

KACM400005182021



**IN THE COURT OF THE PRL. CIVIL JUDGE AND
J.M.F.C., AT MUDIGERE**

:PRESENT:

**SRI. J.KRISHNA, B.A. LL.B.,
PRL. CIVIL JUDGE & JMFC.,
MUDIGERE**

O.S.No.47/2021

DATED THIS THE 23rd DAY OF NOVEMBER 2021

PLAINTIFFS

APPLICANTS:

B.L. Puttaswamygowda
S/o. Late. Lakshmana Gowda,
Aged about 64 years,
R/o. Bakki village, Bettagere post,
Banakal Hobli, Mudigere Taluk,
Chikkamagalur district

[By Sri. B.T.N, Advocate]

V/s.

DEFENDANTS

OPPONENTS:

1. B.B. Ashok,
S/o. Late. Byregowda,
Aged about 58 years,
Agriculturist,

2. B.B. Surendra,
S/o. Late. Byregowda,
Aged about 56 years,
Agriculturist,

3. B.S. Indresh,
S/o. Late. B.M. Subbegowda,
Aged about 51 years,
Agriculturist,

4. B.M. Krishnegowda,
S/o. Late. Manjegowda,
Aged about 74 years,
Agriculturist,

Defendant No.1 to 4 are resident of
R/o. Bakki village, Bettager post,
Banakal Hobli, Mudigere Taluk,
Chikkamagalur district

[By Sri. S.B.A, 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 defendants, their men, agents, servants or anybody acting on their behalf from trespassing into the suit schedule property or cutting and removing the fence or causing damage to the suit schedule property or in any way interfering with plaintiff's peaceful

possession and enjoyment of suit schedule property till disposal of the 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 plaint and affidavit, the brief case of the plaintiff is as hereunder:

3. The plaintiff is the owner and in possession of property measuring 6 acres 23 guntas in Sy.No.40 of Bakki village, Banakal Hobli, Mudigere Taluk, more fully described in the schedule of the plaint, hereafter, referred to as suit schedule property. He has acquired the suit schedule property under unregistered partition deed dated 20.10.1993, got mutated into his name under M.R.No.27/1998-99. He has cultivated robusta coffee, pepper, arecanut and silver oak trees in suit schedule property. He has put fence around the suit schedule property with wooden poles and barbed wire. Accordingly, plaintiff is in possession and enjoyment. The defendant No.1 to 4 are closed relatives of plaintiff, the defendant No.1 and 2 are having land in the north of suit schedule property and defendant No.3 and 4 are having land in the south of suit schedule property.

Since they are not in good terms with plaintiff, on 03.04.2021 defendant No.1 and 2 in the northern side and defendant No.3 and 4 in the southern side of suit schedule property attempted to remove the fence and damage the suit schedule property. The plaintiff with great difficulty resisted the illegal acts of defendants. The defendants have threatened the plaintiff that they will continue their illegal act. In this regard a complaint has been filed before Bankal Police, they fail to take any action saying matter is civil in nature. Hence, the suit and this application. Further, it is pleaded the plaintiff is having prima facie case, balance of convenience lies in his favour. If the application is rejected, he will be put to more hardship and injury than defendants. Accordingly, prays to allow the application.

4. The defendant No.1 to 4 appeared, defendant No.3 filed written statement, defendant No.1, 2 and 4 have admitted the same by filing separate memo. All the defendants files memo to treat the written statement of defendant No.3 as objection to I.A.No.I.

5. In the written statement defendants denied all the averments of plaint as false. It is specifically submitted land measuring 12 acres 27 guntas of

Sy.No.40 of Bakki village, Bankal Hobli, Mudigere taluk was an ancestral joint family property of plaintiff and defendants. In a partition, land measuring 2 acres 30 gunta allotted to Manjegowda S/o. Subbegowda, who is grand father of defendant No.3. Another 2 acres 30 gunta was fallen to the share of father of defendant No.1 and 2. As per the partition khata had been made out in the name of grand father of defendant No.3 to the extent of 2 acres 30 gunta, he was in possession and enjoyment. He and his son, who is father of defendant No.3 had financial difficulties and borrowed money from Smt. B.K. Subbamma W/o. Kenchegowda.H.P, Kundur Estate and mortgaged 2 acres 30 gunta. In the meanwhile grand father of defendant No.3 Manjegowda died, father of defendant No.3 i.e., Subbegowda got mutated the land measuring 2 acres 30 guntas in to his name. Further he had cleared the mortgage amount to B.K. Subbamma and he was in possession and enjoyment by cultivating coffee, pepper and shade bearing trees. After the death of father of defendant No.3, the defendant No.3 applied for transfer of khata into his name, while mutating the khata, the Tahasildar, Mudigere mutated 1 acre instead of 2 acre 30 gunta. The defendant No.3 is in

possession of 2 acres 30 gunta. The revenue authorities surveyed the property and prepared sketch. In the sketch it is shown defendant No.3 is in possession of 2 acres 30 gunta and the plaintiff is in possession of 3 acres 15 gunta including 15 gunta of kharab. In this regard this defendant preferred an appeal. The plaintiff suppressing the real facts filed the suit by false allegations. Hence, prays to reject the application.

6. Heard Sri. B.T.N, Advocate for plaintiff. Sri. S.B.A, Advocate for defendants, 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 his favour?
3. Whether the plaintiff establishes that if temporary injunction is not granted, he will be put to great loss or hardship?
4. What order?

7. 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

POINT No.1 TO 3 :

8. It is the specific case of the plaintiff that he is the owner and in possession of suit schedule property, he acquired the same under unregistered partition deed dated 20.10.1993 and got mutated the khata on the partition under M.R.No.27/1998-99. To evidence these facts, plaintiff has produced RTC of the year 2019-20 discloses Sy.No.40 of Bakki village, Banakal Hobli, Mudigere Taluk is totally measuring 12 acres 27 gunta including 35 gunta kharab. Out of which 6 acres 23 gunta standing in the name of plaintiff under M.R.No.27/1998-99, 1 acre standing in the name of defendant No.3 under M.R.No.28/2001-02, 35 gunta standing in the name of defendant No.4 under M.R.No.3/1977-78 and remaining 3 acres 14 gunta standing in the joint

name of defendant No.1 and 2 under M.R.No.7/2012-13. It is relevant to note plaintiff has produced certified copy of M.R.No.27/1998-99, on which 6 acres 23 gunta i.e., suit schedule property mutated in the name of plaintiff, discloses on the basis of partition 6 acres 23 guntas in Sy.No.40 mutated in the name of plaintiff. To evidence partition, plaintiff has produced certified copy of partition deed dated 20.10.1993 discloses plaintiff allotted with 6 acres 23 guntas in Sy.No.40 within the boundaries mentioned hereunder:

ಪೂರ್ವಕ್ಕೆ : ಒಂದನೇ ಹಿನ್ನೆದಾರರ ಮನೆಯ ಓಣಿ
 ಪಶ್ಚಿಮಕ್ಕೆ : ಹೆಚ್.ಎಂ.ನಾರಾಯಣ ಮತ್ತು ಹೆಚ್.ಎಂ.ಗೋಪಾಲಗೌಡರ
 ಜಮೀನು
 ದಕ್ಷಿಣಕ್ಕೆ : ಬಿ.ಎಂ.ಸುಬ್ಬೇಗೌಡರ ಜಮೀನು
 ಉತ್ತರಕ್ಕೆ : ಸರ್ವೆ.ನಂ.42/p

9. The defendants submitted total extent of 12 acres 27 guntas in Sy.No.40 was the ancestral joint family properties of plaintiff and defendants. In the partition 2 acres 30 guntas was allotted to grand father of defendant No.3 and 2 acres 30 guntas was allotted to father of defendant No.1 and 2. In this regard the defendants produced RTCs of the year 1963-64 and 1964-65 discloses out of 12 acres 27 guntas, 7 acres 7 guntas including 1 acres 27 guntas

kharab was in the name of Laxmanagowda S/o. Subbegowda, who is the father of plaintiff herein. 2 acres 30 guntas was in the name of grand father of defendant No.3 i.e., Manjegowda and 2 acres 30 guntas was in the name of Byregowda S/o. Subbegowda, who is the father of defendant No.1 and 2. These facts are not disputed and plaintiff contended from the time of his father they are in possession of suit schedule property i.e., 6 acres 23 gunta, as it that be.

10. The defendants have produced records of rights of Bakki village discloses on 06.12.1960, 2 acres 30 gunta each mutated in the name of Manjegowda and Byregowda on the basis of partition. Further it discloses in the year 1968-69 on the death of Manjegowda 2 acres 30 guntas in Sy.No.40 mutated in the name of B.M. Subbegowda, who is the father of defendant No.3. It is relevant to note the same records of rights discloses on 30.07.1978 property of Subbegowda in Sy.No.40 subjected to partition under registered deed bearing S.R.No.581/1977-78, wherein property of Subbegowda in Sy.No.40 divided into three parts, one is measuring 1 acre 15 guntas, second is

measuring 28 guntas and third one is measuring 27 gunta.

11. On perusal of above stated records produced by the defendants it is clear that 6 acres 23 gunta in Sy.No.40 was in the name of plaintiff and remaining 5 acres 20 guntas was in the name of Manjegowda and Byregowda i.e., 2 acres 30 guntas each. Subsequently, the properties standing in the name of Manjegowda mutated into the name of Subbegowda and later subjected to division. But the parties to the suit not specifically stated relationship of parties and how revenue records got changed from time to time. On perusal of records as per the RTC to the date of suit the suit schedule property standing in the name of plaintiff, 1 acre in Sy.No.40 standing in the name of defendant No.3, 35 guntas standing in the name of defendant No.4 and 3 acres 14 guntas standing in the joint name of defendant No.1 and 2.

12. It is relevant to note defendants pleaded the Tahasildar, Mudigere ought to have mutated 2 acre 30 gunta in the name of defendant No.3, but he mutated only one acre. It is relevant to note such mutation is accepted in the year 2001-02 about 18 years back, till today no steps has been taken by the

defendant No.3 to correct the same. Therefore, the case of the defendants that he is entitled to hold revenue records to an extent of 2 acres 30 guntas is not acceptable at this stage.

13. The advocate for defendants argued that the boundaries mentioned in the schedule of the plaint is contrary to the boundaries mentioned in the partition deed relied by the plaintiff. He has specifically disputed the northern boundary. As per the partition deed to the north it is shown Sy.No.42/p. In the plaint it is shown property of defendant No.1 and 2 in Sy.No.40. In this regard plaintiff has fail to offer any explanation. Therefore, it is clear plaintiff has not given incorrect boundaries in the schedule of the plaint. Further the documents relied by him is contrary to the pleading.

14. The defendants contended plaintiff has not in possession of 6 acres 23 guntas. The plaintiff is n possession of only 3 acres 15 guntas. In this regard they relied upon a survey sketch dated 26.05.2017 and 07.03.2020. In both sketch it is shown plaintiff is in possession of only 3 acres 15 gunta only. It is relevant to note as per the above said sketch the land in possession of plaintiff is bounded on north by

property of defendant No.1 and 2 and south by property of defendant No.3. The advocate for plaintiff disputed the sketches stated above saying they are not in the knowledge of plaintiff and it is created on the instigation of defendants. He has produced copy of the complaints filed to the Tahasildar, ADLR and DDLR against the sketch dated 26.05.2017. Keeping above sketch dated 26.05.2017 apart, only on the sketch dated 07.03.2020 court can easily conclude plaintiff is not in possession of 6 acres 23 guntas as asserted in the plaint. It is relevant to note the sketch dated 07.03.2020 is prepared on the application given by plaintiff on 14.02.2020. Therefore, he cannot dispute the sketch dated 07.03.2020. Unless it is set aside by competent authority in any action taken by the plaintiff or by the competent authority suo-moto. Here plaintiff has not placed any records to show he has challenged the sketch dated 07.03.2020. It is relevant to note despite a sketch is prepared on 07.03.2020, the plaintiff failed one more application on 31.08.2020 seeking phody of Sy.No.40. When Surveyor visited the spot on 10.12.2020, he did not co-operated for measurement, so Surveyor did not conduct survey and his application is disposed of. Which shows the

plaintiff deliberately avoided the survey being conducted on the property, for the reasons best known to him.

15. On perusal of records suit schedule property measuring 6 acres 23 guntas standing in the name of plaintiff, but the revenue sketch produced before the court discloses he is not in possession of such extent. Even the boundaries mentioned in the schedule of the plaint and the boundaries mentioned on the document relied by the plaintiff i.e., partition deed stands contradictory as to the boundaries. Therefore, plaintiff has failed to made out prima facie case, balance of convenience in his favor. Accordingly, I answer Point No.1 to 3 in the '**Negative**'.

POINT No.4 :

16. 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.

Exparte order passed on I.A.I
stands vacated.

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

sd/-
(J.KRISHNA)
PRL. CIVIL JUDGE & JMFC.,
MUDIGERE.