

**IN THE COURT OF THE CIVIL JUDGE AND ADDITIONAL
J.M.F.C., AT TARIKERE**

Present : SMT.PAVITHRA.M.D, B.A., LL.B.,
Civil Judge & Addl. JMFC. Tarikere.

O.S.No.283/2018

Dated this 7th day of January 2019.

Plaintiff : Smt.Ramakka,
W/o Chowdabhovi,
Aged about 70 years,
Agriculturist,
R/o Machenahalli Village,
Kasaba Hobli,
Tarikere Town and Taluk.
(Reptd. by : Sri T.R.Srinivas-Advocate)

-Vs-

Defendants: 1. Ramesha S/o Krishnappa,
Aged about 35 years,
Agriculturist.

2. Smt. Lakshamma,
W/o Krishnappa,
Aged about 55 years,
Agriculturist,
Both are R/o K.Hosuru village,
Amruthapura Hobli,
Tarikere Taluk.
(Reptd. By : Smt.Geeta.B.T.-Advocate)

I.A.No.2

Applicant in I.A/: Smt.Ramakka
Plaintiff

-Vs-

Opponents in IA/: Ramesha and another
Defendants

ORDERS ON IA.No.2

The plaintiff has filed this application U/Or.39 Rule 1 and 2 R/w Sec.151 of CPC seeking relief of temporary injunction to restrain the defendants from interfering with the plaintiff's peaceful possession and enjoyment over the suit schedule property till disposal of the suit.

2. It is averred in the affidavit annexed to the application that, the suit schedule property was granted by the Government in favour of husband of the plaintiff by name Chowdabhovi. In pursuance of the grant, the khatha of the suit property stands in the name of the plaintiff's husband. One Kittappa had purchased the said property under the registered sale deed dated 30.01.1961 and after commencement of the PTCL Act 1978, the suit property was restored in favour of the plaintiff's husband. That after restoration, the name of the plaintiff's husband was mutated in respect of the suit property and after his demise, the name of the plaintiff was mutated in the revenue records pertaining to the suit property under inheritance and she continued to

be in possession over the suit property. The defendants have no right, title, possession over the suit schedule property and they made an illegal attempt to trespass and also dispossess the plaintiff from the suit property. Hence, the assistance of this Court is necessary to restrain the illegal act of the defendants. Hence, this application.

3. The defendants have adopted the contents of their written statement as objection to IA.No.2. The defendants in their written statement have stated that, the assertion of the plaintiff is not within their knowledge. Further they contended that, there are 3 blocks in the land bearing Sy.No.2 of Ramanahalli village measuring 14 acres 36 guntas. The 1st block measuring 5 acres 20 guntas was granted in the name of the plaintiff, the 2nd block was granted in the name of the 1st defendant's grandfather and 3rd block was granted in the name of one T.R.Ramanna and they are in possession of their respective properties. The above said T.R.Ramanna filed the suit in OS.No.227/2017 and also obtained an order of temporary injunction in his favour. The plaintiff misusing the said order is trying to put up fence in the property of the

defendants. When the 3 blocks in Sy.No.2 were measured it is found that, the plaintiff is in actual possession of 4 acres 19 guntas including 0-05.08 guntas kharab and the defendants land was in the name of one Marulaiah and at the time of measurement he was in actual possession of 4 acres 3 guntas including 4 guntas of kharab land. The above said T.R.Ramanna also was in actual possession of 3 acres 18 guntas including 13 guntas of kharab land and the respective lands was encroached by the landholders of the land bearing Sy.No.33 and 34. Such being the case the defendants in colluding with the above said Ramanna are trying to put up fence in the land of the plaintiff. Though, there is a bund in between the lands of the plaintiff and the defendants, the plaintiff has filed this suit to grab the land of the defendants. Accordingly, they prayed to dismiss the application filed by the plaintiff with costs.

4. On the strength of application and the documents produced at the initial stage, the points which arise for my consideration are as follows:-

- 1) Whether the plaintiff is made out a prima facie case?

- 2) Whether the balance of convenience lies in favour of the plaintiff?
- 3) Whether the plaintiff will be put to great hardship and injury in case temporary injunction is not granted?
- 4) What order?

5. Heard the arguments canvassed by the counsel for the plaintiff and the defendants. Perused the materials available on record and now my findings on the above points are 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 the final order
for the following:

REASONS

6. **Points No.1 to 3**: Since these points are inter related to each other they are taken up together in order to avoid repetition of facts.

The plaintiff has filed the instant suit for permanent injunction to restrain the defendants from interfering with her peaceful possession and enjoyment over the suit schedule property. It is the claim of the plaintiff that, she inherited the suit property from her husband and after his demise, she is

in peaceful possession and enjoyment over the suit schedule property. Per-contra, the defendants contended that, the holders of the land bearing Sy.No.33 and 34 encroached the land bearing Sy.No.2 of Ramanahalli village and the plaintiff herself is trying to encroach the defendant's property and also trying to put up fence in their property.

7. With these rival contentions taken by the both parties I have perused the documents produced by the plaintiff in order to know whether the plaintiff has established her prima-facie possession over the suit schedule property. The plaintiff has produced certified copy of the grant order. As it could be seen from the said document, the suit property has been granted in favour of plaintiff's husband by name Chowdabhovi. Further she also produced RTC extracts pertaining to the suit schedule property. The said RTC extracts reveals that, from 1974 to 1986, the suit schedule property stands in the name of the plaintiff's husband by name Chowdabhovi. The RTC extract pertaining to the year 1981 to 1986 further reveals that, the suit schedule property has been restored in the name of the plaintiff's husband. She

also produced certified copy of the order passed by the learned Assistant Commissioner at Tarikere in SC/ST/DAR.392/1978-79, dated 02.11.1979. The contents of the said order reveals that, the plaintiff's husband preferred a petition before the learned Assistant Commissioner Tarikere for restoration of the suit schedule property herein in his favour from one Sri.Kittappa. The learned Assistant Commissioner after hearing both the parties passed an order to the effect that, the suit schedule property herein was restored to the original grantee i.e., the plaintiff's husband Chowdabhovi. As per the mahazar, the actual possession of the suit schedule property also delivered to the plaintiff's husband. That after restoration, the name of the plaintiff's husband also mutated in the revenue records pertaining to the suit schedule property. Further she also produced a RTC extract pertaining to the land bearing Sy.No.2 of Ramanahalli village. As it could be seen from the said document, the land to an extent of 5 acres 20 guntas in the suit schedule survey number stands in the name of the plaintiff. More importantly, the said RTC extract pertains to the year 2017-18. She also produced the certified copy of the

sketch pertaining to the land bearing Sy.No.2 of Ramanahalli village.

8. Per-contra, the defendants have produced 3 RTC extracts pertaining to the land bearing Sy.No.2 of Ramanahalli village. As could be seen from the said RTC extracts, the land measuring 5 acres 20 guntas stands in the name of the 2nd defendant. The said RTC extracts also reveals that, in the land to an extent of 5 acres 20 guntas stands in the name of the plaintiff. As it could be seen from the said document, the block No.1 in suit schedule survey number 2 of Ramanahalli village belongs to the plaintiff and block No.2 belongs to the defendants. Further a document dated 16.01.2015, the land bearing Sy.No.2 measuring 5 acres 20 guntas was restored in the name of the 2nd defendant.

9. The documents produced by the both parties it is crystal clear that, asper the revenue documents perta in ing to the suit scheudl eproperty is in possesoni and enjoyment over the same as on the date of suit. Though, the defendants have raised their defence to the effect that, the plaintiff herself is attempting to put up fence in their property. If they are

agrrieved by the act of the plaintiff the revenue lies to the defendants somewhere else, but not under this application. However, the RTC extract pertaining to the suit schedule property itself shows that, the plaintiff is in prima-facie possession over the suit schedule property. U/Sec.133 of Karnataka Land Revenue Act, the RTC extract is having presumptive value to the effect that, whatever mentioned therein is true and correct. Though, the said presumption is rebuttable presumption, at this initial stage, the defendants have not successfully rebutted the presumption available to the said RTC extract. At this initial stage, the materials available on record would prima-facie shows that, the plaintiff is in actual possession of the suit schedule property.

10. Hence, at this initial stage, the contention taken by the defendants is not sustainable. Prima-facie the materials available on record clearly shows that, the plaintiff is in actual possession of the suit schedule property. This suit is for bare injunction. Hence, chances of the plaintiff succeeding in this suit are more, then that of the defendants. As the plaintiff is in prima-facie possession and enjoyment of

the suit schedule property, balance of convenience lies in his favour. From the documents it is clear that, the plaintiff has established prima-facie case in his favour. If the possession of the plaintiff over the suit schedule property is not protected, then she will be put to hardship and loss which cannot be compensated in terms of money. The plaintiff would be put to great hardship and loss in case temporary injunction is not granted to protect her possession over the suit schedule property. At this initial stage I find nothing to disbelieve the apprehension of the plaintiff regarding interference caused by the defendants. Hence, I find it is just and essential to grant relief of temporary injunction in favour of the plaintiff as prayed in the application. On the basis of the above said discussion I hold that, prima-facie case, balance of convenience is in favour of the plaintiff and he will be put to hardship and loss if injunction is refused. Accordingly I answers point No.1 to 3 in the Affirmative.

11. **Point No.4:** In view of the foregoing reasons and conclusion arrived at point No.1 to 3, the application filed by

the plaintiff deserves to be allowed. Hence, I proceeds to pass the following:

ORDER

I.A.No.2 filed under Order 39 Rule 1 and 2 R/w Sec.151 of C.P.C filed by the plaintiff is allowed.

The defendants are hereby restrained from interfering with the plaintiffs' peaceful possession and enjoyment of the suit schedule property till disposal of the suit by way of temporary injunction.

Cost shall follow the event.

(Direct Dictation given to the Stenographer, typed by him, corrected by me and then pronounced in the open Court on this the 7th day of January 2019.)

Sd/-

**(PAVITHRA.M.D)
CIVIL JUDGE AND
ADDL.J.M.F.C., TARIKERE.**