



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

**DATED: THIS THE 20<sup>th</sup> DAY OF DECEMBER 2023**

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

**ORIGINAL SUIT No: 40/2023**

**BETWEEN :**

Smt. M.V.Gowramma  
W/o Late Manjegowda,  
D/o Venkatappagowda,  
Aged about 87 years,  
R/o Baggasagodu Village,  
B.Hoshalli Post, Mudigere Taluk,  
Chikkamagaluru District.

*... Plaintiff*

***(By Sri. D.S.Sudhir, Adv.,)***

**AND :**

1. Mr. Kariyaiah  
S/o Manjaiah,  
Aged about 72 years,  
R/o Indiranagara,  
Banakal Post, Mudigere Taluk,  
Chikkamagaluru District.
2. Smt. Gopamma  
W/o Uddaiah,



D/o Kariyaiah,  
Aged about 45 years,  
R/o Bettadamane Village &  
Post, Gonibeedu Hobli, Mudigere  
Taluk, Chikkamagaluru District.

3. Smt. Geetha  
D/o Kariyaiah,  
Aged about 43 years,  
R/o Indiranagara,  
Banakal Post, Mudigere Taluk,  
Chikkamagaluru District.

4. Mr. Umesh  
S/o Uddaiah,  
Aged about 45 years,  
R/o Bettadamane Village & Post,  
Gonibeedu Hobli, Mudigere Taluk,  
Chikkamagaluru District.

*...Defendants*

**(By Sri.C.K.Jagadeesha, Adv.)**

**PARTIES ON I.A.NO.I**

**BETWEEN :**

Smt. M.V.Gowramma

*... Applicant*

**AND :**

Mr. Kariyaiah & Others

*...Opponents*

i	Provision under which the	Order XXXIX Rule 1 and 2
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	application is filed	of CPC
ii	Relief sought for	Temporary injunction
iii	The date on which the application is filed	21.03.2023
iv	Number of the application	I
v	The date on which the objections are filed by different opponents	20.07.2023
vi	The date on which the orders were passed on the said application	20.12.2023

### **ORDERS ON I.A.NO.I**

The Plaintiff has filed the present application under Order XXXIX rule 1 & 2 of Code of Civil Procedure, seeking an interim order of temporary injunction restraining the defendants, their men, servants, agents or anybody claiming through them from trespassing into, doing illegal acts in the suit schedule property or in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property till disposal of the present suit.

**2.** The Plaintiff has contended that, she is the absolute owner in possession of the suit schedule property which is the land in Sy.No.111 (Old No.40) measuring 0.19 guntas situated at Koodahalli Village, Banakal Hobli, Mudigere Taluk. Defendant No.2 and 3 are the daughters of defendant



No.1 and defendant No.4 is the son of defendant No.2 and grandson of defendant No.1. The plaintiff has purchased the suit property from the defendant No.1 and his mother by name Motamma, vide registered sale deed dtd: 24.05.1972 and she also got mutated the katha pertaining to suit property vide M.R.No.8/1972-73. Ever since the date of purchase, the plaintiff is in possession, occupation and cultivation of the suit schedule property.

**3.** The plaintiff has further contended that, the defendants having no right, title or interest over the suit property, they are interfering with the peaceful possession of the same on one or the other pretext in order to grab the suit property. During the year 2016-17, the defendant No.2 had filed PTCL case in PTCL No.17/2016-17 before the Assistant Commissioner, Chikkamagaluru and the said petition came to be dismissed vide order dtd: 21.09.2020. In spite of the same, the defendants are interfering with the peaceful possession of suit schedule property. In this regard the plaintiff and her son had lodged complaint with Banakal Police Station who have given an acknowledgment. Whereas the defendants further tried to trespass into the suit schedule property with the help of JCB on 28.02.2023.



Though the plaintiff had approached jurisdictional police, they have not helped the plaintiff rather gave an endorsement but the defendants are still continuing with their attempts. On these averments, the plaintiff has sought for interim order of temporary injunction till disposal of the suit.

**4.** The defendants have filed memo adopting written statement as objections to the present application. It is the defendant No.4 who has filed his written statement and the same is adopted by the other defendants. In the written statement, defendant No.4 has denied the plaint averments and contended that the suit property is totally measuring 24 guntas and the same is granted to the father of defendant No.1 vide grant certificates No.151/1958-59 dtd: 12.09.1959, No.169/1958-59 dtd: 16.07.1959. There is no provision to sell the said property under PTCL Act. Though, these facts are known to the plaintiff and her family members, they have fabricated the sale deed and obtained katha in her favour.

**5.** The defendants have further contended that the land in Sy.No.111 totally measures 0.24 guntas out of which



the present suit is filed with respect to 0.19 guntas. The plaintiff has not produced any survey sketch pertaining to the suit property. Ever since the land grant, the defendant No.1 to 4 are in possession and enjoyment of the land to an extent of 0.24 guntas by constructing house therein and also fenced the same. The plaintiff having misused the fact that the defendants had demolished their house in order to construct new one, she has lodged false complaint against the defendants. Suit property is far from the place where the plaintiff is residing and as such there is no chances of her being in possession of suit property. On these averments, the defendants have sought for rejection of present application.

**6.** Heard both side and perused the written arguments filed by the defendants and so also the entire materials available on record. In view of the above contentions, the following points arise for consideration:

- 1. Whether the plaintiff has made out prima-facie case in her favour to grant temporary injunction as prayed for?***
- 2. Whether the balance of convenience lies in favour of plaintiff?***



**3. Whether the Plaintiff will be put to irreparable injury if the injunction is not granted in her favour?**

**4. What order?**

7. Now, the findings of this Court on the above points are as follows:

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**

**8. POINT No.1:** It is the case of plaintiff that she is in possession, enjoyment and occupation of the suit schedule property having acquired the same through registered sale deed executed by the defendant No.1 and his mother, and the plaintiff has also got mutated revenue entries in her name. In order to show prima-facie case, the plaintiff has produced revenue documents pertaining to the suit property out of which the index of land and records of rights discloses that the land in Sy.No.40 measuring 24 guntas stood in the name of one Manjaiah. On perusal of the certified copy of sale deed



dtd: 24.05.1972, it could be seen that one Motamma W/o Manjaiah and the defendant No.1 has sold the land to an extent of 20 guntas inclusive of Mangalore tiled house to the plaintiff and towards the northern boundary of said property there is mention regarding property of Manjaiah.

9. The plaintiff has further produced certified copy of LR Tippan wherein it discloses that the land in Sy.No.40 is assign with new survey number as 111. Further, RTC pertaining to land in Sy.No.111 discloses that out of 24 guntas of land, 5 guntas of land is in the name of defendant No.1 and 19 guntas of land is in the name of plaintiff. Though, the defendants have contended that they are in possession of entire extent of 24 guntas of land in Sy. No.111, the sale deed and RTC produced by the plaintiff does speak against the defendants. Moreover, the defendants have not produced any iota of documents which shows otherwise of the plaintiff's assertion. On careful perusal of the revenue documents and so also certified copy of sale deed, it could at this stage be considered that the plaintiff has made out prima-facie case regarding her possession over the suit schedule property. Hence, point No.1 is answered in **Affirmative**.



**10. Point No.2 and 3:** Since these two points require common consideration of materials on record, they are taken for discussion together so as to avoid repetitions.

It is the further case of plaintiff that the defendants have got no right, title or interest over the suit property but the defendant No.2 had filed PTCL case against the plaintiff in order to grab the suit schedule property. The plaintiff has further contended that though the said PTCL case is dismissed, the defendants are trying to interfere with the plaintiff's peaceful possession and enjoyment of the suit property. In this regard, the plaintiff has produced order dtd: 21.09.2022 passed by the Asst. Commissioner, Chikkamagaluru Sub-Division in PTCL No17/2016-17 wherein it discloses that the defendant No.2 had filed the said petition against the plaintiff contending that the plaintiff has purchased the suit property vide registered sale deed in violation of PTCL Act. The said order further discloses that the petition filed by the defendant No.2 came to be dismissed on the ground of delay and laches.

**11.** On the other hand, the defendants have contended that ever since the land grant they are in possession of entire



extent of 24 guntas in Sy.No.111 of Koodahalli Village. Though the defendants have not produced any document in support of their claim, in the written arguments the defendants have argued that the suit property is not phoded and as such the entire extent of land is not changed. The defendants have further submitted that they do not know about the plaintiff and his son filing complaint with the Banakal Police. In the written arguments the defendants have further contended that the boundaries to the plaint schedule property are not mentioned properly and the plaintiff has suppressed the fact regarding existence of land belonged to defendant No.1 towards western side of suit property. On perusal of boundaries mentioned in sale deed dtd: 24.05.1975 and also in the plaint schedule, there is a mention about the property belonging to defendant No.1 towards western side of suit property.

**12.** Though the defendants have specifically contended that since the suit property is not phoded, the same cannot be identified and also that the plaintiff has not produced any sketch pertaining the suit property. The said contentions require consideration after the full-fledged trial so as to conclude whether the suit property can be identified or not.



This apart, there is nothing available on record in support of the defendants to depart from the conclusion recorded regarding prima-facie case in favour of plaintiff. At this juncture, having considered the police complaint and acknowledgment issued by the Banakal Police and so also the petition filed by the defendant No.2 seeking to nullify the sale transaction pertaining to suit property made in favour of plaintiff, this Court is of view that at this stage the balance convenience lies in favour of plaintiff and if the temporary injunction is not granted, the plaintiff will be put to irreparable injury. Hence Point No.2 and 3 are also answered in **Affirmative**.

**13. POINT No.4:** In view of the above findings recorded on point No.1 to 3, this Court is of view to allow the present application. Hence, the following.

**ORDER**

***I.A. No.I filed by the Plaintiff under Order XXXIX Rules 1 & 2 of Code of Civil Procedure, is hereby allowed.***

***Temporary injunction is granted in favour of plaintiff restraining the defendants, their men, servants, agents or anybody claiming***



***through them from trespassing into, doing illegal acts in the suit schedule property or in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property till disposal of the present suit.***

***For Issues by: 03.01.2024.***

*(Dictated to the stenographer, typed by her on computer, corrected and then pronounced by me in the open court on this the 20<sup>th</sup> day of December, 2023)*

Sd/-

**(Vishwanath.A)**

Addl. Civil Judge & JMFC,  
Mudigere.

**\*BSM**