efforts made by the plaintiff is went in vain. Accordingly, the plaintiff without having any alternative remedy filed this suit against the defendants.

3. In response to the service of suit summons, the defendants have appeared before the court through their counsel and filed their common written statement which is to be treated as objection to the interim application filed by the plaintiff, the defendants in their written statement denied that, the plaintiff herself being the absolute owner in possession of the suit property and stated that the suit property is also belongs to the defendants, because as per her own assertion the plaintiff stated in the plaint that, the suit property is ancestral property. Under such circumstances, she is not the absolute owner of the suit property. It is further contended that, the propositus of the plaintiff and defendant's family by name Dobbu Dhimmaiah and his wife had Four children namely Giddappa, Hotte Chikkanna, Sanna Thimmanna and Kaldappa. The plaintiff is the lineal descendant of Giddappa and defendants are the legal representatives of 2nd son of propositus by name Hotte Chikkanna. It is further

contended that, the plaintiff has furnished wrong information before the revenue authorities stating that, she alone is the owner of the property and except her no other co-parceners are alive to claim their right over the property. It is further contended that, the defendant No.1 has submitted an objection before the revenue authority for change of Katha entry in respect of house property in the name of plaintiff. It is further contended that, the plaintiff and defendants jointly enjoying the suit property by preparing food and other activities and beside the house property 1st defendant has put up the temporary hut for the purpose of taking rest at night time, such being the fact, the plaintiff in order to evict the defendants from the suit property and also to demolish the temporary hut she filed this bogus suit. Hence, the defendants prayed to dismiss the application with costs.

4. Heard both sides and also perused the records placed before this court, the following points that arise for my consideration are as under:

- 1. Whether the plaintiff has made out a prima facie case and balance of convenience lies in her favour?***
- 2. If the Temporary injunction is granted who will be put untold hardship and irreparable loss?***
- 3. What order?***

5. My answers to the above said points are as follows:

Point No.1 : In the **Negative**

Point No.2 ; Infavour of defendants

Point No.3 : As per the final order for the
following

REASONS

6. **Point No.1 & 2 :-** These points are interconnected with each other, hence to avoid repetition of facts these two points are taken up together for common discussion.

The plaintiff claims to be the absolute owner in possession of the suit schedule property as per panchayath records and in order to substantiate her case she has produced E-Swathu document, survey sketch, building construction permission, tax paid receipts and photographs. On the other hand the defendants have produced copy of the objection letter given to the PDO of Kaluvehally Gramapanchayath stating that, the suit property is the ancestral property of him and plaintiff as she cannot claim herself as absolute owner without consent of other coparceners, memo issued by Taluk Executive Officer, Challakere infavour of PDO of Kaluvehally Gramapanchayath directing him to consider the application submitted by the defendant in accordance with law, copy of the information letter given by the ADLR to the defendant No.1, received copy of the objection letter forwarded to ADLR wherein the defendant No.1 stated that, the suit property is ancestral property, copy of the endorsement

given by the Karnataka Lokayuktha Police, Chitradurga division stating that, the Karnataka Lokayuktha Police has issued direction to the concerned Panchayath authorities to change the Katha entry in accordance with law and also requested the local police for their assistance to falsify the uproar between the plaintiff and defendants, the plaintiff also produced 03 photographs which clearly shows that, there is a temporary hut existed in front of plaintiff's house, all these documents clearly goes to show that, there is a dispute with regard to title over the suit property, the defendant in their written statement described the family tree which shows that the defendants are the legal representatives of Hotte Chikkanna and the plaintiff is leniel descendant of Giddappa, both Giddappa and Hotte Chikkanna and Sanna Thimmaiah, Kaldappa are the sons of propositus by name Dobbu Dhimmaiah. Under such circumstances, there is a cloud over the title of plaintiff, until the plaintiff proved

her title with cogent evidence she is not entitled permanent injunction based on panchayath records, because the panchayath are not the documents of title, if the genealogy furnished by the defendant is true then the plaintiff cannot claim injunction against other coparceners or co-owners. As such, looking to the fact and circumstances of these case, at this stage the plaintiff has not made out a prima-facie case because there is a temporary hut existing infront of plaintiff's house. Under such circumstances, if the court granted injunction infavour of plaintiff then she may take steps to evict the defendants from the temporary hut. As such, the plaintiff at this stage failed to establish the prima-facie case and balance of convenience lies in her favor and if the court granted injunction infavour of plaintiff then the defendant will be put untold hardship and loss. Hence, with these observations and reasons **I**

am answering point No.1 in the negative and point No.2 infavour of defendant.

7. **Point No.3** : For the above said reasons and discussions, I proceed to pass the following:

ORDER

The Interim Application No.1 filed by the Plaintiff U/o 39 Rule 1 & 2, is hereby dismissed.

No order as to costs.

(Dictated to the stenographer transcribed by him, then corrected and pronounced by me in open Court this the **13th day of February, 2019**)

**(Sri. Shrishail B. Bagadi)
Civil Judge & JMFC.,
Molkalmuru.**

Order pronounced in open court
vide separate order sheet:

ORDER

The Interim Application No.1 filed by the Plaintiff U/o 39 Rule 1 & 2, is hereby dismissed.

No order as to costs.

For issues,

Call on 27.03.2019.

**Civil Judge & JMFC.,
Molakalmuru.**