

KACM400000822020



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

:PRESENT:

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

O.S.No.22/2020

DATED THIS THE 9th DAY OF FEBRUARY 2022

**PLAINTIFF
APPLICANT:**

D.E. Paramesh,
S/o Late. Erappagowda,
Aged about 60 years,
Agriculturist,
R/o. Bakki village, Bettagere
post, Banakal Hobli,
Mudigere Taluk,

[By Sri. B.A.S, Advocate]

V/s.

**DEFENDANTS
OPPONENTS:**

1. Lokesh,
S/o Late. Basaiah,
Aged about 37 years,

2. Suresh,
S/o Late. Basaiah,
Aged about 35 years,

3. Smt. Geetha,
W/o Suresh,
Aged about 30 years,

4. B.R. Nagesh,
S/o Ramaiah,
Aged about 38 years,

5. Smt. Gangamma,
W/o Late. Basaiah,
Aged about 65 years,

All are R/o. Bakki village,
Bettagera post, Banakal Hobli,
Mudigere Taluk,

[By Sri. K.C.C., Advocate]

ORDERS ON I.A.No.II

The plaintiff has filed the application U/o. XXXIX rule 1 and 2 of CPC seeking ad-interim temporary injunction, restraining the defendants, their agents, servants or anybody acting on their behalf from trespassing into the suit schedule properties or encroaching upon the suit schedule properties or dispossessing the plaintiff from the suit

schedule properties or causing acts of waste and damage to the suit schedule properties and in any way interfering with the plaintiff's peaceful possession, enjoyment of suit schedule properties till disposal of suit.

2. In support of the application, the plaintiff filed affidavit, prays to read the plaint as part and parcel of the affidavit. On perusal of the plaint and affidavit the brief case of the plaintiff is as hereunder.

3. The plaintiff is a ex-service men, senior citizen and residing in Bakki village. After his retirement, he has cultivated 6 acres 15 guntas (including kharab) in Sy.No.6 of Bakki village and 2 acres in Sy.No.85 of Bettagere village, more fully described in the schedule of the plaint, hereafter, referred to as suit schedule properties. In suit schedule properties he has planted coconut trees, silver trees, fruit bearing trees and cultivated coffee and pepper. He has constructed a house and formed a dry yard in Sy.No.6 and fence all around the suit schedule properties. On 12.08.2010 he has filed application to Deputy Commissioner, Chikkamagalur seeking grant of suit schedule properties. In turn

Deputy Commissioner, Chikkamagalur directed the Tahasildar, Mudigere to take necessary steps. The Tahasildar, Mudigere visited the suit schedule properties, prepared the sketch, which discloses plaintiff has been in possession of suit schedule properties. The Bettagere Grama Panchayath and Tripura Grama Panchayath have passed a resolution to grant suit schedule properties in favour of plaintiff on 27.08.2013 and on 16.03.2013 respectively. The grant certificate/saguvali chit is yet to be given. The defendants have no manner of right, title or interest over the suit schedule properties, however on 16.01.2020 along with supporters came near the suit schedule properties, attempted to remove the fence in the eastern and northern side of suit schedule properties, trespassed into the suit schedule properties and also dispossess the plaintiff. The plaintiff with great difficulty resisted the illegal acts of defendants. He has complained to the jurisdictional police, they did not take any action stating matter is civil in nature. Hence, the suit and 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.

4. The defendant No.1 to 5 have appeared, subsequently defendant No.1 died, in the result the suit against defendant No.1 stands abated. The defendant No.4 filed detailed written statement, defendant No.2, 3 and 5 have admitted the same by filing separate memo and all defendants files memo to treat the written statement as objections to I.A.No.II.

5. In the written statement defendants have denied all the averments of plaint as false, except the facts plaintiff is ex-service men and filed application on 12.03.2010 to Deputy Commissioner, Chikkamagalur seeking grant. It is specifically submitted to the application filed by the plaintiff, father of defendant No.4 i.e., Ramaiah filed objections stating no grant certificate shall be given to plaintiff. In Sy.No.6 of Bakki village total measurement is 14 acres 8 gunta, out of which mother of plaintiff is having 2 acres, in Sy.No.6/1 father of defendant No.4 and uncle of defendant No.4 had 2 acres. Mother of plaintiff obtained sale deed

from father of defendant No.4 and uncle of defendant No.4 in a fraudulent way, it is challenged under PTCL Act in PTCL.No.09/2014-15. In Sy.No.6/3p1, 5 acres 1 gunta is a Government land, 1 acre reserved for graveyard, 20 gunta belongs to Biliyappa, 6 gunta belongs to Devaraj, 10 gunta belongs to Kalaiah. Father of defendant No.4 granted with 1 acre 25 gunta in Sy.No.6/3p4. The defendant No.2, 3 and 5 have constructed residential houses in Sy.No.6 and residing there for more than 40 to 50 years. One Manjunath S/o. Kalaiah is also having 2 acres in Sy.No.6. The defendants have filed the application seeking regularization of their possession in Sy.No.6. Therefore, plaintiff is not in possession of Sy.No.6 of Bakki village and Sy.No.85 of Bettagere village. Hence, prays to reject the application.

6. Sri. B.A.S, Advocate for plaintiff files written arguments. Heard Sri. K.C.C, Advocate for defendants, 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?

7. On that basis, my findings on the above point are as under:

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**POINTS No.1 TO 3 :**

8. It is the case of the plaintiff that he is a ex-service men and residing in Bakki village. This fact is not disputed by the defendants. The plaintiff being a ex-service men anticipating a grant he is doing

cultivation in suit schedule properties and filed application before Deputy Commissioner, Chikkamagalur. To evidence he has filed application before Deputy Commissioner, Chikkamagalur, plaintiff has produced copy of the application dated 12.08.2010 filed before Deputy Commissioner, Chikkamagalur discloses plaintiff has filed the application seeking grant of land measuring 6 acres 15 gunta in Sy.No.6 of Bakki village and 2 acres in Sy.No.85 of Bettagere village. The defendants admitted that plaintiff has filed such application and contended father of defendant No.4 filed objections to the application. To evidence the same, the defendants have produced copy of the objections filed by father of defendant No.4 on 22.03.2013 discloses father of defendant No.4 i.e., Ramaiah objected to grant land in Sy.No.6 in favour of plaintiff. Further, defendant No.4 also filed similar objection on 04.08.2017 and copy of the same is placed before the court.

9. It is the case of the plaintiff on the application of plaintiff dated 12.08.2010 the Deputy Commissioner, Chikkamagalur directed the Tahasildar to take suitable action. To evidence the

same, plaintiff has produced a letter dated 19.08.2010 forwarded to Tahasildar, Mudigere by the office of Deputy Commissioner, Chikkamagalur to make enquiry on the application given by plaintiff dated 12.08.2010. It is the case of the plaintiff on receipt of letter dated 19.08.2010, the Tahasildar, Mudigere directed the Taluk Surveyor to make local inspection and draw the sketch in the presence of Village Accountant. To evidence the same, plaintiff produced letter addressed by the Tahasildar, Mudigere to Taluk Surveyor, Mudigere dated 17.12.2011. It is the case of the plaintiff that in pursuance of the letter dated 17.12.2011 the Taluk Surveyor made local inspection in the presence of Village Accountant drawn mahazar and sketch. To evidence the same, mahazar and sketch is produced. The sketch identified the property sought for grant by the plaintiff. Further, it is the case of the plaintiff that the Bettagere Grama Panchayath and Tripura Grama Panchayath have passed a resolution to grant the suit schedule properties to the plaintiff. The relevant resolutions are also produced, they disclose panchayaths' stating no objections to grant the

properties in favour of plaintiff, if plaintiff is entitle and law permits, passed the resolution.

10. The plaintiff has produced RTC of Sy.No.6/3p1 discloses it is totally measuring 6 acres 8 gunta including 1 acre 25 gunta kharab, out of which 1 acre is reserved for graveyard of Hindus, 20 gunta in the name of Biliyappa and remaining 5 acres 1 gunta including kharab is a Government land. The RTC of Sy.No.85/1 of Bettagere village discloses totally measurement 65 acres 16 gunta, out of which 59 acres 28 gunta is Government land. The documents placed by the plaintiff particularly RTC of Sy.No.6 of Bakki village discloses totally measuring 8 acres 6 gunta, out of which 1 acre 25 gunta is a kharab, 1 acre is reserved for Hindu graveyard and 20 is in the name of Biliyappa, the remaining 5 acres 1 gunta including kharab is Government land. The plaintiff claims he is in possessions of 6 acres 15 gunta in Sy.No.6 including kharab, same is not acceptable, because such extent is not available to the plaintiff.

11. The defendants have specifically contended plaintiff is not at all in possession of suit schedule properties. They produced M.R.No.29/1998-99 discloses in Sy.No.6/3p of Bakki village 1 acre is reserved for Hindu graveyard. Further, they produced M.R.No.6/1987-88 and M.R.No.7/1987-88 disclose 6 gunta in Sy.No.6 and 11 gunta in Sy.No.6 granted to Laxmaiah and Kalaiah respectively. Further, RTC of Sy.No.6/3p4 discloses 1 acre 25 gunta is in the name of defendant No.4. When such is the case plaintiff is having possession of 6 acres 15 gunta is doubtful. Further, immediately when plaintiff approached for grant, father of defendant No.4 objected for grant stating plaintiff is not in possession. When such is the case matter has to be decided by competent authority after due enquiry, whether any such enquiry is pending or decided is not forthcoming before the court. Therefore, plaintiff has failed to made out prima face case and balance of convenience in his favour. When such is the question of considering irreparable loss and injury will not arise for consideration. Therefore, plaintiff is not entitle for any relief. Accordingly, I answer Point No.1 to 3 in the '**Negative**'.

POINT No.4 :

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

: O R D E R :

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

(Dictated to the Stenographer directly on computer, then corrected by me and then pronounced in the open court on this the **9th day of February 2022**)

sd/-

(J.KRISHNA)

**C/C. ADDL. CIVIL JUDGE & JMFC.,
MUDIGERE.**

SAR