

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND JMFC
AT CHANNAGIRI.**

**Present:- Sri.D.Ramesh, B.AL., LL.B.,
Addl. Civil Judge and JMFC,
Channagiri.**

Dated : This the 25th day of January, 2019

O.S.No.08/2018

Between:

Mallamma and others : **PLAINTIFFS**
(By Sri. HMV., Adv.,)

And

Gangamma and others : **DEFENDANTS**
(D.No.1 - By Sri.MTS., Adv.,)
(D.No.2 & 3 - By Sri.KGS., Adv.,)

I.A.No.I

Mallamma and others : **Plaintiffs/applicants**

V/s.

Gangamma and others : **Defendants/Opponents**

ORDERS ON IA No.I

The plaintiffs have filed application under Order 39 Rule 1 of CPC against the defendants for restraining them from interfering with the possession and enjoyment of suit schedule property.

2. Brief facts of the affidavit are as follows:

The plaintiffs are the owners and in lawful possession and enjoyment of property suit property bearing Khata

No.805 and Asthi No.582 (Old No.574) of Tavarekere village measuring 77 x 54 feet consisting of house and Palu and the same is bounded by East – House of Veerabhadrappa, West – Panchayath Road, South – Oni and then house of Gangamma, Ramappa and Sharadamma and North – Property of Deviramma. The khata of said property stands in the name of their father late Kariyappa, their father died on 14.05.2006. Plaintiffs are the legal heirs have filed an application to the Gram Panchayath for change of khata and same is pending. The suit schedule property was vacant site and it is the ancestral property and the plaintiffs have constructed the red tiled house towards eastern side of suit schedule property in the year 1998-99 to the extent of about East-West 29 feet, North-South 28 feet by leaving a vacant site towards the western side of the said house. Now they have put up foundation for construction of new house in the said vacant site to the extent of East-West 42 feet and North-South 32 feet. The said construction was undertaken by them as the old house is in dilapidated condition and the said foundation was put up them in the month of July 2017 by leaving a setback on all four sides. The defendants having no manner of right and interest over the suit schedule property with an intention to harass the plaintiffs have put threat to dismantle the foundation. The act of defendants are recurring. Hence, prays to allow this application.

3. The defendants filed written statement and also filed memo to consider the written statement as objections to

IA.No.I. In their written statement they denied all the averments of the plaint and they have also specifically denies the description of suit property with regards to the measurement and boundaries. They further contended that the plaintiffs have not pleaded anything about the origin of the suit property intentionally either to Kariyappa or his father T.M.Mallappa S/o Sanna Hanumappa. Kariyappa is the husband of first plaintiff and father of other plaintiffs. During the lifetime of T.M.Mallappa, there was partition in their family under registered partition deed dated 06.01.1971. In the said partition deed, the Mallappa-father of Kariyappa was allotted the property bearing K.No.328 measuring East-West 57 feet and North-South 34 feet bounded by boundaries as mentioned in the said partition deed. In the partition deed, the boundaries mentioned as East – Ajjara Rudrappa, Maheshwarappa's Hittalu, West – Road, North – Hittalu of T.M.Gangadharappa and South – Hittalu of Giryappa and Hanumanthappa. In the suit schedule boundaries, the eastern boundary is mentioned as property of Veerabhadrappa who is none other than the son of Ajjara Rudrappa. The northern boundary is shown as the property of Deveeramma who is none other than the daughter-in-law of T.N.Gangadharappa. The southern boundary is shown as Oni and then house of Gangamma, Sharadamma and Ramappa. Infact, there is no Oni at all to the said property. The Gangamma, Ramappa and Sharadamma are none other than the defendant No.1 to 3.

Infact, the Hittalu of Giriyappa and Hanumanthappa was shown to the south of K.No.328 as per partition deed of 1971, wherein this Hanumanthappa is none other than the husband of first defendant and Giriyappa is none other than the father of defendant No.3 and father-in-law of defendant No.2. Therefore, the suit property is none other than the property bearing K.No.328, which is measuring East-West 57 feet and North-South 34 feet. This K.No.328 was assessed in the name of T.M.Mallappa upto 1997-98 in Panchayath records and thereafter the new number was assigned to the said property as 574 and it was assessed in the name of Kariyappa S/o Mallappa who is none other than the husband of first plaintiff. Now the said property is assessed as Asthi No.582. In this aspect, confirmation letter is produced along with written statement. Even though, the original owner T.M.Mallappa was owing the vacant site to an extent of 57 x 34 feet in K.No.328. Now the measurement in panchayath records in the name of his son Kariyappa have been shown as 77 x 54 feet which goes to show that this entry of measurements have been created and concocted without any base by colluding with the panchayath officials by the plaintiff. Therefore, the plaintiffs are neither the owners nor in possession of any property which is described in the suit schedule property. Infact to the south of property No.328 measuring North-South 34 feet of Tavarekere Village, the Hittalu of defendants is situated. But the plaintiffs have intentionally shows the southern side boundary as Oni and

then the house of defendants. Infact to the south of 34 feet property of plaintiffs, the Hittalu of defendants is situated and south of that Hittalu, the house property of defendants is situated and thereby giving the north-south measurement as 54 feet to the suit property the plaintiffs are laying their wrongful claim to the Hittalu portion of defendants. Thus, the plaintiffs have suppressed the material facts and have not disclosed the origin of the title intentionally and by giving false boundaries and measurements. Hence, prays to dismiss the application.

4. Heard the arguments and perused the records. The following points that arise for my consideration.

1. **Whether the plaintiffs have made out prima-facie case?**
2. **Whether the plaintiffs have made out balance of convenience lies in their favour?**
3. **Whether the irreparable injury caused to the plaintiffs, if the I.A. is not allowed?**
4. **What Order?**
5. I answer the above points 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 final order, for the following;

REASONS

6. POINT NO.1 TO 3:- These points are interlinked to each other, hence they have taken up together for common discussion to avoid the repetition of facts.

7. It is the case of the plaintiffs that they are the owners and in lawful possession and enjoyment of the suit schedule property bearing K.No.805, Asthi No.582 (Old No.574) of Tavarekere village measuring 77 x 54 feet consisting house and Palu bounded by East – Property of Veerabhadrappa, West-Panchayath Road, North – Property of Deviramma and South – Oni & then house of Gangamma, Ramappa and Sharadamma. The khata of the said property stands in the name of Kariyappa who is the husband of first plaintiff and father of other plaintiffs, has died on 14.05.2006. Thereafter, the plaintiffs have filed an application to Gram Panchayath for change of khata, same is pending. The suit property is the ancestral property of plaintiffs' family, they have constructed red tiled house towards eastern side of suit property in the year 1998-99 to the extent of East-West 29 feet, North-South 28 feet by leaving vacant site towards western side of the said house. Now the plaintiffs have put up foundation for construction of new house in the said vacant site to an extent of East-West 42 feet and North-South 32. The defendants have no manner of right, title and interest over the property put threats to dismental the foundation.

8. In order to prove their contention, they have furnished the 3 DCB extracts, 4 tax paid receipts, photos and C.D., resolution of general body meeting of Tavarekere Panchayath, DCB register, House sanction letter in favour of wife of plaintiff No.2 and certified copy of the order on IA.No.I in OS.No.143/2017.

9. The defendants have specifically denied the description of suit schedule property. The defendant No.1 contended that the plaintiffs have not pleaded regarding the origin of the suit property intentionally either to Kariyappa or his father T.M.Mallappa S/o Sanna Hanumappa. Kariyappa is husband of plaintiff No.1 and father of other plaintiffs. T.M.Mallappa was entered into registered partition deed in his joint family on 06.01.1971. As per the said partition deed, the T.M. Mallappa father of Kariyappa was allotted the property bearing Kaneshumari No.328 measuring East-West 57 feet and North-South 34 feet bounded by East – Ajjara Rudrappa, Maheshwarappa's Hittalu, West – Road, North – Hittalu of T.M.Gangadharappa and South – Hittalu of Giryappa and Hanumanthappa. In the suit schedule property, the eastern boundary mentioned as property of Veerabhadrappa who is the son of Ajjara Rudrappa, The northern boundary shown as the property of Deveeramma who is none other than the daughter-in-law of T.M.Gangadharappa, the southern boundary is shown as Oni and then house of Gangamma, Sharadamma and Ramappa,

who are the defendants herein. Infact, there is no Oni at all to the said property, Infact, Hittalu of Giriappa and Hanumanthappa was shown to the south of Kaneshumari No.328 as per the partition deed dated 1971, wherein the Hanumanthappa is none other than the husband of first defendant and Kariyappa is none other than the father of defendant No.3 and father-in-law of second defendant. Therefore, the suit property is none other than the property bearing Kaneshumari No.328, which is measuring East-West 57 feet and North-South 34 feet. This Kaneshumari No.328 was assessed in the name of T.M.Mallappa up to 1997-98 in Panchayath records. Thereafter, new number was assessed to the said property as 574 and it is assessed in the name of Kariyappa S/o Mallappa who is the husband of first plaintiff. Now, the property assessed as Asthi No.582. In this aspect confirmation letter is produced along with written statement. Even though, the original owner T.M.Mallappa was owning the vacant site to an extent of 57 feet x 34 feet in Kaneshumari No.328. Now the measurement in the panchayath records, the name of his son Kariyappa have been shown as 77 x 54 feet which goes to show that this entry of measurements have been created and concocted without any base by colluding with the panchayath officials. Therefore, the plaintiffs are neither the owners nor in possession of property described in the suit schedule. Infact, to the southern side of property bearing Kaneshumari No.328 measuring East-West 57 feet, North-South 34 feet,

the Hittalu of defendants is situated, but the plaintiff intentionally shown the southern boundary as Oni and then the house of defendants. Infact to the South of 34 feet property of plaintiffs, the Hittalu of defendant is situated and thereby giving the North-South measurement as 54 feet to the suit property the plaintiffs are laying their wrongful claim to the Hittalu portion of defendants.

10. In order to prove their contention, they have produced the certified copy of partition deed dated 06.01.1971, endorsement issued by Panchayath dated 04.10.2017 and Xerox copy of the Will dated 04.06.1984.

11. I have carefully gone through the both side documents. The plaintiffs have produced DCB register extracts for the year 1988-89 and 2017-18. The DCB register extract for the year 1988-89 reveals that the Khata No.574, Asthi No.574 measuring 77 x 54 feet stands in the name of Kariyappa S/o T.M.Mallappa, Tavarekere village. The DCB register extract for the year 2017-18 reveals that Khata No.805, Asthi No.582 (New No. 574) measuring 77 x 54 feet stands in the name of Kariyappa S/o T.M.Mallappa, other documents are tax paid receipts and photos. Except these documents, the plaintiffs have not produced any title documents and even they have not pleaded about origin of title over the suit property either Kariyappa or his father

T.M.Mallappa. The measurements mentioned in the DCB register extracts by the panchayath authority itself not enough to decide the ownership of parties. The Revenue records should be based on any title documents. And it is also not reflected in the DCB register extracts that on what basis the panchayath authority has mentioned the measurement of suit property. Further the plaintiffs are also not produced any documents to show the boundaries mentioned in the suit schedule property.

12. On the other hand the defendants have furnished the certified copy of partition deed dated 06.01.1971 was taken place between the husband of first plaintiff, and his family members. 'A' schedule property of the said partition deed, reveals that property bearing Khaneshumari No.328 measuring 34 x 57 feet bounded by East – Ajjara Rudrappa, Maheshwarappa's Hittalu, West – Road, North – Hittalu of T.M.Gangadharappa and South – Hittalu of Giryappa and Hanumanthappa. In the said partition deed, the Khaneshumari number is mentioned as 328. The defendant No.1 specifically pleaded that the Khaneshumari No. 328 is the old number to the suit schedule property and it was stands in the name of T.M.Mallappa up to 1997-98. Thereafter, the said property assigned as New No.574 and it is transferred in the name of Kariyappa S/o Mallappa. In this aspect the defendant No.1 has produced the certificate dated 04.10.2017 issued by the Gram Panchayath,

Tavarekere village. The said certificate reveals that K.No.328 and K.No.574 are one and the same. Therefore, the Khaneshumari No.328 is nothing but the suit schedule property. Under such circumstances, it is clear that the T.M.Mallappa who was the father of Kariyappa was acquired the property measuring 34 x 57 feet only. When the origin of title itself shows the measurement is 34 x 57 feet only, how in DCB register extracts mentioned 77 x 54 feet. Moreover, as per the said partition deed to the southern side of the said property shown as Kariyappa and Hanumantha's Hittalu, but in the suit schedule southern side shown as Oni and then house of Gangamma, Ramappa and Sharadamma. In the partition deed itself shows that there is no Oni on the southern side, how now the plaintiffs are claiming Oni on the southern side. Hence non-production of origin of suit property and not pleading about the said origin of suit property by the plaintiffs itself shows that they are approaching the court without clean hands. When they are seeking equitable remedy before the court like permanent injunction, they ought to have plead true facts and they ought to have approached the court with clean hands. They are claiming the relief only based on the DCB register extract. The DCB register extract should have corroborate with origin of suit property. Hence at this stage, the plaintiffs have not made out prima facie case that they are in possession of property mentioned in the suit schedule boundaries and measurements. Therefore, the question of

considering the balance of convenience and irreparable injury does not arise at all. Therefore, I answer the point no.1 to 3 in the Negative.

13. Point No.4 :- For the above reasons I proceed to the pass the following :-

ORDER

The I.A. No.I filed by the plaintiffs under Order 39 Rule 1 of C.P.C. is hereby rejected.

In the facts and circumstances of this case, no order as to cost.

(Dictated to the stenographer, transcribed by her and corrected by me, then pronounced in the open court dated this the 25th day of January, 2019)

(D.RAMESH)
Additional Civil Judge & JMFC,
Channagiri.

**Orders on IA No.1 in
O.S.08/2018**

(Vide seperate order pronounced in the open Court)

ORDER

**The I.A. No.I filed by the
plaintiffs under Order 39 Rule 1 of
C.P.C. is hereby rejected.**

**In the facts and circumstances
of this case, no order as to cost.**

**Addl. Civil Judge & JMFC,
Channagiri.**