

**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 23<sup>rd</sup> 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, 3<sup>rd</sup> Main,  
11<sup>th</sup> 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.I**

**APPLICANT:** Sri M.S.Achal

V/s.

**OPPONENT:** Sri M.L.Kallesh and another

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**ORDERS ON I.A.No.I**

I.A.No.I under order 39 rule 1 and 2 CPC filed by the plaintiff seeking the relief of temporary injunction restraining the defendants or any other persons claiming

through them from causing interference to the possession of the plaintiff over the schedule properties in any manner or preventing the plaintiff of his sons and labourers from carrying out agricultural activities or any development works over the plaint schedule properties or anyway causing interference to the possession of the plaintiff over the schedule properties pending disposal of the suit.

2. The said application is annexed with the affidavit of the GPA holder of the plaintiff wherein he has stated that the plaintiff is the absolute owner in possession of the suit schedule properties, the same acquired by the plaintiff under Jubane Hisse dated 30.04.2001 which was reduced into writing on 30.04.2002. As per the partition the katha of the suit schedule properties are yet to be changed in the name of plaintiff. As there is cordiality among the family members of the plaintiff, the plaintiff had not taken steps for change of Katha so far. Further stated that himself and the defendants are brothers and there was a family partition under palu patti dated 10.6.1985, that the plaintiff is the owner in possession of the schedule properties. The defendant No.1 got land in Sy.No.416/3 ( old Sy.No.285) , but he illegally got the phodi of the said land by illegally including the house constructed by him for his parents.

Since he objected for the said phodi, the defendants started to harass him and tried to interfere with the possession and enjoyment of the schedule property by the plaintiff. The defendants are trying to cut the timber grown in the schedule properties and trying to dispossess the plaintiff from the schedule properties. On 20.10.2019 the defendants armed with two guns alongwith their men trespassed into the schedule properties and tried to remove the timbers, the said illegal act of the defendants has been resisted by the plaintiff with great difficulty. The threat of the defendants is still continuing, if the defendants are not restrained from committing illegal acts, the plaintiff will be put to irreparable loss, injury and untold hardship, hence, it is prayed to allow the application.

3. After service of suit summons the defendants appeared through their counsel and defendant No.2 filed written statement, the defendant No.1 adopted the written statement on his behalf by filing memo, wherein they have denied the entire plaint averments, wherein they have denied the alleged family partition and possession of the schedule properties by the plaintiff. It is denied that the defendants are trying to cut the timber grown in the schedule properties. It is contended that the plaintiff has filed this suit by giving

wrong boundaries by including the land of the defendant No.1 in Sy.No.416/3 with an intent to grab his land, where in the defendant has grown anthurium plants, has made false claim and filed this false suit, that there is no cause of action to file the present suit. It is further contended that since the plaintiff interfered with his peaceful possession and enjoyment of land in Sy.No.416/3, the defendant No.1 has filed suit in OS.No.114/19 and enraged by the same the plaintiff has come up with suits in OS.No.124/19 and 128/19 by creating concocted documents. Since the defendants refused to give the land to the plaintiff, the plaintiff with an intent to destroy the anthurium plants of the defendants is still making illegal attempts and posing threat on them. If the application is allowed, the defendants will be put to greater hardship, hence, it is prayed to dismiss the application.

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

1. Whether the plaintiff has made out prima facie case?
2. Whether the plaintiff has made out that balance of convenience lies in his favour?

3. Whether the plaintiff 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 Negative,

Point No.4: As per final order,

for the following reasons:

### **REASONS**

6. **POINT No.1** The plaintiff averred that the he is the absolute owner and is in possession of the suit schedule properties. The same acquired under Jubane Hisse dated 30.04.2002, the defendants have no manner of right title over the suit schedule properties, they have armed with 2 illegal guns along with their men and trespassed into the suit schedule properties. On other hand defendants have denied the entire case of the plaintiff and defendant no:2 claiming counter claim.

7. The plaintiff has produced RTC extracts for the year 2019.2020, inrespect 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 partitioned between them, Copy of the Jubane Hissa Palu Parikattu dated 30.04.2002, which shows that the plaintiff and his father, who is the GPA holder of plaintiff and one Smt.Vimala.B.M and on behalf of her minor son M.S. Laxmisha ( for herself and on behalf of minor Lakshmisha ) were partitioned between them in respect of suit schedule properties and other properties, Notarised copy of GPA. He has also produced RTC extract in respect of Sy.No.317/2A for the year 2003-04, wherein the name of the plaintiff is appearing as possessor and cultivator to an extent of 2 acre 21 guntas. He has also produced M.R. extract in respect of Sy.No.317/2A, acknowledged issued by SHO, Mudigere P.S, Photos, village map , affidavit of one Krishnappa Poojary S/O. Late Channappa Poojary.

8. The defendants have 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.

9. On perusal of the documents produced by the plaintiff which reveals that under the Jubane Hissa Palu parikatthu dated 30.04.2002, the plaintiff, his father who is the GPA Holder of plaintiff and on behalf of his minor brother Lakshmisha, his mother Smt.Vimala ( for herself and on behalf of minor Lakshmisha ) have partitioned the suit schedule properties and other properties. As per the above said document the plaintiff has not acquired the suit schedule properties for his exclusive share. The plaintiff has not produced any documents to show that he is in exclusive possession of the suit schedule properties. It shows that the plaintiff case is doubtful. Hence, the plaintiff has not made out prima faice stage at this stage. No doubt, a prima facie

case is only opinion of the Court that there exists a serious dispute, which requires to be decided on merits after recording of evidence, a doubtful case is not regarded as a prima facie case. In this regard, in the decision reported in *ILR 1992 Kar 2905 (R.Dilip Kumar vs S.Ramu)*, it is observed as follows:

"There is no power the exercise of which is more delicate, which requires greater caution, deliberation, and sound discretion, or is more dangerous in a doubtful case, than the issuing an injunction. It is the strong arm of equity, that never ought to be extended unless to cases of great injury, where Courts of Law cannot afford an adequate or commensurate remedy in damages. The right must be clear, the injury impending or threatened, so as to be averted only by the protecting preventive process of injunction. But that will not be awarded in doubtful cases, or new ones not coming within well-established principles; for if it issues erroneously, an irreparable injury is inflicted for which there can be no redress, it being the act of a Court, not of the party who prays for it. It will be refused till the

Courts are satisfied that the case before them is of a right about to be destroyed, irreparably injured, or great and lasting injury about to be done by an illegal act. In such a case the Court owes it to its suitors and its own principles to administer the only remedy which the law allows to prevent the commission of such act. The discretionary power must be exercised with extreme caution and applied only in very clear cases; otherwise, instead of becoming an instrument to promote the public as well as private welfare, it may become a means of an extensive and perhaps an irreparable injustice."

10. Considering the pleading put forth by the parties, the right claimed by the plaintiff is not prima facie established, at this stage. Whether the said right is available to the plaintiff has to be established by the plaintiff by adducing cogent evidence hence, the right claimed by the plaintiff being doubtful at this stage, a prima facie case is not made out. Under the circumstances, I hold that at this stage, the plaintiff has not made out prima facie case in her favour. Accordingly, I answer point no.1 in the negative.

11. **Points No.2 and 3:-** Since these two points are inter-related, they are taken up together for consideration to avoid repetition. In view of the findings on Point No.1, these points became purely academic. In this regard the decision reported in AIR 2010 SC 296 (Kashi Math Vs., Srimad Sudhindra Thirtha Swamy and another) is relevant. Fact remains that, having failed to prove the Point No.1, the Plaintiff has consequently failed to prove these two points as well. Hence, these points are answered in the Negative.

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

**ORDER**

I.A.No.I filed by the plaintiff under O.39  
R.1 and 2 seeking for the relief of temporary  
injunction is hereby dismissed.

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

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

\*mvp/-