

IN THE COURT OF THE CIVIL JUDGE & JMFC., KOPPA

Present : Smt. Priya Ravi Joglekar, B.Com.,LL.M.,
Civil Judge & JMFC., Koppa.

Dated : This the 10th day of January 2022.

O.S. No. 49/2021

Plaintiff/s : Smt. Laxmi, W/o Seena,
Age 55 years, House wife & Agriculturist,
R/o CRS, Herur Village,
Koppa Taluk.

(Represented by Sri. M. Narayana Swamy, Adv.,)

V/S

Defendant/s : Smt. Laxmi, W/o Guruvappa,
S/o Late. Siddappa Gowda,
Age about 49 years,
R/o Herur Village,
Koppa Taluk.

(Represented by Sri. G.M. Vishwanatha,
Adv.,)

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**ORDER ON I.A. NO. I FILED BY THE PLAINTIFF UNDER
ORDER 39 RULE 1 AND 2 R/W SECTION 151 OF C.P.C.**

The present application is filed by the plaintiff under Order 39 Rule 1 and 2 R/W Section 151 of C.P.C. seeking an order of temporary injunction against the defendant restraining the defendant, her men, supporters, servants, agents or anybody claiming through her from trespassing over the suit schedule property, till the disposal of the suit, in the ends of justice.

2. In the affidavit annexed to the application, the plaintiff stated on oath that she is the absolute owner in possession and enjoyment of the suit schedule property. The plaintiff is belonging to schedule caste and she has got saguvali chit under grant from the Thahasildar on 2.3.2007. On the basis of granting of suit schedule property, the khatha of the suit schedule property

is mutated into the name of the plaintiff. The suit schedule property is surveyed from the revenue department. The plaintiff has grown up coffee, pepper, coconut and areca in the suit schedule property. It is barbed fence surrounded with the suit schedule property. The defendant is no where concern to the suit schedule property. She is residing far away from the suit schedule property. She has no right, title, interest, possession over the suit schedule property. She is trying to grab the portion of the suit schedule property. At that time, the plaintiff has given complaint to the District Commissioner, Chikkamagaluru. The police also advised her to not to interfere in the suit schedule property. But, the defendant has not stopped her illegal activities and trying to remove the fence from the suit schedule property. Hence, in order to restrain the defendant from the alleged interference the plaintiff has filed the above said application.

3. After service of summons, the defendant appeared through her counsel and filed written statement with the memo requesting to consider the contents of written statement as objection to I.A.

4. In the objection/written statement the defendant has denied all the allegation made in the interim application. She has only admitted that the plaintiff is belonging to schedule caste. Thereafter she contended that she is the absolute owner in possession and occupation and enjoyment of the suit schedule property bearing Sl.No. 60 and site No. 13 measuring 60 X 40 (2400 Sq. feet) and an extent of 40 X 270 (10,800 Sq.feet) of encroached land of Sy.No. 35 of Heruru Village, Koppa Taluk. The above said properties were granted to the brother of the defendant by name A. Shankara, S/o Angara. After grant in the same Sy.No. 35 an extent of 40 X 270 of government land was unauthorizedly cultivated by him. On the western side of the

above said site and both lands and lands are adjacent to each other. Since from the date of grant he was in possession and enjoyment of the said site and cultivated the encroached land. He has grown up coffee, areca, coconut plants and he has also dug a well in the said land. The neighbourers were also using the above said well. In the year 2010 a partition was took place among the family members of the defendant. Since from the date of partition the defendant is in possession and enjoyment of the said site and encroached land. Therefore, the khatha of the said property granted into A. Shankar, not it is changed into the name of the defendant. In the year of 2002 the plaintiff had filed the suit against A.Shankar and his sister by name Narsi before this court in O.S. No. 31/2002 for the relief of mandatory injunction and permanent injunction. That suit was dismissed. Thereafter the plaintiff has not preferred any appeal against the defendant.

The Tahasildar Koppa has granted the suit schedule property in favour of plaintiff which is now newly numbered as 348. At that time the boundaries of the said land has been shown wrongly. Thereafter 10 X 60 feet of the site and an extent of 40 X 270 feet encroached land of the defendant has been included with the land of the plaintiff. Hence, the said land is inclusion of the site of the defendant is illegal and improper. In this regard, the defendant has filed appeal before the Assistant Commissioner, Chikkamagaluru against the cancellation of the grant in favour of the plaintiff. Thereafter, the plaintiff who is having her lands towards the northern side of the defendant 60 X 40 feet property in the year 2017 has given a false complaint to the Tahasildar, Koppa Taluk alleging that the defendant has encroached the property of the plaintiff. The Tahasildar, Koppa has issued notice to the defendant and prepared mahazer and also recorded the statement of the defendant. In that statement the defendant

has given her statement by stating that she has not at all encroached any portion of the plaintiff and the defendant is in possession of her properties. When the defendant was not near to the suit schedule property and she was not in station for the period of 15 days, taking the undue advantage the plaintiff has suddenly trespassed into the properties of the defendant without the knowledge of her on 13.8.2017 she has dug the pits and also laid down foundation in the suit schedule property. Further she has fenced by encroaching extent of 10 X 60 feet of site belonging to the defendant out of the 60 X 40 feet sites and also put a temporary shed and gate in the said property. Immediately the defendant came into the spot and enquired the plaintiff. At that time, the plaintiff has denied the title and ownership of the defendant on the said properties. In this regard the defendant has given complaint to the Koppa Police Station and they have advised and warned to both the parties to get the dispute resolved

from the civil court. The defendant also gave complaint before the Tahasildar on 8.9.2017. But he has not taken any action against the plaintiff. Therefore, the plaintiff was also trying to interfere in the peaceful possession, occupation and enjoyment of the defendant's encroached land also. The plaintiff with political supporters and influence she has tried to interfere and dispossess the defendant from her properties. In this regard, the defendant also filed the suit against the present plaintiff in O.S.No. 26/2018 for seeking the relief of mandatory injunction and also permanent injunction. Further, on 15.2.2021 the Assistant Commissioner passed order in the revenue appeal preferred by the defendant in the case No. 270/2017. The Hon'ble Assistant commissioner has allowed appeal and also passed order to the Tahasildar, Koppa to cancel the order dated 20/5/2003 and grant certificate dated 2.3.2007. Hence, the plaintiff has not whispered above said facts before this court and also pendency of O.S. No. 26/2018.

Therefore, the plaintiff has not approached this court with clean hands. Hence, the application was filed by the plaintiff is not maintainable and liable for dismissal.

5. Heard the counsel for plaintiff and defendant. Upon perusal of the averments in affidavit accompanying the application, the objection put-forth by the defendant and other materials submitted by the plaintiff and defendant, the following points were arisen for my consideration:

- 1) Whether the plaintiff has made out prima facie case to grant temporary injunction?
- 2) Whether the plaintiff proves that the balance of convenience lies in her favour?
- 3) Whether the plaintiff proves that she will be put to irreparable loss and injury if temporary injunction is not granted?

4) Whether the plaintiff is entitled for an order of discretionary relief of temporary injunction as prayed in I.A. No. I ?

5) What order?

6. My findings to the above points are as under:

Point No. 1 : In the partly affirmative

Point No. 2 : In the partly affirmative

Point No. 3 : In the partly affirmative .

Point No. 4 : In the partly affirmative

Point No. 5 : As per the final order
for the following reasons.

REASONS

7. **Point No. 1 to 3**: As these points are interlinked with each other, they are taken together for common discussion in order to avoid repetition of same facts. In this case, the plaintiff averred that she is in peaceful possession and enjoyment of the suit schedule property. She is belonging to Schedule Caste. Therefore, the Tahasildar, Koppa has granted the saguvali chit

in her favour. The khatha of the suit schedule property has been also changed into the name of her. She has cultivated areca, coconut, coffee, pepper in the suit schedule property. The defendant has no right, title, interest, possession over the suit schedule property. But, the defendant is trying to remove the fence in the suit schedule property with a malafide intention to grab the suit schedule property from the plaintiff. Hence, the plaintiff has filed this application for restraining the defendant from alleged interference in the suit schedule property.

8. In support of the contention of the plaintiff, she has produced certified copy of grant certificate, mutation register extract, RTC, survey sketch, assessment register extract, cultivation certificate of crops, notice was issued by the Tahasildar, Koppa to conducting the survey, Aadhar card and application was filed by the plaintiff before the District

Commissioner for the alleged interference from the defendant etc.,

9. On the other hand, the defendant specifically denied all the allegations against her. She has contended that before filing of this suit the plaintiff has interfered and encroached into the property bearing Sl. No. 60 and site No. 13. The plaintiff has encroached 10 X 60 feet out of the extent of 40 X 270 feet encroached land of the defendant. The defendant is in possession and enjoyment of the site properties bearing Sl. No. 60 and site No. 13 measuring 60 X 40 feet and 40 X 270 feet. The above said lands were granted into the name of the brother of the defendant by name A. Shankara. After the partition in the year of 2010 the above said two properties which are in existence of Sy.No. 35 have been fallen into the share of the defendant. Now, the defendant is in peaceful possession and enjoyment of the

above said properties. Earlier the present plaintiff has filed suit against the brother of the plaintiff by name A. Shankara and sister by name Narasi in O.S. No. 31/2002 for seeking relief of mandatory injunction and permanent injunction. That suit was also dismissed by this court. The plaintiff has not preferred any appeal before the Hon'ble Appellate Court. When the plaintiff has encroached the property of the defendant, then the defendant has filed suit against the present plaintiff in O.S. No. 26/2018 relating to properties measuring 60 X 40 feet and 40 X 270 feet situated at Sy.No. 35 of Heruru Village, Koppa Taluk. The plaintiff was giving wrong boundaries into the Tahasildar. She has obtained grant certificate from the Tahasildar. In this regard the defendant preferred the appeal before the Assistant Commissioner Chikkamagaluru for cancellation of above said grant and the Hon'ble appellate authority has passed order in favour of the defendant and also cancelled the granted order was

passed by the Tahasildar, Koppa dated 20.5.2003 and 2.3.2007. Hence, the plaintiff came before this court with unclean hands.

10. In support of the above said contention the defendant has produced certified copy of the order was passed by the Assistant Commissioner dated 15.2.2021, certified copy of the plaint O.S. 26/2018, I.A. copy, survey sketch, legal notice, dated 15.3.2018, copies of register extracts, legal notice dated 11.4.2018.

11. Perused the documents were produced by the plaintiff and defendant. It is clearly noticed that there is real dispute between the plaintiff and defendant relating to Sy.No. 35. At the time of hearing, the learned counsel for the defendant submitted that the plaintiff husband is one of the government employee. Therefore, how did the granting committee has granted the suit schedule property in favour of the plaintiff. At the time of hearing the

learned counsel for the plaintiff also contended that the defendant and her husband both are the government employees. How did the government has granted the lands in favour of the defendant.

12. On careful perusal of the documents were produced by the defendant, it is clearly noticed that the defendant also filed the suit against the plaintiff in O.S. No. 26/2018 for seeking relief of mandatory and permanent injunction. In that suit, the present defendant contended that she is in possession and enjoyment of the suit schedule property and that property was granted in favour of her brother by name A. Shankar. Thereafter, partition effected in between the family members. Therefore, property measuring 60 X 40 feet and 40 X 270 feet Sl. No. 60 and site No. 13 which are situated in Sy.No. 35 have been fallen into the share of the defendant. Therefore, the defendant is in possession and enjoyment of the above said properties. But the plaintiff has

interfered into the above said lands by dug the pits and putting the shed. Therefore, she is claiming mandatory and permanent injunction over the above said properties. Further, the defendant contended that her brother had dug up the well for the purpose of cultivating the coffee, pepper, coconut, areca in the above said properties. Therefore, the defendant is in possession and enjoyment of the suit schedule property. But, the plaintiff by taking undue advantage that when the defendant was in absent 15 days from the above said properties, then she has encroached into the properties of the defendant.

13. Then, the contention was taken by the plaintiff and defendant itself goes to show that both the parties are contending that they are in possession and enjoyment of the suit schedule property. But, on careful perusal of the documents were produced by the plaintiff and defendant are not sufficient to goes

to show that they are in possession and enjoyment of the suit schedule property. Only they have produced grant certificate, mutation, record of rights etc. and also the defendant produced order of the Assistant Commissioner and plaint copy of the O.S. No. 26/2018 and legal notice was issued by him relating to O.S. No. 26/2018, survey sketch etc., These documents are not explaining about that the plaintiff or the defendant in possession and enjoyment of the suit schedule property. Further, the plaintiff has produced the photo. The photocopies are also not sufficient to prove that the plaintiff is in possession and enjoyment of the suit schedule property. Therefore, before the completion of the trial this court has not come to the conclusion that whether the plaintiff is in possession and enjoyment of the suit schedule property or the defendant is in possession and enjoyment of the suit schedule property or the plaintiff has obtained grant certificate from the Tahasildar, Koppa by giving wrong

boundaries or the defendant is interfering into the suit schedule property or the plaintiff is interfering in the properties of the defendant. Hence, this court has not come to the conclusion relating to the plaintiff has proved the prima facie case in favour of her or the balance of convenience in favour of her or alleged loss or injuries caused to her or the defendant is also failed to prove that the prima facie case in her favor, balance of convenience in her favour and the alleged loss or injuries caused to her at this stage. There is real dispute in between the plaintiff and defendant relating to suit schedule property and Sl. No. 60 and site No. 13 measuring 60 X 40 and 40 X 270 feet which is situated in Sy.No. 35. If the temporary injunction granted in favour of the plaintiff at this stage, then the plaintiff may misuse the order of this court and dispossess the defendant from her properties or injunction order is not granted, then the defendant may interfere into the suit schedule property and dispossess the

plaintiff. Therefore, both the parties have proved the above said points in the partly at this stage. Accordingly, I answer point No. 1 to 4 in the partly affirmative.

14. **Point No. 5:** On the above said reasoning, I proceed to pass the following order.

ORDER

I.A. No. 1 filed by the plaintiff under order 39 rule 1 and 2 R/W Section 151 of C.P.C. is hereby partly allowed.

Both parties are hereby directed to maintain status-quo in respect of the suit schedule property bearing Sy.No. 35 and Sl. No. 60 measuring 60 X 40 feet and site No. 13 measuring 40 X 270 feet situated in Sy.No. 35 at Heruru Village, Koppa Taluk, till disposal of the case.

No order as to cost.

(Dictated to the Stenographer, typed by her directly through computer, corrected by me and then pronounced in the open court on this the 10th day of January, 2022)

Sd/-xxx 10/1/2022
(Priya Ravi Joglekar)
Civil Judge & JMFC.,
Koppa.