

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 24th day of January 2022.

O.S. No. 23/2021

Plaintiff/s : 1) Rathnakara,
S/o Late Siddappa Gowda,
Aged about 63 years,
2) Suresha, S/o Rathnakara,
Aged about 33 years,
Agriculturists, R/o Holehoddu, Bhandigadi
Village and Post, Koppa Tq.,
Chikmagalur District.

(Represented by Sri. Prasanna T.D.,
Adv.,)

V/S

Defendant/s : Chandrashekara H.B.
S/o Bellanna Gowda,
Aged about 60 years, Agriculturist,
R/o Holehoddu, Bhandigadi Village and
Post, Koppa Tq.,
Chikmagalur District.

(Represented by Sri. K.R. Krishnananda,
Adv.,)

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

The plaintiffs filed an application under order 39 rule 1 and 2 R/W section 151 of CPC to restraining the defendant and his agents and supporters, labours, followers or anybody claiming through him from dig in the western side of the suit schedule property by forcibly and dispossess the plaintiffs in the suit schedule property till the disposal of the suit.

2. The above said application is accompanied by an affidavit sworn to by the plaintiff No. 2. According to the plaintiffs, they are in possession and enjoyment of the suit schedule property. The suit schedule property originally belonging to Siddappa Gowda, who is the father of the plaintiff No. 1 and grandfather of the plaintiff No. 2. The suit schedule property was granted by the Tahahsildar, Koppa in favour of Siddappa Gowda on 7.6.1960 as manedala manjuri

certificate. After the death of Siddappa Gowda, till khatha is standing in the name of Siddappa Gowda. The plaintiffs are legal heirs of Siddappa Gowda. The plaintiffs have constructed the fence in the eastern and southern side of the suit schedule property. There is escalated area on northern side and western side of the suit schedule property the house property of the defendant is in existence. The suit schedule property is situated 5 feet height from the house property of the defendant. He has no right, interest over the suit schedule property. But, he is interfering in the suit schedule property by dig the western side of the suit schedule property. Hence, the plaintiffs have lodged complaint against the defendant in Hariharapura Police Station. They have advised the plaintiffs to approach this matter in civil court. Hence, filed this application for restraining the defendant from the alleged interference. Hence, they pray to allow the application.

3. On the other hand, the defendant filed objection to the above said application. He specifically denied all the averments made in the above said application. He contended that the suit schedule boundaries are wrongly mentioned by the plaintiffs. The plaintiffs have given false boundaries including the portion of the property of the defendant. He contended that as per the grant certificate the suit schedule property situated after 50 feet from the road. But, the plaintiffs have falsely show their property as it is situated within 50 feet from the road. The suit schedule property is in possession and enjoyment of one Mahesha. The defendant is in possession and enjoyment of 40 X 80 feet site in Sy.No. 135 of Bhandigadi Village since from more than 30 years. He has constructed residential building in the extent of 25 X 50 feet and residing therein along with his family members. The government has also granted Rs. 1,50,000/- to the defendant under the Indira Awas Yojane for the construction of house in

the area of 25 X 20 feet out of 40 X 80 feet. He has left 15 feet vacant space towards eastern side of his property. In that place he has grown up cashew nut trees and they are now yielding. He also dug the cow dung to an extent of 10 X 15 feet area. He has constructed cow shed in the backside of his house and he has left 15 feet vacant space in the front yard and raised flower garden and also he left 5 feet of vacant space in the backyard. Southern side of the property of the defendant one Mahesha has put his fence. Hence, there is no question arise at all relating to enclosing the property of the plaintiff. The defendant has filed application to the government to grant his property. The plaintiffs have been granted only 3 guntas of site in Sy.No. 135 of Bhandigadi Village. But, the plaintiffs illegally claiming 5 guntas of area including the road margin and also trying to encroach towards eastern side property of the defendant. The plaintiffs have not come before this court with clean hands. They have suppressed all these facts before

this court. Hence, the application is not maintainable and liable to be dismissed.

4. I have heard both sides.

5. The following points arise for my consideration:

POINTS

1) Whether the plaintiffs have made out prima facie case to grant temporary injunction?

2) Whether the plaintiffs prove that the balance of convenience lies in their favour?

3) Whether the irreparable loss and injury will be caused to plaintiffs if an order of temporary injunction is not granted?

4) What order?

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

Point No. 1 : In the affirmative

Point No. 2 : In the affirmative

Point No. 3 : In the affirmative

Point No. 4 : As per the final order
for the following:

REASONS

7. **Point No. 1 and 2:** Both points are taken up together for common discussion to avoid repetition. The plaintiffs have brought this suit against the defendant and filing interim application against the defendant for seeking the relief of temporary injunction. The plaintiffs are supposed to establish the existence of prima facie. For the purpose of granting temporary injunction, existence of prima facie case is imperative. With this background, now I wish to ascertain whether the plaintiffs have making out prima facie case or not.

8. According to the plaintiffs the suit schedule property had been granted in favour of the father of the plaintiff No. 1 and grandfather of the plaintiff No. 2 by name Siddappa Gowda on 7.6.1960. After his death, till the khatha of the suit schedule property is standing in the name of Siddappa Gowda. The house property of the defendant is situated towards western side of the suit schedule property and he is trying to dig

towards western side of the suit schedule property. Hence, in order to restrain the defendant from the alleged interference the plaintiffs have filed this application.

9. In support of the contention of the plaintiffs, the plaintiffs have produced grant certificate register extract, RTC, revenue sketch, ration card, genealogical tree affidavit and certificate etc.,

10. On the other hand, the defendant contended that the above said application is not maintainable because the plaintiffs are claiming 5 guntas of land in Sy.No. 135 including the road margin. The plaintiffs have wrongly mentioned the boundaries of the suit schedule property including the house property of the defendant. The defendant is in possession and enjoyment of 40 X 80 feet site in Sy.No. 135 of Bhandigadi Village. He has filed application before the concerned authority to grant the property. Further, the

defendant is constructed his house in the extent of 25 X 50 feet. On the basis of scheme of Indiar Awaz Yojane he has constructed residential house in the area of 25 X 20 feet out of 40 X 80 feet. Further towards eastern side of the house property he has left 15 feet vacant space and he has grown up cashew nut trees which is yielding now. He has dug the cow dung to an extent of 10 X 15 feet area. He has constructed cow shed in the backside of his house and he has left out 15 feet vacant space in the front yard and raised flower garden. He also left out 5 feet vacant space in the backyard. Southern side of the property of the defendant Mahesha has put his fence. Hence, the plaintiffs have suppressed all these material facts before this court. Hence, the plaintiffs have not come before this court with clean hands. Hence, application was filed by the plaintiffs is not maintainable and liable to be dismissed.

11. In support of the above said contention, the defendant has produced rough sketch with respect to Sy.No. 135, application was filed by the defendant before the Thahasildar, Koppa relating to grant the property into his name in Sy.No. 135, memorandum, report of the Revenue Inspector, Ahavalu Thakte, caveat copy.

12. On careful perusal of the records, it is clearly noticed that as per the documents were produced by the plaintiffs and defendant, it is clearly noticed that the suit schedule property was granted in favour of the father of the plaintiff No. 1 and grandfather of the plaintiff No. 2 by name Siddappa Gowda. Further, it is also noticed that the boundaries of the suit schedule property mentioned as eastern side Sy.No. 135, western side Sy.No. 135, northern side Sy.No. 135 and southern side road. The exact measurement of the granted property of Siddappa Gowda is an extent of 3 guntas of land.

The RTC extract shows that Sy.No. 135/P5 is now standing in the name of Siddappa Gowda to an extent of 5 guntas. Further, the survey sketch report shows that Sy.No. 135 is an extent of 3 guntas of land is standing in the name of Siddappa Gowda and there is also existence of road margin of 50 feet. It is also mentioned that to an extent of 15 feet margin left out southern side of the suit schedule property. In the above said report also mentioned that 5 guntas of land is standing in the name of the H.S. Nanjundiah. Xerox copy of the ration card, affidavit of genealogical tree and certificate of genealogical tree shows that the plaintiffs are legal heirs of Siddappa Gowda.

13. Even though the defendant also produced documents relating to Sy.No. 135 and the documents were produced by the defendant not show that what is the exact measurement of the property of the defendant. In his written statement he

clearly mentioned that he is in possession and enjoyment of the 40 X 80 feet extent of Sy.No. 135. But, the documents were produced by the defendant itself goes to show that he has filed application before the government for grant the land in his favour with an extent of 40 X 60 feet in Sy.No. 135. But, in the written statement he has mentioned that he is in possession and enjoyment of the 40 X 80 feet in Sy.No. 135. In this regard, the defendant has not produced sufficient documents before this court. The documents were produced by the plaintiffs sufficient to show that they are in possession and enjoyment of the suit schedule property which was granted in favour of father of the plaintiff No. 1 and grandfather of the plaintiff No. 2. Even though the RTC extract shows that Sy.No. 135 measuring 5 guntas is standing in the name of Siddappa Gowda, but in this suit the plaintiffs are claiming relief over the suit schedule property which is measuring only 3 guntas as per the grant certificate and survey sketch etc.,

14. Further, as per the written statement it is clearly noticed that one side the defendant has contended that he is in possession and enjoyment of 40 X 80 feet in Sy.No. 135, thereafter he submitted that he has constructed house in the above said property measuring 25 X 50 feet residing along with his family members. Thereafter he contended that on the basis of scheme of Indira Awas Yojane he has constructed residential house in the area of 25 X 20 feet out of 40 X 80 feet. Further towards eastern side of the house property he has left 15 feet vacant space and he has grown up cashew nut trees which is yielding now. He has dug the cow dung to an extent of 10 X 15 feet area. He has constructed cow shed in the backside of his house and he has left out 15 feet vacant space in the front yard and raised flower garden. He also left out 5 feet vacant space in the backyard. Then, the defendant has not produced sufficient documents before this court to show that what is the exact measurement of the property which is in his

possession and enjoyment. The measurement was shown by the defendant only 40 X 80 feet in the written statement and in his documents he has shown as 40 X 60 feet in the Sy.No. 135 of Bhandigadi Village. But, explanation was given by the defendant, it is more than measurement of 40 X 80 feet or 40 X 60 feet of Sy.No. 135. Therefore, the attitude of the defendant shows that he is interfering into the suit schedule property which is adjacent to his land without any proper documents.

15. The documents were produced by the plaintiffs sufficient to show that as per the grant certificate was issued by the government in favour of Siddappa Gowda, the plaintiffs are in possession and enjoyment of the suit schedule property. Even though, the defendants contended that the boundaries mentioned in the suit schedule property, grant certificate and caveat petition are different. But, after observation of the suit

schedule property, grant certificate and caveat petition, all boundaries are similar, it is mentioned one side as Sy.No. 135 and another side it is mentioned as in the name of the property of the defendant because the defendant himself also admitted that his property situated towards western side of the suit schedule property, it is coming under the Sy.No. 135. Then, there is no doubt relating to correct boundaries of the suit schedule property. The attitude of the defendant shows that he is interfering in the suit schedule property towards western side of the suit schedule property. When the suit is pending before this court and the plaintiffs are claiming over the suit schedule property, if the temporary injunction is not granted in favour of the plaintiffs, then the defendant may misuse the same order and he would interfering the suit schedule property. In order to protect the above said suit schedule property till the disposal of the suit, it is necessary to grant the temporary

injunction over the suit schedule property. Accordingly, I answered point No. 1 and 2 in the affirmative.

16. **Point No. 3 :** In view of my findings on Point No. 1 and 2, there is prima facie case is available in favour of the plaintiffs. There is dispute with respect to the suit schedule property relating to the above said suit schedule property is situated within 50 feet of margin road and plaintiffs have encroached 50 feet of margin road or not or the defendant has encroached in the suit schedule property by digging towards western side of the suit schedule property. It shall be looked into after the completion of trial. At this stage, this court has not come to the conclusion that the plaintiffs have encroached the 50 feet of the margin road or not. But the attitude of the defendant shows that he is trying to interfering in the suit schedule property.

17. The interim order will be the antidote to protect the existing nature of the property. In this regard, it is just and necessary to quote the following judgment to know the value of the interim order.

ILR 1988 Kar. 2817

(Life Insurance Corporation V/S Bangalore LIC Employees)

(equivalent citation 1988 KLJ 455, 1988 (2) Kar. L.J. 455)

“The preventive remedy of injunction is thus granted as a instant antidote to stop or prevent the invasion of the plaintiff’s right in regard to which a complaint is made. The court having regard to the expediency involved should not embark upon a nit-picking operation at that stage by holding a mini trial to lay thread–bear the case of the plaintiff to find out if a prima facie case is made out or not. It would be sufficient if the court is assured that questions raised by the plaintiff are not vexatious or too casual. But there are

such as to merit serious consideration at a subsequent stage. That such is the content and frontiers of the expression prima facie case is also the view of Govinda Bhatt Justice (as his Lordship then was) in the case of State of Karnataka V/S S.Venkataraju, 1975 (1) Kar. L.J. 142 and Jaganatha Shetty (J) (as his Lordship then was) in J.Krishnamurthy V/S Bangalore Turff Club in ILR. Kar. 1975, 1957)”

18. If the interim order is granted by restraining the defendant from dig towards western side of the suit schedule property till disposal of the case, no prejudice will be caused to the defendant. On the other hand, if the defendant would interfere into the suit schedule property by digging towards western side of the suit schedule property, then it will definitely affect the right of the plaintiffs. Hence, on these grounds, the plaintiffs are entitled for the relief of injunction as prayed in the I.A. By considering all these facts, the

plaintiffs have made out balance of convenience and irreparable loss in their favour. Accordingly, point No. 3 is answered in the affirmative.

19. **Point No. 4:** On the above said reasonings, I proceed to pass the following order.

ORDER

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

The defendant and his agents and supporters, labours, followers or anybody claiming through the defendant is hereby restrained from dig in the western side of the suit schedule property by forcibly and dispossess the plaintiffs, till the disposal of this 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 24th day of January, 2022)

Sd/-xxxx 24/1/2022
(Priya Ravi Joglekar)
Civil Judge & JMFC.,
Koppa.