



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

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

DATED: THIS THE 20th DAY OF DECEMBER 2024

ORIGINAL SUIT No: 90/2021

BETWEEN :

Sri. Santhoush M.S.,
Aged about 35 years,
S/o Subbe Gowda,
R/o Mekanagadde Village and Post,
Gonibeedu Hobli, Mudigere Taluk.

.... Plaintiff

(By Sri. Siddaiah D., Adv.,)

AND :

- 1.** The Range Forest Officer,
Mudigere Range,
Mudigere Taluk, Mudigere.
- 2.** The Assistant Conservator
of Forest Officer,
Mudigere Range,
Mudigere Taluk.
- 3.** The Deputy Conservator of Forest,
Chikamagalore District.
- 4.** The Government of Karnataka,
Rep: By its Chief Secretary,
Vidhana Soudha- Bengaluru-1.

.... Defendants

(By Sri. Assistant Government Pleader, Adv.,)



PARTIES ON I.A.NO.II

BETWEEN :

Santhoush

... Applicant

AND :

The Range Forest & Others

... Opponents

i	Provision under which the application is filed	Order XXXIX Rule 1 and 2 of CPC
ii	Relief sought for	Temporary injunction
iii	The date on which the application is filed	12.07.2021
iv	Number of the application	II
v	The date on which the objections are filed by different opponents	Objections not filed.
vi	The date on which the orders were passed on the said application	20.12.2024

(Vishwanath A.)

C/c Addl. Civil Judge & JMFC,
Mudigere.

ORDERS ON I.A.NO.II

This application is filed by the plaintiff seeking an interim order of temporary injunction in favour of plaintiff and against the defendants, their men, agents, servants or any other persons claiming through them from trespassing or from encroaching upon the suit schedule property by removing the fence or from dispossessing the plaintiff from the suit schedule property or from causing acts of waste and damage to the suit schedule property or



in any way interfering with the plaintiff's peaceful possession, occupation and enjoyment of the same pending disposal of the above suit.

2. The plaintiff has contended that he is in possession, occupation, cultivation and enjoyment of the suit schedule property wherein he has cultivated coffee, pepper, banana, silver and other shade bearing trees. He has also fenced the suit property all around. Suit schedule property is acquired by the plaintiff by way of land grant under Akrama-Sakrama Scheme. Vide order dated BAHU(G)674/1991-92 dated 22.06.2012, he has also been issued with grant certificate bearing No. 574/2012-13. This being the case, the defendants who have got no manner of right, title or interest in or over the suit schedule property, are trying to trespass and encroach upon the same on its southern side and also trying to dispossess the plaintiff therefrom. On 07.07.2021, the defendants have tried to obstruct the plaintiff from cultivating his land proclaiming that they will obtain permission from the government for removing fence and they will dispossess him from the suit property. On these averments, the plaintiff has sought for allowing the present application.

3. On the other hand, the defendants have not filed their statement of objections to the present application. However, the defendant No.1 has filed his written statement denying the plaintiff's averments and contended that the total extent of land in Sy. No. 50 of Hosakere Village is 122.29 acres out of which 28.36 acres is classified as Karab. In an affidavit filed before the Hon'ble Apex



Court in WP No. 202/1995, the land to an extent of 14.16 hector in Sy. No. 50 of Hosakere Village, is mentioned as deemed forest and since no final order is passed in the said writ petition, the said land shall have to be considered as deemed forest. The land claimed to be in possession of plaintiff is also the part of deemed forest. Without approval by the central government, the deemed forest area cannot be utilized for any other purpose. The plaintiff, in the month of October 2020, tried to cultivate the portion of deemed forest area. On information of same on 16.10.2020, the defendant No.1 along with its staff had visited the spot and on inspection, it was found that the plaintiff has cultivated the land to an extent of 3.20 acres in the deemed forest area.

4. The defendant No.1 has further contended that they have also lodged FIR against plaintiff in FOC No. 05/2020-21 and on 17.10.2020, the defendant No.1 had conducted spot mahazar thereby resisted the illegal act of plaintiff. If that was not done, the plaintiff would have encroached upon some more extent of deemed forest area. The plaintiff has not cultivated the land to an extent of 4 acres in Sy. No.50 since from 1991, rather he has encroached upon deemed forest area to an extent of 3.20 acres in the month of October 2020 and tried to cultivate the same. In order to escape from the said FOC case, the plaintiff has filed the false suit. The plaintiff has obtained grant certificate illegally on 22.06.2012 and no revenue entries were mutated to the name of plaintiff till 2020. The revenue department has not obtained opinion from the forest department while mutating the khatha and thus they reserve liberty to challenge the said mutation. Since the defendant No.1 has



removed the plaintiff's encroachment, he has filed the false suit to have unlawful gain.

5. Heard the arguments addressed on behalf of the plaintiff as well as defendants and also carefully perused 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 his favour to grant temporary injunction as sought for?**
- 2. Whether the balance of convenience lies in favour of the plaintiff**
- 3. Whether the plaintiff will be put to irreparable injury if temporary injunction is not granted in her favour?**
- 4. What order?**

6. The answers of this Court on the above points 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

7. 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.

In order to show the prima-facie case in respect to his possession over the suit property as well as the obstruction by the defendants, the plaintiff has produced the Saguvali Chit dated 23.06.2012 along with the resolution of land grant committee and order in BAHU(GO) 674/1991-92 wherein it discloses that the land to an extent of 4 acres in Sy.No.50 of Hosakere village is granted in favour of plaintiff. The plaintiff has also produced RTC, Mutation extract and the Tax paid receipt which would disclose that the revenue entries pertaining to the said 4 acres of land is mutated to the name of plaintiff. The very RTC would further disclose that the land in Sy.No.50 of Hosakere Village, totally measures 122.29 acres out of which 93.33 acres is classified as 'B' Karab. The receipt patta produce by the plaintiff would also disclose that the land to an extent of 4 acres in Sy.No.50 is cultivated with coffee.

8. The specific contention of the plaintiff is that he having acquired the suit schedule property by virtue of land grant, is in possession of the same and the defendants are causing obstruction to such possession. On the other hand, the specific contention of defendant No.1 is that the land to an extent of 35 acres in Sy.No.50 is a deemed forest and in this regard an affidavit is filed before the Hon'ble Apex Court in WP No.202/1995, however no final order is passed in the said case. On perusal of the copy of affidavit filed



before the Hon'ble Apex Court, it could be seen that the land to an extent of 14.16 hectare is shown as deemed forest. The defendant No.1 has further contended that the plaintiff has encroached 3.20 acres of land in the said deemed forest whereas the said encroachment is removed and the case is also registered against the plaintiff. The sketch produced by the defendant No.1 would disclose the boundary of the deemed forest out of which the encroached land to an extent of 3.20 guntas is also marked. It could also be seen that the defendant No.1 has registered FIR by drawing mahazar wherein it is stated that the plaintiff is resisted from encroaching the forest land.

9. Though the defendant No.1 has not produced anything to show that the land in Sy.No.50 of Hosakere Village is notified as forest land in accordance with Law, but there is an affidavit filed before the Hon'ble Apex Court, by the Additional Principal Chief Conservator of Forests submitting report of the counsel which has identified the forest land in the state among which 14.16 hectare in Sy.No.50 of Hosakere Village, Gonibeedu Hobli, is also reported as deemed forest. It is the case of plaintiff that the suit schedule property is granted to him by the committee for regularization of unauthorized occupation. The resolution of the said committee would disclose that the land to an extent of 4 acres is granted to the plaintiff as he is seen to be in unauthorized occupation of said land ever since 1984-85. As per the plaint as well as the affidavit annexed to the present application, the age of plaintiff is 35 as on 2021 and if this thing is considered, then it is no doubt that the plaintiff was not at all born during the year 1984-85. Further the



resolution of land grant committee does not disclose the signature of Secretary and one more member. As contended by the plaintiff, the land grant was made in the year 2012 but the revenue entries as per the said grant is seen to have been mutated in the year 2021.

10. This apart, it could be notice from the photographs produced by the plaintiff as well as the defendant No.1 that the coffee plants are being supported with a bamboo stick which makes it clear that the plantings are made recently. The plaintiff has further contended that he has fenced the suit property all around but no such fence could be seen in the photographs. Moreover, the plaintiff has not produced any document to support the boundaries mentioned in the plaint schedule. The circumstances being thus, this Court finds no prima-facie case in favour of plaintiff, at this juncture. When there is no prima-facie case, consideration of balance of convenience and irreparable injury does not call for. Thus for the foregoing, this Court answers the Points No.1 to 3 in '**Negative**'.

11. Point No.4: In view of the above findings recorded on points No.1 to 3, this Court is of view to reject the present application. 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.



**For cross examination of PW1 by:
15.01.2025.**

(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 DECEMBER, 2024**).

(Vishwanath A.)
C/c Addl. Civil Judge & JMFC.,
Mudigere.

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