

IN THE COURT OF THE CIVIL JUDGE AND J.M.F.C. AT SRINGERI**PRESENT**

**Sri. Suryanarayana S., B.A.L., L.L.B.,
Civil Judge & JMFC., Sringeri.**

Dated: This the 7th day of March, 2020.

O.S.No.08/2019

Plaintiff: Sri.Srinivasa Gowda
S/o Singappa Gowda,
Aged about 63 years,
R/o Malnad,Nemmar Post,
Sringeri Taluk.
(By Sri.K.C.C., Adv.)

V/s

Defendants: 1) Venkatesh Bhat
S/o Late.Mahabala Bhat,
2) Gowri W/o Chandrashekar
3) Narashimamurthy
S/o Late.Mahabala Bhat
All the defendants are resident
of Malnad, Nemmar Post,
Sringeri Taluk.
(By Sri. S.G.S., Adv.)

Parties to the I.A.No.1

Between	Rank in I.A	Rank in suit
Sri. Srinivasa Bhat	Applicant	Plaintiff
V/s		
Venkatesh bhat and others	Opponent	Defendants

ORDERS ON I.A.NO.1

The Applicant/plaintiff has filed this application under Order 39 Rules 1 and 2 read with Section 151 of CPC seeking temporary injunction against the defendants, their agents, servants or anybody claiming through them from alienating the B schedule property to any other person in any manner till the disposal of the suit.

2. The applicant in support of his application filed affidavit, wherein he stated that property measuring 33 guntas in survey no.111 in the Malnad Village Sringeri Taluk granted to his father Shingegowda in Tenancy act and the plaintiff acquired above said property through jubane hissa patra entered in between his family, Khata of Survey no.111 measuring 0.33 guntas mutated into his name. The plaintiff cultivating the same as per the boundaries existed earlier. Thereafter with an intention of pakka podi of his properties, he filed application before Survey department Sringeri. The surveyor inspected the property of him and defendant and other land owners. After Pakka Podi lands of plaintiff renumbered as Sy.No.111/10 measuring 0-13 guntas and Sy.No.111/13 measuring 0-20 guntas and the defendants property was renumbered as Sy.No.111/12 measuring 0-39 guntas. After Pakka Podi it has come to the knowledge of the plaintiff that he is in possession of land measuring 0-20 guntas in Sy.no.111/10, but Sy.no.111/13 measuring 13 guntas it is in the possession of the defendants which

morefully described as A schedule property. The plaintiff demanded the defendants to surrender the A schedule property which is the portion of B schedule property, but defendants not surrender the said possession of land and always postponing the same. Though many panchayath's were taken place in this regard, but the defendants not handed over the possession of A schedule property to the plaintiff. The defendants and his family members resisted the entry of plaintiff to secure the possession of the A schedule property. On 27-01-2019 when plaintiff demanded the defendants to handover the possession of A schedule property they refused the same and threatened the plaintiff that they sell the entire B schedule property which also include A schedule property and the defendants are making hectic efforts to sell away the B schedule property along with A schedule property. If defendants succeeded in their acts, the plaintiff will be put to untold hardship which cannot be compensated in terms of money. Hence, he has filed the present application for the aforesaid relief. If the present application is not allowed, the plaintiff put to great injury and hardship which cannot be compensated in terms of money, hence prays to allow the application.

3. After service of summons, the defendants appeared through their counsel before the court and filed their written statement and objection to the said I.A. wherein defendant denied specifically all other averments of the plaint.

4. The defendants further contended that their father Sri.Mahabala Bhatta has gave Form no. 7 with respect to 1 acre of land which is in his possession time immemorial. After considering the from no.7, the Land Tribunal Sringeri has granted occupancy Right and issued Form No.10. As per the Order of land tribunal the Katha of the property has been mutated into the name of the father of the defendants. After his father death the Khata has been mutated jointly in the names of the defendants with the consent of other family members of the defendants. The defendants are actually are in cultivation possession and enjoyments of one acre of land in survey no.111 of Malnad village. The plaintiff who is the neighbor of the defendants land is always giving troubles to them in enjoying the property in one or the other way. The defendants further submits that the plaintiff has made an application to the Taluk Legal Services Authority and after closer of the same filed present false suit by suppressing that the true facts and materials and meanwhile the plaintiff has created certain documents by colluding with the survey authorities and created sketch. The property of the plaintiff i.e., 13 guntas and 20 guntas are not adjacent to each others and there are at different place. The plaintiff wanted to make a single boundary to same land now by making false story has filed this suit without any cause of action or justification. The plaintiff has also filed false complaints before the Sringeri

police against the defendants and he also in the habit of filing the false petition to the various authorities against the defendants. The defendant further submits that the plaintiff not approached the court with clean hands and the case of the plaintiff is not based on any proper and good grounds. on these grounds, the defendant prays to reject the application.

5. Heard the arguments of both counsels.

6. Upon perusal of material placed on record the following points are arises for my consideration.

POINTS

1. Whether the plaintiff has established prima-facie case?
2. Whether the balance of convenience lies in favour of plaintiff?
3. Whether the irreparable loss or hardship will be caused to the plaintiff if injunction is not granted?
4. What Order?

7. My findings to the above points are as under:

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

8. **Point Nos.1 to 3:-** Since these points are interrelated and inter linked with each other, these points are taken up together for discussion in order to avoid repetition of facts.

9. On perusal of the pleading of the parties, the plaintiff filed the present suit for the relief of Possession against the defendant with respect to suit 'A' schedule property. The plaintiff pleaded that property measuring 0-33 guntas originally granted to his father through tenancy in the Sy.No.111 of Malnad village Sringeri Taluk. The said property fell on the share of plaintiff in the jubane hissa patra effected between their family members and he mutated the khata of the said property in his name and he has cultivated the said property as per the boundary existed earlier. Thereafter he filed application before survey department Sringeri for pakka podi of his property. After pakka podi his property has been renumbered as Sy.No.111/10 measuring 20 guntas and Sy.No.111/13 measuring 13 guntas, during said pakka podi defendants property also renumbered as Sy.No.111/12. After pakka podi he came to know about the fact that he was only in possession of Sy.No.111.10 measuring 20 guntas, though he is the owner of the Sy.No.111/12 0-13 guntas same is in possession of the defendants. He demanded the possession of the said 0-13 guntas i.e., A schedule

property, but defendants refused to handover the possession of the same to the plaintiff and threatened him that they sell away the same along with their property. If the defendants succeeded in their act the plaintiff will be put to lot hardship and loss which cannot be compensated in terms of money. Hence, he has filed the present suit and came with the present application. The plaintiff in support of his contention produced copies of Form no.10, RTC of Sy.No. 111, Mutation extract, Podi sketch, Aakar band, mutation podi and RTC of Sy.No.111/10. 111/12,and 111/13 .

10. Per Contra the defendant contended that, plaintiff properties 20 guntas and 13 guntas are not existed in single boundary and adjacent to each other, they are at different area, now the plaintiff with an intention make single boundary for the said properties by creating false story filed the present suit. The defendants contended that their father granted 1 acre of land by Land tribunal as per his application under Form no.7. After grant the defendants father was in possession of the said land, after his death the defendants are jointly are in possession and enjoyment of the said 1 acre of land. They are actually in possession of 1 acre of land in the survey no.111/12 as per Form no.10 issued by the Land Tribunal. The plaintiff adjacent neighbor giving all sort to trouble to the defendants in enjoying the said land. The plaintiff gave false complaints against them to the Sringeri

police and also filed several petition against them. The plaintiff earlier filed application regarding the same before the Taluk Legal Service Authority and closure of the same filed the present false suit on false cause of action, he has not approached the court with clean hands and not entitled for the relief as prayed in the application, the defendants counsel produced copies of RTC of Sy. No.111/12, mutation register extract, from no.10 and atlas copy of Sy.no.111 of Malnad village Sringeri Taluk.

11. In AIR 1966 Mys 74 in between Mathew Phillips V/s P.O. Koshy, wherein it is held that:

Temporary injunction-Principle governing grant of-
doubt existing as to infringement of right claimed
temporary injunction should be refused. Before the issue of
a temporary injunction, the court must satisfy itself that
the plaintiff has a prima-facie case.

To sustain an application for temporary injunction, a
probability of right is sufficient. But if the legal right,
which is alleged to have infringed, is doubtful, the mere
existence of the doubt is enough to refuse temporary
injunction. The party, seeking the aid of the court for an
injunction, must show that the act complained of is in
violation of his right or is at least an act which, if carried
into effect, will necessarily result to a violation of the right.

And also in K.L. Narayanamurthy and another V/s Rajini and another
reported in 2001(3) Kar. L.J. 84, wherein our Hon'ble High Court of Karnataka
held that, there must be positive pleadings and positive materials available on

record warranty injunction and balance of convenience, irreparable injury has to be establish before restraining a neighbor from putting up construction.

12. As per the ration laid down in the said cases on perusal of the contentions of both parties and documents produced by the parties, it is undisputed facts that the plaintiff father was granted 0-33 guntas under tenancy and 1 acre of land granted to the defendants father by land tribunal as per form no.10 in the Survey no.111 of Malnad village Sringeri Taluk. It is also admitted facts that after pakka podi of the survey no 111 as per their holdings, the property of the plaintiff renumbered as Sy.no.111/10 measuring 20 guntas and Sy.no.111/13 measures 0-10 guntas and the defendants property renumbered as Sy.No.111/12. As per the survey sketch, Akhar band and Mutation Podi it clearly shows that the plaintiff having land in the different survey no and they are not in the single boundary. The plaintiff alleged that Sy.no.111/13 measuring 13 guntas of land is in possession of defendants along with the land in Sy.no.111/12 measuring 1 acre 12 guntas which was more fully described as 'B' Schedule property, thereby alleged that the A schedule property is part and parcel of the B schedule property and apprehends that the defendants now trying to sell away B schedule property along with A schedule property hence he has filed the present application to restrain the defendants from alienating the same. The RTC Of

Sy.No.111/10, 111/12 and 111/13 produced by the plaintiff at this stage itself clarifies that the Sy.No.111/12 measures only 39 guntas, the defendant also produced mutation register extract wherein it reveals that the 0-39 guntas of land mutated into the name of defendants and there is 0-01 guntas Put A Kharab land also exists in the Sy.No.111/12 wherefore the defendants are in possession of 1 acre of land in the survey number. The Properties of the plaintiff and defendants are pakka poded as per their holdings and now they existed in the separate khata in the name of plaintiff and defendants. Further Survey sketch and Akhar Band produced by the plaintiff itself it reveals that the Separate boundaries also fixed to the holdings of the plaintiff and defendants as per the said documents. The plaintiff suppressed the said facts and mentioned B schedule property in Sy.No.111/12 measuring totally 1 acre 12 guntas is not acceptable one . The Khata and all documents with respect to 'A' schedule property separately standing in the name of the plaintiff, hence situation stood being this, how can defendant without having any kind of right over the same sale the said 'A' schedule property. As per the records produced at this stage by the plaintiff itself reveals that the defendants are the lawful owners of the land in Sy.no.111/12 measuring 1 acre, only on the assumption of the plaintiff the defendant cannot be restrained from alienation of his land in the Survey No.111/12. The plaintiff has

not produced any satisfactory materials before the court in support of his contention. Prima-facie no case was made out and also balance of convenience not in favour of the plaintiff. The plaintiff at this stage has not produced any documents with respect to show that alleged act of alienation of A schedule property by the defendants. Only on the basis of the plaintiff pleadings, assumption and that of documents which he placed before the court the order of temporary injunction cannot be granted as prayed. Considering all these aspects of the case and totality of circumstances. Hence, I answer point Nos.1 to 3 in the Negative.

13. **Point No.4:** In view of my above discussion and findings given on point Nos.1 to 3, I proceed to pass the following.

ORDER

I.A.No.1 filed by the plaintiff under Order 39
Rules 1 and 2 read with Section 151 of CPC is hereby
dismissed.

Under the facts and circumstances of the case,
No order as to cost.

(Dictated to the Typist directly in the computer, then corrected and pronounced by me in the open court, on this the 7th day of March, 2020)

sd/--
(Suryanarayana S.)
Civil Judge & J.M.F.C.,
Sringeri.