

**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.125/2020

Dated this 06th day of October 2020

Plaintiff : Rushikumar,
S/o late Nanjundappa,
Aged about 65 years,
Agriculturist,
R/o Doranalu Village,
Kasaba Hobli,
Tarikere Taluk,
Chikkamagaluru District.
(Reptd. By : Sri.S.V.Ashok Kuamr-Advocate)

V/s

Defendants: 1. Malathi,
W/o late Palakshappa,
Aged about 50 years.

2. Harishchandrapal,
S/o late Palakshappa,
Aged about 23 years.

Both are Agriculturist,
R/o Doranalu Village,
Kasaba Hobli,
Tarikere Taluk,
Chikkamagaluru District.
(Reptd. By : Sri.K.R.Gurupadappa-Advocate.)

I.A.

Applicant in I.A/: Rushikumar
Plaintiff

-Vs-

Opponents in IA/: Malathi & Anr.
Defendants

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ORDERS ON IA

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 defendants to restrain them 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 suit schedule property was a part and parcel of Dornalu village. The plaintiff and other some villagers were in possession and enjoyment of village property and the plaintiff is in peaceful possession and enjoyment over the suit schedule property. Considering the long standing possession of the plaintiff and other persons, the Grama Panchayath Dornaalu asd entered the name of the plaintiff in the Assessment register. The plaintiff is the absolute owner of the suit schedule property, and the suit schedule property is a vacant space which is used for dumping Cow Dung. The defendants have no manner of right title, muchless

possession over the suit schedule property. On 30.05.2020 the defendants tried to obstruct the possession and interfere with the plaintiffs peaceful possession and enjoyment over the suit schedule property. However, the plaintiff resisted the illegal act of the defendants with great difficulty. But while going back the defendants threatened that they will not allow the plaintiff to enjoy the suit property. Hence, without aid of this court the illegal act of the defendants can not be restrained. Hence, this application.

3. The defendants have adopted the contents of their written statement as objection to IA.No.1. In their written statement the defendants have denied the entire case of the plaintiff. They contended further that Dornalu Gram Panchayath has issued a Certificate infavour of brother-in-law of 1st defendant by name Nanjundappa S/o Kallappa, granting a vacant site measuring 33 x 72 feet. From the date of grant the brother-in-law of the 1st defendant was in possession of the said property. But, as per the grant Certificate the name of the 1st defendant has not been mutated in the Assessment register. That after demise of the

brother-in-law of the 1st defendant, without giving notice to the husband of the 1st defendant, Dornalu Gramapcnahyath has entered the property measuring 65x36 instead of 33x72 feet in the Assessment Register bearing No.643. Hence, the husband of the 1st defendant had applied for change of khatha of the vacant site measuring 33x72 feet. That after considering all the documents, the Secretary of the Dornalu Gram Panchayath was ordered to enter the khatha as per the grant. But, the Secretary of the Dornal Gram Panchayath has not changed the khatha as per the order. Wherefore, the husband of the 1st defendant by name B.N.Palakshappa has filed a suit in OS.No.30/2009 against the Secretary of Dornal Gram Panchayath seeking for the relief of declaration in respect of the vacant measuring 33x72 feet and that said suit came to be decreed on 11.09.2012. Being aggrieved by the said judgment and decree, the Secretary of Dornal Gram Panchayath has preferred an appeal in RA.No.63/2012 and when the said appeal is pending for consideration, the 1st defendant's husband was passed away. In the said appeal, the judgment and decree passed in OS.No.30/2009 was confirmed. Even after the demise of the 1st defendant's

husband, the defendants are in possession of the vacant site measuring 33x72 feet. As per the judgment and decree passed in original suit and the regular appeal, the 1st defendant had applied for change of khatha, but Dornal Gram Panchayath has not entered the name of the 1st defendant in the assessment register. When the plaintiffs and others have obstructed the 1st defendant to put up barbed wire fence around vacant space measuring 33x72 feet, the 1st defendant had lodged a complaint before Lingadahalli police. But, the police authorities have not taken any action. The suit schedule property has not been granted in favour of the plaintiff at any point of time and the plaintiff is not in possession over the suit property. The 1st defendant is the owner of vacant site measuring 33x72 feet and the application lodged by the 1st defendant to enter her name in the assessment is still pending for consideration. Hence, the defendants prayed to dismiss the suit as well as the application with cost.

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

- 1) Whether the plaintiff has 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 Negative.
Point No.2 :	In the Negative.
Point No.3 :	In the Negative.
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 instituted the present suit for permanent injunction to restrain the defendants from interfering with the peaceful possession and enjoyment over the suit schedule property. It is the claim of the plaintiff that, he is the absolute owner and in possession over the suit

schedule property and considering the land standing possession of the plaintiff of the suit schedule property Dornal Gram Panchayath has entered the name of the plaintiff in the assessment register. The plaintiff alleged further that, the defendants having no manner of right, title, muchless possession over the suit schedule property they are interfering with the plaintiffs peaceful possession and enjoyment over the suit schedule property.

7. On contrary, the defendants contended that, Dornal Gram Panchayath has granted the vacant site to an extent of 33x72 feet in favour of the father-in-law of the 1st defendant by name Nanjundappa S/o Kallappa, but as per the grant, the name of the father-in-law of the 1st defendant has not been entered in the assessment register. Though, after the demise of said Nanjudappa, his son by name D.N.Palakshappa who is the husband of the 1st defendant had applied to enter his name as per the grant. The defendants also obtained a decree in OS.No.30/2009 and in RA.No.63/2012 wherein it is declared that, the defendants are the absolute owners of the vacant site measuring 33x72

feet. But as per the decree also, the name of the defendants has not been entered in the assessment register and the application lodged by the 1st defendant for change of khatha is still pending for consideration. Dornal Gram Panchayath has not granted the suit property in favour of the plaintiff at any point of time. Since, the 1st defendant is in possession over the vacant site bearing measuring 33x72 feet, she prayed to dismiss the application.

8. With this background, now I would like to scrutinize the documents produced by the both parties. The plaintiff has produced the certified copy of the Assessment Register Extract. As it could be seen from the said assessment register extract, the property bearing assessment No.644, measuring 65x36 feet which is bounded by east:-road, west:- P.C.Chandrappa, north:- Siddachar & Palakshappa and south:- Palakshappa. No doubt that, the description of the suit schedule property is exactly tallied with the assessment register extract produced by the plaintiff. The said assessment register extract also shows that, the property bearing assessment No.643, measuring 65x36 feet which is

bounded by east: road, west: P.C.Chandrappa, north: Rushi Kumar and south: Venakshamma. Admittedly, the said D.N.Palashappa is none other than the husband of the 1st defendant. But it is the case of the defendants that, the vacant site to an extent of 33x72 feet was granted in favour of the father-in-law of the 1st defendant and they are in possession of the entire extent and the application lodged by the defendants to change the khatha of the vacant site to an extent of 33x72 feet is still pending for consideration. So, the assertion and contention of both the parties prima-facie shows that, there is a dispute with regard to title and possession of the parties in respect of the suit schedule property.

9. The plaintiff has filed the tax paid receipts which shows that, the plaintiff has paid tax on 01.06.2020 pertaining to the property bearing assessment No.644. It is the case of the plaintiff that, he is paying the tax regularly. But, except the tax paid receipts for the year 2020, the plaintiff has not placed the tax paid receipts for the previous years. So, at this stage it leads to draw adverse inference in

respect of possession of the plaintiff over the suit schedule property.

10. The plaintiff also produced a copy of the face sheet of the order passed in MSA.No.38/2017 on the file of Hon'ble High Court of Karnataka. But, the plaintiff has not produced the entire order. In the absence of complete order, only a face sheet of the order cannot be looked into. The plaintiff also produced a copy of the Commissioner report which shows that, the extent of vacant site bearing assessment No.643 is 65x36 feet. During the course of arguments, the counsel for the plaintiff vehemently argued that, an extent of 65x36 only was granted in favour of the father-in-law of the 1st defendant and the defendants have accepted the said extent. Let me consider the said fact along with the documents produced by the defendants.

11. The defendants have produced a grant certificate issued by Dornal Group Panchayath. As it could be seen from the said grant certificate it is clear that, on 11.03.1963, the Chairmen of Dornal Group Panchayath has granted a site measuring 33x72 feet in favour of Sri.Mudubagilu

Nanjundappa S/o Kallappa. The defendants also produced a copy of the order dated 03.08.2006 passed by the President of Taluk Panchayath, Tarikere in ತಾ.ಪಂ.ಸಿ.ಆರ್.ನಂ.140/2002-03. As per the said order, the President of Taluk Panchayath, Tarikere has directed the Secretary of Dornal Gram Panchayath to enter the name of the 1st defendant in the assessment register pertaining to the vacant site measuring 33x72 feet. It is relevant to note here that, the plaintiff has produced the assessment register extract pertaining to the suit schedule property which is for the year 1996-97. But, the President of Taluk Panchayath, Tarikere has directed the Secretary of Dornal Gram Panchayath to enter the name of the 1st defendant in the assessment register. Wherefore, in the absence of prob/enquiry it is difficult to accept the assessment register extract produced by the plaintiff at this stage. The defendants also produced the certified copy of the meeting proceedings of Dornal Gram Panchayath and in the said meeting, they decided to measure the property as per the possession of the parties. The defendants also produced the certified copy of the assessment register extract which shows that, a backyard bearing assessment No.643 measuring 6x36

feet stands in the name of the husband of the 1st defendant. The said assessment register extract is not in dispute. The defendants also produced the notice issued by the Taluk Panchayath, Tarikere to attend before them for hearing in respect of the application lodged by the 1st defendant. All the 3 notices are issued prior to passing orders in ತಾ.ಪಂ.ಸಿ.ಆರ್.ನಂ.140/2002-03. The defendants also paid a tax in respect of the property bearing assessment No.643. The 1st defendant on 06.10.2018 has filed application before the Development Officer of Dornal Gram Panchayath to change the khatha as per the judgment and decree passed in OS.No.30/2009 and in RA.No.63/2012. She also filed a complaint to the C.E.O of Zilla Panchayath, Chikkamagaluru complaining that, Dornal Grama Panchayath has not entered the name of the 1st defendant in the assessment register. Towards this end, the 1st defendant has filed a copy of applications lodged by the 1st defendant. The 1st defendant also filed the certified copy of the judgment and decree passed in OS.No.30/2009 dated 11.09.2012. As could be seen from the the said judgment and decree, the 1st defendant has instituted a suit for declaration to declare that, he is the

absolute owner of the property bearing assessment No.643 measuring 33x72 feet and consequential relief of permanent injunction against the Secretary of Dornal Grama Panchayath. That after full fledged trial, the said suit came to be partly decreed declaring that, the husband of 1st defendant is the owner of the property bearing assessment No.643 measuring 33x72 feet and the said suit is dismissed with respect to relief of permanent injunction. The judgment and decree passed in this suit is confirmed in RA.No.63/2012 on the file of Hon'ble Senior Civil Judge at Tarikere. While passing the judgment in OS.No.30/2009, this Court observed that, there is no cogent materials to show that, the husband of the 1st defendant is in possession of the property bearing assessment No.643 measuring 33x72 feet.

12. As ventilated from the pleadings of the both parties and the documents produced at this initial stage, though the plaintiff has produced the assessment register extract pertaining to the suit property, but the said assessment register extract pertains to the year 1996-97. On the other hand, the defendants have seriously disputed the title of the

plaintiff over the suit schedule property. Moreover, the application lodged by the 1st defendant to enter her name in the assessment register extract is still pending for consideration before the Zilla Panchayath, Chikkamagaluru. As adverted supra, the assessment register extract produced by the plaintiff is issued before passing orders in ತಾ.ಪಂ.ಸಿ.ಆರ್.ನಂ.140/2002-03. In the said order, Taluk Panchayath has directed the Secretary of Dornal Gram Panchayath to enter the name of the 1st defendant in the assessment register extract. So, in the absence of full fledged trial it is not proper to accept the assessment register extract produced by the plaintiff. Admittedly, the suit schedule property is a vacant site and both the plaintiff and the defendants are claiming to be in possession of the said site. It is well established that, when who persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession as against the person who is not able to establish title. This means that, even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a preclude for

deciding the de-jure possession. In the present case, at this initial stage, there is a cloud over the title of the plaintiff over the suit property. Hence, at this initial stage this Court is of the opinion that, the plaintiff is not entitled for the equitable relief of temporary injunction at this initial stage. Further, the plaintiff is at liberty to establish his case during the course of trial. Accordingly, I answer point No.1 to 3 in the Negative.

13. **Point No.4:** In view of the foregoing reasons and conclusion arrived at point No.1 to 3, the application filed by the plaintiff deserve to be rejected. Hence, I proceeds to pass the following:

ORDER

I.A filed under Order 39 Rule 1 and 2 R/w Sec.151 of C.P.C filed by the plaintiff is hereby rejected.

No order as to cost.

(Direct Dictation given to the Stenographer, typed by him, corrected by me and then pronounced in the open Court on this the 06th day of October 2020.)

Sd/-

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