



**IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC.,
MUDIGERE.**

DATED: THIS THE 09th DAY OF AUGUST 2023

Present: Sri. Sachin.D, B.A., L.L.B.
Prl. Civil Judge & JMFC.,
Mudigere.

ORIGINAL SUIT No: 113/2022

BETWEEN :

Bhavani D/o Ramegowda,
Aged about 67 years,
Agriculturist,
R/o Moodasasi Village,
Kasaba Hobli,
Mudigere Taluk.

... Plaintiff

(By Sri.K.M.Prashanth, Adv.,)

AND :

K.B.Jagadeesh S/o late Byraiah,
Aged about 45 years,
Agriculturist,
R/o Karbyle Village,
Kasaba Hobli,
Mudigere Taluk.

...Defendant

(By Sri.K.C.Chandrashekar, Adv.,)

**PARTIES ON I.A.NO.1****BETWEEN :**

Bhavani

*... Applicant***AND :**

K.B.Jagadeesh

*...Opponent***ORDERS ON I.A.NO.I**

The plaintiff has filed the present application under Order 39 Rule 1 and 2 R/w section 151 of CPC, seeking an order of this court to grant temporary injunction by restraining the defendant and his agents or anybody claiming on his behalf from committing trespass into the suit schedule property by removing its fence and to cause damage to the coffee plants, pepper creepers and trees grown in the same and also dispossessing him in any manner and cause interference with his peaceful possession and enjoyment over the same.

2. In the affidavit accompanied to the application the plaintiff has deposed that the suit schedule property is the part of Sy.No.59 and it was earlier belongs to the government. He has entered into the said government land and occupied an extent of 4 acres 35 guntas and cultivated the same with coffee and applied for the regularization of



un-authorized occupation. On the recommendation of the committee constituted for regularization of un-authorized occupation of the government land i.e., "Taluk Sakrama Samithi", Mudigere, the un-authorized occupation of the plaintiff to an extent of 4 acres 19 guntas in Sy.No.59 was regularized. Thereafter, the Tahsildar, Mudigere has issued Saguvali Chit bearing No.436/2012-13, dated 23.06.2022 and consequent to that the khatha of the suit schedule property has been mutated in the name of the plaintiff. Therefore, the plaintiff is the absolute owner in possession and enjoyment over the suit schedule property. It is further deposed that the plaintiff has cultivated the suit schedule property with coffee and also grown shade bearing trees and fenced all around. The defendant has no right, title and interest over the suit schedule property and despite of the same, making hectic attempts to trespass into the same to occupy the same illegally. Such being the case, on 03.12.2022, the defendant with the help of his henchmen, made hectic attempts to trespass into the suit schedule property from its eastern side and tried to remove the crop raised in the same and also tried to cause extensive damage to the coffee plants, pepper creepers and silver trees etc. The defendant could not succeed in his illegal ventures due timely intervention and even though complained to the



jurisdictional police, same is vent in vain. Whereas, the threat of the defendant is continuing one. Therefore, plaintiff, without any alternative way, approached this court. It is further stated that the plaintiff has made out prima-facie case and balance of convenience in his favour. If the injunction is not granted, the defendant will be trespass and dispossess the plaintiff from the suit schedule property and the untold hardship will be caused to the plaintiff. Hence, it is prayed for allow the application and grant injunction as prayed.

3. In response to the suit summons, the defendant appeared through his counsel and filed his written statement on 18.03.2023. Further, he has filed memo on 18.03.2023 and adopted the written statement as objection to present application.

4. In the written statement, the defendant has categorically denied the plaint averments and contended that the plaintiff is not in possession of the suit schedule property. It is further contended that the suit schedule property is not granted in favour of the plaintiff and khatha was not mutated in his name. The plaintiff has not filed any application in form No.50 and 53, because she is originally



belongs to Sakaleshpura Taluk. It is further contended that the plaintiff is having 14.07 acres at Moodasasi village and 15.01 acres of land at Bommenahalli village. Further, in the name of husband and children of plaintiff, total 132.21 acres land is there. Therefore, the question of granting the suit schedule property to the plaintiff doesn't arise. Hence, regarding that he has already filed appeal before the Assistant Commissioner, Chikkamagaluru, in LNDRUC.30/2022 and the same is pending for consideration.

5. It is further contended that on 24.09.2021, the defendant has filed his application to the Tahsildar, Mudigere, requesting to furnish document with respect to grant to the plaintiff and other four members in the Moodasasi and Karabyle village of Mudigere Taluk. Whereas, the Tahsildar Mudigere, has issued endorsement that no file exist regarding grant. Again, on 04.01.2022, applied for documents in the RRT branch of the Tahsildar, Mudigere with respect to Moodasasi and Karabyle village. Whereas, they have issued endorsement as in the RRT and Bhoomi branch, no register is maintained regarding that. Thus, the plaintiff has suppressed the true facts and filed the present suit. It is further contended that the defendant, residents of



Karabyle and Moodasasi village have filed an application before Makonahalli grama panchayath, requesting to reserve the property bearing Sy.No.59/P1, measuring 5 acres 4 guntas and 60/8, measuring 4 acres 18 guntas, in total 9.22 guntas for burial ground. Upon the said request, the Makonahalli grama panchayathi has passed the resolution and sent the Executive Officer, Mudigere. Whereas, the plaintiff has filed the present suit to engulf the said property. It is further contended that since the appeal is pending before the Assistant Commissioner, Chikkamagaluru, this court has no jurisdiction and hence, if the injunction is granted in favour of the plaintiff, he will be put irreparable loss. Hence, prayed for reject the application with costs.

6. In view of the above contentions of the both parties, the following points arise for consideration.

- 1. Whether the plaintiff has made out prima-facie case in her favour to grant temporary injunction as prayed for?***
- 2. Whether the balance of convenience lies in favour of the plaintiff?***



3. Whether the plaintiff will be put to irreparable hardship, if temporary injunction is not granted in her favour?

4. What order?

7. Having heard both side, the court perused the application, affidavit, written statement and documents supplied by the both parties and authorities supplied by the counsel for the plaintiff. Now, the findings of the court to the above points are as follows;

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

8. POINT No.1: Plaintiff has filed the present suit for the relief of permanent injunction against the defendant with respect to property bearing Sy.No.59, measuring 4 acres 19 guntas, situated at Moodasasi village, Kasaba Hobli, Mudigere Taluk. The first principle to grant temporary injunction is that the plaintiff has to make out prima-facie case in her favour. Plaintiff in order to made out



prima-facie case in her favour, produced the documents such as Saguvali Chit bearing No.436/2012-13, proceedings of Taluk Sakrama Committee, Mudigere, xerox copy of the sketch, Mutation Reg.No.H.3/2020-21, RTC extract of the suit schedule property of the year 2021-22 and 2022-23, tax paid receipt, affidavit with respect to boundaries of the suit schedule property.

9. It is the contention of the plaintiff that she was occupied the Sy.No.59, which belongs to the government and cultivated an extent 4 acres 35 guntas. Thereafter, she has made application before the Taluk Sakrama Committee, Mudigere, to regularize her unauthorized occupation of the government land. After considering her application, the committee has regularized her unauthorized occupation of the suit schedule property and issued saguvali chit on 23.06.2012. The plaintiff has produced the original saguvali chit and the order of the Taluk Sakrama Committee, Mudigere. Those documents are clearly goes to show that as per the order No.ಬಹು (ಕಸಬಾ) 678/1991-92, unauthorized occupation of the suit schedule property is regularized in favour of the plaintiff and the Saguvali Chit bearing No.436/2012-13, dated 23.06.2012 has been issued in favour of the plaintiff with respect to suit schedule property.



10. It is further contended by the plaintiff that after the grant of the suit schedule property, the khatha was effected in her name. Mutation Reg.No.H.3/2020-21, goes to show that as per the order of the Taluk Sakrama Committee, Mudigere, the suit schedule property has been mutated in the name of the plaintiff. Further, the RTC extracts of the suit schedule property for the year 2021-22 and 2022-23, clearly establishes that the 4 acres 19 guntas of land in Sy.No.59 of Moodasasi village, Kasaba Hobli, Mudigere Taluk, is standing in the name of the plaintiff. Further, those RTC extracts clearly depict the name of the plaintiff both in column No.9 and 12. Tax paid receipt, which produced by the plaintiff to shows that the plaintiff is paying the tax to the suit schedule property. Plaintiff has also produced the affidavit and wherein, she has sworn regarding true and correctness of the boundaries of the suit schedule property. The boundaries stated in the affidavit and the plaint schedule are one and the same.

11. On careful perusal of the documents and the affidavit contents, it is crystal clear to the court that the suit schedule property has been granted in favour of the plaintiff by issuing the saguvali chit as per the



recommendation of the Taluk Sakrama Committee, Mudigere. Thereafter, the khatha of the suit schedule property has been mutated in the name of the plaintiff. Thus, it is prima-facie evident that the plaintiff is in possession of the suit schedule property. Therefore, the plaintiff has made out arguable case in her favour.

12. The defendant in support of his contention as asserted in the written statement, produced the documents such as endorsement dated 01.12.2022 issued by the Tahsildar, Mudigere, endorsement dated 27.02.2023 issued by the Tahsildar, Mudigere, certified copy of the report dated 01.12.2022 submitted by the Tahsildar, Mudigere to the Assistant Commissioner, Chikkamagaluru, xerox copy of the proceedings dated 06.08.2016 of Makonahalli grama panchayath, letter dated 29.11.2016 of the Makonahalli grama panchayath, two patta receipts, letter dated 20.12.2018 of Makonahalli grama panchayath, proceedings of the Makonahalli grama panchayath dated 19.12.2018, letter dated 02.03.2020 of Makonahalli grama panchayath and list regarding site less people of the Makonahalli grama panchayath.



13. It is the contention of the defendant that the suit schedule property is not granted to the plaintiff and she has not filed any form No.50 and 53 before the competent authority. Further, it is also contended that plaintiff and his family having land at Bommenahalli, Moodasasi village and as such, the question of grant the suit schedule property doesn't arise. To substantiate the same, the defendant has produced the endorsement dated 01.12.2022 and 27.02.2023 issued by the Tahsildar, Mudigere. Wherein, it is stated that no register, file were found in respect of grant of the suit schedule property to the plaintiff in Sy.No.59 and issuance of Saguvali Chit bearing No.436/2012-13. Further, it is also produced the report dated 01.12.2022 and wherein, the Tahsildar has opined and reported to the Assistant Commissioner, Chikkamagaluru, that in respect of suit schedule property, no original file was build up and mutation and RTC were effected in the name of the plaintiff. Further, it is also formed an opinion by the Tahsildar, Mudigere, in the said report that in respect of suit schedule property, the plaintiff is not the original applicant and same may be rejected. Therefore, on looking into the endorsements and the aforesaid report of the Tahsildar, it is crystal clear to the court that the Tahsildar, Mudigere, who



is the competent authority to say that genuineness of the documents issued in favour of the plaintiff has himself opined that no original file was build up to grant in favour of the plaintiff and the original applicant is different person. However, the said aspect has to be ascertained by holding full fledged trial.

14. The defendant has further contended that he, residents of Karabyle and Moodasasi village have filed application to reserve the property bearing Sy.No.59/P1, measuring 5 acres 4 guntas and Sy.No.60/8 for burial ground and accordingly, Makonahalli grama panchayath has passed the resolution. On perusal of the proceedings dated 06.08.2016, it clearly appears that the Makonahalli grama panchayath has passed resolution that those properties are need for burial ground and sites and also passed resolution to sent the copy of the same to the Deputy Commissioner, Chikkamagaluru. It is to be noted that on the basis of the recommendation sent by the Makonahalli grama panchayath, what action taken by the Deputy Commissioner, Chikkamagaluru has to be come out from the trial. But this juncture, no document on record.



15. On perusal of the documents on the plaintiff side, those are shows that the plaintiff has been granted the suit schedule property and the khatha has been mutated in her name as per the grant. Hence, at prima-facie, the plaintiff has made out that she is having arguable case and she satisfies that she is in possession. Hence, the plaintiff has made out prima-facie case in her favour. Accordingly, this court answer point No.1 in the **in the Affirmative**.

16. POINT NO.2 AND 3: As these two points are inter-connected each other and requires common discussion, they have taken together for discussion.

The existence of prima-facie case alone doesn't entitles the plaintiff to grant temporary injunction as prayed in the application. The plaintiff has to satisfy the court about the another principle that she will suffer irreparable injury, if the injunction is not granted as prayed. Plaintiff contention is that the defendant is making hectic attempts to encroach the suit schedule property and to cause damage to the crops raised in the same. The defendant in the written statement nowhere contended that as per the recommendation of the Makonahalli grama panchayath, the suit schedule property was granted to the Makonahalli



grama panchayath for the purpose of burial ground and to issue sites to the site-less people. In the letter dated 29.11.2016, which addressed by the Makonahalli grama panchayath in favour of the E.O, Taluk Panchayath, Mudigere, it is stated that the encroached land has to be granted in favour of the Makonahalli grama panchayath. Thus, it is prima-facie shows that neither the defendant nor the Makonahalli grama panchayath are in possession of the suit schedule property.

17. Though it is alleged that the documents are created and no file was build up to grant the suit schedule property in favour of the plaintiff, the said question has to be adjudicated in the appeal filed by the defendant before the Assistant Commissioner, Chikkamagaluru, in LNDRUC:30/2022. The documents on record are shows that the plaintiff is in possession of the suit schedule property. Admittedly, the suit schedule property is the agricultural property. If the defendant has made his hectic effects and trespassed into the suit schedule property, the plaintiff will be put to irreparable loss. Further, at this juncture, if the injunction is granted, it will not prevent the defendant to approach the competent authority to get the grant of the suit schedule property for the purpose of burial



ground and the distribution of the site to the site-less people.

18. On the other hand, if the injunction is not granted, there are possibilities to dispossess the plaintiff from the suit schedule property. If succeeded to trespass and dispossess the plaintiff, the very object of the suit will be nullify. Therefore, it is of the opinion of this court that the balance of convenience lies in favour of the plaintiff. Further, if the injunction is not granted, the irreparable loss will be caused to the plaintiff and same can't be compensated in any means. The loss caused to be the plaintiff is greater than the loss which likely to be the defendant. Hence, this court answer point No.2 and 3 **in the Affirmative.**

19. POINT No.4: In view of the above findings on point No.1 to 3, this court proceed to pass the following.

ORDER

***The IA.No.1 filed by the plaintiff
under Order 39 Rule 1 and 2 R/w section
151 of CPC is hereby allowed.***



The defendant and his agents or anybody claiming on his behalf are hereby restrained by way of temporary injunction from trespassing into the suit schedule property by removing fence and to cause damage to the coffee plants, pepper creepers and trees grown therein and also dispossessing the plaintiff and to interfere with her peaceful possession and enjoyment over the same till disposal of the suit.

No order as to costs.

(Dictated to the stenographer, typed by him on computer, corrected and then pronounced by me in the open court on this the 05th day of AUGUST, 2023)

(Sachin. D)
Prl. Civil Judge & JMFC,
Mudigere.

* _ * _ *

Visit ecourts.gov.in for updates or download mobile app “eCourts Services” from
[Android or iOS](#)