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**IN THE COURT OF THE CIVIL JUDGE AND ADDL.
JMFC AT TARIKERE**

Dated This the 31st day of May 2023

PRESENT

**Sri. P.S.Santhosh Kumar, M.Com., LL.M.,
Civil Judge & Addl. JMFC,
Tarikere.**

O.S.No.227/2020

**PLAINTIFF: Smt. Anasuyamma,
W/o Late. Sri. Chandrappa,
Aged about 65 years,
Agriculturist,
R/o. K. Chattanahalli village,
Amruthapura Hobli,
Tarikere Taluk.**

(By Sri. H.S.N., Advocate)

V/s.

DEFENDANTS:

**1. Sri. Shivananda,
S/o Late. Sri. Hanumanthaiah,
Aged about 60 years,**

**2. Smt. Meenakshamma**

W/o Sri. Shivananda,
Aged about 55 years.

Both are agriculturist,
R/o. K. Chattanahalli village,
Amruthapura Hobli,
Tarikere Taluk.

(D.1 by Sri. K.N.V., Advocate)

(D.2 by Sri. B.N.K., Advocate)

PARTIES ON I.A.No.VI

Applicant: Sri. Shivanandappa

-V/S-

Opponent: Smt. Anusuyamma

ORDERS ON I.A No.VI

The counsel for the defendants No.1 has filed this I.A.No.VI u/o. VII rule 11(a) of CPC seeking rejection of the plaint for want of cause of action

2. In the affidavit annexed to the said I.A., he has stated that the plaintiff is not in possession of the suit schedule property at any point of time. He has further stated that the plaintiff had filed O.S.No.336/2012 on

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the file of this court against the defendant No.2 and one Sri. Chandrashekara and Smt. Gayathramma, which was transferred to the Hon'ble Special Court established under the Karnataka Land Grabbing Prohibition Act, 2011, wherein it was numbered as LGC (T) No.1012/2018 and the said suit came to be dismissed as not maintainable directing the Tahasildar, Tarikere, to dispose off the applications filed by the plaintiff and defendants therein u/s. 53 of the Karnataka Land Revenue Act. The plaintiff has against filed this suit for permanent injunction against him and the defendant No.2 for the same relief. Hence, there is no cause of action for the suit and the cause of action alleged is a concocted and imaginary one. Accordingly, prayed for allowing the application.

3. The counsel for the plaintiff has filed objections to the said application contending that she is in possession of the suit schedule property since 30 to 40 years and the defendants being financially sound causing obstruction to her possession and the matter requires full pledged trial. Accordingly, prayed for dismissal of the application .

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4. Heard both the sides on I.A.No.VI. I have also gone through the written arguments filed by the defendant No.1 in support of I.A.No.VI. Perused the materials available on record.

5. The points that arise for my consideration are as follows :-

- 1) Whether the I.A.No.VI filed by the defendant No.1 deserves to be allowed?
- 2) What Order?

6. My findings on the above points are as under :-

Point No.1: In the Negative,

Point No.2: As per final order,

for the following:-

:: R E A S O N S ::

7. **POINT No.1:** The defendant No.1 has argued that the plaintiff is not at all in possession and enjoyment of the suit schedule property at any point of time and that the previous suit filed by her in O.S.No.336/2012 also came to be dismissed as not maintainable by the Hon'ble Special Court established

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under the Karnataka Land Grabbing Prohibition Act, 2011 in LGC (T) No.1012/2018 and the plaintiff again has filed this suit against him and defendant No.2, as such, there is no cause of action for the plaintiff to file this suit. On the other hand, the plaintiff has denied the contentions taken by the defendant No.1 and argued that the defendant without having any manner of right, title or interest over the suit schedule property, is interfering with her peaceful possession and enjoyment of the same being financially sound. In the light of the said rival contentions of the parties, I have gone through the plaint. I have also gone through the orders passed by the Hon'ble Special Court in LGC (T) No.1012/2018. It is relevant to mention here that it is well established principles of law that while considering an application under the provisions of U/o.VII rule 11 of CPC, the averments of the plaint are only to be taken into consideration and my said view is supported with the ratio laid down in the decision of the Hon'ble High Court of Karnataka reported in 2021 KAR 15828, between Sri. Chinnareddy Vs. Smt. Parvathamma. Upon going through the plaint, it is

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crystal clear that the plaintiff is claiming to be in unauthorized possession of the suit schedule property and she has filed an application before the authority concerned in Form No.53 for regularization and in paragraph No.8 of the plaint, the plaintiff has categorically stated that on 08.07.2020, when the plaintiff was planting coconut saplings in the suit schedule property, the defendants trespassed into the same and obstructed the plaintiff with her agricultural works and also tried to oust her from the suit schedule property. Merely because she is claiming that she is in unauthorized possession of the suit schedule property, it cannot be said that there is no cause of action and as rightly argued by the counsel for the plaintiff, to adjudication of the matter in issue matter requires full pledged trial. Further it is relevant to mention here that the another contention of the defendant No.1 that the plaintiff has filed this suit for the second time before this court in respect of the suit schedule property against the defendant No.2 and him. It is relevant to mention here that it is well established principle of law that cause of action to file a suit for

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permanent injunction to protect the possession is always recurring in nature and when such an occasion arises to a person in possession of the property, he has a remedy to approach the competent civil court seeking the relief of permanent injunction. Further it is relevant to mention here that the defendant No.1 has contended that previously the suit filed by the plaintiff before this court in respect of the suit schedule property was transferred to the Hon'ble Special Court established under Karnataka Land Grabbing Prohibition Act, 2011 and numbered as LGC (T) No.1012/2018 which came to be dismissed by the Hon'ble Special Court as not maintainable with a direction to the Tahasildar, Tarikere, to dispose the pending application filed by the plaintiff and defendant u/s. 53 of Karnataka Land Revenue Act and if they are not entitled for regularization of suit land, both of them are liable to be evicted from the suit schedule property. I have gone through the copy of the said order furnished by the defendant which is on record. Merely, because such a direction has been issued by the said court it cannot be said that the plaintiff was not at all

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in possession of the suit schedule property and that there was no any interference by the defendants with her possession of the same as on the date of suit as I have already held that the said fact could be adjudicated only after a trial. Further it is not the case of the defendant that said applications were disposed off and that the plaintiff was evicted by the authority concerned. As such, the said contention of the defendant No.1 will also not come to his help in order to establish that there is no cause of action for the present suit. In view of my above discussion and in the circumstances of the case, I am of the opinion that the decisions relied upon by the defendant of the Hon'ble Supreme Court reported in 1998 SAR (Civil) 141 between ITC Limited V/s. The Debets Recovery Appellate Tribunal and others and 2014 SAR (Civil) 771 are not applicable to the present set of facts. With these observations, my findings on Point No.1 is in the '**Negative**'.

8. POINT NO.2:- In view of my findings on Point No.1, I proceed to pass the following:-

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**:: O R D E R ::**

I.A.No.VI filed by the defendant
No.1 U/o.VII rule 11(a) r/w. Sec.151 of
CPC is hereby rejected on cost of
Rs.200/-.

(Dictation to the Stenographer, transcribed by him, then corrected by me, signed and then pronounced by me in the Open Court on this the **31st of May 2023**)

sd/-

(P.S.Santhosh Kumar)
Civil Judge & Addl. JMFC,
Tarikere.

SAR