



**IN THE COURT OF THE III ADDITIONAL CIVIL JUDGE
AND JMFC, KADUR**

Present: - Sri. Thahakaleel K.A., B.A., LL.B.,
III Additional Civil Judge & JMFC., Kadur
Dated: This 29th Day of July 2024

OS No. 508/2022

Plaintiff: 1. Sri. Kariyappa.
S/o. Late. Kariyappa,
Aged about 66 years,
Retire teacher and agriculturist,
R/o. Rathnakara Extension,
Opp. Agriculture College,
Shovamogga City and post.
(Rep. by Sri. S.N. Girisha Advocate)

V/s.

Defendants: Sri. Basavarajappa,
S/o. late. Gangadharappa,
Aged about 61 years,
Agriculturist,
R/. Mangenahalli Village,
Mathighatta post.
Kadur Taluk,
Chikkamagaluru District.

(Represented by Sri. M.P. Manjunath Advocate).

Parties to I.A No. I

Applicant : Sri. Kariyappa.



V/S

Respondent : **Sri. Basavarajappa.**

Sl.No.	Subject	Remarks
1	Provision under which the application is filed	Order XXXIX Rule 1 and 2 CPC
2	Relief sought for	Temporary Injunction.
3	The date of which the application is filed	2.9.2022
4	Number of the application	I.A.No.I
5	The date of which the objections are filed by different opponents.	1.06.2023 by the Defendants.
6	The date of Order.	29.07.2024

**ORDERS ON I.A No. I FILED BY THE APPLICANT
UNDER ORDER XXXIX Rule 1 and 2 C.P.C.**

The learned counsel for the Plaintiff has filed present application under Order XXXIX Rule 1 and 2 praying to grant ad interim temporary injunction restraining the defendants from interfering with the peaceful possession and of the suit schedule property and also to restrain the Defendant from trespassing over



the suit schedule property, either by himself, his agents. Servants or anybody on his behalf, pending disposal of the suit on merits in the interest of Justice and Equity.

2. The applicant/Plaintiff has sworn to the affidavit, wherein he has contended that, the suit schedule property originally belonged to his father and he was in possession over the suit schedule property. After demise of his father, the plaintiff became the absolute owner and in lawful possession over the suit schedule property by paying the tax to the government with respect to suit schedule property and the revenue records are also stood in the name of the Plaintiff.

3. The Defendant without having any manner of right, or interest over the suit schedule property, illegally trying to obstruct and interfere with the peaceful possession and enjoyment of the Plaintiff over the suit schedule property. As the defendant is very powerful



person, the Plaintiff is not in position to resist the illegal act of the Defendant without the help of this court. If the Defendant succeeds in his attempt, the Plaintiff will be put to great deal of hardship and humiliation and he will lose the property and very purpose of filling the suit will be frustrated and there will be multiplicity of proceedings. The Plaintiff have got a prima facie case and balance of convenience is in his favour. **With these averments, the Plaintiff has sought to allow the I.A No.1**

4. The learned counsel for the Defendant has filed statement of objection to I.A No.I by denying Plaintiff and application averment, in the statement of objections, the Defendant contended that, the Defendant is the absolute owner and in possession and enjoyment of the landed property bearing Sy. No.39/6, measuring 02 acre 39 guntas, situated at Mathighatta Village, Kasaba Hobli, Kadur Taluk. The said property was belonged to one



Kariyappa (father of the plaintiff) and the Khata was stands in his name. The said Kariyappa had got 3 sons namely Puttappa, Shankarappa and Kariyappa. After the demise of said Kariyappa, minor guardian and the mother of Plaintiff Smt. Hanumamma along with Puttappa, Shankarappa have jointly sold the suit schedule property in favour of father of defendant by name Gangadharappa through the registered sale deed dated 08.10.1971 vide document No. 562/1971-72 for valid consideration and put the father of the defendant Gangadharappa in possession over the suit schedule property. From the date of purchase, the father of the defendant was in possession over the suit schedule property till his death and after his death, the Defendant being the son and legal heir, have inherited the suit schedule property. The father of the Defendant and the defendant were not having knowledge about the revenue entries and hence they have not changed the khata of the



suit schedule property to their names and the said property is continued in the name of the father of the plaintiff, but the father of the Plaintiff or Plaintiff have no manner of right or interest over the suit schedule property and they are not in possession over the suit schedule property as alleged by the Plaintiff. The Plaintiff taking undue advantage of the khata of the suit schedule property continued in the name of his father and also taking undue advantage of innocence and illiteracy of the defendant and his father, has mislead the revenue authorities and got changed the khata of the suit schedule property to his name and now in order to deceive and defraud the defendant and to grab the property of the defendant, has filed this false suit without any ownership and possession over the suit schedule property. Hence, prayed to dismiss the I.A No.1.

5. Heard the learned Counsel for the plaintiff and defendants. Perused the application, affidavit,



objection, pleadings and documents produced by the parties.

6. The following points arise for determination of this Court.

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: The present suit has been filed for the relief of bare injunction, contending that the Plaintiff is the owner and in possession over the suit schedule property. Whereas, the Defendant denies the ownership and possession of the Plaintiff and claimed that, he is the owner and in possession over the suit property by virtue of the registered sale deed dated 08.10.1971 executed by the Hanumamma and others including the plaintiff in favour of father of the Defendant. Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction



simpliciter. In the present case, there is clear cloud over the title of the Plaintiff's title over the suit schedule property. The Hon'ble High Court of Karnataka in its Judgment reported **in ILR 1992 Kar 3772 M./s Patel Entreprises Vs M.P. Ahuja** has held that, the prima facie case certainly includes the nature of the suit and its maintainability. If, on the face of it, the suit is not maintainable, the question of granting the temporary Injunction would not arise. Here also, when there is clear cloud over the title of the plaintiff and also defendant claimed that he is in possession, simple suit for injunction is not sufficient. Hence, by applying the above ratio, this court answers **point no.1 in the negative.**

9. Point No.2 and 3: The suit of the plaintiff is for Injunction. The Defendant also claimed that he is in possession of the suit schedule property. The full-fledged trial is required to determine about the possession. Moreover, the Plaintiff has not made out a prima facie



case for the purpose of this application. Therefore, This Court of the opinion that the balance of convenience does not lie in favour of the Plaintiff and no hardship will be caused to Plaintiff if temporary injunction is not granted.

Hence, I answer point No.2 and 3 in the Negative.

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

ORDER

**The IA No. I filed U/order
XXXIX Rule 1 and 2 CPC by the
Plaintiff is dismissed.**

No Order as to Cost.

*(Typed by me, corrected, signed and then pronounced in open court on this 29th day
of July 2024)*

THAHAKALEEL K.A

III Addl. Civil Judge and JMFC
Kadur.

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