



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

DATED: THIS THE 27th DAY OF APRIL 2024

Present: Sri. Vishwanath A., B.B.A., L.L.B.
Addl. Civil Judge & JMFC.,
Mudigere.

ORIGINAL SUIT No: 106/2023

BETWEEN :

Sri. Ashok S/o Lakshmana,
Aged about 49 years,
R/o Mundagamane, Horanadu,
Kalasa Hobli, Mudigere Taluk,
Chikkamagaluru District.

.... Plaintiff

(By Sri.K.S.Ananthesh, Adv.,)

AND :

1. Sri. Padmanabha @ Padmegowda
S/o Yankegowda @ Venkegowda,
Aged about 62 years.
2. Sri. Dinesh S/o Padmanabha
@ Padmegowda,
Aged about 33 years.
3. Sri. Prakash S/o Padmanabha
@ Padmegowda,
Aged about 31 years.

Df-No.1 to 3 are R/o Mundagamane,
Horanadu Kalasa Hobli, Mudigere
Taluk, Chikkamagaluru District.

.... Defendants

(By Sri. T.Ashoka, Adv.,)

PARTIES ON I.A.NO.I

BETWEEN :

Mr. Ashok

... Applicant

**AND :**

Mr.Padmanabha & Ors

... Opponents

i	Provision under which the application is filed	Order XXXIX Rule 1 and 2 of CPC
ii	Relief sought for	Temporary injunction
iii	The date on which the application is filed	12.10.2023
iv	Number of the application	I
v	The date on which the objections are filed by different opponents	Written Statement treated as Objections.
vi	The date on which the orders were passed on the said application	27.04.2024

(Vishwanath A.)
Addl. Civil Judge & JMFC.,
Mudigere.

ORDERS ON I.A.NO.I

The plaintiff has filed the present application seeking for an order of temporary injunction restraining the defendants, their men, subordinates, agents, servants etc., from trespassing into or in any way interfering with the plaint schedule properties, till disposal of this suit.

2. The plaintiff has contended that he is the owner in possession of suit schedule properties having obtained the same under Forest Rights Act. Other than the plaintiff, no body including the defendants have got right, title or interest in or over the suit property or in possession of the same. This being the case, the defendants are trying to trespass into the suit property and to



disturb the plaintiff's possession over the same. Since few days, the defendants have intentionally abused the plaintiff and his family members in filthy language and they intentionally tried to occupy the suit schedule property. The plaintiff is a small land holder and the defendants with their supporters are causing daily obstruction to the possession of suit property. On these averments, the plaintiff has sought for allowing the present application.

3. On the other hand, the defendants have filed a memo adopting the written statement as objection to IA No.1. It is the defendant No.1 who has filed his written statement and the same is adopted by the defendant No.2 and 3. In the written statement the defendants have denied the plaint averments and contended that the plaintiff has got revenue land to an extent of 0.20 guntas in Sy.No.175 of Horanadu Village under Akarama Sakrama scheme. He has also got mutated the khatha pertaining to the said property vide M.R.No.162/2001-02. The plaintiff is residing in the house situated at the said land. The said land is situated towards northern side of the land in possession of defendant in Sy.No.175 of Horanadu Village. Though the plaintiff has got alternative road to reach his land, the plaintiff has obstructed the defendant's possession over his land claiming road therein. In the panchayath held in the presence of the leaders of the locality, it was decided that the plaintiff should not take his vehicles in the temporary road and he shall also not cause obstruction to the defendants, and in case of any obstruction the defendants can close the said road.

4. The defendants have further contended that though they had allowed the plaintiff in a road left by them, the plaintiff



developing enmity against the defendants for calling the panchayath, he has committed theft of crops belonging to the defendants and has filed the present false suit in order to see that the land in possession of defendant No.1 should not be granted to him. The land to an extent of 200 acres in Sy.No.175 of Horandu Village is the forest land wherein many persons have cultivated certain lands and resided therein. As per the Recognition of Forest Rights Act, some of them have got grant certificate but some other persons including the plaintiff has got land grant due to the influence of political leaders. The plaintiff has got house within the jurisdiction of Horanadu Village Panchayath but he having submitted false documents stating that he has got a house in a forest land has obtained illegal land grant. The plaintiff is aged about 49 years and for the purpose of land grant on basis of forest rights, one has to be in possession of land for more than 30 years prior to 2008. The suit schedule property is imaginary and on survey the suit property may overlap on the land belonging to Bhmeshwara Joshi. The plaintiff has filed the present suit with an intention to grab the property in possession of defendants which is situated towards southern side. On these averment, the defendants have sought for rejection of the present application.

5. In view of the above pleadings of the plaintiff, the following points do arise for consideration:

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



3. Whether the plaintiff will be put to irreparable injury if temporary injunction is not granted in his favour?

4. What order?

6. Having heard the arguments addressed on behalf of the respective parties, this Court has carefully perused the entire materials available on record. In view of the above contentions, the following points arise for consideration:

Point No.1 : **In the Negative,**

Point No.2 : **In the Negative,**

Point No.3 : **In the Negative,**

Point No.4 : **As per final order
for the following:**

REASONS

7. POINT No.1 TO 3: Since these points require common consideration of facts and materials, they are taken for common discussion so as to avoid repetition of facts.

The plaintiff has contended that he is the owner in possession of suit schedule properties having acquired the same through land grant under the Forest rights and he has also got mutated khatha in his favour. To show his prima possession over the suit schedule property, the plaintiff has produced the copies of grant certificate sketch, resolution of forest rights committee and the RTC, which would disclose that the suit property within its boundaries is granted in favour of plaintiff. To show that the boundaries are true, the plaintiff has produced grant certificates and sketch pertaining to



Bhaskar and Padmegowda who according to the plaintiff has got land towards east and southern side respectively of the suit property. The certified copies of the grant certificate pertaining to one Bhaskar S/o Lokegowda would disclose that the suit property is situated towards western side and the land of Padmegowda S/o Yenkegowda is situated towards southern side. The grant certificate pertaining to Padmegowda S/o Majegowda would disclose that the suit property is not adjacent to the land granted to said person.

8. The defendants have also specifically contended that the defendant No.1 has got land to an extent of 20 guntas in Sy.No.175 of Horanadu Village and the said property is situated towards southern side of the land to an extent of 20 guntas in possession of the plaintiff. The RTC pertaining to land in Sy.No.175 would disclose that one Padmegowda S/o Yenkegowda is granted with land to an extent of 1.38 acres and the plaintiff has got right over land to an extent of 3.39 acres in Sy.No.175/P3. Though the defendants have contended that the plaintiff has got illegal grant but the defendants have not placed anything on record at this stage to show the contrary. The defendants have also further contended that the suit property may overlap the property of Bhemeshwara Joshi towards his western side. As per the plaintiff, the land of Bhemeshwara Joshi is situated towards western side of the suit property and the defendant No.1 has got land towards southern side of suit property. Whereas, the defendants have contended that the plaintiff is in possession of 20 guntas of land in revenue portion of Sy.No.175 of Horanadu Village and the plaintiff with an intention to grab the land of defendants, has filed the present false suit.



9. The police acknowledgment dtd: 11.03.2020 would disclose that the parties have agreed for joint survey of their respective properties and they would apply for survey. The police complaint and acknowledgment produced by the plaintiff in co-joint reading with the pleading of the both the parties would at this juncture shows that both the parties have got certain lands in Sy.No.175 of Horanadu Village but their appears dispute with respect to the boundary stone in the said property of which photograph is produced by the plaintiff himself. The extent of lands in which the parties are in actual possession shall have to be considered only after full-fledged trial as it is not in dispute that the properties of both the parties are situated adjacent to each other. There is a triable issue in the present suit as the physical possession of the parties shall have to be ascertain at the trial. Though it appears that the plaintiff has got land grant of suit property, his actual possession over the said extent and within the boundaries is not able ascertained on basis of materials available at this stage. The circumstances begin thus there is a triable issue in the plaintiff's case, both parties shall have to maintain status-quo with respect to the suit property but it is of no use of passing order of status-quo without indicating the status of property. The materials on record at this stage is not certain as to the status of suit property as to its physical possession. This being the case, this Court is not inclined to grant temporary injunction in favour of plaintiff. Hence, Point No.1 to 3 are answered in **Negative.**

10. POINT No.4: In view of the above findings recorded on point No.1 to 3, this Court is of view to reject the present application. Hence, the following.



ORDER

I.A. No.I filed by the Plaintiff under Order XXXIX Rules 1 & 2 of Code of Civil Procedure, is rejected.

(Dictated to the stenographer, typed by her on computer, corrected and then pronounced by me in the open court on this the 27th day of April, 2024).

Sd/-
(Vishwanath A.)
Addl. Civil Judge & JMFC.,
Mudigere.

***BSM**

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