

KACM400001672021



**IN THE COURT OF THE PRL. CIVIL JUDGE AND
J.M.F.C., AT MUDIGERE**

:PRESENT:

**SRI. J.KRISHNA, B.A. LL.B.,
PRL. CIVIL JUDGE & JMFC.,
MUDIGERE**

O.S.No.15/2021

DATED THIS THE 5th DAY OF OCTOBER 2021

**PLAINTIFF
APPLICANT:**

B.K. Nagesh Gowda,
S/o late. Kalle Gowda,
Aged about 79 years,
Agriculturist R/o. Bidarahalli
village and post, Mudigere Taluk

[By Sri. M.V.J, Advocate]

V/s.

**DEFENDANTS
OPPONENTS:**

1. B.B. Narayana,
S/o Late. Basaiah,
Aged about 64 years,
Agriculturist,

2. M.R. Jagadish,
S/o M.E. Rame Gowda,
Aged about 60 years,
Agriculturist,

3. B.N. Ashok,

S/o Late. B.B. Nanjunde Gowda,
Aged about 52 years,
Agriculturist,

4. B.N. Aruna,

S/o Late. B.B. Nanjudge Gowda,
Aged about 50 years,
Agriculturist,

5. Smt. Rathnamma,

W/o Late. B.R. Nagaraj,
Aged about 60 years,
Agriculturist,

6. B.N. Sudheer,

S/o B.R. Nagaraj,
Aged about 42 years,
Agriculturist,

All are R/o. Bidarahalli village,
and post, Mudigere Taluk,
Chikkamagalur district

[D.1 to 3 by Sri. K.S.A., Advocate]

[D.4 to 6 exparte]

ORDERS ON I.A.No.I

The plaintiff has filed the application U/o. XXXIX rule 1 and 2 of CPC seeking ad-interim temporary injunction restraining the defendants, their servants or anybody claiming through them from interfering with the plaintiff's peaceful possession and enjoyment over the suit schedule

properties or dispossessing the plaintiff, till disposal of the suit.

2. In support of the application, the plaintiff has filed the affidavit, submitted he is the owner and in possession of property bearing Sy.No.54/2 measuring 6 acres 1 gunta, more fully described as Item No.1 in the schedule of the plaint and land bearing Sy.No.58/7A measuring 1 acre 23 guntas including 23 guntas of kharab, more fully described as Item No.2 in the schedule of the plaint, both are situated at Bidarahalli village, Kasaba Hobli, Mudigere Taluk, hereafter, collectively referred to as suit schedule properties. He has acquired the suit schedule properties under registered partition deed dated 01.05.1972. The defendant No.1 had encroached 6 guntas, defendant No.2 had encroached 26 guntas and B.B. Nanjundegowda, the father of defendant No.3 and 4 had encroached 2 ½ guntas in suit Item No.1. B.R. Nagaraj, husband of defendant No.5 and father of defendant No.6 had encroached 6 guntas in suit Item No.2. The plaintiff had filed a suit in O.S.No.132/2006 against the defendant No.1, 2 and B.B. Nanjundegowda seeking possession of encroached areas, so also filed a suit in O.S.No.130/2006 against the B.R. Nagaraj before

Addl. Civil Judge (Sr.Dn), Chikkamagalur. The suits were decreed after contest on 10.12.2010 directing the defendants to hand over the portion of suit schedule properties encroached by them. The defendants have filed appeal against the said judgments in R.A.No.21/2011 and R.A.No.22/2011. The appeal dismissed on 09.10.2014. The plaintiff filed execution petition in Ex.No.29/2015 and Ex.No.30/2015 before Senior Civil Judge, Mudigere. In the said execution petitions, the plaintiff has taken possession of encroached areas from the defendants on 27.08.2016 by the orders of the court. As such the plaintiff is in exclusive possession and enjoyment of suit schedule properties. However, defendants are trying to trespass into the suit schedule properties and causing interference. The defendant No.1 and 2 have gone to the extent to file a suit against the plaintiff in O.S.No.164/2016 before Addl. Civil Judge & JMFC., Mudigere for the relief of permanent injunction with respect to land bearing Sy.No.56 and Sy.No.55/1 of Bidarahalli village. In the said suit, the defendant No.1 and 2 have attempted to mislead the Hon'ble Court as to encroachment of suit schedule properties. But the Hon'ble Court while decreeing the suit has

specifically observed the decree given in O.S.No.164/2016 is in relation to Sy.No.56 and Sy.No.55/1 of Bidarahalli village only, it will not affect the Sy.No.54. However, on 04.02.2021 defendants have tried to cause damage to the suit schedule properties with force. Hence, the suit and this application. Further, it is pleaded the plaintiff is having prima facie case, balance of convenience lies in his favour. If the application is rejected, he will be put to more hardship and injury than defendants. Accordingly, prays to allow the application.

3. The defendant No.1 to 3 have appeared through Advocate, defendant No.2 filed the written statement and defendant No.1 and 3 have adopted the same by filing separate memo. The defendant No.1 to 3 files memo to treat the written statement as objection to the I.A.No.I. The defendant No.4 to 6 placed exparte.

4. The defendant No.1 to 3 in their written statement denied all the plaint averments. It is specifically submitted during the partition held between plaintiff and his brothers, suit schedule properties were not subjected to survey. Therefore description of the suit schedule properties in the

partition deed, plaint schedule and boundaries mentioned therein are in correct. The RTC produced by the plaintiff discloses no crop information, which shows plaintiff is not in cultivation. Assertion made by the plaintiff that he is doing cultivation in suit schedule properties are all false. The defendants never encroached the suit schedule properties as alleged in the plaint. They were/are in possession of property, which their predecessors in title were in possession. The plaintiff in collusion with survey authorities got measured the suit schedule properties, wherein property in possession of defendants shown that belongs to plaintiff and defendants have encroached. Against the judgment of O.S.No.132/2006 and O.S.No.130/2006 an appeal is pending before Hon'ble High Court of Karnataka. Admitted the filing of O.S.No.164/2016. In the said suit the plaintiff herein filed application u/o. XXVI rule 9 of CPC, it was rejected. The plaintiff also filed application for haddu basthu, which shows plaintiff is not certain about the boundaries of his properties. It is alleged the defendants have attempted to cause damage, but type of damage defendants were attempted to cause is not specifically pleaded. Therefore, it is a false allegation. B.S. Jayaram son of

plaintiff's brother is a Congress leader and President of Coffee Growers Association. He is a very influential person. The defendants are very poor and old aged, they did not cause any interference to the plaintiff. The suit and application are malafide one. Hence prays to reject the application.

5. Heard Sri. M.V.J, Advocate for plaintiff. Sri. K.S.A, Advocate for defendant No.1 to 3, perused the records. On perusal of records and upon hearing of Advocates, the court has framed following points for consideration.

P O I N T S

1. Whether the plaintiff has made out prima facie case?
2. Whether the plaintiff establishes that balance of convenience lies in his favour?
3. Whether the plaintiff establishes that if temporary injunction is not granted, he will be put to great loss or hardship?
4. What order?

6. On that basis, my findings on the above point 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 final order
for the following:

REASONS

POINT No.1 TO 3 :

7. It is the specific case of the plaintiff that, he has acquired the suit schedule properties under registered partition deed dated 01.05.1972. To evidence the same, plaintiff has produced copy of the registered partition deed, discloses, the plaintiff has acquired the suit schedule properties in the partition held with his brothers. The defendants are not disputing the partition, they contended at the time of partition suit properties were not measured, even after the partition no measurement has taken place. Therefore, boundaries shown in the partition and plaint is in correct, as it that be.

8. It is the case of the plaintiff that defendant No.1, 2 and father of defendant No.3 and 4 have encroached portion of suit Item No.1. Therefore, plaintiff had filed suit in O.S.No.132/2006 to get back the possession, it was decreed in his favour. Even appeal filed by the defendant No.1 to 4 in

R.A.No.21/2011 is dismissed. Later possession is taken in Ex.No.29/2015. To evidence these facts, plaintiff has produced certified copies of the judgment passed in O.S.No.132/2006, R.A.No.21/2011 and the delivery warrant executed in Ex.No.29/2015. They clearly reveal a competent civil court has declared the plaintiff is the owner of the 'A' schedule property herein, it was unsuccessfully challenged before Prl. District and Sessions Judge, Chikkamagalur in R.A.No.21/2021. The encroached portion has taken back through process of law in Ex.No.29/2015. The defendants admitted the proceedings held against them, stated above, they contended they have filed appeal before Hon'ble High Court of Karnataka, but no piece of paper is produced before the court. Therefore, the submission of defendants that appeal is pending before Hon'ble High Court of Karnataka is not tenable.

9. With respect to Item No.2, plaintiff has produced certified copy of judgment passed in O.S.No.130/2006, R.A.No.22/2011, they disclose plaintiff had filed above said suit against B.R. Nagaraj, husband of defendant No.5 and father of defendant No.6, wherein plaintiff is declared as owner of 'B' schedule property herein and B.R.

Nagaraj is directed to handover the encroached portion. The said B.R. Nagaraj challenged the judgment in R.A.No.22/2011, it was dismissed. Thereafter, plaintiff has taken the possession of encroached area in Ex.No.30/2015.

10. The partition deed produced by the plaintiff and the copies of the judgments pronounced in O.S.No.132/2006, 130/2006, R.A.No.21/2011 and R.A.No.22/2011 clearly demonstrates, plaintiff is the absolute owner of suit schedule properties and properties is located within the boundaries shown in the schedule of the plaint herein. Therefore, the contention of the defendants that boundaries mentioned in the schedule of the plaint and partition is incorrect, is not tenable.

11. It is the case of the defendants that in a suit filed by the defendant No.1 and 2 in O.S.No.164/2016 against the plaintiff, plaintiff has filed an application u/o. XXVI rule 9 of CPC for measurement of suit schedule properties herein and properties of defendants. Even he has filed application for haddu basthu of suit schedule properties herein. Therefore, he is not certain about the boundaries of his properties. Such argument is

not acceptable, because having filed the application for haddu basthu by the plaintiff with respect to suit schedule properties no document is placed before the court. Even if any application is pending or filed for haddu basthu survey, makes no significance to the case of the plaintiff.

12. The defendants argued, in the RTC produced by the plaintiff at Column No.12/15 no cultivation is shown. Therefore, the plaintiff is in possession and doing cultivation is not acceptable. On perusal of the RTC of suit Item No.1, it is clear that Column.No.13/9 clearly shown Item No.1 of the suit schedule having pepper and coffee. In RTC of suit Item No.2 it is clearly mentioned having pepper, arecanut and coffee.

13. At last the defendants have argued, it is malafide suit, the allegation that defendants are attempted to cause damage is not specifically pleaded what type of damage that defendants are attempted to cause. The plaintiff has to show actual interference to have the relief of injunction, which is equatable one. On perusal of records there is a long standing legal battle between plaintiff and defendants. The defendant No.1 and 2 have obtained

injunction with respect to their properties in O.S.No.164/2016. In the earlier suits filed by the plaintiff no injunction has been prayed for. The plaintiff is in possession is not seriously disputed by the defendants, but they have disputed the boundaries of plaintiff and also denied cultivation of plaintiff, which show defendants have some hidden agenda to cause inconvenience to the plaintiff, even the plaintiff has seriously apprehended the same. Therefore, granting injunction is necessary otherwise the plaintiff will be put to more hardship and injury than defendants. Allowing of application will not cause any hardship to the defendants. Accordingly, I answer Point No.1 to 3 in the '**Affirmative**'.

POINT No.4 :

14. For the forgoing reasons, I proceed to pass the following:

: O R D E R :

I.A.No.I filed by the plaintiff U/o. XXXIX rule 1 and 2 of CPC is hereby allowed.

The defendants, their servants or anybody acting on their behalf from interfering with the plaintiff's peaceful

possession and enjoyment over the suit
schedule properties or dispossessing the
plaintiff till disposal of the suit by way of
temporary injunction.

(Dictated to the Stenographer directly on computer, then corrected by me and then
pronounced in the open court on this the **5th day of September 2021**)

sd/-

(J.KRISHNA)

**PRL. CIVIL JUDGE & JMFC.,
MUDIGERE.**

SAR