

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

:PRESENT:

Sri.Harisha.K.M., B.A., LL.B.,
ADDL CIVIL JUDGE & JMFC,
MUDIGERE.

DATED THIS THE 23rd DAY OF JUNE 2021

O.S. No.126/2019

PLAINTIFF: Sri.M.S.Achal
S/o.M.L.Sukesh,
Aged about 36 years, Pilot
R/O.No.16,II Stage, 3rd Main,
11th block, Nagarabavi,
Near BSNL Office,
Bangalore 72,
represented by his GPA holder
M.L.Sukesh, S/O.Laxmanagowda,
Aged 62 years,
Agriculturist & Businessman,
R/a No.26/27, 40 feet service road,
II Phase, Manjunatha Nagara,
Rajajinagara,
Bangalore.

(By.Sri.Harish Singatagere, Advocate)

V/s.

- DEFENDANT:**
1. Sri M.L.Kallesh,
S/O.M.T.Laxmangowda
Aged about 58 years,
 2. Sri M.L.Dinesh,
S/O.M.T.Lakshmanagowda
Aged about 60 years,

Both are Agriculturist,
R/a Makonahalli village
& post, Kasaba Hobli,
Mudigere Taluk.
Chikkamagaluru District.

(By Sri.S.D., Advocate)

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PARTIES ON I.A.No.II

APPLICANT: Sri M.L.Dinesh

V/s.

OPPONENT: Sri M.S. Achal

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ORDERS ON I.A.No.II

I.A.No.II under order 39 rule 1 and 2 CPC filed by the defendant no:2, seeking the relief of temporary injunction restraining the plaintiff or any other persons claiming through him from trespassing the schedule properties by removing the fence and trying to harvest the coffee crop

grown in the schedule properties dispossessing the defendant from the IA.No:II schedule properties, pending disposal of the suit.

2. The said application is annexed with an affidavit, wherein the defendant no:2 has contended that he is the owner in possession of IA.No.II schedule "A" property having acquired the same under grant certificate dated 26.2.2003 and he is cultivating the same with coffee, silver trees and jungle wood trees and he has obtained the schedule "B" property under the GPA from the original grantee Thimmaiah and he is cultivating the same with coffee, pepper and shade bearing trees. The plaintiff was intending to buy "A" schedule property, but this defendant refused to sell the same, hence, the plaintiff tried to trespass and encroach upon schedule property and Sy.No.416/3 property without the consent of this defendant and tried to grab the land and anthorium property. Hence, the first defendant had filed suit against the plaintiff in OS.No.114/2019 and hence, the plaintiff has filed this suit to harass him. The plaintiff having no manner of right, title or interest over the schedule property is trying to dispossess the defendant from the schedule property and trying to harvest the coffee grown in the schedule properties and the

illegal act of the plaintiff cannot be resisted without the orders of this court, hence, prayed to allow the application.

2. The plaintiff has filed written statement and adopted the same as objection to the IA.No:II by filing memo, wherein he has denied the counter claim averments and has stated that the defendant no:2 is not in possession of any land in Sy.No:78 and he has seeking counter claim based on forged documents. The boundaries furnished to the schedule properties are false and misleading. Further stated that the alleged GPA itself is illegal and clearly proves that it was executed in gross violation of Karnataka Land Revenue Act and Rules. There was no such person by name M.K.Thimmaiah and the alleged regularization and subsequent GPA are also the result of fraud. On all these grounds, it is prayed to dismiss the application filed by defendant no:2 .

3. On the basis of above pleadings, the following points arise for my consideration:

1. Whether the defendant no:2 has made out prima facie case?
2. Whether the defendant no;2 has made out that balance of convenience lies in his favour?

3. Whether the defendant has made out that if temporary injunction is not granted, he will be put into great loss or hardship?
4. What order?

5. Heard arguments. Perused the materials on record, on that basis my findings on the above points are as under:

Point No.1 to 3 : In the Affirmative,
Point No.4: As per final order,
for the following reasons:

REASONS

7. POINT No.1 The defendant no:2 has averred that he is the owner in possession of IA.No.II schedule "A" property having acquired the same under grant certificate dated 26.2.2003 and he has obtained the schedule "B" property under the GPA from the original grantee Thimmaiah and he is cultivating the same with coffee, pepper and shade bearing trees. On other hand plaintiff has denied the entire counter claim of the defendant no:2 . The defendant no:2 has produced the Certified copy of Saguvali Chit dated 26.02.2003, in respect of counter claim "A" schedule property i,e Sy No:78 measuring 4 acre 38 guntas, which shows that the above said property has been granted

in the name of defendant no:2, Certified copy of Saguvali Chit dated 10.08.2004, which shows that the counter claim “B” schedule property has been granted in the name of M.K.Thimmaiah S/o Kalaiah, Certified copy of Registered GPA, under the said document the defendant no:2 appointed as attorney holder of M.K.Thimmaiah, RTC for the year 2019-2020, pertaining to counter claim schedule properties, wherein the name of defendant no:2 and M.K.Thimmaiah are appearing as possessors and cultivators, MR extracts, land revenue clearance certificate, copy sketch in respect of Sy No:78 of Kelluru village, photos and CRC.

8. The plaintiff has produced RTC extracts for the year 2019.2020, in respect of suit schedule properties, wherein the name of GPA Holder of the plaintiff is appearing as possessor and cultivator, copy of Jubane Hissa Palu Parikattu, dated 10.06.1985, which shows that the GPA holder of the plaintiff and defendants and their father were partition between them, Copy of the Jubane Hissa Palu Parikattu dated 30.04.2002, which shows that the plaintiff and his brother and GPA holder of plaintiff and one Smt.Vimala.B.M on her behalf and on behalf of her minor son, were partitioned between them in respect of suit

schedule properties and other properties, Noatrised copy of GPA.

9. The documents produced by the defendant no:2, which shows that the counter claim suit "A" schedule property has been granted in the name of defendant no:2 and the katha of the same has been entered in his name. Further the documents produced by defendant no:2, shows that the counter claim suit "B" schedule property has been granted in the name of M.K.Thimmaiah s/o Kalaiah, the katha of the same has been entered in his name. The said Thimmaiah executed GPA and defendant no:2 was appointed by his attorney holder to maintain and doing such acts as mentioned in the GPA. The said GPA is not disputed by Thimmaiah. It shows that the defendant no:2 is in possession of the counter claim schedule properties. The plaintiff has taken specific contention that the defendant no:2 who is not in possession of any land in Sy No:78 by furnishing false boundaries is trying to encroach the plaint schedule properties etc, cannot be decided at this stage without holding a full fledged trail of the both parties and examining all the documents. At this point of time these disputes cannot be looked into by this court. The defendant no:2 has produced necessary documents to show

that he is in possession of the counter claim schedule properties. This show that the defendant No.2 has made out prima-facie case. Accordingly, I answer the above point in the affirmative.

10. Points No.2 and 3:- As already stated above, the defendant no:2 has made out prima-facie case, so we need to see as to where the balance of convenience lies. So we have to see if Temporary Injunction is granted who will be put to more inconvenience. If the defendant no:2 is going to be put to great inconvenience that the Temporary Injunction cannot be granted against the plaintiff. The defendant no:2 apprehends that the plaintiff may encroach upon the IA.No.II schedule properties. Under the circumstances, to protect the interest of the defendant No.2, in this case, if the temporary injunction order is granted in favour of the defendant no:2 in respect of the IA.No.II schedule properties, no hardship is going to be caused to the Plaintiff. On the other hand, if the order is not granted, the defendant no:2 will be put to much inconvenience as there is every chance of plaintiff causing injury to the defendant no:2 by interfering with his possession of the IA.No:II schedule properties. Therefore, it can be seen that the balance of convenience lies infavour of the defendant

no:2 and if temporary injunction is not granted great hardship and loss would be caused to the defendant no:2. Accordingly I answer the point no:2 and 3 in the Affirmative.

11. Point No.4 :- In view of the findings on the above points, the following order is passed :-

ORDER

I.A.No.II filed by the defendant no:2 under O.39 R.1 and 2 seeking for the relief of temporary injunction, is hereby allowed.

The plaintiff, his agents, servants or any other persons are hereby temporarily restrained from trespassing the IA.No.II schedule properties by removing the fence and trying to harvest the coffee crop grown in the IA.No:II schedule properties dispossessing the defendant from the same, till disposal of the suit.

(Dictated to the Stenographer, transcribed by her, then corrected by me and pronounced in the open court on this the 23rd day of JUNE 2021)

(Harisha K.M.)
Addl.Civil Judge & JMFC.,
Mudigere.

*mvp/-