

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

ITINERATE AT KALASA

: PRESENT :

**SMT. PRAKRITI KALYANPUR, LL.M.,
ADDL. CIVIL JUDGE & JMFC.,
MUDIGERE**

O.S.No.193/2017

DATED THIS THE 10th DAY OF SEPTEMBER 2018

PLAINTIFF:

Sripalaiah,
S/o. Manjappaiah,
Aged about 65 years,
Agriculturist,
R/o. S.K. Megal, Samse Post,
Kalasa Hobli-577124
Mudigere Taluk,
Chikkamagalur District

[By Smt. K.V., Advocate]

V/s.

Defendant:

1. Shanthappa Gowda,
@ Putte Gowda,
S/o. Giddappa Gowda,
Aged about 63 years.

2. Ramegowda,
S/o. Giddappa Gowda,
Aged about 60 years.

3. Krishne Gowda,
S/o. Giddappa Gowda,
Aged about 57 years.

4. Lokappa Gowda,
S/o. Giddappa Gowda,
Aged about 53 years.

All the above parties are residing at
"Kurdu Mane", S.K. Megal, Sames
Post, Kalasa Hobli-577124
Mudigere Taluk, Chikkamagalur District

[By Sri. G.B.V., Advocate]

PARTIES IN I.A.No.II

APPLICANT: **Sripalaiah,**

V/s.

OPPONENT: **Shanthappa Gowda and others**

ORDERS ON I.A.No.II

The plaintiff has filed I.A.No.II u/o. XXXIX rule 1 and 2 of CPC for restraining the defendant, his men, agents, servants or any other person claiming right

through him from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property pending disposal of the suit.

2. The said application is supported with affidavit of the plaintiff and submitted that he is the owner of the plaint schedule property acquired through occupancy confirmation certificate and the khata stands in his name. The defendant without any right has trespassed into the plaint schedule property and is posing threat of dispossession Hence, prays to allow this application.

3. The case of the defendant is as follows:

The defendant has filed memo that the written statement filed by him may be treated as objection to the I.A and has stated that he is the owner of the counter claim schedule property acquired from his father, who had purchased it from Padvathamma and the khata stands in his name. Thereafter, he exchanged the Sy.No.214/3 with Sy.No.223/4 with N.P. Jayachandra and the same was registered before the Sub-Registrar Office. The plaintiff does not have any right over the counter claim schedule property and the plaint schedule property is about 1000 feet away from the counter claim schedule property. The plaintiff has

filed the suit only to show to the bank that he is cultivating the plaint schedule property. He has misused the exparte temporary injunction granted by the court and has filed a false compliant against this defendant. Hence prays to reject the above I.A.

4. On the basis of above, the point for consideration is that:

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?

5. Heard arguments. Perused the materials on record.

6. On that basis, my findings on the above point are as under:

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

POINT No.1 :

7. The plaintiff has averred that he is the owner of the plaint schedule property and the defendant is trespassing and threatening to dispossess him. On the other hand, the defendant has stated that the plaint schedule property is about 1000 feet away from the property of the defendant. The plaintiff is the one who has interfered with his possession.

8. The plaintiff has produced the legal advice given by Advisor to Canara Bank, Kalasa, Form No.10 by which the property was conferred on the plaintiff, the M.R, RTC, patta book, tax paid receipt, EC, Sketch, G.Tree and Aadhaar card.

9. On the other hand, the defendant has produced the sale deed bearing S.R.No.414/97-98, exchange deed bearing S.R.No.1699/16-17, complaint, statement of the defendant, acknowledgment and endorsement given by the Kuduremukha police.

10. On a cursory perusal of the documents and the pleadings it is seen that the plaintiff has prima facie shown by producing the title deed i.e., the occupancy confirmation certificate and also the revenue

documents with respect to the schedule property that he is the owner in possession of the schedule property. The defendant has contended that the plaintiff is trying to encroach his land. But these contentions will have to be decided after holding full fledged trial after giving opportunity to the parties to examine all the documents. At this point of time, other disputes cannot be looked into by this court. The plaintiff on the other hand has produced the necessary documents to show that he is in possession of the suit schedule property. This shows that he has made out prima facie case. Accordingly, I answer the Point No.1 in the "**Affirmative**".

POINTS No.2 & 3 :

11. Since both points are interconnected, they are taken together for discussion for the purpose of avoiding repetition of facts. The plaintiff as stated above has made out prima facie case, now we need to see where the balance of convenience lies. As stated by the Hon'ble Supreme Court, the balance of convenience is in reality, the balance of inconvenience. So we have to see, if temporary injunction is granted, who will be put to more inconvenience. If the defendant is going to be

put into greater inconvenience than the plaintiff, then temporary injunction cannot be granted against the defendant.

12. In this case, if temporary injunction is granted, the plaintiff cannot encroach on defendant's property on the strength of this order. Whereas he can only protect his possession of the suit schedule property and this protection he needs till the disposal of the suit i.e., till all the contentions between the parties are finally adjudicated. Whereas on the other hand if temporary injunction is not granted, the defendants may cause injury to the plaintiff. Therefore, it can be seen that the balance of convenience lies in his favour and if temporary injunction is not granted great hardship and loss would be caused to the plaintiff. With this observation, Points No.2 and 3 are answered in the "**Affirmative**".

POINT No.4 :

13. For the foregoing reasons, I proceed to pass the following:

: ORDER :

I.A. No.II filed by the plaintiff U/o. XXXIX rule 1 and 2 of CPC is hereby allowed.

The defendants are hereby temporarily restrained from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property pending disposal of the suit.

(Dictated to the Stenographer directly on computer, then corrected by me and then pronounced in the open court on this the **10th day of September 2018**)

sd/-

(PRAKRITI KALYANPUR)
ADDL. CIVIL JUDGE & JMFC.,
MUDIGERE

SAR