

**IN THE COURT OF THE PRINCIPAL CIVIL  
JUDGE AND JMFC AT KADUR.**

**Present:** Smt.Anitha, B.A. (Law) L.L.B,  
Prl.Civil Judge & JMFC.,  
Kadur.

**Dated this the 16<sup>th</sup> day of September, 2017**

**O.S.No.165/2016**

Plaintiff: Nagappa, S/o late Mudlappa,  
Aged about 55 years,  
Agriculturist,  
R/at Chowlahiriyur village,  
Kadur Taluk,  
Chikkamagalur District.

**(By: Sri B.M.Laxmana Gowda, Advocate)**

V/s

Defendants: 1. Nanjundappa,  
S/o late Mudlappa,  
aged about 60 years,  
2. Bavi Siddappa,  
S/o Nanjundappa,  
aged about 35 years,  
3. Mudlagiriyappa,  
S/o Nanjundappa,  
aged about 33 years,  
Warden: working at Hosadurga.

4. Malleshappa, S/o Nanjundappa,  
aged about 60 years,
5. H.C. Malleshappa,  
S/o Late R.Onkaraiah,  
aged about 47 years,
6. H.C. Bavi Siddaiah,  
S/o Late R. Onkaraiah,  
aged about 38 years,
7. H.C. Shivakumar,  
S/o Late R. Onkaraiah,  
aged about 36 years,

All are Agriculturists,  
R/at Chowlahiriyur village,  
Kadur Taluk,  
Chikkamagalur District.

**(Defendants No.1 to 3 by: Sri  
H.N.S., Advocate and Defendants  
No.4 to 7 by: Sri M.S.H., Advocate)**

**ORDERS PASSED ON I.A.NO.IV**

Learned counsel for defendants No.4 to 7 filed I.A.No.IV under Section 151 of CPC to give police protection to the plaintiff through Yagati Police Station in order to cultivate the suit schedule property.

2. The application is supported with the affidavit of defendant No.4 stating that, they have filed I.A.No.II under Order 39 Rule 1 and 2 R/w Section 151 of CPC to restrain the plaintiffs, his agents or his family or anybody on his behalf from trespassing, obstructing, interfering and dispossessing defendants No.4 to 7 from the suit schedule property. The said application came to be allowed and the plaintiff preferred an Appeal in MA No.18/2016 before the Hon'ble Senior Civil Judge at Kadur and the defendants have filed the objection and appeal is pending. But there is no stay order. The plaintiff is violating the orders passed by this court. On 13.05.2017 when he had been to the suit schedule property for cultivation the plaintiff and his son Santhosh, who is working as a Constable at Puttur, South Canara District trespassed into the suit schedule property and obstructed the 4<sup>th</sup> defendant from cultivation. The 4<sup>th</sup> defendant requested them not to interfere with the property, but they refused to do so. The 4<sup>th</sup> defendant lodged a complaint before the police. The PSI of Yagati Police Station issued a notice to the plaintiff and his son and they have

warned not to interfere with the cultivation of the suit schedule property by the 4<sup>th</sup> defendant. The 4<sup>th</sup> defendant left the agriculture and cultivation and again the plaintiff and his son have continued to trespass into the suit schedule property and disobey the orders passed by this court. The police protection is very much necessary to execute the orders passed by this court. Hence, prayed to allow the application.

3. The plaintiff has filed the objection contending that, the application is not maintainable under law or on facts. The affidavit filed in support of the application is a false affidavit and the 4<sup>th</sup> defendant has created the story. Against the orders passed by this court in IA No.1 the plaintiff preferred an Appeal before the Hon'ble Senior Civil Judge at Kadur in MA No.18/2016 and it is pending. The question of violating and disobeying the orders passed by this court on IA No.1 does not arise at all and there is no question of police protection. The defendants have cultivated the property nor the plaintiff disturbed the cultivation of the defendants. The 4<sup>th</sup> defendant has filed this application by mis-

using the process of law and in order to get wrongful gain and grab the property of the plaintiff. Hence, prayed to dismiss the application with costs.

4. Thereafter, heard the arguments advanced by the learned counsel for defendants No.4 to 7. Learned counsel for the plaintiff has not addressed the arguments on this application and perused the case papers. After hearing the arguments and on perusal of the entire case papers the points that arise for consideration are as hereunder:

### **POINTS**

1. Whether defendants No.4 to 7 have made out sufficient grounds to give police protection to them in order to cultivate the suit schedule property?

2. What order?

5. The findings on the above points are as hereunder:

Point No.1: In the Affirmative

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

### **REASONS**

6. **Point No.1:** This is the suit filed by the plaintiff against the defendants for the relief of partition and separate possession of the plaintiff's half share in the suit schedule property. The plaintiff has also sought for declaration that, the suit schedule property is the ancestral and joint family property of himself and the 1<sup>st</sup> defendant and also sought for declaration that, the sale deed dated 16.03.2016 in respect of 38 guntas of property and 1 acre and 8 guntas of properties is null and void and not binding upon him. The plaintiff has also prayed for permanent injunction restraining the defendants, their agents, servants or anybody from alienating any bit of land in favour of anybody.

7. At the time of filing the suit itself the plaintiff maintained IA No.1 under Order 39 Rule 1 and 2 of CPC seeking the relief of temporary injunction restraining defendants No.4 to 7 from alienating the suit schedule property. Defendants No.4 to 7 have filed I.A.No.II under Order 39 Rule 1 R/w Section 151 of CPC seeking the relief of

temporary injunction restraining the plaintiff, his agents, his family members from obstructing, interfering or dispossessing defendants No.4 to 7 from the suit schedule property. On merits, this court passed orders on 26.09.2016 and I.A.No.I filed by the plaintiff under Order 39 Rule 1 and 2 of CPC has been rejected with costs of Rs.300/-. I.A.No.II filed by defendants No.4 to 7 under Order 39 Rule 1 and 2 R/w Section 151 of CPC has been allowed with the costs of Rs.300/-. This court has restrained the plaintiff, his agents or his family members or anybody on his behalf from trespassing, obstructing, interfering and dispossessing defendants No.4 to 7 from the suit schedule property pending disposal of the suit. The issues have been framed.

8. On 29.06.2017 the learned counsel for the defendants No.4 to 7 filed I.A.No.III under order 39 Rule 2(A) R/w 151 of CPC and the present application. Since the separate enquiry is required to dispose I.A.No.III this court has directed the office of this court to register a separate civil mis case against the plaintiff in respect of I.A.No.III. As such

Civil Misc.No.9/2017 has been registered in respect of I.A.No.III. The present application is filed by defendants No.4 to 7, which is supported with the affidavit of the 4<sup>th</sup> defendant stating that when they tried to cultivate the suit schedule property, the plaintiff and his son by name Santhosh are interfering with the cultivation. Defendants No.4 to 7 have also stated that, they have lodged the complaint before the police, but no action was taken.

9. In the affidavit, the 4<sup>th</sup> defendant has categorically stated that on 13.05.2017 when he had been to the suit schedule property for the purpose of cultivation the plaintiff and his son have resisted him. Hence, he has sought for police protection in order to cultivate the suit schedule property. Admittedly, the plaintiff has preferred an appeal before Hon'ble Senior Civil Judge, Kadur against the orders passed by this court on I.A No.I. It is very much necessary to note that, this is the rainy season and defendants No.4 to 7 are engaged in the agricultural work. The objection filed by the plaintiff is not sufficient to show that, there is no disturbance by him for the

cultivation of the suit schedule property by the 4<sup>th</sup> defendant. The police protection has been prayed only for the purpose of cultivation of the suit schedule property. Therefore, the affidavit averments of the 4<sup>th</sup> defendant is sufficient to hold that police protection is very much necessary for the purpose of cultivating the suit schedule property. The plaintiff has not chosen to address the arguments on this application. Accordingly, point No.1 is answered in the Affirmative.

10. **Point No.2:** In view of the discussions made above, this court proceeds to pass the following:

### **ORDER**

I.A.No.IV filed by defendants No.4 to 7 under Section 151 of CPC is hereby allowed with costs of Rs.300/-.

Issue direction to PSI of Yagati Police Station to provide proper protection to defendants No.4 to 7 in order to cultivate the suit

schedule property.

The police protection will be in force only till the period of agricultural operation in the suit schedule property.

(Dictated to the Stenographer directly on the computer, same is corrected and pronounced by me in the open court on this the 16<sup>th</sup> day of September, 2017.)

Sd/-  
**(Anitha)**  
Prl.Civil Judge and JMFC.,  
Kadur.