



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

DATED: THIS THE 28th DAY OF FEBRUARY 2024

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

ORIGINAL SUIT No: 118/2023

BETWEEN :

H.D.Sudhakara
S/o Duggegowda,
Aged about 56 years,
R/o Hoysalalu Village,
Gonibeedu Hobli,
Mudigere Taluk,
Chikkamagaluru District.

.... Plaintiff

(By Sri.B.Jagadeesh, Adv.,)

AND :

1. State of Karnataka
By its Chief Secretary
(Revenue Department)
Vidhana Soudha, Bangalore.
2. The Deputy Commissioner
Chikkamagaluru District.
3. The Assistant Commissioner
Chikkamagaluru
4. The Thasildar
Mudigere Taluk, Mudigere

.... Defendants

(Assistant Government Pleader)

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

H.D.Sudhakara.

... Applicant

AND :The State of Karnataka
by its Secretary & 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	18.11.2023
iv	Number of the application	I
v	The date on which the objections are filed by different opponents	Objections not filed.
vi	The date on which the orders were passed on the said application	28.02.2024

(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, its men, agents or any person claiming through them from trespassing, removing fence, damaging the coffee and other crops in the suit schedule properties or in any way taking forcible possession of any



portion of suit schedule properties without due process of law, till disposal of this suit.

2. The plaintiff has contended that he is the owner in possession of suit schedule properties having acquired the same through Court auction confirmed under sale certificates. Item No.1 of the suit property is acquired through auction sale in Ex.No.13/1993-94 and khatha is mutated to the name of plaintiff vide MR No. 17/1997-98. Item No.2 property is acquired under sale certificate bearing registration number 294/1996-97 dated 12.06.1996 and khata is mutated to the name of plaintiff vide MR No. 1/1996-97. Item No.3 property is acquired under sale certificate bearing registration number 561/1999-2000 dated 13.08.1999 and khata is mutated to the name of plaintiff vide MR No. 1/1996-97. At the time of purchase, suit properties were dry and barn land, then the plaintiff has cultivated the said land with robust coffee plant, pepper, areca and raised silver oak. The suit schedule properties are located in one common area and part of Sy. No.119/P of Hoysalalu Village and the same is fenced by the plaintiff by barbed wires with stone pillar and live cuttings. After Dursahthi, the suit properties are assigned with new Sy. Nos. as Sy. No. 217, 218 and 222.

3. The plaintiff has further contended that on false information of one Smt.Bhagya w/o Manjunath of Hysalalu Village, the defendant No.4 has conducted survey of the lands held by the plaintiff family including the suit schedule properties. On wrong notion and on false report, the defendant No.4 has issued notice of eviction against the plaintiff alleging that he has encroached upon



the land to an extent of 00.14 guntas in block No.6 and 00.03 guntas in block No.3 of granted lands. Before this survey, the Taluk surveyor by name B.S. Shivakumar has conducted the survey on 05.09.2022 and reported that there is no encroachment. But on 22.11.2023 one L.Depak had conducted the survey wherein reported that there is encroachment of above said extent of land and the said report is prepared at the instance of Smt. Bhagya Manjunath. Even if there are any encroachment as alleged, the defendant No.4 has to follow the due process of law and to approach the Civil Court. But, the defendant No.4 having taken unilateral decision, has issued eviction notice dated 19.10.20023. On these averments, the plaintiff has sought for allowing the present application.

4. On the other hand, even on granting sufficient opportunities, the defendants have not filed their written statement and also the statement of objections to 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 plaintiffs 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 Affirmative,**

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

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

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 auction sale for which he has also been issued with sale certificate and the same are duly registered. The plaintiff has further contended that, he having got mutated the khatha of suit property to his name, he has cultivated the suit property with Robusta coffee, areca, silver oak and etc. To show his prima possession over the suit schedule properties, the plaintiff has produced the copies of sale certificate dated 06.08.1997, registered sale certificate issued in Ex.No. 90/95 and 112/95 and also the copy of another registered sale certificate issued in Ex.No. 12/1994. It is the case of plaintiff



that the originals of these documents are deposited with SBI, Mudigere. The copies of said documents would prima-facie show that the suit schedule properties are purchased by the plaintiff at auction sale and the said sale is confirmed. The revenue documents pertaining to suit properties are also standing in the name of plaintiff.

8. The plaintiff has also produced the sketch pertaining to land in Sy, No. 217, 2187, 222 out of the land in Sy, No.119. This sketch would disclose that the properties purchased by the plaintiff were assigned with new survey numbers after durasthi. On careful perusal of the documents produced by the plaintiff, it appears that the plaintiff having purchased the suit properties under auction sale, he is in possession of same. RTCs of these properties would depict that the same are cultivated with Robusta Coffee. These aspects are not at dispute as the defendants have not filed their written statement and also the statement of objections to the present application.

9. The plaintiff has further contended that on the notion of wrong survey, the defendant No.4 has issued eviction notice to the plaintiff alleging encroachment of land in block No. 3 and 6 of Sy. No. 119 and the defendants are trying to take possession of suit property forcibly without following due process of law. The plaintiff has produced notice dated 19.10.2023 issued by the defendant No.4 wherein alleged encroachment of land to an extent of 0.14 guntas in block No.3 allotted to one Manjaiah S/o Ramaiah and 0.03 guntas in block No.6 granted to one Manjaiah S/o Kariyaiah. It could also be



seen that the defendant No.4 has called the plaintiff to remove the encroachment within 7 days. The plaintiff has also got issued reply to the said notice wherein took up contention similar to that pleaded in the present case.

10. During the course of her arguments, learned AGP has submitted that the defendants are not trying to evict the plaintiff without following due process of law. The present suit is with respect to the suit schedule properties situated within the boundaries stated therein. Though it is alleged that the plaintiff has encroached the land granted to other persons, the defendants have not placed anything in this regard. Even if there is an encroachment made by the plaintiff, his possession over such encroached portion cannot be taken back otherwise than in due course of law as the plaintiff shall also be given an opportunity to speak in the matter. It is the plaintiff's case that he is cultivating the suit properties with coffee, arecanut and pepper. This being the case, if he is illegally or forcible dispossessed from any portion of suit properties, irreparable injury will be caused to him. The plaintiff has made out prima-facie case with respect to the suit properties and the balance of convenience at this stage is also in favour of plaintiff. Under the circumstances, this Court records its reasons on Point No.1 to 3 in **Affirmative.**

11. POINT No.4: In view of the above findings on point No.1 to 3, this Court is of view to allow the present application and accordingly proceed to pass the following.



ORDER

IA.No.I filed by the plaintiff under Order XXXIX Rules 1 & 2 of Code of Civil Procedure, is hereby allowed.

Temporary injunction is granted in favour of plaintiff restraining the defendants, its men, agents or any person claiming through them from trespassing, removing fence, damaging the Coffee and other crops in the suit schedule properties or in any way taking forcible possession of any portion of suit schedule properties without due process of law, till disposal of this suit.

For plaintiff evidence by: 14.03.2024.

(Dictated to the stenographer, typed by her on computer, corrected and then pronounced by me in the open court on this the 28th day of February, 2024).

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

***BSM**

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