



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

DATED: THIS THE 20th DAY OF SEPTEMBER 2023

Present: Sri. Sachin.D, B.A., L.L.B.
Prl. Civil Judge & JMFC.,
Mudigere.

ORIGINAL SUIT No: 29/2023

BETWEEN :

1. Sri.S.M.Srinath,
S/o S.D.Manjunatha Gowda,
Aged about 42 years,
Agriculture & Business,
R/o Kelahandi, Handi Post-577 111,
Aldur Hobli, Chikkamagaluru Taluk,
Chikkamagaluru District.

2. Sri.M.P.Sandesh S/o Puttegowda,
Aged about 37 years,
Buiness,
R/o Sushanth Nagar,
Mudigere Town & Post-577 132,
Mudigere Taluk,
Chikkamagaluru District.

... Plaintiffs

(By Sri.N.S.Jayaram, Adv.)

AND :

1. Mr.A.C.Yakub,
S/o late Haji Abdul Rehman,



Aged about 55 years,
Agriculture.

- 2.** Mrs.Kurshid Yakub W/o A.C.Yakub,
Aged about 42 years,
Housewife.

Both are R/o No.34,
Bearyes Valencia,
Seninary Road, Saint Jerosa,
Mangalore-575 002,
Dakshina Kannada District.

...Defendants

(By Sri.K.S.Adithya, Adv.,)

PARTIES ON I.A.NO.1

BETWEEN :

S.N.Srinath & Anr.

... Applicants

AND :

Mr.A.C.Yakub & Anr.

...Opponents

1	Provisions under which the application is filed	Under Order 39 Rule 1 and 2 of CPC
2	Relief sought for	Temporary Injunction
3	The date on which the application is filed	20.02.2023
4	Number of the application	1
5	The date on which the objection filed by opponents	28.02.2023



6	The date on which the order was passed on the said application	20.09.2023
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(Sri. Sachin. D)
Prl. Civil Judge & JMFC.,
Mudigere.

ORDER ON I.A.NO.I

The present application is filed by the plaintiffs under Order 39 Rule 1 and 2 of CPC, seeking an order of this court to restrain the defendants and their agents or anybody claiming on their behalf from trespassing into the suit schedule property and causing acts of waste, taking forceful possession and dispossessing them from the same and also disturbing their peaceful possession and enjoyment of the suit schedule property pending disposal of the suit by way of temporary injunction.

2. In the affidavit accompanied to the application, the plaintiff No.1 has deposed that the suit schedule property originally belongs to one Keshavegowda.K.K and he had acquired the same under the partition deed dated 05.06.1981. Thereafter, K.K.Keshavegowda, his wife and children have effected partition in respect of joint family properties through a registered partition deed dated



04.05.2000. Where under the suit schedule property was allotted to K.K.Jagadish. It is further deposed that the plaintiffs and K.K.Jagadish have entered into a partnership agreement on 21.03.2008 to run home-stay for a period of 25 years commencing from 26.03.2008. Accordingly, they registered name in the Karnataka Tourism Department for running the home-stay. Later, they obtained the license from the local grama panchayath for construction of cottage and also constructed cottages and building in the suit schedule property. Further, on 23.01.2009, plaintiffs, K.K.Keshavegowd and K.K.Jagadish again entered into a partnership agreement for running Naduvinamadkal Cottages Home-Stay business for a period of 30 years commencing from 23.01.2009. Thereafter, the plaintiffs got the license from Hesgal grama panchayath for running the home-stay in the name and style of “Naduvinamadkal Cottages” and invested more than Rs.70,00,000/- for the said business.

3. The partnership agreement was unregistered one and subsequently, in 2012, plaintiffs, K.K.Jagadish and K.K.Keshavegowda have come out of the partnership firm and decided to run Naduvinamadkal Cottages Home-Stay on proprietary basis. For that, Sri.K.K.Jagadish has leased the suit schedule property for the period of 5 years from



06.07.2012 on monthly rental basis. Plaintiffs are paying monthly rent of Rs.12,500/- since then. It is further deposed that the plaintiffs are paying monthly rent and they are up to date in paying the rent. After, 06.07.2017, the plaintiffs are continuing their business on oral rent agreement between them and Sri.K.K.Jagadish due to the Corona Pandemic. Therefore, even now, they are running the Naduvinamadkal Cottages Home-Stay business in the suit schedule property being in possession and occupation of the same.

4. Such being the case, Sri.K.K.Jagadish and his mother started to disturbing the plaintiffs peaceful possession and Sri.K.K.Jagadish had gifted the suit schedule property in favour of his mother Smt.Savithramma under a registered gift deed dated 14.09.2012 behind the back of the plaintiffs. The said Savithramma in collusion with the Sri.K.K.Jagadish instituted the suit against the plaintiffs for the relief of permanent injunction in OS.No.68/2021 and same is pending before the learned Addl. Civil Judge & JMFC, Mudigere. In the said suit, the plaintiffs have claimed the counter claim against Smt.Savithramma and K.K.Jagadish to restrain them from dispossessing the plaintiffs' from the suit schedule property without due process of law. But the said Savithramma in



order to defeat the justice to the plaintiffs had filed memo to withdraw the suit.

5. It is further deposed that Smt.Savithramma, K.K.Jagadish and K.K.Dileep have conveyed the schedule property to the defendants behind the back of the plaintiffs without showing the existence of building therein and to avoid the payment of stamp duty under a registered sale deed dated 24.11.2022. As soon as, came to the knowledge of the said fact, plaintiffs moved objection before the Tahsildar, Mudigere, for sanction of the mutation in favour of the defendants and same is pending. Now, the defendants are trying to dispossess the plaintiffs' forcefully without due process of law and on 10.02.2023, defendants along with their henchmen, tried to trespass into the suit schedule property and to take possession forcefully by dispossessing them. Further, with great difficulty, the plaintiffs have resist the illegal acts of the defendants. But their illegal acts can't be resisted without the assistance of this court. Therefore, filed the suit for the relief of permanent injunction. It is further deposed that the plaintiffs have made out prima-facie case, balance of convenience in their favour. The irreparable injury will be caused to the plaintiffs, if the application is rejected and hence, prayed for allow the



application and grant temporary injunction as prayed in the application.

6. In response to the suit summons, the defendants appeared through their counsel and filed their written statement on 28.02.2022. Thereafter, they adopted the said written statement as objection to IA.No.1 by filing adoption memo dated 28.02.2023.

7. In the written statement, the defendants have contended that the plaintiffs might have been entered into partnership and lease agreement with K.K.Jagadish. But they could not run the home-stay due to non-completion of the cottages and building within a prescribed period. Further, during COVID-19 pandemic lock-down for about 8 months, it was impossible to run the home-stay. Therefore, the plaintiffs could not run the home-stay and they have suffered loss. Hence, they neither renewed the tenancy nor license for running home-stay and abruptly left the Naduvinamadkal village about 7 years back. Thereafter, they started pressuring K.K.Jagadish to return the rental advance and to reimburse their loss. In that regard, they have filed many cheque bounce cases against K.K.Jagadish and his relatives to recover loss suffered in home-stay business. It is further contended that the defendants are



also having some other properties near by the suit schedule property and Savithramma had offered to sell the suit schedule property with an intention to repay the loan due in the Bank of Baroda. The defendants have fully knowledge about the plaint schedule property that it is in actual possession of Savithramma since many years and no home-stay business therein. Therefore, purchased the suit schedule property for valid consideration. There is no landlord and tenancy relationship between the plaintiffs and defendants and no tenancy is attained by the vendor of the defendants.

8. It is further contended that even otherwise, no subsisting tenancy either between the plaintiffs and K.K.Jagadish or his mother Smt.Savithramma after 06.07.2017. Therefore, the plaintiffs can't claim any right over the suit schedule property by the unregistered lease agreement. There is no oral rent agreement as alleged and the plaintiffs are not carrying any home-stay business. If at all, the plaintiffs are carrying business, they would produce the license for the subsequent period from 06.07.2017 as the license for home-stay business has to be renewed each year. Therefore, they can't run the business without license. As such, the plaintiffs are not running the home-stay business after the lapse of lease period. Further, it is



contended that after the COVID-19 pandemic, the licensed home-stay were closed by the government and when such being the case, the running of home-stay without license is nothing, but a false. It is further contended that the plaintiffs have not produced any document to show that they are running the home-stay and existence of the building in the suit schedule property. Hence, said aspect clearly goes to show that the falsity of the claim of the possession of the plaintiffs. Therefore, the documents produced by the plaintiffs are concocted. As such, the plaintiffs are not entitled for any relief as sought in the application. Hence, prayed for reject the same.

9. In view of the above contentions of the both parties, the following points arise for consideration.

- 1. Whether the plaintiffs have made out prima-facie case in their favour to grant temporary injunction as prayed for?***
- 2. Whether the balance of convenience lies in favour of the plaintiffs?***
- 3. Whether the plaintiffs will be put to irreparable hardship, if temporary injunction is not granted in their favour?***



4. What order?

10. Having heard both side, the court perused the application, affidavit, written statement and documents supplied by the both parties. Now, the findings of the court to the above points are as follows;

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:

REASONS

11. Point No.1 to 3:-As these three points are inter-connected each other and requires common discussion, they have taken together for consideration.

The plaintiffs have filed the present suit for the relief of permanent prohibitory injunction as against the defendants. It is their contention that K.K.Jagadish and K.K.Keshavegowda entered into a partnership agreement to run the Naduvinamadkal Home-stay business for a period of 30 years from 23.01.2009, but they could not able to complete the building construction within 26.03.2008. Thereafter, though they got license from Hesgal grama panchayath and invested more than Rs.70,00,000/- to run



the home-stay business, Then, they come out from the partnership firm and decided to run Naduvinamadkal Cottages Home-Stay on proprietary basis. Accordingly, on 06.07.2022, entered into a lease agreement with K.K.Jagadish for a period of 5 years and run the business on monthly rental basis. Even after lapse of lease period, on oral rent agreement between them and Sri.K.K.Jagadish, they are running the home-stay business in the suit schedule property having possession and occupation of the property. The first and foremost condition precedent to grant temporary injunction is that plaintiffs have make out the prima-facie case in their favour. The plaintiffs in order to made out prima-facie case, produced the documents such as xerox copy of the GPA dated 17.06.2021, xerox copy of the un-registered partnership deed dated 31.03.2008 and 21.03.2009, xerox copy of the un-registered lease deed dated 06.07.2012, letter dated 04.05.2010, xerox copy of the permission, tax paid receipt and license, xerox copy of the order sheet, plaint, counter claim, objection to counter claim, written statement, IA.No.1, memo in OS.No.68/2021, xerox copy of the sale deed dated 24.11.2022, RTC extract of the suit schedule property, xerox copy of the representation dated 05.12.2022 given by the plaintiffs in favour of the Tahsildar, Mudigere, xerox



copy of the license and NOC obtained from Hesgal grama panchayath.

12. On the contrary, it is the contention of the defendants that the plaintiffs are not running any home-stay business in the suit schedule property as they pleaded and contended that they have left the premises soon after the completion of lease period. After the lapse of lease period, they neither renewed the same nor running the home-stay business in the suit premises. But they demanded to K.K.Jagadish to return the rental advance and reimburse their loss and regarding that several cheque bounces cases are pending between plaintiffs, K.K.Jagadish and his relatives. It is further contended that the suit schedule property has been purchased by the defendants for valid consideration by having fully aware that the suit schedule property was in possession of Smt.Savithramma and no home-stay business was running in the same. It is further contended that there is no landlord and tenancy relationship between plaintiffs and defendants and no tenancy attorned by the vendor of the defendants. Therefore, the plaintiffs are not entitled for any reliefs as sought in the application.



13. Herein this case, it is admitted fact that the suit schedule property is originally belongs to one K.K.Jagadish and his family. Further, it is also admitted fact that the defendants have purchased the suit schedule property through a registered sale deed dated 24.11.2022 from K.K.Jagadish, Smt.Savithramma and Dileep.K.K. The RTC extract of the suit schedule property, which produced by the plaintiffs shows that the property bearing Sy.No.71 of Naduvinamadkal village, 2 acres 6 guntas is standing in the name of Smt.H.M.Savithramma W/o K.K.Keshavegowda. Both column No.9 and 12 are depict that H.M.Savithramma is the owner as well as cultivator of that land. It is the specific contention of the plaintiffs that they initially entered into partnership agreement with K.K.Jagadish on 31.03.2008 to rung the home-stay business in the name and styled as Naduvinamadkal Cottages Home-Stay in the suit schedule property. The xerox copy of the partnership deed dated 31.03.2008 goes to show that the plaintiffs and one K.K.Jagadish have entered into partnership agreement in respect of the suit schedule property to run the Naduvinamadkal Cottages Home-Stay business. Further, partnership deed dated 23.01.2009 also goes to show that again K.K.Keshavegowda, K.K.Jagadish and the plaintiffs have entered into a another partnership deed to run the



home-stay business for a period of 30 years. As admitted by the plaintiffs themselves, they, K.K.Jagadish and K.K.Keshavegowda have come out from the said partnership agreement. Thus, there is no partnership firm or deed is existed between the plaintiffs and K.K.Jagadish and K.K.Keshavegowda. Therefore, the partnership deed dated 31.03.2008 and as well as 23.11.2009 are not helps to the plaintiffs to show the possession and occupation of the suit schedule property as they pleaded.

14. It is the specific contention of the plaintiffs that they entered into lease agreement with K.K.Jagadish and K.K.Keshavegowda on 06.07.2012 to run the home-stay business in the suit schedule property. The xerox copy of the lease agreement dated 06.07.2012, goes to show that the lease agreement was executed between K.K.Keshavegowda, K.K.Jagadish and the plaintiffs with respect to suit schedule property to run home-stay business and it was commenced from 06.07.2012 for a period of 5 years. Admittedly, the said lease period was already lapsed. The plaintiffs have contended that even after expiry of the lease period, they are continuing their business on oral agreement. Further, they contended that they are paying rent up to date and they are in occupation



and enjoyment of the suit schedule property. Thus, it is clear to the court that the said oral rent agreement between K.K.Jagadish and plaintiffs has to be ascertained in the full fledged trial only. But the documents which placed by the plaintiffs are clearly established that the lease agreement dated 06.07.2012 was expired on 06.07.2017 and the condition No.'G' of the lease agreement clearly goes to show that after the expiry of the lease agreement, the plaintiffs should have been approach the lessor i.e., K.K.Jagadish and K.K.Keshavegowda and upon request of the plaintiffs, the lessor of the agreement should have been delivered new lease agreement in respect of the suit schedule property. But, herein this case, the plaintiffs themselves contended that on oral rental agreement, they are continuing their possession in the suit schedule property and running the business. In terms of the lease agreement dated 06.07.2012, there should have been another lease agreement for a new period. It is settled law that as per section 17(1)(d) of Registration Act, 1908, lease of immovable property from year to year or from any term exceeding one year or reserving a yearly rent, should be compulsorily registrable document. But, herein this case, least agreement dated 06.07.2012 is executed for 5 years. Therefore, it is exceeding one year. Thus, the said document



should have been registered before the Sub-Registration Office to meet the condition of the section 17(1)(d) of the Registration Act. But, the same is not registered one. Therefore, the said document can't be looked into for any purpose at this stage.

15. The plaintiffs have also produced the order sheet, plaint, written statement, counter claim, IA and memo in OS.No.68/2021. Wherein, one Savithramma had filed the suit against the defendants and K.K.Jagadish for the relief of permanent injunction in respect of the suit schedule property. She has claimed that by virtue of the gift deed dated 31.07.2012, she became the owner and she has been put into the suit schedule property. But, the present plaintiffs herein and K.K.Jagadish are trying to interfere with her peaceful possession and they are trying to got execute the lease in favour of the suit schedule property. In the said suit also, the present defendants have filed counter claim and wherein contended that they are in occupation and enjoyment of the suit schedule property and running the Naduvinamadkal Cottages. Upon considering the those documents, at this stage, it can't be say that the plaintiffs are in possession even after expiry of the lease agreement dated 06.07.2012.



16. Moreover, in the sale deed dated 24.11.2022, which executed by K.K.Jagadish, Savithramma and Sri.Dileep.K.K, nothing whispered about the attornment of tenancy and also existence of Naduvinamadkal Cottages, which is running by the present plaintiffs. Therefore, whether the plaintiffs are in possession and enjoyment of the suit schedule property even after expiry of the lease agreement has to be ascertained after holding the full fledged trial. Though the plaintiffs have produced the NOC issued by the Hesgal grama panchayath to run Naduvinamadkal Cottages Home-Stay and also license dated 30.01.2023, it is clear to the court that in the said license, the number of the suit schedule property is not mentioned. Thus, at prima-facie it is not probable to say that the plaintiffs are running the home-stay business as they contended. Hence, they have not made out any prima-facie case in their favour.

17. The existence of prima-facie is condition precedent to grant temporary injunction. As already observed above, the plaintiffs are not made out prima-facie case in their favour. When such being the case, the question of considering the balance of convenience and irreparable loss



doesn't arise. Accordingly, this court answer point No.1 to 3 **in the Negative.**

18. Point No.4:-In view of the above findings on point No.1 to 3, this court proceed to pass the following.

ORDER

The IA.No.1 filed by the plaintiffs under Order 39 Rule 1 and 2 of CPC is hereby rejected.

No order as to costs.

(Dictated to the stenographer, typed by him on computer, corrected and then pronounced by me in the open court on this the 20th day of SEPTEMBER, 2023)

(Sachin. D)
Prl. Civil Judge & JMFC,
Mudigere.

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