

KACM400005512021



**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.54/2021

DATED THIS THE 23rd DAY OF DECEMBER 2021

**PLAINTIFF
APPLICANT:**

Smt. Jayalaxmi,
W/o Rudresh,
Aged about 28 years,
R/o. Muttigepura village,
Halemudigere post,
Mudigere Taluk,

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

V/s.

**DEFENDANTS
OPPONENTS:**

Annappa,
S/o Siddaiah,
Aged about 40 years,
R/o. Muttigepura village,

Halemudigere post,
Mudigere Taluk,

[By Sri. S.D., Advocate]

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 defendant, his agents, servants or anybody acting on his behalf from trespassing into the suit schedule property, removing fence or encroaching upon suit schedule property or dispossessing the plaintiff from the suit schedule property or in any way causing disturbance to the plaintiff's peaceful possession and enjoyment of suit schedule property 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 property bearing No.150900402 600920023, measuring 40 x 55 feet totally measuring 204.39 sq. meters including the building measuring 37.60 sq. meters situated in Muttigepura

village, Kasaba Hobli, Mudigere Taluk more fully described in the schedule of the plaint, hereafter, referred to as suit schedule property, is granted to plaintiff by the Government under Hakku Pathra bearing No.15/2019-20 dated 30.08.2019. She has constructed a house in suit schedule property and paying tax to the Village Panchayath, Halemudigere. She has obtained Form No.9 and 11(a) from the panchayath. Accordingly, she is in possession and enjoyment of suit schedule property. The defendant is brother of husband of plaintiff, the defendant and his mother are residing in a separate house situated far away from suit schedule property. The defendant has no right, interest over the suit schedule property. The husband of plaintiff has an auto rickshaw and constructed a shed adjacent to the house located in the suit schedule property to park the auto rickshaw. The defendant is having tiller, he is claiming space in the shed constructed to park auto rickshaw by the plaintiff, to park his tiller. When plaintiff and her husband refused the claim of defendant, he attempted to trespass into the suit schedule property on 03.03.2021 along with his men by removing the fence claiming he has right over suit schedule

property. Hence, the suit and application. Further, it is pleaded the plaintiff is having prima facie case, balance of convenience lies in her favour. If the application is rejected, she will be put to more hardship and injury than defendants. Accordingly, prays to allow the application.

4. The defendant has appeared, filed detailed written statement and filed a memo to treat written statement as objection to I.A.No.I. In the written statement he denied all the averments of plaint as false. It is submitted during the life time of Siddaiah, who is the father of defendant and father in law of plaintiff, constructed sheet roofed house in suit schedule property and it was used to stock agricultural products. Since, the house is at Government land no khata was recorded in the name of Siddaiah. After the death of Siddaiah, his legal heirs are using the said house. In the year 2008 beside the suit schedule property a shed is constructed and a grocery shop has been running by the defendant in the shed. Siddaiah died leaving behind Rudresh husband of plaintiff, Annappa, defendant herein, Duggaiah, Mamatha and wife Subbamma as his legal heirs. All are having right

over the suit schedule property and it is a joint family property. Since khata has not been entered, no partition is effected and it is agreed among them to get partition after getting the khata. The plaintiff and her husband to grab the suit schedule property created false documents and attempted to dispossess the defendant and other legal heirs of Siddaiah. Hence, prays to reject the application.

5. Heard Sri. K.S.A, Advocate for plaintiff. Sri. S.D, Advocate for defendant, 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 her favour?
3. Whether the plaintiff establishes that if temporary injunction is not granted, she 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 negative;
Point No.2:	In the negative;
Point No.3:	In the negative;
Point No.4:	As per final order for the following:

REASONS

POINTS No.1 TO 3 :

7. It is the case of the plaintiff that suit schedule property is granted to her under Hakku Pathra bearing No.015/2019-20 dated 30.08.2019. To evidence the same, plaintiff has produced Hakku Pathra and sketch prepared before Hakku Pathra. The Hakku Pathra discloses suit schedule property is granted to plaintiff, It is the case of the plaintiff on the basis of Hakku Pathra, she got mutated the khata and constructed a house. To evidence, plaintiff has produced Form No.9 and 11(a) disclose khata of the suit schedule property standing in the name of plaintiff and it consist house measuring 37.63 sq. meters. It is relevant to note khata is recorded on the basis of Hakku Pathra. The above said documents clearly reveals that suit schedule property granted to

plaintiff and consist a house measuring 37.63 sq. meters and khata is in the name of plaintiff.

8. The defendant specifically contended the suit schedule property was a Government land, his father Siddaiah was in possession by constructing a sheet roofed house and it was used for stock the agricultural products. After his death, all his legal heirs including husband of plaintiff and defendant are in possession. The plaintiff and her husband have married in the year 2012. However, by creating false documents that plaintiff is in possession prior to 2011-12 got the Hakku Pathra and trying to dispossess the defendant. To prove these facts, the defendant produced marriage invitation card of plaintiff and her husband, discloses plaintiff married Rudresh on 30.05.2012 and she is the native of Boodanikki village, K.R. Pete, Chikkamagalur taluk with the help of marriage invitation. The defendant argued that while getting the Hakku Pathra plaintiff has given wrong information to the Government stating she is in possession of suit property prior to 1998-99. According to the marriage invitation card, she shifted to Mudigere in the year 2012 prior to that she was in her parental home at Chikkamagalur

Taluk. To establish she has given false information to the Government produced statement given by plaintiff before revenue officers discloses she has given the statement that she in possession of suit schedule property from 1998-99. It is relevant to note to the date of suit plaintiff is aged about 28 year. If so in the year 1998-99, she was aged about 6 to 8 years. That a 6 to 8 years child constructed a house and residing therein is not acceptable. Further, by that time she was at Chikkamagalur. The marriage invitation and statement given by the plaintiff before revenue officers discloses plaintiff has given wrong information to the revenue officers while getting Hakku Pathra.

9. To prove Siddaiah was in possession of suit schedule property, no documents is placed before the court. It the case of the defendant that he is running grocery shop beside the suit schedule property. To evidence the same, he has produced 2 trade license of the year 2008 and 2016 respectively. They are not helpful to the case of the defendant, because the defendant he is not running grocery shop in the suit schedule property.

10. As stated supra plaintiff got the suit schedule property and Hakku Pathra and khata record in her name and it consist a house. According to the defendant, plaintiff has given wrong information and obtained Hakku Pathra, the filing of wrong information is established stated supra. The defendant has not placed any records to evidence Siddaiah was in possession of suit property, thereafter defendant and husband of plaintiff and all the legal heirs are in possession. Till today defendant has not challenged the issuance of Hakku Pathra stating all the family members are in possession of suit schedule property and plaintiff obtained Hakku Pathra by wrongful means. However the plaintiff under the application claiming the relief of temporary injunction, which is equitable one. To get the equitable relief, party must approach the court with clean hands. As stated supra, plaintiff by suppressing the material facts obtained Hakku Pathra. Therefore, plaintiff is not entitle for any relief. Accordingly, I answer Point No.1 to 3 in the **'Negative'**.

POINT No.4 :

11. 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
rejected.

(Dictated to the Stenographer directly on computer, then corrected by me and then pronounced in the open court on this the **23rd day of December 2021**)

sd/-

(J.KRISHNA)

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

SAR