

KACM710045852021



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

-:: PRESENT ::-

**SRI. P.S.SANTHOSH KUMAR, M.Com., LL.B.,
CIVIL JUDGE & ADDL. JMFC.,
TARIKERE**

DATED THIS THE 18TH DAY OF JUNE 2022

O.S.No.445/2021

PLAINTIFF:

**Sri. Dr. Panditharadhya
Shivacharya Swamy,
S/o Sri. Nagaiah,
Aged about 70 years,
Head of Sanehalli Matt,
Sanehalli village,
Kasaba Hobli,
Hosadurga Taluk,
Chithradurga district.**

**Represented by his GPA holder
Sri. S.K. Parameshwaraiah,
S/o. Sri Shivapooje Karibasaiah,
Aged about 69 years,
R/o. Sanehalli village,**

Kasaba Hobli,
Hosadurga Taluk,
Chithradurga district.

(By Sri. T.N.M., Advocate)

V/S

DEFENDANTS:

- 1. Sri. Nagaraj,**
S/o Late. Sri. Basappa,
aged about 68 years,
- 2. Sri. Somashekarappa,**
S/o Late. Sri. Basappa,
aged about 65 years,
- 3. Sri. Ananda,**
S/o Late. Sri. Basappa,
aged about 53 years,
- 4. Smt. Jayalakshmi G,**
W/o Late. Sri. B. Murthy,
aged about 43 years,
- 5. Sri. Hemantha E.B,**
S/o Late. Sri. B. Murthy,
aged about 28 years,
- 6. Sri. Punith E.B,**
S/o Late. Sri. B. Murthy,
aged about 26 years,

All are R/o. Ittige village,
Amruthapura Hobli,
Tarikere Taluk.

(By Sri. K.R.H., Advocate)

PARTIES IN I.A.NO.I

PLAINTIFF: **Sri. Dr. Panditharadhya**
APPLICANT **Shivacharya Swamy,**

V/S

DEFENDANTS: **Sri. Nagaraj and others**
OPPONENTS

ORDERS ON I.A.NO.I

The plaintiff has filed I.A.No.I under order XXXIX rule 1 and 2 r/w Sec.151 of CPC seeking for temporary injunction against the defendants or anybody on their behalf from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property pending disposal of the suit.

2. In the affidavit annexed to the said I.A, the GPA holder of the plaintiff has stated that the plaintiff is the absolute owner in possession and enjoyment of the suit schedule property. He has further stated that the suit schedule property originally belongs to one B. Murthy

S/o. Basappa, who is none other than the bother of the defendant No.1 to 3, husband of defendant No.4 and father of defendant No.5 and 6. He has further stated that during the lifetime of father of said B. Murthy, his father had borrowed a loan from PLD Bank, Tarikere, by mortgaging the suit schedule property. He has further stated that thereafter, he failed to discharge the land and hence, Assistant Registrar of Co-operative Societies auctioned the suit schedule property and one Sri H.B. Rangappa being the higher bidder purchased it. He has further stated that at that time, said B. Murthy objected the purchaser to take possession of the property. He has further stated that thereafter, the Revenue Inspector, as per the directions of Deputy Commissioner handed over the possession of the suit schedule property to the legal heirs of said Sri H.B. Rangappa. He has further stated that the revenue authorities have effected khata of the suit schedule property into the name of Smt. Jayamma W/o. Sri. HB. Rangappa and hence, the said Smt. Jayamma and her children are the absolute owners of the suit schedule property. He has further stated that subsequently said Smt. Jayamma and her children have gifted the said

property in favour of plaintiff through a registered gift deed dated 23.04.2008. He has further stated that the donors have handed over the possession of the suit schedule property to the plaintiff on the date of the gift deed itself. He has further stated that since the date of the registered gift deed, the plaintiff is in peaceful possession and enjoyment of the suit schedule property.

3. He has further stated that the defendant No.1 to 3 are the brothers of late Sri. B. Murthy, defendant No.4 is the wife and defendant No.5 and 6 are the sons of said Sri B. Murthy. The defendants have no manner of right, title or interest over the suit schedule property. He has further stated that on 05.12.2021, the defendants tried to interfere with the peaceful possession and enjoyment of the suit schedule property by the plaintiff and tried to cut the coconut trees grown therein. He has further stated that with great difficulty the plaintiff resisted the illegal acts of the defendants and succeeded to send them back. The plaintiff also approached the Tarikere Police Station regarding the said interference. But, the said police did not take any action against the defendants and asked him to settle

the matter as it is of civil nature. The defendants are powerful persons backed with men and money and they may again disturb the peaceful possession and enjoyment of the plaintiff over the suit schedule property. The plaintiff has got prima facie case and balance of inconvenience lies in his favour. If the temporary injunction is not granted as sought for, the plaintiff would be put to hardship and injury which cannot be compensated. On the other hand, it will not cause any hardship to the defendants.

4. The defendants have adopted their written statement as objections to I.A.No.I. They have denied the case of the plaintiff. The cause of action stated by the plaintiff is imaginary and for the reasons that the defendant No.3 has lodged a complaint before Tarikere Town Police on 13.11.2021 against 20 to 30 persons for the offences punishable u/s. 114, 147, 447, 504, 324, 323, 427 r/w. 149 of IPC. They have further contended that there is nothing to show that the plaintiff has taken peaceful possession of the suit schedule property or that the donors have given voluntary possession of the suit schedule property to the plaintiff. They have further contended that the plaint averments indicate

only de-jure possession and not de facto possession. They have further contended that land bearing Sy.No.116/3 of Ittige village, Tarikere taluk, totally measuring 6 acres 39 guntas, originally belonged to one Late Sri. Basappa, who is the father of defendant No.1 to 3 and one late Sri. B.Murthy, who is the husband of defendant No.4. The said land is the ancestral property of said Sri. Basappa. They have further contended that said Sri. Basappa had borrowed a loan from PLD Bank, Tarikere, to the tune of Rs.6,137/- for digging a well in his land by pledging the same. They have further contended that the loan amount was not repaid since digging of the well was failed and the same was intimated to the bank to waive off the loan amount. They have further contended that thereafter, bank had issued an endorsement that the loan borrowed by said Sri. Basappa was waived. They have further contended that later, said PLD bank has raised a dispute before the Arbitrator against Sri. B. Murthy, who is the elder son of said Sri. Basappa and brother of defendant No.1 to 3, without making all the legal representatives of said Sri. Basappa as parties and award came to be passed. They have further contended that thereafter, the said

land was put into auction by the bank, which was purchased by deceased Sri. H.B. Rangappa.

5. They have further contended that thereafter, the elder brother of defendant No.1 to 3 i.e., Sri. B.Murthy had filed a suit for permanent injunction in O.S.No.47/1985 on the file of this court against the said Sri. Rangappa and one Smt. Eramma and which came to be decreed on 25.01.1988 restraining them from interfering with the peaceful possession and enjoyment of the defendants of the suit schedule property and the said decree was not challenged and hence, it has attained finality. They have further contended that award passed by Assistant Registrar of Co-operative Societies, Tarikere, came to the knowledge said Sri. B.Murthy during 1986 and immediately, he filed an appeal before the Hon'ble Appellate Tribunal in appeal No.140/1986 and the Hon'ble Appellate Tribunal was pleased to allow the appeal and set aside the order passed by Assistant Registrar of Co-operative Societies, Tarikere, and remitted back the matter to the District Registrar of Co-operative Societies, Chikkamagalur. They have further contended that against the said order, he has filed writ petition before the Hon'ble High

Court of Karnataka in W.P.No.211662/1986 and said petition came to be allowed and the matter was remitted to the Tribunal for fresh disposal. They have further contended that the defendants did not appear before the Hon'ble Tribunal due to financial difficulty and accordingly, it came to be dismissed in default on 09.11.1991 and later on, an application was filed before KAT for restoration, but the said application came to be dismissed and against the said order, the defendants have filed writ petition before the Hon'ble High Court of Karnataka in W.P.No.2232/1991 challenging the same.

6. They have further contended that the Secretary of PLD Bank, Tarikere, sent a letter dated 12.01.2000 to the Tahasildar stating that Smt. Eramma and Sri. H.B. Rangappa had purchased entire extent 6 acres 39 guntas in Sy.No.116/03 in public auction and hence, he has no objection to change the khata in their names. They have further contended that due to collusive acts of said Smt. Eramma and Sri. H.B. Rangappa and the Secretary of PLD bank, Tarikere, khata was mutated and they are making hectic efforts grab the land in question. They have further contended that said Sri. B. Murthy died on 18.10.2010 and after his death, the

defendants No.1 to 3 made several representation to the Secretary of PLD Bank and Tahasildar, Tarikere, to obtain documents as to the alleged public auction sale, but the same was not furnished to the defendant No.1 to 3 with a false say that there is no documents. They have further contended that subsequently, the defendants preferred a writ petition before the Hon'ble High Court of Karnataka in W.P.No.51289/2017 to quash the confirmation of sale and the same is pending before the Hon'ble High Court of Karnataka. They have further contended that having learnt about mutation of khata into the name of plaintiff in respect of suit schedule property, they have preferred an appeal before the Assistant Commissioner, Tarikere, in R.A.No.86/2019-20 and the same is pending in which the the donor of the plaintiff and her two sons and two daughters were arrayed as respondents No.3 to 7. They have further contended that the plaintiff is not in possession of the suit schedule property. Accordingly, prayed for dismissal of the application.

7. Heard the learned counsel for the plaintiff and defendants. Perused the materials available on record.

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

1. Whether the plaintiff has got a prima facie case in his favour?
2. Whether the balance of inconvenience lies in favour of plaintiff?
3. Whether the plaintiff would be put to irreparable loss and injury if the T.I. is not granted?
4. What Order?

9. 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 final order,

for the following,

:: R E A S O N S ::

10. POINT NO.1 TO 3: Since these points are interlinked each other, I have taken together for discussion in order to avoid repetition facts and evidence.

11. Upon going through the pleadings of the parties and the other materials available on record, it could be seen that the suit schedule property earlier belonged to one Sri Basappa is not in dispute. It is further not in dispute that the defendant No.1 to 3 and one late Sri B.Murthy are the sons of said Sri Basappa and defendant No.4 to 6 are the wife and children of late Sri B.Murthy. It is also not in dispute that said Sri Basappa had raised a loan with PLD Bank, Tarikere, by mortgaging the suit schedule property and upon failure to make repayment of the said loan amount, the suit schedule property was put into auction and one Sri H.B.Rangappa has purchased it in the said auction.

12. It is the specific contention of the plaintiff that the wife and children of said Sri H.B.Rangappa, namely Smt Onkaramma and Sri R.Halappa, R.Basavaraju, R.Jyoti, have executed a registered gift deed in favour of the plaintiff on 23.04.2018 and they handed over possession of the same to the plaintiff. It is pertinent to mention here that the execution of the said gift deed is also not in dispute. The defendants have specifically contended that though the gift deed goes to show that possession of the suit schedule property has been

delivered in favour of the plaintiff, no actual possession was handed over to the said Sri H.B.Rangappa or the donors of plaintiff and it is only a de jure possession and they are in actual possession of the suit schedule property till today. They have further contended that very recently on 13.11.2021 they have also lodged a complaint to the Tarikere Town Police Station against some 20 to 30 persons for having trespassed into the suit schedule property for the offences punishable u/s 144, 147, 447, 504, 354, 323, 427 r/w Sec 149 of IPC which goes to show that they are in possession of the suit schedule property. Further the defendants have contended that since they have question the very auction made by the Assistant Registrar of Co-operative Societies, Tarikere, in WP.No.51289/2017 and it is pending for consideration. The defendants have also relied upon the decisions of the Hon'ble Supreme Court reported in AIR 1968 SC 702 and unreported decision in Civil Appeal No.2069/2014. I have gone through the said decisions.

13. Upon going through the materials on record and after hearing both the sides, it could be seen that the RTC extract and mutation register extract produced

by the plaintiff goes to show that khata of the suit schedule property has been mutated into the name of the plaintiff and the plaintiff is shown to be in possession of the said land based upon the gift deed dated 23.04.2018. The said gift deed has been produced by the plaintiff and it also goes to show that possession of the suit schedule property was delivered to the plaintiff on the very same day. It is further pertinent to mention here that the orders passed by the Civil Judge [Jr.Dvn.] and Addl. JMFC., Tarikere, in Ex.No.29/2003 which was filed by said B.Murthy s/o Basappa against the judgment debtors/plaintiffs herein for violation of the decree passed in OS.No.47/1985 dated 25.01.1988 came to be dismissed with an observation that the revenue inspector has acted upon the orders of the Deputy Commissioner directing to deliver possession of the property to the judgment debtors. The said order has been challenged by the decree holder/defendants herein before the Hon'ble High Court of Karnataka in WP.No.56872/2013 which also came to be dismissed holding that the possession of the property was delivered to the respondents on 19.10.2002 and that the petitioner is not in possession

of the suit schedule property. These documents prima facie goes to show that the plaintiff is in possession of the suit schedule property. Merely because the defendants have lodged a complaint stating that some people had come and interfered with their possession of the suit schedule property and that the defendants have questioned the very auction proceedings in WP.No.51289/2017 and it is still pending, and further that the defendants have challenged the mutation proceedings in MR.No.H[21] effected in favour of the plaintiff before the Assistant Commissioner, Tarikere, it cannot be concluded that the defendants are in actual possession of the suit schedule property at this stage. Further, the ratio laid down in the decisions relied upon by the counsel for the defendants, in my opinion, is also not applicable to the present facts and circumstances of the case. It is pertinent to mention here that in deciding an application for grant of temporary injunction, the court much satisfy that there is a bonafide dispute raised by the applicant and that there is strong case for trail which needs investigation and a decision on merits and on the facts before the court there is a probability of applicant being entitled to the relief claimed by him.

As such, considering the materials on record, I hold that the plaintiff has made out a prima facie case in his favour. It is pertinent to mention here that the plaintiff has categorically stated that on 05.12.2021, the defendants have tried to interfere over the suit schedule property of the plaintiff and tried to cut the coconut trees in the suit schedule property. Considering the said fact, when I have already held that the prima facie case is in favour of the plaintiff, it is just and necessary to grant temporary injunction in favour of the plaintiff or otherwise, the plaintiff will be put loss and injury which cannot be compensated in terms of money and it may further lead to multiplicity of proceedings between the parties. Hence, I am of the opinion that the balance of convenience lies in favour of the plaintiff rather than the defendants. With these observations, my findings on **Point No.1 to 3** are in the **Negative**.

14. POINT NO.4: in view of my findings on point No.1 to 3, I proceed to pass the following:

ORDER

I.A.No.I filed by the plaintiff Under Order XXXIX rule 1 and 2 r/w Sec.151 of CPC is hereby allowed with costs.

The defendants are hereby restrained from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property in any manner till disposal of the suit.

(Typed to my dictation directly on computer by the Stenographer, corrected, signed and then pronounced by me in the Open Court on this the **18th Day of June 2022**)

sd/-

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

SAR