



**IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC.,
MUDIGERE.**

Present: **Sri. Vishwanath.A,** B.B.A., L.L.B.
Prl. Civil Judge & JMFC.,
Mudigere.

DATED: THIS THE 11th DAY OF APRIL 2025

ORIGINAL SUIT No: 25/2019

BETWEEN

Sri.A.R.Vijayakumar,
Aged about 52 years,
S/o late A.S.Ramegowda,
Agriculturist,
R/o Abachur,
Jogannanakere Village & Post,
Kasaba Hobli, Mudigere Taluk.Plaintiff

(By Sri.M.V.Jayaraj, Adv.)

AND

- 1.** Smt.Sannamma,
Aged about 65 yeras,
W/o late Yenkaiah,
R/o Halur,
Jogannanakere Village & Post,
Kasaba Hobli, Mudigere Taluk.
- 2.** Smt.Shanthala.H.Y,
Aged about 35 yeras,
D/o late Yenkaiah,
W/o Shivaram.
- 3.** Sri.Shivaram,
Aged about 40 years,
S/o late Gangaiah.

Defendants No.2 and 3 are
R/o Shakthinagara, Hesgal Post,
Kasaba Hobli, Mudigere Taluk.Defendan
ts

(By Sri.K.M.Prashanth, Adv.)

PARTIES TO I.A.NO.2



Sri.A.R.Vijayakumar

..... Applicant

AND:

Smt.Sannamma & Ors.

..... Opponents

1	Provisions under which the application is filed	Under Order 39 Rule 1 & 2 of CPC
2	Relief sought for	Temporary injunction
3	The date on which the application is filed	08.02.2019
4	Number of the application	2
5	The date on which the objection filed by opponents	05.08.2021
6	The date on which the order was passed on the said application	11.04.2025

PARTIES TO I.A.NO.8

Smt.Shanthala

..... Applicant

AND:

Sri.A.R.Vijayakumar

..... Opponent

1	Provisions under which the application is filed	Under Order 94(C) R/w 151 of CPC & Order 39 Rule 1 & 2 of CPC
2	Relief sought for	Temporary injunction



3	The date on which the application is filed	07.06.2019
4	Number of the application	8
5	The date on which the objection filed by opponents	05.02.2025
6	The date on which the order was passed on the said application	11.04.2025

(VISHWANATH.A)
PRL. CIVIL JUDGE & JMFC.,
MUDIGERE.

COMMON ORDERS ON IA NO.II & VIII

IA.No.2 is filed by the plaintiff under Order 39 Rules 1 and 2 of CPC, seeking for a temporary injunction restraining the defendants, their men, agents, servants or any other persons claiming through them from trespassing or from removing the fence or from encroaching upon the plaint 'A' and 'B' schedule properties or from dispossessing the plaintiff therefrom or from causing acts of waste and damage to the plaint schedule properties and in any way interfering with the plaintiff's peaceful possession, occupation and enjoyment over the said properties.

2. IA.No.8 is filed by the defendant No.2 who has filed the counter claim. This application is filed under section 94(C) R/w 151 of CPC and Order 39 Rules 1 and 2 of CPC, seeking temporary injunction restraining the plaintiff, his men, servants or any other persons



claiming right through him from committing trespass to the written statement schedule property or from encroaching upon the same, pending disposal of the suit.

3. Since the above applications require common appreciation of materials on record and also the common discussion, they are taken up for disposal by a common order.

4. The plaintiff's case is that he is the owner in possession, occupation and enjoyment of the plaint 'A' schedule property which is fallen to his share under the registered partition deed dated 23.07.2009 and he has also got the khatha of said property to his name vide MR.No.7/2008-09. Plaint 'B' schedule property was in possession and occupation of his father for more than 70 years and after his father, the plaintiff continued to be in possession of the said property. Plaint 'B' schedule property is situated on the northern side of plaint 'A' schedule property. Plaint 'A' and 'B' schedule properties are adjacent to each other and commonly fenced. Plaint 'A' and 'B' schedule properties are cultivated with coffee, pepper, plantation, silver trees and etc. The defendant No.1 is the mother of defendant No.2 and defendant No.3 is the husband of defendant No.2. The defendant No.1 to 3 who have got no manner of right, title or interest in or over the plaint schedule properties are yet trying to trespass and encroach upon the plaint schedule properties. On 27.01.2019, the defendants along with their men and supporters have tried to trespass upon the plaint schedule properties on an instigation of local politicians. They have tried to trespass upon the plaint schedule properties by removing the fence towards the northern side of the



said properties. Though the said act of defendants were resisted with great difficulty, but the defendants are again trying to harvest the crops grown in the plaint schedule properties. The plaintiff though approached the police, but the same was of no help for the matter being in a civil nature. On these averments, the plaintiff is seeking for allowing the IA.No.2.

5. In support of IA.No.8, the defendant No.2 has contended that the plaintiff is guilty of suppressing the truth. The land to an extent of 3 acres in Sy.No.190 of Jogannanakere Village of Mudigere Taluk i.e., written statement schedule property, was granted to one Yenkaiah S/o Motaiah vide Saguvali Chit No.329/1979-80 and the khahta of said property is mutated to his name. After durasth, the said land is re-numbered as Sy.No.521. After the death of said Yenkaiah, the khahta of said land is mutated to the name of his wife Smt.Sannamma. In a partition under the registered partition deed dated 08.06.2017, the said property i.e., the written statement schedule property is fallen to the share of defendant No.2 and consequently, she got his name mutated in the khatha of said property vide MR.No.H49/2016-17. Since then, the defendant No.2 being the absolute and exclusive owner of the said property, is in possession, occupation, cultivation and enjoyment of the said property. The plaintiff who had an wicked eye on the said land was waiting for an opportunity to grab the land and thereafter filed the present suit on a false, fictitious and speculative grounds. Having obtained the ex-parte temporary injunction and on 18.02.2019, the plaintiff with the help of his supporters, tried to commit trespass into



the written statement schedule property from its northern side and in fact he has removed the fence and tried to enclose the property of defendants with his land. The said act was resisted due to the timely intervention and loud protest. The plaintiff who was unsuccessful in his venture, has posted life threat to the defendant No.2. Therefore, finding no alternative, she has approached the Court with counter claim and the present application. On these averments, the defendant No.2 is seeking for allowing the IA.No.8.

6. The defendants have filed a memo submitting that they are adopting the written statement as objections to IA.No.2. In the written statement, the defendants having denied the plaint averments and have taken up similar contention as that contended by the defendant No.2 in support of IA.No.8.

7. The plaintiff has filed the statement of objections to the IA.No.8 wherein contended that the application in IA.No.8 is filed to drag the proceedings and on the false contentions. The defendant No.2 has filed the application to cause wrongful loss to the plaintiff and to have wrongful gain. The said application is highly belated. Accordingly, the plaintiff has sought for rejection of IA.No.8.

8. Heard the arguments addressed by both side, perused the written arguments of defendants and also the entire materials on record. Now, the following points do arise for consideration of the above applications:

1. Who among the plaintiff and defendant No.2, has made out prima-facie case in



their favour to grant temporary injunction as sought for in the respective applications?

2. In whose favour the balance of convenience lies?

3. Who among the plaintiff and defendant No.2, will be put to irreparable injury if temporary injunction is not granted in their favour as sought for in the respective applications?

4. What order?

9. The learned counsel for the defendants has relied upon the following decisions;

- (1) AIR 1983, SC 1272, between Cotton Corporation of India Limited V/s united Industrial Bank Limited & Ors.
- (2) 1989(2), between Gowrishankara Swamigalu V/s Siddhaganga Mutt & Ors., decided on 31.03.1989, by the Hon'ble High Court of Karantaka.
- (3) AIR 1972, Delhi 84, between Shashi Kapoor V/s Subhash Kapoor & Ors.
- (4) AIR 1972, Orissa 12, between Upendra Das & Anr. V/s Krushna Sahu & Ors.
- (5) ILR 2004 KAR 4076, between Fakirasab V/s Syedusab & Ors.
- (6) ILR 2004 KAR 4086, between K.P.Nataraj & Anr. V/s the Commissioner & Director of Foor & Civil Supplies, Bangalore & Ors.



10. This Court has carefully perused the decisions referred supra. The ratio laid-down in the said decision is kept in mind and will be applied while recording the reasons.

11. The answers of this Court on the above points are as under:

Point No.1 : **The defendant No.2**

Point No.2 : **The defendant No.2**

Point No.3 : **The defendant No.2**

Point No.4 : **As per final order**

for the following:

REASONS

12. POINTS No.1 TO 3: Since these points require common consideration of facts and materials, they are taken for common discussion so as to avoid repetitions.

The plaintiff has contended that he is in possession of the plaint schedule properties, but the defendants are trying to trespass, encroach upon the same and obstructing his possession over the said properties. The plaintiff has specifically contended that the plaint 'A' schedule property is fallen to his share under the registered partition deed dated 23.07.2009 and the khatha of the said property is also in his name. Plaintiff has further put-forth that his father was in possession of the plaint 'B' schedule property from past 70 years and after his father, the plaintiff is in possession of the said property.



Before advertng to the other aspects, it is necessary here to extract the description of the plaint schedule properties which are as under:

PLAINT 'A' SCHEDULE PROPERTY

Plantation/coffee land to an extent of 2-00 acres in Sy.No.50/3 of Jogannanakere village, Kasaba Hobli, Mudigere Taluk, having the following boundaries:-

East : Land of Jagamohan
West : Land of Kalegowda
North : 'B' schedule property
South : Land of Jagamohan

PLAINT 'B' SCHEDULE PROPERTY

Plantation/coffee land to an extent of 3-00 acres in Sy.No.521 (old Sy.No.190) of Jogannanakere village, Kasaba Hobli, Mudigere Taluk, having the following boundaries:-

East : Land of Subramanya
West : Land of Kalegowda
North : Land of Sumithramma
South : 'A' schedule property

13. To show his possession over the plaint schedule properties, the plaintiff has produced the copy of registereed partition deed dated 23.07.2008 and the revenue documents. From perusal of the



registered partition deed, it could be seen that the plaintiff, his father and the brother and sisters of the plaintiff have entered into partition and as per the schedule 'C' to the said partition deed, among other properties, the land to an extent of 2 acre in Sy.No.50 of Jogannanakere Village is fallen to the share of plaintiff. The boundary to the said property as mentioned in the said partition deed is worth extracting and the same reads as under:

East : Land of H.T. Subramanya
West : Government land
North : Land in hissa No.4
South : Land of B.K.Jagamohan

The RTCs produced by the plaintiff with respect to the land in Sy.No.50 of Jogannanakere Village, goes to show that the said land was to the total extent of 4.25 acres and the land to an extent of 2 acres which is in the name of plaintiff, entered as per the partition deed, is numbered as Sy.No.50/3. Plaintiff has also produced IL & RR of the land in Sy.No.50. In the receipt patta, the land to an extent of 2 acres in the name of plaintiff is shown as Sy.No.50/2. Plaintiff has also produced CRC which disclose that the plaintiff is cultivating the land to an extent of 2 acres in Sy.No.50 of Jogannanakere village, with coffee. Though the plaintiff has contended that he is in possession of the plaint 'B' schedule property and the same is situated towards northern side of the plaint 'A' schedule property, but the northern boundary to the land in Sy.No.50 fallen to the share of plaintiff, as per the partition deed, is shown as the land in hissa No.4



i.e., the land to an extent of 1 acre in Sy.No.50 fallen to the share of A.R.Jayaramgowda under the schedule 'D' to the partition deed dated 23.07.2008. Further, the plaintiff has produced no document evidencing his possession over the plaint 'B' schedule property.

14. The defendants among whom the defendant No.2 has maintained a counter claim against the plaintiff, have contended that the plaintiff in order to engulf on the property belonging to the defendant No.2 in Sy.No.521 of Jogannanakere Village, has not only tried to trespass and encroach upon the same, but also filed the present suit, obtained the exparte temporary injunction and then tried to commit trespass to the said property towards northern side. The defendants have specifically contended that the land to an extent of 3 acres in Sy.No.190 of Jogannanakere Village i.e., the written statement/counter claim schedule property was then granted to one Yenkaiah. The said land came to be re-numbered as Sy.No.251 after durasth. After the death of Yenkaiah, the khatha of said land came to name of his wife Smt.Sannamma, and later under the registered partition dated 08.06.2017, the defendant No.2 has acquired the said property to her share and since then she is in possession, occupation and cultivation of the said property. The registered partition deed dated 08.06.2017 produced by the defendants read along side the revenue documents in connection to the written statement/counter claim schedule property, supports the contention of defendants with respect to the possession of defendant No.2 over the said property of which the description is as under:

**WRITTEN STATEMENT/COUNTER CLAIM SCHEDULE PROPERTY**

Plantation land (cultivated with coffee) to an extent of 3-00 acres in Sy.No.521 (old Sy.No.190) of Jogannanakere village, Kasaba Hobli, Mudigere Taluk, having the following boundaries:-

East : Land of Subramanya
West : Land of Krishnegowda
North : Land of Ramegowda
South : Land of Sundresh

15. If the description of plaint 'B' schedule property and the written statement/counter claim schedule property, is read together, it could be clearly seen that both the lands are of same survey number and with the same extent, however except the boundary towards eastern side, the boundary towards other directions are different. In this background, if the phodi sketch produced by the defendants is carefully perused, it could be clearly seen that it is the land in Sy.No.190 which is re-numbered as Sy.No.521. Towards the northern side of said land, there is a land in Sy.No.190, towards southern side, there is a land in Sy.No.49 and next to the same there is a land in Sy.No.50. Towards eastern and western side of the land in Sy.No.521, there is again the land in Sy.No.190. This makes it clear that the land in Sy.No.521 is not totally adjacent to the land in Sy.No.50, but the same is next to the south-western corner of the land in Sy.No.521. From these aspects, it could at this stage be considered that the plaintiff is claiming to be in possession of the



written statement/counter claim schedule property which is in the name of defendant No.2.

16. As noted earlier, towards southern side of the land in Sy.No.50 fallen to the share of plaintiff as per the partition deed, there is a land of one B.K.Jagamohan and towards northern side, there is a land in hissa No.4 which is fallen to the share of plaintiff's brother by name A.R.Jayamegowda. If at all, the plaintiff's father was in possession of the plaint 'B' schedule property i.e., the land to an extent of 3 acres in Sy.No.190 which is later re-numbered as Sy.No.521, then the partition deed should have got the recital in that regard. Nowhere in the partition deed dated 23.07.2008 there is a mention about the plaint 'B' schedule property. As could be seen from the revenue documents produced by the defendants, the name of defendant No.2 is mutated with respect to the written statement/counter claim schedule property, as per the registered partition deed. It is not the case of plaintiff that the defendants have got the revenue records in connection to the property belonging to him. Further, the receipt patta produced by the defendants in connection to the counter claim schedule property is in the name of defendant No.2 and the RTC goes to show that the said land is cultivated with coffee. These aspects at this juncture shows the possession of defendant No.2 over the counter claim schedule property and not of the plaintiff over the plaint 'B' schedule property.

17. The plaintiff having contend that the plaint 'B' schedule property is towards northern side of plaint 'A' schedule property, has alleged interference and obstruction by the defendants. It could be



seen in the phodi sketch produced by the defendants, that the land in Sy.No.521 which is towards northern direction of the land in Sy.No.50 is in the name of defendant No.2. Further, the boundaries mentioned to the 'A' schedule property is not tallying with the one mentioned in the partition deed relied upon by the very plaintiff. On the other hand, the possession of defendant No.2 over the counter claim schedule property which has got the same extent and survey number as that of plaint 'B' schedule property, is apparent at this stage. Under the circumstances, the ratio laid-down in the decisions referred by the defendants regarding establishment of prima-facie case, probability of success in the suit, prima-facie possession, is in support of the defendants. The above being the case, the obstruction as alleged by the plaintiff is not descernable and if the temporary injunction is granted in favour of the plaintiff and refused in favour of defendant No.2, then there will be a threat/obstruction to the possession of defendant No.2 over the counter claim schedule property. In such case, it is the defendant No.2 who will be put to irreparable injury. Hence, **point No.1 to 3** are answered in favour of **defendant No.2**.

18. POINT No.4: In view of the above findings recorded on points No.1 to 3, this Court is of view to reject the IA.No.2 and to allow the IA.No.8. Hence, the following;

ORDER

I.A. No.II filed by the plaintiff under Order XXXIX Rules 1 & 2 of Code of Civil Procedure, is hereby rejected.



I.A. No.VIII filed by the defendant No.2 under section 94(C) & Order XXXIX Rules 1 & 2 of Code of Civil Procedure, is hereby allowed.

The plaintiff, his men, servants or any other persons claiming right through him are by way of temporary injunction, restrained from committing trespass to the written statement/counter claim schedule property or from encroaching upon the same, till disposal of this suit.

For Issues by:04.06.2025.

(Dictated to the Stenographer, typed by him on computer, corrected and then pronounced by me in the open court on this the **11th day of APRIL, 2025**).

(Vishwanath A.)
Prl. Civil Judge & JMFC.,
Mudigere.

VP

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