



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
J.M.F.C., AT MUDIGERE**

: PRESENT :

**SRI. JAYAPRAKASH V., B.A., L.L.B.,
SENIOR CIVIL JUDGE & JMFC,
MUDIGERE**

O.S. 72/2023

DATED THIS THE 13th DAY OF SEPTEMBER 2024

PLAINTIFF: Sri. K. Manchegowda,
S/o Late Kadegowda,
Aged about 58 years,
Businessman,
R/o J.M. Road,
Mudigere Town,
Chikkamagaluru District.

Represented by his GPA Holder,
H.K. Manoj
S/o Late H.S. Kalappagowda,
Aged about 48 years,
R/o Daradahalli village,
Mudigere Taluk,
Chikkamagaluru District.

(By Sri. H.S., Advocate)

V/s.

DEFENDANT: 1. Smt. K.T. Sridevi,



W/o D.R. Duggappagowda,
Aged about 56 years,
R/o Gendehalli- Belur Road,
Mudigere Town,
Chikkamagaluru District.

2. Sri. D.R. Duggappagowda,
S/o Late Ramegowda,
Aged about 63 years,
R/o Gendehalli – Belur Road,
Mudigere Town,
Chikkamagaluru District.

(By Sri. K.M.P., Advocate)

I. A. No. I

Applicant :- Smt. K. Manchegowda

V/s.

Opponents:- Smt. KT. Sridevi and others

1	Provisions under which the application is filed	Under order XXXIX rule 1 and 2 of CPC
2	Relief sought for	Temporary injunction
3	The date on which the application is filed	21/11/2023
4	Number of the application	IA. No. I



5	Date on which the objection filed by opponents	03/01/2024
6	The date on which the order was passed on the said application	13/09/2024

(Jayaprakash V)
Senior Civil Judge and JMFC,
Mudigere

**ORDER ON I.A.NO. I FILED BY THE PLAINTIFF UNDER ORDER
XXXIX RULE 1 AND 2 R/W SECTION 151 OF CPC.**

The plaintiff has filed I.A.No.I for grant temporary injunction against the defendants from trespassing into the application / plaint 'A' schedule properties or making any construction over the application / plaint 'A' schedule property or causing interference to the possession of the plaintiff over the application / plaint 'A' schedule properties excluding the application / plaint 'B' schedule property pending disposal of the suit.

2. In the affidavit annexed to the application the SPA holder of plaintiff stated that, he managing the plaint schedule and other properties of the plaintiff.



Plaintiff is the absolute owner in possession of the plaint schedule properties. The plaint schedule properties are the part of the two house site properties totally measuring 98,924.50 square feet which was purchased by the plaintiff under registered sale deed bearing document No. 534/07-08 dated 28/05/2007 from its joint owners Ramesh Prabhu and Suresh Prabhu. The plaintiff thereafter formed the layout of house sites in the said properties after approval from the local authorities. The plaint schedule properties bear site No. 23 to 26 of the said layout plan. The plaintiff sold several sites out of the said layout the plaint schedule properties and other sites are retained by the plaintiff.

3. Plaintiff further stated that, the above said properties were the ancestral properties belonging to one late Kallegowda of Nandipura village, Mudigere Taluk. There was partition of HUF properties belonging to the said family under registered partition deed bearing document No. 57/1947-48 dated 18-08-1947. The above said properties were part of the



property which was allotted to the share of late N.K.Nanjundegowda who was one of the sons of late Kallegowda. Thereafter there was partition of HUF properties belonging to the family of late N.K.Nanjundegowda under registered partition deed bearing document No. 291/72-73 dated 30-06-1972. The above said property was allotted to the share of one of his son by name N.N.Rajiv. The said N.N.Rajiv and his minor son sold the eastern portion of the said property to the vendors of the plaintiff by name Ramesh Prabhu and Suresh Prabhu under registered sale deed bearing document No 45/04-05 dated 19-04-2004 retaining one site towards southern side and western portion situated to the west of The PB road the said property earlier had Khatha No. 167/159 of then Mudigere Municipality during the year 1947 and at that time bounded on East: Mudigere-Belur road; West: earlier Municipal field now layout; North: Municipal field and now road; South: the house of Rangarajaiah and thereafter his son B.R.Jaganath and later a road and presently



property of Ranjan Ajith Kumar. The said property had Khatha No. 19/186, 20/186 and 21/186 during the year 1977. The property purchased by the vendors of the plaintiff had Khatha No. 315 and is bounded on east: Mudigere-Belur road; West: P.B.Road also called as Doddi Beedi; North: road; south: remaining land of N.N.Rajeev and property of Venkatesh. Now the plaint schedule properties are provided with property identification number after formation of layout. The erstwhile owner of the said property N.N.Rajiv is still in possession of land towards western side of the P.B.Road and he has got Khatha in the Mudigere Town Panchayath to the said property.

4. Plaintiff further submit that the plaintiff was in possession of the plaint 'A' schedule properties and was forced to file a suit for the relief of injunction against the defendants when there was interference by them to the peaceful enjoyment and possession of the plaintiff over the said properties. The plaintiff filed a suit in O.S. 160/2020 on the file of Addl. Civil



Judge, Mudigere in respect of the entire extent of the site purchased by the plaintiff. The plaintiff also filed an appeal in M.A. 03/2022 on the file of this court against the order passed on I.A. No. 1. The said I.A. was dismissed as there was improper description of the boundaries. The defendant No. 1 is claiming to be the owner of the land measuring 9 guntas situated towards the southern side of the plaint schedule properties in Sy. No. 44 of Mudigere village. It is stated that the 2nd defendant purchased the land measuring 9 guntas situated in Sy. No. 44 of Mudigere village, Mudigere Taluk under sale deed dated 04-08-2014 and gifted said land to the 1st defendant under registered gift deed bearing document No. 1979/2014-15 dated 11-02-2015. It is stated that there was partition of their properties under partition deed bearing document No. 2103/17-18 dated 24-01-2018. In the above said sale deed, gift deed and partition deed, the possession of the plaintiff is admitted in the boundaries described in the said deeds. But later under rectification deed,



they got changed the boundary. Now the land situated towards the southern side of the plaint schedule properties stands in the name of the 1st defendant. The defendants encroached the part of the plaint 'A' schedule properties detailed as plaint 'B' schedule properties and shown as 'ABCD' in the rough sketch in the month of May 2018. The defendants constructed a house over the part of the plaint 'B' schedule properties. The plaintiff was not aware about the said encroachment at that time and even at the time of filing the suit in O.S. 160/2020. After filing of the said suit, the defendants started to make false allegations against the plaintiff that he encroached the land of Grama Tana. Defendant lodged several petitions to several authorities making false allegations. Even the Mudigere Town Panchayath admitted that the said land does not belong to them and it was the property of late N.K. Nanjundegowda. The revenue authorities conducted survey of the land on the basis of such petition. After survey it was found that the defendants are themselves encroached



the plaint 'B' schedule properties. Plaintiff came to know the same when he obtained the survey report in the 1 week of November 2022. As such the plaintiff got dismissed the appeal in M.A. 3/2022 and the suit in O.S. 160/2020 as he intended to file suit for comprehensive relief of declaration and possession.

5. Plaintiff further submit that the defendants have got no rights or title whatsoever over the plaint schedule properties. The 2nd defendant is member of several organizations. He started to make false allegations against the plaintiff in his attempt to protect his encroachment over the plaint schedule properties. The 2nd defendant even made an attempt to kill the GPA holder of plaintiff and in this regard a criminal case is registered against the 2nd defendant in Cr. No. 147/2022 of Mudigere Police Station. There were several negotiations held to settle the dispute. The Panchayathdars convinced the plaintiff to sell the encroached land to the defendants. The 2nd defendant even made an application for surveying the



land as intended to purchase the encroached land. But later on, the defendants changed their minds and once again started to make false allegations against the plaintiff so as to get the encroached land free of cost by putting pressure on the plaintiff. The 2nd defendant even made an application for regularization of the said encroachment. The defendants have got evil eye over the plaint schedule properties. In order to achieve their illegal goal, they are causing lot of interference to the possession of the plaintiff over remaining portion of the plaint 'A' schedule property. The defendants are now making hectic efforts to encroach the remaining portion of the plaint 'A' schedule properties. On 11-11-2023, the defendants tried to trespass into the remaining portion of the plaint 'A' schedule property and the same was prevented by the attorney of the plaintiff who tried to lodge complaint to the Mudigere Police. But they refused to receive the same on the ground that the dispute in civil in nature.



6. The plaintiff stated that he has got prima-facie case. The balance of convenience lies in his favour. If the T.I. is not granted in favour the plaintiff, there is ample chances of further encroachment by the defendants. In such event the plaintiff will be put to irreparable loss, untold hardship and injury. Hence, plaintiff prays to allow the application.

7. On the other hand defendants appeared through their counsel and filed written statement and filed memo to treat the written statement as objection to IA No.I. In the written statement defendant No.2 has denied the entire allegations made against him in the plaint.

8. Defendants stated that Sri. H.K. Manoj has got no Locus Standi to represent K.Manhegowda and to prosecute the suit. The said Sri. H.K.Manoj has failed to file necessary affidavit in terms of Rule 16(2) of the Karnataka Civil Rules of Practice, 1967. In view



of which the suit filed by H.K.Manoj does not survive for consideration.

9. Defendant further stated that the boundaries furnished in the Plaint Schedule are wrong and totally false and fictitious. No such properties as detailed/described in the Schedule of the plaint are in existence and that the said properties are imaginary and illusory. Defendant further stated that Sri.N.K. Nanjundegowda himself did not have any land in Edga Maidana which has been given to N.N.Rajiv under Partition deed. N.N.Rajiv in collusion with the Municipal authorities got entered a false entry in the municipal records with regard to non existing land or in respect of the Grama Tana land with an sole idea and desire to grab/knock off the public property meant for the village/town. The existence of the said Grama Tana land has been clearly mentioned as in the village map of Mudigere village. Defendant stated that the fraud played in the said subject matter could be noticed in the information furnished by the Mudigere Town Panchayithi authorities in response to



the application filed by the defendant No.2 under the provisions of Right to Information Act. Later Sri.N.N.Rajiv along with his son sold the imaginary extent of land fraudulently to the alleged Vendor of the plaintiff and the alleged vendor of the Plaintiff has in-turn sold the imaginary extent of land fraudulently to the plaintiff on the basis of the deceptive documents created, innovated in the Mudigere Town Panchayath office. On the said fraudulent document, the plaintiff cannot be said to have acquired any valid and legal title in or over the imaginary land. After purchasing the imaginary land the plaintiff has put his wicked eye on the land being used as road by the public and on the land belongs to the defendants. Being annoyed by the illegal acts of the plaintiffs the local residents of the vicinity has complained the matter to the Hale Mudigere Grama Panchayithi, who passed a resolution on 23-06-2020 and necessary proceedings with regard to the public Road have taken place in the office of Tahsildar, Mudigere. Therefore the present suit is an device to



frustrate the proposed steps/action to taken by the public authority. There is no prima-facie case or an absolute case on merits in favour of the plaintiff. The Balance of convenience lies in favour of the defendants. There is no semblance of right exist in favour of the plaintiff. The grant of declaration and injunction will cause irretrievable injury and uncompensated loss, damage to the defendants. Hence, defendant prayed to dismiss the application.

10. Heard on both side.

11. From the above rival contention, the following points arise for my consideration.

1. Whether the plaintiff has made out prima-facie case for grant of temporary injunction?
2. Whether the plaintiff proves that the balance of convenience lies in his favour?
3. Whether the plaintiff proves that irreparable injury and hardship will be caused to him if temporary injunction is not granted?
4. What order?



12. Heard arguments by both sides.

13. Upon appreciation of rival contention in the arguments advanced by the both parties, my findings to the above points 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

14. POINT NO.1 TO 3:- These points are inter-linked with each other hence they are taken for common discussion to avoid repetition.

15. The plaintiff has filed the suit for declaration that he is the absolute owner of plaint 'A' schedule property and for possession of plaint 'B' schedule property and also sought the relief of permanent injunction restraining the defendants from trespassing into the plaint 'A' schedule property. Plaintiff has filed I.A. No. I for grant of temporary injunction



restraining defendants from trespassing into the plaintiff 'A' schedule property or making any construction over the application 'A' schedule property or causing interference to the possession of plaintiff over the application 'A' schedule properties excluding the application 'B' schedule property.

16. It is the specific case of plaintiff that, plaintiff is the absolute owner in possession of the plaintiff 'A' schedule property. The plaintiff schedule properties are the part of the two house site properties totally measuring 98,924.50 square feet which was purchased by the plaintiff under registered sale deed bearing document No. 534/07-08 dated 28/05/2007 from its joint owners Ramesh Prabhu and Suresh Prabhu. The plaintiff thereafter formed the layout of house sites in the said properties after approval from the local authorities. The plaintiff schedule properties bear site No. 23 to 26 of the said layout plan.

17. Plaintiff stated that, the plaintiff schedule properties were the ancestral properties belonging to



one late Kallegowda of Nandipura village, Mudigere Taluk. Under registered partition deed bearing document No. 57/1947-48 dated 18-08-1947, the above said properties were part of the property which was allotted to the share of late N.K.Nanjundegowda who was one of the sons of late Kallegowda. Thereafter there was partition of HUF properties belonging to the family of late N.K.Nanjundegowda under registered partition deed bearing document No. 291/72-73 dated 30-06-1972. The above said property was allotted to the share of one of his son by name N.N.Rajiv. The said N.N.Rajiv and his minor son sold the eastern portion of the said property to the vendors of the plaintiff by name Ramesh Prabhu and Suresh Prabhu under registered sale deed bearing document No 45/04-05 dated 19-04-2004 retaining one site towards southern side and western portion situated to the west of the PB road.

18. The said property earlier had Khatha No. 167/159 of then Mudigere Municipality during the year 1947 and at that time bounded on East:



Mudigere-Belur road; West: earlier Municipal field now layout; North: Municipal field and now road; South: the house of Rangarajaiah and thereafter his son B.R.Jaganath and later a road and presently property of Ranjan Ajith Kumar. The said property had Khatha No. 19/186, 20/186 and 21/186 during the year 1977.

19. Plaintiff stated that, the property purchased by the vendors of the plaintiff had Khatha No. 315 and is bounded on East: Mudigere-Belur road; West: P.B.Road also called as Doddi Beedi; North: road; South: remaining land of N.N.Rajeev and property of Venkatesh. Now the plaint schedule properties are provided with property identification number after formation of layout.

20. Plaintiff further submit that he was forced to file a suit in O.S. 160/2020 for the relief of injunction against the defendants when there was interference by them to the peaceful enjoyment and possession of the plaintiff over the said properties.



The plaintiff also filed an appeal in M.A. 03/2022 on the file of this court against the order passed on I.A. No. 1. The said I.A. was dismissed as there was improper description of the boundaries.

21. The defendant No. 1 is claiming to be the owner of the land measuring 9 guntas situated towards the southern side of the plaint schedule properties in Sy. No. 44 of Mudigere village. The 2nd defendant purchased the land measuring 9 guntas situated in Sy. No. 44 of Mudigere village, Mudigere Taluk under sale deed dated 04-08-2014 and gifted said land to the 1st defendant under registered gift deed bearing document No. 1979/2014-15 dated 11-02-2015. It is stated that there was partition of their properties under partition deed bearing document No. 2103/17-18 dated 24-01-2018. In the above said sale deed, gift deed and partition deed, the possession of the plaintiff is admitted by defendants in the boundaries described in the said deeds. But later under rectification deed, they got changed the boundary. Now the land situated towards the



southern side of the plaint schedule properties stands in the name of the 1st defendant. The defendants encroached the part of the plant 'A' schedule properties detailed as plaint 'B' schedule properties and shown as 'ABCD' in the rough sketch in the month of May 2018. The defendants constructed a house over the part of the plaint 'B' schedule properties. After filing of the said suit, the defendants started to make false allegations against the plaintiff that he encroached the land of Grama Tana. Defendant lodged several petitions to several authorities making false allegations. The Mudigere Town Panchayath admitted that the said land does not belong to them and it was the property of late N.K. Nanjundegowda. The revenue authorities conducted survey of the land on the basis of such petition. After survey it was found that the defendants are themselves encroached the plaint 'B' schedule properties. As such the plaintiff got dismissed the appeal in M.A. 3/2022 and the suit in



O.S. 160/2020 as he intended to file suit for comprehensive relief of declaration and possession.

22. Plaintiff further submit that the defendants have got no rights or title whatsoever over the plaint schedule properties. The 2nd defendant is member of several organizations. The Panchayathdars convinced the plaintiff to sell the encroached land to the defendants. The 2nd defendant even made an application for surveying the land as intended to purchase the encroached land. But later on, the defendants changed their minds and once again started to make false allegations against the plaintiff so as to get the encroached land free of cost by putting pressure on the plaintiff. The 2nd defendant even made an application for regularization of the said encroachment. The defendants have got evil eye over the plaint schedule properties. In order to achieve their illegal goal, they are causing lot of interference to the possession of the plaintiff over remaining portion of the plaint 'A' schedule property. On 11-11-2023, the defendants tried to trespass into



the remaining portion of the plaint 'A' schedule property and the same was prevented by the attorney of the plaintiff who tried to lodge complaint to the Mudigere Police. But they refused to receive the same on the ground that the dispute is civil in nature. Hence, plaintiff prays to allow the application.

23. On the other hand defendants contended that the description of the suit schedule properties are improper the boundaries furnished in the plaint are wrong. The defendants stated that no such properties as detailed in the schedule of the plaint are in existence and the said properties are imaginary and illusory. Defendants further stated that Sri.N.K. Nanjundegowda himself did not have any land in Edga Maidana which has been given to N.N.Rajiv and such being so, how N.N.Rajiv S/o N.K. Nanjundegowda could acquire any land in Edga Maidana under Partition deed. N.N.Rajiv in collusion with the Municipal authorities got entered a false entry in the municipal records with regard to non existing land or in respect of the Grama Tana land



with an sole idea and desire to grab/knock off the public property/property meant for the village/town. The existence of the said Grama Tana land has been clearly mentioned as in the village map of Mudigere village and even in other records also. Later Sri.N.N.Rajiv along with his son sold the imaginary extent of land fraudulently to the alleged Vendor of the plaintiff and the alleged vendor of the Plaintiff has in-turn sold the imaginary extent of land fraudulently to the plaintiff on the basis of the deceptive documents created, innovated in the Mudigere Town Panchayithi office. On the said fraudulent document, the Plaintiff cannot be said to have acquired any valid and legal title in or over the imaginary land. After purchasing the imaginary land in order to make good the loss, the plaintiff has put his wicked eye on the land being used as road by the public and on the land belongs to the defendants. Being annoyed by the illegal acts of the plaintiffs the local residents of the vicinity has complained the matter to the Hale Mudigere Grama Panchayath, who



passed a resolution on 23-06-2020 and necessary proceedings with regard to the public Road have taken place in the office of Tahsildar, Mudigere. Therefore the present suit is an device to frustrate the proposed steps/action to taken by the public authority. There is no prima-facie case or an absolute case on merits in favour of the plaintiff. The Balance of convenience lies in favour of the defendants. Hence, defendant prayed to dismiss the application.

24. While deciding the application under Order 39 rule 1 & 2 of CPC, the court must be satisfied about prima-facie case to grant temporary injunction. It is settled principle of law that even if an unfettered prima-facie case is found established by the applicant still the applicant has to establish balance of convenience and irreparable loss or injury, only on completion of 3 formalities the applicant will be granted the relief of temporary injunction.

25. In order to substantiate the contention of plaintiff, he has produced the following documents:



Sl. No.	Date	Description of Document
1	26/10/2023	GPA Executed by plaintiff in favour of H.K. Manoj to manage the property and prosecute the case
2		7 numbers of Form No. 3 issued by the Pattana Panchayathi Mudigere.
3	18/08/1947	Partition deed registered as document No. 57/1947-48
4	30/06/1972	Partition deed registered as document No. 291/1972-73
5	27/02/2004	Sale deed executed by N.N. Rajeeva and his minor son Sri. N.R. Nandan in favour of Sri Ramesh Prabhu and Sri. Suresh Prabhu
6	28/05/2007	Sale deed executed by Sri. Ramesh Prabhu and Sri. Suresh Prabhu in favour of Sri. K. Manchegowda
7		Approved site plan
8	30/08/2023	Declaration issued by the Pattana Panchayath Mudigere
9	18/10/2022	Certified copy of the survey sketch regarding 0.05½ gunta



		of land of plaintiff encroachment by the owner of Sy.No. 44/1
10	30/08/2022	Application filed by defendant No.2 to the ADLR Mudigere
11		Order sheet in MA 3/2022.
12	20/11/2023	Complaint filed by plaintiff to the SP Chikmagaluru
13	09/10/2022	FIR in crime No. 147/2022 registered against defendants and others.
14	11/02/2015	Gift deed executed by defendant No.2 in favour of defendant No.1
15	4/8/2014	Sale deed executed by Smt. Razia Begam and others in favour of defendant No.2
16	24/01/2018	Partition deed entered into between the children of D.R. Duggappa Gowda.
17	12/12/2017	Form No. 9 standing in the name of defendant No.1
18	12/12/2017	Form No. 11A standing in the name of defendant No.1
19		Drawing for the proposed layout plan
20		Residential single site plan



21		Order sheet in O.S. No. 160/2020
22	17/1/2024	Endorsement issued by the Deputy Commissioner, Chikmagaluru
23		Rough sketch of the suit schedule property
24	10/10/2017	Letter correspondence of PDO to the Tahasildhar Mudigere
25		Statement of defendant No.2 recorded at the time of survey of grama tana property
26	29/07/2016	Letter written by defendant No.2 to the president and PDO Hale Mudigere grama panchayath
27		Village map
28	14/11/2022	Letter issued by the pattana panchayath Mudigere to the Sub-Inspector, Mudigere in crime No.148/2022
29	27/10/2022	Letter issued by the Tahasildar Mudigere to the Deputy Commissioner, Chikmagaluru
30	10/10/2022	Endorsement issued by the pattana panchayath Mudigere
31		Copy of the property tax paid register.



26. On other hand defendant has produced following documents:

Sl. No.	Date	Description of the document
1	30/6/1972	Partition deed Document No.291/71
2		Village map
3		Information in writing with certified Assessment registered extract 7 in numbers
4	7/1/2021	Information furnished by the Mudigere Town panchayath
5		Technical approval of town and country planning authority Chikmagaluru with single site layout plan.
6	19/1/2021	Certificate issued by the PDO Hale Mudigere grama panchayath
	21/8/2019 and 10/8/2019	Representation of Local residence of the vicinity
		Resolution of Hale Mudigere grama panchayath
8	11/8/2020	Proceedings of Tahasildar Mudigere
9		Sketch of the road existing in the grama tana land
10	5/3/2021	Letter issued by the information



		officer pattana panchayath Mudigere
11	9/3/2022	Proceedings of Deputy Commissioner
12		Order sheet in MA 3/2022
13		Order sheet in O.S. No. 160/2020
14		Order in IA No. I in O.S. No. 160/2020
15		Copy of plaint in O.S. No. 160/2020
16	20/12/2023	Xerox copy the information furnished by the pattana panchayath
17	11/12/2023	Xerox copy the information furnished by the pattana panchayath
18	20/07/2021	Letter filed by Karntaka State Formers Association and Hasiru Sene to the Director District Urban Development Cell, Chikmagaluru
19	20/07/2021	Letter issued to the Deputy Commissioner Chikmagaluru regarding encroachment of grama tana land.
20	29/07/2021	Letter issued by the Deputy Commissioner Chikmagaluru to the planning Director DUDC in the office of Deputy Commissioner
21	04/08/2022	Representation submitted by the



	and 26/09/2023	Karnataka State Former Association to the Deputy Commissioner
22	20/11/2023 and 09/10/2023	Representation submitted by public to the Deputy Commissioner, Chikmagaluru
23	11/01/2023	Letter written by the defendant No.2 the AEE, MESCOM Mudigere
24	17/01/2024	Letter written by the defendant No.1 to Deputy Commissioner
25	17/05/2024	Letter written by the defendant No.2 to Chief officer, Pttana Panchayath, Mudigere Taluk.
26	05/03/2021	Letter written by Information Officer Pattana Panchayath, Mudigere to defendant No.2
27	09/02/2024	Letter written by Information Officer Pattana Panchayath, Mudigere to H.R. Basavarajappa
28	09/02/2024	Letter written by Pattana Panchayath, Mudigere to defendant No.2
29	09/02/2024	Letter written by Pattana Panchayath, Mudigere to defendant No.2
30	25/02/2024	Information furnished under RTI by Pattana Panchayath, Mudigere to defendant No.2
31	01/03/2024	Information furnished under RTI by



		Pattana Panchayath, Mudigere to defendant No.2
32	30/04/2024	Endorsement from Tahasildar to defendant No.2
33	05/08/2024	Letter written by defendant No.2 to Chief Officer Pattana Panchayath, Mudigere
	12/02/2021	Information furnished under RTI by Pattana Panchayath, Mudigere to defendant No.2
	29/06/2013	Government Karnataka Proceedings

27. The plaintiff has relied the following citations:

1. 2014 O Supreme (Kar) 783
2. 2003 O Supreme (Ori) 884
3. 2003 O Supreme (Raj) 1457

The defendants have relied the following citations:

- 1) 2004 (1) KCCR 662
- 2) 2009 (1) KCCR 670
- 3) (2012) 9 SCC 552 (X)
- 4) ILR (1995) II Delhi 792
- 5) ILR Cal 814
- 6) (1983) 4 SCC 625
- 7) 2002 (3) KCCR SN 220 (D)



- 8) ILR 1991 Kar 1696
- 9) 2009 (1) KCCR 192
- 10) 2006 (2) KCCR SN 118
- 11) 2009 (3) KCCR SN 163 (DB)
- 12) 2006 (3) KCCR SN 186

I carefully perused the above citations and followed the principles laid down in the above citation.

28. The plaintiff to substantiate his contention has produced the GPA executed by plaintiff in favour of H.K. Manoj to manage the property and prosecute the case. The defendants contended that Sri. H.K. Manoj has got no Locus Standi to represent K.Manhegowda and to prosecute the suit. The said Sri. H.K.Manoj has failed to file necessary affidavit in terms of Rule 16(2) of the Karnataka Civil Rules of Practice, 1967. In view of which the suit filed by H.K.Manoj does not survive for consideration. But on 19/07/2024 plaintiff filed memo with affidavit of GPA holder of plaintiff under rule 16(2) of the Karnataka Civil Rules of Practice, 1967. Though defendant has filed his



objection to the said memo, but it is a curable defect and the plaintiff by filing the affidavit of GPA holder of plaintiff under rule 16(2) of the Karnataka Civil Rules of Practice rectified the said defect.

29. Plaintiff to prove his possession over the plaint “A” schedule property produced the Form No. 3 issued by the Pattana Panchayathi Mudigere. It appears the said assessments are standing in the name of plaintiff. Plaintiff also produce the certified copy of the partition deed dated 18/08/1947 registered as document No. 57/1947-48. On perusal of the the said partition deed it appears that Sri. N.K. Nanjunde Gowda is allotted 'B' schedule property therein. In the said partition the property in khatha No. 167/159 has been allotted to the share of N.K. Nanjunde Gowda. The boundaries stated in the said partition deed is East: Mudigere – Beluru road, West : Municipal ground, South : House of Rangarajaiah and North: Municipal ground. The partition deed also shows that Sri. N.K. Nanjunde Gowda is the son of Late Kalegowda.



30. The plaintiff filed the another partition deed dated 30/06/1972 registered as document No. 291/1972-73. In the said partition of the family of N.K. Nanjunde Gowda, the 'C' schedule property therein has been allotted to N.N. Rajeeva. It bears the khatha No. 19/186, 20/186 and 21/186. The boundary of the property allotted the N.N. Rajeeva in the said partition deed is stated as East by Mudigere – Beluru road, West by Municipal vacant site and road, South by House of B.R. Jaganatha and North Municipal road. The plaintiff has produce the sale deed dated 27/02/2004 as document No. 45/2004-05 executed by N.N. Rajeeva and his minor son N.R. Nandan in favour of Sri Ramesh Prabhu and Sri. Suresh Prabhu. It appears that the property measuring

$$1) \frac{370+234}{2} \times \frac{200+228}{2} \quad 2) \frac{87+200}{2} \times \frac{228+250}{2}$$

has been sold by N.N. Rajeeva and his son. In the said sale deed the boundaries of the property sold by N.N. Rajeeva and his son infavour of Sri Ramesh Prabhu and Sri. Suresh Prabhu is stated as East:



Mudigere - Belur Road, West: Doddi Beedi road, North : Panchayath road and South the property retained by N.N. Rajeev and property of Venkatesha. The sale deed dated 28/05/2007 produced by the plaintiff shows that Sri Ramesh Prabhu and Sri. Suresh Prabhu have sold the said property site No. 315/1 to the plaintiff herein. The measurement of the property purchased by plaintiff is 98924.50 Sqf. It is bounded East: Mudigere – Belur road, West: Doddi Beedi road, North: Panchayath road, South: site of N.N. Rajeeva and site of K. Venktesh. The defendants seriously disputed the boundaries stated in the above partition deed and sale deeds. The defendants further stated that as per the said sale deed on the western side of the schedule property Doddi Beedi road is in existence, but the approved plan issued by the town panchayath is situated in P.B. Road.

31. The plaintiff has produced the approved site plan it appears that the layout plan has been formed at assessment No. 315/1 and property No.9-8-17 of ward No. 2, P.B. road, Mudigere Taluk. The



defendant contended that in the sale deed of plaintiff it is stated that the site existing in Doddi beedi road but in the approved plan it is stated that it is existing in P.B.Road. In this regard the plaintiff produced the declaration issued by the Town panchayath by declaring that the assessment No.315/140/135 is standing in the name of K. Manchegowda S/o Kadegowda and it is further stated that since from the years 1986-87 till 1997-98 in the MAR 19 (tax assessment register) it is entered as Prasad Block Road. It is to be noted is that the description existing as on the date of execution of the sale deed may differ on this date. If the defendant want to establish that the description of the suit schedule property is not true and correct then he can establish the same during trial.

32. The defendant contended that, on 5/3/2021 the information officer under RTI furnished information that no document relating to road information available in their office. The defendant contended that the plaintiff has created said document in



collusion with authorities. The defendant further contended that the Chief Officer Town Panchayath has no authority to approve the layout plan. With regard to the genuineness of the said approval of layout plan it requires trial, this court at this stage cannot come to conclusion that the said plan is genuine or not.

33. The survey sketch produced by plaintiff discloses that, the khata of assessment No.315/1 property No.7/8/17 is stands in name Manchegowda and it consist of house and compound and 0.05½ guntas has been encroached by the land owner of Sy.No. 44/1. Admittedly the Sy.No. 44/1 belongs to defendants. Whether defendants have encroached the said 0.05½ guntas of land can not be decided in the present application and it requires full-fledged trial.

34. Plaintiff produce the letter dated 30/08/2023 issued by the defendant No.2 to the ADLR Mudigere for furnishing sketch of the property No.9-8/17/24 assessment No. 315/1/32 and site No. 9-8-17/25 assessment No. 315/1/33 and site No.9-8-17/26



assessment No.315/1/34 by stating that he intend to purchase 5,900 sq.ft suit “A” schedule property from plaintiff. The said letter submitted by defendant No.2 to the ADLR Mudigere for furnishing the sketch clearly shows that he was intending to purchase the plaint schedule property. The plaintiff in the application stated that there were several negotiations held to settled the dispute. The Panchayathdars convinced the plaintiff to sell the encroached land to defendants. The plaintiff stated that though defendant filed application for surveying the land for purchasing the said land but later on the defendant changed his mind and started to make false allegation against the plaintiff so as to get the encroached land free of cost by putting pressure on plaintiff. The various representations filed by the defendant itself indicates the intention of the defendants and interference of defendants over the suit schedule property.

35. Plaintiff produce the order sheet in MA 3/2022. It appears that the plaintiff herein filed memo to dismiss the appeal as not pressed. Plaintiff



produce the letter dated 20/11/2023 issued by plaintiff to the SP Chikmagaluru, with regarding the life threat by the defendant No.2. Plaintiff produce the FIR in crime No. 147/2022 registered against the defendant No.1 and 2 and others for the offence Punishable Under Section 307, 324, 506, 504, 114 R/w Sec. 34 of IPC and section 3(1), 25(1b) of Indian Arms Act 1957. The said documents also shows the interference of defendants.

36. Plaintiff has produce the gift deed executed by defendant No.2 in favour of defendant No.1 pertaining to 0.09 acres of land in Sy.No. 44/1. The gift deed shows that on the western side of the property of defendant the property of plaintiff is in existence. Plaintiff has produced the sale deed dated 4/8/2014 executed by Smt. Razia Begam and others in favour of defendant No.2 pertaining to 0.09 acres of land in Sy.No. 44/1. The said sale deed of the defendant also discloses that on the Western side of the property of defendant the property of plaintiff is in existence. Plaintiff has produce the order sheet in



O.S. No. 160/2020 and also produced case status report it appears that the suit in O.S. No. 160/2020 has been dismissed as not pressed.

37. The plaintiff has produced the endorsement dated 17/1/2024 issued by the Deputy Commissioner, Chikmagaluru. In the said endorsement it is stated that the panchayath property has been not encroached and the complaint filed by the villagers and defendant No.1 has been closed. Plaintiff produced the letter correspondence of PDO to the Tahsildar Mudigere dated 10/10/2017 regarding the application filed by defendant No.2 regarding regularization of the grama tana property by the side of Sy.No. 44/1. It indicates that defendant himself has encroached grama tana property. Plaintiff produced the statement of defendant No.2 recorded at the time of survey of grama tana property. The plaintiff also produce the letter dated 29/07/2016 written by defendant No.2 to the president and PDO Hale Mudigere grama panchayath for regularization of 10 guntas of grama tana property. Plaintiff produced the



grama tana map. Plaintiff also produce the letter dated 14/11/2022 issued by the chief officer pattana panchayath Mudigere to the Sub-Inspector, Mudigere regarding the requisition submitted by the police station to identified the place of incident taken place in the crime No.148/2022. The chief officer has submitted the information by stating that as per survey records the khatha of the said place of incident is standing in the name of K. Manjegowda S/o Kalegowed in assessment No. 315/1 property No. 7/8/17. It appears that the application schedule property is stands in the name of plaintiff.

38. Plaintiff produce the letter dated 27/10/2022 issued by the Tahsildar Mudigere to the Deputy Commissioner, Chikkamagaluru. The said document shows that the suit schedule property is belongs to the plaintiff and they have issued license of construction of building and there is no violation of any rules. The endorsement dated 17/01/2024 issued by the Deputy Commissioner, Chikkamagaluru also clearly shows that the property of Pattana Panchayath



is not encroached by the plaintiff. By this it is clear that the the plaintiff is in possession of plaint 'A' schedule property. Plaintiff produced the endorsement issued by the pattana panchayath Mudigere dated 10/10/2022. In the said endorsement it is stated that the khatha of assessment No.315/1 property No.9-8-17 is standing in the name of Manchegowda i.e., the plaintiff herein and in the said endorsement it is further stated that the road existing on the western side of the said property is called as Doddibeedhi and P.B. Road. Moreover, the defendant has produce the representation dated 21/8/2019 it indicates that the said representation is filed by the local residence of the vicinity of Doddi Beedi and Prasad Block. Itself shows that the suit schedule property is situated by the side of Doddi Beedi / Prasad Block.

39. On the other hand the defendants produced the partition deed dated 30/06/1972 on perusal of the said partition deed it reveals that the 'C' schedule property therein has been allotted to N.N. Rajiva. The defendants stated that the boundaries stated in the



said partition deed is not tallying with the boundaries stated in the plaint. It is to be noted is that the description existing as on the date of execution of the said partition deed may differ on this date.

40. Defendant has produced the information in writing with certified assessment registered extract 7 in numbers and stated that in the assessment No.28 the property standing in the name of N.K. Nanjundegowda is in the state of Edga Maidan and the assessment No.134/34A vacant site standing in the name of N.N. Rajiva is situated in the Prasad Block Road. The defendants contended that there is ambiguity regarding the existence of suit schedule property, whether the said property is situated by the side of Edga Maidan Road or situated at Prasad Block. But the endorsement issued by the Pattana Panchayath shows that the said area is called as Prasad Block and Edga Maidan Road, all the said names are pertaining to the same place.

41. Defendants produced the information furnished by the Mudigere Town panchayath dated 7/1/2021



wherein it is stated that in the katha register of the year 1948 there is no entry of khatha No.167/159 and Municipal khatha No. 19/186, 20/186, 21/186 SM No. 28 H No.29-30. Defendants produce the technical approval of town and country planning authority Chikmagaluru with single site layout plan pertaining to Sy.No. 44/1 measuring 9 guntas belongs to the defendants. Defendants also produce certificate dated 19/1/2021 issued by the PDO Hale Mudigere grama panchayath by stating that the Sy.No. 44/1 measuring 0.09 guntas is situated in the jurisdiction of Hale Mudigere grama panchayath. Defendant has produce the representation of Local residence of the vicinity of Doddi Beedi and Prasad Block dated 21/8/2019 and 10/08/2019. These letters produced by the defendants itself presupposes that the suit schedule property is situated in Doddi Beedi / Prasad Block. Defendant also produce the resolution of Hale Mudigere grama panchayath the said resolution does not disclose any survey number or property in which the said road passes through. Defendants have produce the



proceedings of Tahasildar Mudigere dated 11/8/2020 for entering the road in the village map. It does not disclose the said road is situated in the suit schedule property. Defendants have produce the sketch of the road existing in the grama tana land. Defendant also produced the letter dated 5/3/2021 issued by the information officer pattana panchayath Mudigere relating to the name of road. In the said letter the Pattana Panchayath stated that there is no records available in the panchayath office regarding the particulars of road.

42. Defendants have produce the proceedings of Deputy Commissioner dated 9/3/2022, wherein the Deputy Commissioner directed Tahasildar Mudigere, ADLR Mudigere and chief officer Pattana Panchayath to conduct joint inspection regarding encroachment of gramatana land. Defendant produced copy of order sheet in MA 3/2022 and order sheet in O.S. No. 160/2020 and copy of order in IA No. I in O.S. No. 160/2020 and copy of plaint in O.S. No. 160/2020. It appears that the injunction application filed by the



plaintiff has been rejected by the court on 20/01/2022. It also appears that the M.A. No. 3/2022 preferred by the plaintiff herein has been not pressed by plaintiff. Defendant produced xerox copy the information furnished by the pattana panchayath on 20/12/2023, wherein defendant sought for furnish copy of khatha No. 156/147 from 1947 – 48 to 1970. But the pattana panchayath has stated that no such khatha is available in the pattana panchayath. Defendant produced xerox copy the information furnished by the pattana panchayath on 11/12/2023, wherein defendant sought for furnish copy of the conversion order and layout plan. But the pattana panchayath has stated that no such information is available in the pattana panchayath. Defendants stated that the said documents are created by the plaintiff illegally. Whether the said documents are genuine or not cannot be decided in the present application, it requires full fledged trial.

43. Defendants have produced the letter dated 20/07/2021 filed by Karnataka State Former



Association and Hasiru Sene to the Director District Urban Development Cell, Chikmagaluru and letter issued to the Deputy Commissioner Chikmagaluru regarding encroachment of grama tana land by illegally creating documents by plaintiff. Defendant produce the letter dated 29/07/2021 issued by the Deputy Commissioner Chikmagaluru to the planning Director DUDC in the office of Deputy Commissioner, Chikmagaluru and also produce the letter dated 04/08/2022 and 26/09/2023 representation submitted by the Karnataka State Former Association to the Deputy Commissioner regarding bogus documents created for the gramatana property. Defendant produce the representation submitted by public on 20/11/2023, 09/10/2023 to the Deputy Commissioner, Chikmagaluru. Defendant has produced the letter dated 11/01/2023 written by the defendant No.2 the AEE, MESCOM Mudigere for removal of CC TV camera. The report submitted by Tahsildar Mudigere to the Deputy Commissioner, dated 27/10/2022 clearly indicates that the Municipal Assessment No. 315/1



and 315/1/141/135 are not benami property and the said properties are allotted to the N.K. Nanjundegowda under the partition deed thereafter, in the partition deed dated 30/06/1972 the said property has been allotted to the share of N.N. Rajiva. Said N.N. Rajiva sold the property to Ramesh Prabhu and Suresh Prabhu on 19/04/2004 under the registered sale deed No.45/2004-05. Thereafter, plaintiff has purchased the said property from Ramesh Prabhu and Suresh Prabhu under the registered sale deed. In the said report it is further stated that the said property was standing in the name of N.N. Rajiva for a period of 75 years and during the said period Town and Country Planning Act 1961 was not existed. The Tahsildar further stated that after purchase of the said property by plaintiff khatha has been changed in the name of plaintiff and he has formed sites and sold several sites and khatha has been entered in the name of purchasers and building license have been issued. The Tahsildar further stated that there is no violation of any rules. Now while



deciding interim application for the relief of injunction at this stage without going into the merit of the case and holding mini trial this court has consider the aspect of prima-facie case at this stage this court make it very clear that this court is looking towards prima-facie case and not prima-facie title. It is also well settled principles of law that at the time of disposing the temporary injunction application the court cannot go into prima-facie title and only to consider whether the plaintiff has made out a prima-facie case for granting the relief of injunction.

44. The primary purpose or granting interim relief is the preservation of the things is dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and prejudice, likely to be cause to the applicant if



the relief is refused; and injury and prejudice likely to be caused to the respondent if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.

45. The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side. The first rule is that the applicant must make out a prima facie case in support of the right claimed by him. The court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled



to the relief claimed by him. The existence of a prima-facie right and infraction of such right is a condition precedent for grant of Temporary Injunction.

46. In order to ascertain the prima-facie case, this court has carefully perused the materials on record. On perusal of the property assessment register relied by plaintiff clearly shows that the suit “A” schedule property stands in the name of plaintiff. The layout plan also shows that plaintiff is in possession of the suit “A” schedule property. The documents relied by plaintiff prima-facie shows that plaintiff is in possession of the suit “A” schedule property as on the date of suit. It is the contention of the defendants that the suit schedule property is grama tana property. On one hand defendants stated that the suit schedule property is imaginary property and on the other hand defendants stated that the suit schedule property is a grama tana property. But after considering the materials on record it appears to this court that plaintiff is having better title than



defendants over the suit schedule property and till the Government passes suitable order for resuming the possession from plaintiff, then on the basis of the registered sale deed standing in the name of plaintiff, this court is of the opinion that the plaintiff has made prima-facie case for granting equitable relief of temporary injunction.

47. The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be grater than that which is likely to be caused to the opposite party by granting it. The existence of the prima-facie case alone does not entitle the applicant for a temporary injunction. The applicant must further satisfy the court about the third condition by showing that he will suffer irreparable injury if the injunction as prayed is not granted and that there is no other remedy open to him by which



can protect himself from the consequences of apprehended injury. In the application, the plaintiff has sought for the relief of temporary injunction restraining defendant from trespassing or making any construction or interfering to the possession of plaintiff over the suit “A” schedule property.

48. After considering the materials on record, this court is of the opinion that comparative mischief, hardship or inconvenience will be caused to the plaintiff if equitable relief of temporary injunction is not granted in favour of the plaintiff than the comparative mischief, hardship or inconvenience caused to the defendant if this application is allowed. After considering the materials on record, this court is of the opinion that the applicant has made out prima-facie case, the balance convenience leans in favour of the plaintiff and if the equitable relief of temporary injunction is not granted in favour of plaintiff as prayed in I.A. No. I, then he will be put to irreparable loss and injury. At this stage while deciding I.A No.I this court cannot decide merits of



the case. The aspects of genuineness of the documents is requires full fledged trial and it will be decided after full pledged trial only. Based on the documents produced by the applicant it is clear that the applicant has made out a prima-facie case. Under such circumstances, if the application is not allowed the applicant will be put to great loss and hardship.

49. The unchallenged revenue entries and the title deeds is the material to show the lawful possession of plaintiff to grant of temporary injunction. It is the settled or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and right of possessor to protect his possession against the owner as come to be settled by a catena of decisions. Even the true owner has no right to dispossess the trespasser by force if the trespasser is settled possession of the land and in such a case unless he evicted in the due course of law, he is entitled to defend his possession even against the rightful owner.



In view of my above discussion, I am of the opinion that the applicant has established prima-facie case in his favour. It is the applicant who will be put to inconvenience if defendant is not restrained from trespassing, interfering or making any construction over the application 'A' schedule property. It is the applicant who will be put to irreparable loss and injury, if the relief in IA. No.I is not granted. Accordingly, Point No.1 to 3 is answered in Affirmative.

50. **Point No.4:-** For the aforesaid reason and discussion, I proceed pass the following: -

O R D E R

I.A. No. I filed by the plaintiff Under Order 39 Rule 1 & 2 is hereby allowed.

The defendants their men, servants, agents and any other persons claiming under them are restrained from trespassing, interfering or making any



construction over the application 'A'
schedule property pending disposal of
the suit.

(Dictated to the stenographer, transcribed by her, corrected and then pronounced
in the open court on this the 13th day of September 2024)

B

(JAYAPRAKASH V.)
SENIOR CIVIL JUDGE & JMFC,
MUDIGERE.