

**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.383/2017**  
**Dated this 09<sup>th</sup> day of July 2018**

**Plaintiff** : Mangalamma  
(Reptd. by : Sri.Abdul Razak-Advocate )

**-Vs-**

**Defendant** : Jayalakshamma  
(Reptd. by : Sri.G.Manjunath-Advocate)

**I.A.No.1**

Applicant in I.A/: Mangalamma  
Plaintiff

**-Vs-**

Opponent in IA/: Jayalakshamma  
Defendant

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**ORDERS ON IA.NO.1**

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

2. It is averred in the affidavit annexed to the application that, the plaintiff is in possession and enjoyment over the suit schedule property. The Karnataka State Government recognized her long possession over the suit schedule property granted the same by virtue of hakkupathra dated 05.03.2017 by receiving necessary fee. The plaintiff is in possession in and over the suit schedule property since 40 years and after obtaining hakkupathra, she filed application before PDO, Bhavikere gramapanchayath for entering her name in the assessment register. The defendant having eagle eye over the suit schedule property is trying to interfere with the possession of the plaintiff over the suit schedule property and also try to disposes her from the suit schedule property. Hence, without the assistance of this Court, the illegal act of the defendant cannot be restrained. Accordingly, this application seeking temporary injunction as prayed for.

3. The defendant has adopted her written statement as objection to the instant application. The defendant in her written statement has contended that, she is the sister of the plaintiff and the written statement schedule property belongs

to her and she acquired the said property under a ದೃಢೀಕರಣ ಪತ್ರ dated 03.11.2017. She further contended that, suit schedule property is for way from the defendant's property and boundaries of the said properties are not tallied. The plaintiff is trying to knock of the written statement property. Hence, she submitted that, the application filed by the plaintiff is not maintainable and deserves to be dismissed 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 defendant. 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 defendant from interfering with the possession of the plaintiff over the suit schedule property. It is the claim of the plaintiff that, she is in possession and enjoyment over the suit schedule property since 40 years and after considering, her possession over the suit schedule property, the Government authority has issued hakkupathra in her favour on 05.03.2017. Per-contra, the defendant has contended that, she is in possession of written statement schedule property which is far away from the suit schedule property and the boundaries of the both properties are also different.

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 the hakkupathra dated 28.02.2017. As it could be seen from the said document, the Tahsildar, Tarikere Taluk has issued hakkupathra accepting the possession of the plaintiff over the suit schedule property. Further, it is of interest to mention here that, the boundaries mentioned in the said hakkupathra and the suit schedule property are one and the same. Further, the plaintiff also produced a copy of the application given to the PDO, Bhavikere gramapanchayth to enter her name in the assessment register pertaining to the suit schedule property. On contrary, the defendant also produced assessment register extract and tax paid receipts which shows that, the written statement schedule property stands in her name. The certificate issued by the PDO, Bhavikere gramapanchayath also shows that, the written statement schedule property belongs to the defendant. Admittedly, the boundaries of the written statement schedule property and the suit schedule property are different. The defendant also produced a copy of the application given to the Superintendent of Police,

Chikkamagaluru District seeking protection over the written statement schedule property. Further she also produced other Xerox copy of the grant certificate issued in favour of the son of the plaintiff. Furthermore, the defendant also gave a letter village accountant, Bhavikere village to cancel the grant certificate issued in favour of the plaintiff.

8. The hakkupathra produced by the plaintiff would show that, the plaintiff is in possession over the suit schedule property as on the date of suit and application lodged by the plaintiff to enter her name in the assessment register extract pertaining to the suit property is pending. It is not in dispute that, the suit schedule property and the written statement schedule property are different and the boundaries of the both properties are also different. At this initial stage, the documents produced by the plaintiff prima-facie would show that, the plaintiff is in possession and enjoyment over the suit schedule property as on the date of suit.

9. Apart from this, the plaintiff has filed the instant suit for permanent injunction. So, prima-facie the documents show that, the plaintiff is in prima-facie possession and

enjoyment of the suit schedule property as on the date of the suit. 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 her favour. From the documents it is clear that, the plaintiff has established prima-facie case in her favour. If the legitimate right of 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. At this initial stage I find nothing to disbelieve the apprehension of the plaintiff regarding interference caused by the defendant. 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.

10. **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.1 filed under Order 39 Rule 1 and 2 R/w Sec.151 of C.P.C filed by the plaintiff is allowed.

The defendant is 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 09<sup>th</sup> day of July 2018.)*

Sd/-

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