

**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.128/2019

PLAINTIFF: Sri M.L.Sukesh,
S/o.M.T.Laxmana gowda,
Aged about 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.L.Sukesh

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 suit schedule property in any manner or preventing the plaintiff and his sons and labourers from carrying out floriculture or any development works over the

or entering the plaint schedule property, pending disposal of the suit.

2. The said application is annexed with the affidavit of the plaintiff wherein he has stated that he is in unauthorized occupation and cultivation of the plaint schedule property since 1985 and constructed one poly house, one greed house, two portioned mangalore tiled house, one tractor shed, one electricity generator with 10 HP motor and one flower grading hall, one office room, one water tank and also dug borewell in the written statement schedule property and he has made an application under form No. 57 for regularization of his unauthorized occupation. It is further contended that plaintiff and his father, mother and defendants were between the joint family properties under Palu Patti dated 10.6.1985, accordingly, kathas has been mutated in his name. Later the plaintiff and his wife, sons was Partition between them under Jubane Hisse dated 30.04.2002. but the katha are not yet changed as per the said Partition. The defendant No.1 has got land towards the eastern side of plaint schedule property in Sy. No.416/3 which was formed out of old Sy.No.285 but he illegally got the phodi of Sy.No.416 conducted by including the house constructed by him in Sy.No.285 which came to

his notice recently. Since this plaintiff raised objection for phodi of Sy.No.416, the defendant started to harass this plaintiff by trying to encroach upon the schedule property and threatened that they would put weedicide into the water tank so as to destroy all anthurium plants. The defendant no:1 has filed suit in OS.No.114/2019 against this plaintiff and his sons in respect of land in Sy.No.416/3 by making false claim and obtained an ex parte order and in the guise of the said order, on 14.10.2019 the defendants trespassed into the schedule property and tried to lock the houses and flower grading room and also to disconnect the electricity connection. The act of the defendants cannot be resisted without the assistance of the court, hence, it is prayed to allow the application.

3. After the service of summons, the defendants appeared through their counsel, defendant No.1 filed writtes statement and filed memo stating that the defendant No.2 adopted the written statement of filed by defendant No.1 and written statement as objection to the I.A.I, wherein they have denied the entire plaint averments. It is denied that the plaintiff has constructed one poly house, one greed house, two portioned mangalore tiled house, one tractor shed, one electricity generator with 10 HP motor and one flower

grading hall, one office room, one water tank and also dug borewell in the plaint schedule property. It is further denied that the plaintiff is in possession and enjoyment of the schedule property and the defendants tried to destroy the anthurium plants grown in the schedule property. It is contended that the plaintiff is not in possession of Sy.No.306 and 416/4 of Makonahalli village and there is no anthurium plants in the said property, that the plaintiff with an intention to grab the property of the defendants in Sy.No.416/3 where in the defendant no:1 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, he 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 OS.No:126/19 by created 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 he is in unauthorised occupation and cultivation of the suit schedule properties since 1985, which was belonged to the State. Earlier the plaintiff used to cultivate the same with coffee

plants. He has started to cultivate the plaint schedule properties with Anthurium plants in the year 2004, that he has filed Form no:57 and the same is pending for consideration, that the defendants having no right, title possession over the plaint schedule property, tried trespass and to lock the houses and flowering grading room and also disconnect the electricity connection. On other hand the defendants have contended that plaintiff is not in possession of Sy. No.306 and 416/4 of Makonahalli village and there is no anthorium plants in the said properties, that the plaintiff with an intention to grab the property of the defendants in Sy.No.416/3 where in the defendant no:1 has grown anthorium plants, has made false claim and filed this false suit.

7. The Plaintiff has produced 2 RTC extracts for the year 2019.2020, in respect of Sy.No.306/p1 306/p2, wherein the name of Government, one Pruthviraj and H.M. Sharadha are appearing as possessor and cultivators, RTC extract for the year 2019.2020, in respect of Sy.No:416/3, wherein the name of defendant no:1 is appearing as possessor and cultivator, RTC extract in respect of Sy No:317/2A, wherein the name of plaintiff is appearing as possessor and cultivator to an extent of 2 acre 21 guntas, MR

extract in respect of Sy No:317/2A, Jubane hisse palu parikathu dated 30.4.2002, copy of the palu patti, copies of the SFAC letters dated 21.2.2006 and 15.9.2005, copy of letter issued by the national horticulture board, certificate, copies of statements of accounts of the defendant No.1, satellite map, 8 photographs, CD, Affidavit of the defendant no:1, Two Copies of Notice and Atlas nakalu pertaining to suit schedule property, RTC extract in respect of Sy No:305/1, for the year 2020.2021, wherein the name of Sreevilas A Estate is appearing as possessor and cultivator, RTC extracts in respect of Sy No:305/2 and Sy No:305/4, for the year 2020-2021, wherein the name of M.R.Pruthviraj is appearing as possessor and cultivator, RTC extracts in respect of Sy No:305/3 and Sy No:305/5, for the year 2020.2021, wherein the name of Praveen Kumar is appearing as possessor and cultivator, RTC extract in respect of Sy No:416/4, for the year 2020.2021, which shows that the said land is copy karab land, certified copy of application given by the plaintiff to the ADLR, Mudigere, certified copy of application of Memorandum, certified copy of sketch in respect of old Sy No:285, New Sy No:416 to an extent of 4 acre 38 guntas and Certified copy of Village Map.

8. The defendants have produced saguvali chit pertaining to Sy.No.285 measuring 4.38 acres, situated at Makonahalli, Mudigere taluk, which reveals that the said Survey number has been granted in the name of the defendant No.1 by issuing saguvali chit, M.R.Extract which reveals that the katha of the Sy.No.285/p1 has been mutated in the name of the defendant No.1. RTC extract for the year 2019.2020 in respect of Sy No:416/3, wherein the name of the defendant No.1 is appearing as possessor and cultivator to an extent of 4 acre 38 guntas, Tax paid receipts issued in the name of the defendant No.1. They have also produced photos, receipt patta book, CRC, atlas copy in respect of Sy No:416/3, measuring 4 acre 38 guntas, letter, crop confirmation certificate, application given by the defendant to the horticulture department, Mudigere, atlas nakalu in respect of Sy No:416/3.

9. The specific case of the plaintiff is that he is in unauthorized occupation and cultivation of the suit schedule properties since, 1985 and he has filed application before the concerned authority for regularization of his unauthorized occupation and cultivation of the same. In order to show the same he has not produced any documents, except the affidavits of the plaintiff and other persons.

Without producing the documents only on the basis of affidavits produced by the plaintiff, this court cannot come to the conclusion that the plaintiff is in possession of the suit schedule properties, at this stage without full fledged trial on both sides. It shows that the plaintiff case is doubtful. Hence, the plaintiff has not made out prima facie case 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. The counsel for the plaintiff has relied upon the decisions reported in 2007 0AIR (SC) 900 (Ramji Rai V/s Jagadish Mallah (Dead through Lr,S) and 2002(3) Kar.L.J 175 (Chako and Another V/s Deputy Commissioner, Shimoga

District, Shimoga and others). I have carefully gone through the above said decisions. The facts and circumstances of the above said decisions and facts and circumstances of the case on hand are different, with due respect to the above said decisions, the same are not applicable to the case on hand.

11. 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.

12. **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.

13. **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 23rd day of June 2021)

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

*mvp/-