

IN THE COURT OF CIVIL JUDGE AND J.M.F.C

YELANDUR

DATED 26th DAY OF OCTOBER 2021

PRESENT

**SRI. SHARATH CHANDRA.N. B.A.L., LLB.
CIVIL JUDGE AND J.M.F.C.,
YELANDUR**

O.S.No. 06 of 2020

Plaintiff : Sri. M. Chidananda
(By Sri.SRA. Advocate)

V/s

Defendants : Sri. M.M. Chinnaswamy And another
(By Sri.PR. Advocate)

I.A.No.I

**Applicant/
Plaintiff** : Sri. M. Chidananda

V/s

**Opponents/
Defendants** : Sri. M.M. Chinnaswamy And another

ORDERS ON IA I

The plaintiff has filed this application seeking a relief of temporary injunction order against the defendants or anybody on their behalf from interfering with the plaintiff's possession

over the suit schedule property till the disposal of the case. The defendant has filed written statement as objections to this application.

2. The case of the plaintiff in brief:

One Sri. Malligashetty has three sons by name N.M.Chinnaswamy, Sri.Somanna, Sri.Chidananda. M.M Chinnaswamy is the defendant No.1 of this case. M. Chidananda is the plaintiff of this case. The said Malligashetty had various movable and immovable properties in Madduru village. He during his lifetime divided all these properties among three sons. In that partition all the three sons ie., plaintiff, defendant No.1 and other son Sri. Somanna got various properties. In that oral partition the suit schedule properties came to the share of the plaintiff. After the death of Sri. Malligashetty the defendant No.1 being the eldest member acted as a karta of the family and managed all the properties and looked after the cultivation of all the properties.

3. All the three brothers got various properties in the partition and similarly the plaintiff got this suit schedule

property in the partition. Based on such partition all the three brothers have got separate and individual khathas in their name. The plaintiff and defendants got various properties and amongst them few of the properties are already sold except the suit schedule property.

4. The extent of suit schedule property is 1 acre 20 guntas. But at the time of entering into the records the revenue officials by mistake has mentioned 2 guntas as kharab land. The plaintiff sought for correction of the same but the defendants unnecessarily raised objections. But the plaintiff is in entire extent of 1 acre 20 guntas and the alleged 2 guntas is not a kharab land.

5. The defendants do not own any property in the neighbouring plot of the suit schedule property but still the defendants are interfering with the plaintiff's possession. The plaintiff is working as a Secretary in Panchyath Raj Department. Hence the defendant is trying to create one or other problem for the plaintiff. In this background the plaintiff has filed this suit against the defendants restraining them or

anybody on their behalf from interfering with the plaintiff's possession over the suit schedule property. During the pendency of the suit the plaintiff claims for a relief of temporary injunction order to restrain the defendants or anybody on their behalf from interfering with the plaintiff's possession over the suit schedule property till the disposal of the suit.

6. After the service of suit summons the defendants have appeared through their counsel Sri. PR and has filed statement of objections to the present application and have also filed written statement to the suit.

7. The case set-out by the defendants in brief:

The defendants in the written statement have admitted that the plaintiff and defendant No.1 and another brother Sri.Somanna are the brothers. They also admit that their father late Malligashetty owned several movable and immovable properties and during his lifetime all the properties were divided between the brothers. They also admit that the defendants being the eldest male member acted as a karta of the family. After the death of their father looked after all the

properties. But the defendants have specifically denied that there was an oral partition and in the oral partition several properties were divided and it is also disputed that the plaintiff was told that he has to look after his own marriage expenses. The defendants contend that the property bearing Sy No.1120/1 measuring 11 guntas out of 2 acre 3 guntas came to the share of defendant No.1 and Sy No.1120/5 measuring 5 guntas came to the share of defendant No.1 by way of oral partition. But it is contended that the plaintiff intentionally has not included Sy No.1120/5 measuring 10 guntas in the plaint. Hence the suit is bad for non-inclusion of the properties. The defendants specifically contend that the plaintiff has not produced any documents to show that the alleged suit schedule property came to his share.

8. The defendants apart from denying the material plaint averments contend that the 'puduvina road' (ಪೂಡುವಿನ ದಾರಿ) measuring 10 guntas is bounded by suit schedule property on the eastern side which originally belong to defendant No.1 and the property of Basavaraj is not on the western side of suit

schedule property. The plaintiff has created false boundaries by stating falsehood on the western side in order to knockoff of the properties of the defendants which is situated on the western side. By contending these facts the defendants have sought for dismissal of this application.

9. The counsel for plaintiff has addressed the arguments. Though it was posted for the arguments of the defendants, neither the defendants or the counsel had appeared to address on IA No.1. This court has considered the arguments of the plaintiff and has considered the pleadings, application, statement of objections and the documents on record. Considering these aspects the following points arises for consideration in order to decide this case:-

Point No.1:- Whether the plaintiff proves that he has made out a prima facie case in order to grant a relief of temporary injunction order till the disposal of the suit?

Point No.2:- Whether the plaintiff has made out balance of convenience in his favour ?

Point No.3:- Whether the plaintiff will be put to irreparable loss if the present application is dismissed?

Point No.4:- What order?

10. In view of the pleadings and materials available on record the above points are answered in the following manner:-

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

11. **Point No.1**:- At this stage, the plaintiff has to makeout a prima facie case. In view of the nature of the suit and the relief sought the prima facie case for the plaintiff to prove is his prima facie possession over the suit schedule property. The plaintiff claims to be in possession of the suit schedule property and the suit schedule property according to plaintiff measures 1 acre 20 guntas. But the plaintiff contends that due to an error 2 guntas has been shown as kharab land but infact it is 1 acre 20 guntas. Now this court cannot decide the correctness of entry in the revenue record with respect to 2 guntas. Hence if according to plaintiff he is in possession of 1 acre 20 guntas he has to show revenue records to extent of 1 acre 20 guntas. The defendant have specifically disputed the plaintiff's possession. The plaintiff in the support of the contention has produced the revenue records. One of the document produced is the certified copy of the mutation register. Upon examining this mutation register it prima facie appears to the court

that the plaintiff and defendant No.1 and another brother by name Somanna have a partitioned their joint family properties and in that partition several properties have come to their respective shares. According to the mutation entry Sri.Chinnaswamy has got 2 acre 2 guntas, Somanna has got 1.13½ guntas and plaintiff has got 1.33½ guntas. Importantly to note is that the suit schedule property and the extent shown there is 1 acre 20 guntas. In that particular survey number the entire extent is shown as 2 acre 3 guntas and out of that 2 acres 3 guntas 11 guntas has come to the share of Chinnaswamy, 12 guntas to Somanna and 1 acre 20 guntas to Chidananda. Though the defendants have specifically disputed this aspect but the revenue records support the claim of the plaintiff.

12. The RTCs with respect to the suit schedule properties though reflect the name of the plaintiff but in column No.9 the extent shown is 1 acre 18 guntas and in column No.3 the entire extent is shown as 1 acre 20 guntas and out of 1 acre 20 guntas 2 guntas is said to be kharab land. Now according to the plaintiff this entry of 2 guntas is by mistake of the revenue authority and he has taken steps to correct the same. But as already discussed this court is not going into the correctness of the revenue record as it is not a suit for a declaration and it is a mere suit for injunction based on

possession. But the revision settlement Aakarband shows the entire extent of the suit schedule property is the 1 acre 20 guntas and there is no reference of 2 guntas as kharab land. Having prima facie examined these documents this court of the opinion that there appears to be some discrepancy with respect to this 2 guntas as to whether it is a kharab land or not. But this court will certainly not go in to detail to decide this aspect. The latest revenue records ie., RTCs reflect the name of the plaintiff to extent of 1 acre 18 guntas.

13. Though the defendants have disputed the material plaint averments they have not produced any contrary documents which support their claim. Nor they have contented that they are in possession of the suit schedule property. Neither the revenue record show this aspect. On prima facie examination of the documents this court is of the prima facie opinion that plaintiff is in possession of 1 acre 18 guntas in the suit schedule property ie., in Sy No.1120/6. This prima facie aspect is sufficient at this stage for this court to decide this application. This court cannot go into merits of the revenue records or the correctness of the revenue record. Hence Point No.1 is answered in the **Affirmative**.

14. **Point No.2 and 3:** In order to avoid repeating the facts and in order to maintain brevity both these points are taken up together for discussion. The plaintiff prima facie has shown his possession over 1 acre 18 guntas in the suit schedule property. The suit schedule property said to be an agriculture land hence the revenue records are the deciding factor for this court in order to come to a conclusion. The plaintiff having shown has prima facie possession based on revenue records certainly has balance of convenience in his favour in order to prevent the defendants interference over his possession. Though the defendants contend that the plaintiff has given wrong boundaries they are unable to show any prima facie material at this stage. As this is a suit for bare injunction based on possession it is sufficient for the plaintiff to show his prima facie possession. Having shown his prima facie possession it would be necessary for this court to restrain the defendants from interfering with the plaintiff's possession. If the present application is dismissed it is the plaintiff who will be put to irreparable loss and hardship. On the contrary the defendants will not be put to any irreparable loss because they do not have any documents in their favour with respect to suit schedule property. Hence in the opinion of the court this application deserves to be allowed but only to an extent of 1 acre 18 guntas and not 1 acre 20

guntas that the plaintiff has mentioned in the application. Accordingly, point No.2 and 3 are answered in the **Affirmative**.

15. **Point No.4**:- For the reasons discussed in point No. 1 to 3, this court proceeds to pass the following:-

ORDER

I.A.No.I filed by the plaintiff is allowed in part.

The defendants or anybody on their behalf are restrained by a order of temporary injunction from interfering with plaintiff's possession over the suit schedule property ie., an extent of 1 acre 18 guntas in Sy No.1120/6, till the disposal of the suit.

IA No.I is accordingly allowed in part.

(Dictated to stenographer, transcribed by her, corrected and then pronounced by me in the Open Court, this the 26th day of October 2021).

(SHARATH CHANDRA.N)
Civil Judge and J.M.F.C.,
Yelandur.

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