

KADG220021262021



**IN THE COURT OF THE I ADDITIONAL CIVIL JUDGE &
JMFC, CHANNAGIRI.**

Present: Kum.Shama Srivatsa.

B.A ,LL.B, (Hon's), LL.M.

I ADDL. Civil Judge & JMFC, Channagiri.

O.S. No. 131/2021

PLAINTIFF : Sri. Hanumanthappa and Others

/Vs/

DEFENDANTS : Sri. Manjappa and Others

PARTIES IN I. A.

APPLICANT : Sri. Hanumanthappa and Others
----- (Plaintiff)

/Vs/

OPPONENTS : Sri. Manjappa and Others -----
(Defendants)

**ORDER ON APPLICATION FILED UNDER ORDER 39
RULE 1 & 2 OF CODE OF CIVIL PROCEDURE**

The I.A No.1 is filed by the plaintiff under order 39
Rule 1 and 2 of CPC praying for an order of Temporary
Injunction against the defendants restraining them from

interfering with the suit schedule property bearing Sy.No. 72/1 measuring 0.35 guntas situated at Geddalahalli village, till disposal of the suit.

2. The 1st plaintiff has filed affidavit in support of his application deposing that, the suit property bearing land Sy.No.72/1 measuring 0.35 acres situated at Geddalahalli village, Santhebennuru Hobli, Channagiri Taluk is granted to him by Tahsildar, Channagiri, vide order No. 1733/1994-95 and issued Grant certificate (Saguvali Chit) in his namae. Followed by transmission of 1st plaintiff's name in the revenue records vide mutation order M.R.No 48/1999-2000 and it is renumbered as M.R.No.T146/2019-2020. Since then the plaintiffs have become absolute owners in possession and enjoyment of suit property.

3. The Plaintiff further states that, defendants have no manner of right or interest over the suit property, inspite of that, on 10/04/2021 at 10.00 AM defendants by forming an unlawful assembly tried to trespass suit schedule property by stating that, Government has allocated the site

to build house in said suit schedule property. Defendants tried to instill the “Bondh Stones”. In the said land, wherein the plaintiffs opposed the same with great difficulties. Though the plaintiffs asked the defendants to stop their illegal act of interference, they did not listen to them. On this illegal interference caused by defendants a complaint was also lodged before the police by the plaintiffs, but it did not yield any benefit. Hence plaintiffs filed this instant application. According to plaintiff, they have got *prima-facie* case and balance of convenience. If injunction is not granted, irreparable injury would be caused to them. On these grounds plaintiff's prayed to allow the application.

4. Defendant No.1 and 2 did not appear and both placed *ex-parte*. Defendant No.3 appeared and filed written statement. Defendant No. 3 also filed memo to treat written statement as objection to this application. In his objections, he has contended that, State Government has allotted a site measuring 30 feet by 40 feet in Sy.No.74 by virtue of Ashraya Yojana on 27-11-1993 in his father's

name vide order no.HUD535/KHB/90 and issued certificate. The defendant No.3 specifically denied interference as alleged by plaintiff's. Defendants contends that, they are the owners and in the possession over the Sy. No. 74 bounded by East: Road, West : Cultivation land , North : Sy.No.72/1 and South: Site No. 3 and no where the defendant No.3 is interfering with the suit schedule property of the plaintiff's. The Defendant No.3 herein further contends that, he belongs to schedule tribe and caste community and plaintiff's with the mala-fide intention has instituted the present suit against him. Therefore, On these grounds the defendant No.3 prayed to dismiss the application.

5. Heard both plaintiff and defendant counsels and perused the records placed.

6. The points that arise for consideration of this court are:-

1. Whether the plaintiffs prove that they have prima-facie case in their favour?

2. Whether the plaintiffs prove balance of convenience in their favour?

3. Whether the plaintiffs prove that irreparable loss would be caused to them if injunction is not granted?

4. What order?

7. Now the following points arise for consideration of this Court are :-

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:-

REASONS

8. **POINT NO.1 TO 3:-** The plaintiff No.1 contended that, suit property was granted to him by Government vide order No. 1733/1994-95 , dt. 02.11.1999 and issued Grant certificate (Saguvali Chit) in his name. In order to substantiate the prima facie case, the plaintiff No.1 has produced Grant certificate (Saguvali Chit) dt. 02-11-1999

issued by Tahasildar, Channagiri for cultivation of the said land with a condition not to alienate. The Mutation Order No. 48/99-2000, dated 11/11/1999 and renumbered as M.R. No . 2019-2020 dt. 13-02-2020 were produced by the plaintiff discloses that, the land bearing Sy.No.72/1 measuring 0.35 Guntaas situated at Geddalahalli Village is granted in his favour by the order morefully described in the mutation, followed by transmission of his name in the revenue records more particularly the R.T.C.s. Plaintiff also produced Encumbrance certificate for the year 2002-2014, Survey Sketch, and these documents discloses that plaintiff is in possession and enjoyment over the suit schedule property without disruption.

9. According to plaintiff, the defendants with malafide intention to create trouble are trying to trespass and instill the stones in the suit schedule property. In support of his allegation the plaintiff has produced the photographs along with a CD and a Endorsed Copy of Complaint addressed to Superintendent of Police

Davanagere dt.20-07-2022 , wherein he has requested for the legal action against the Defendants. On perusal of Endorsement issued by PSI, Santhebennuru dt. 19-08-2022 shows that , police have rejected to initiate any legal action against the defendants as the dispute arose between plaintiff and defendant is of civil in nature and endorsed to settle the matter before this court.

10. According to defendants, the plaintiff has shown wrong boundaries and survey number as the defendant No.3 is the owner and in the possession over the Sy. No. 74 bounded by East: Road, West : Cultivation land , North : Sy.No.72/1 and South: Site No. 3 and he never interfering with the suit schedule property of the plaintiff. Defendant no.3 further claims that, State Government has allotted a site measuring 30 feet by 40 feet in Sy.No.74 by virtue of Ashraya Yojana on 27-11-1993 in his father's name vide order no.HUD535/KHB/90 and issued certificate and defendant No.3 specifically denied interference as alleged by plaintiff's but to substantiate the same defendants No 3 has not produced documents.

11. On perusal of the documents on record, it *prima-facie* reveal that, the plaintiff is in possession over the suit property. Though the defendants have denied the interference in the Sy.No.72/1 and boundaries, they have not produced any documents in this regard. As already observed above the photographs along with the copy of Complaint addressed to Superintendent of Police Davanagere, dt.20-07-2022 and Endorsement issued by PSI, Santhebennuru, dt. 19-08-2022 produced by the plaintiff would *prima-facie* indicate the interference by the defendants. If the injunction is not granted, further loss or injury would be caused to the plaintiff. The balance of convenience tilts in favour of the plaintiff, as the defendants failed to prove at this juncture that, they are in Possession of Sy.No.74 and not caused any interference to the property of the plaintiff. As such, the plaintiff is successful in proving all the ingredients for grant of injunction. Hence, I answer Point No.1 to 3 in the **Affirmative.**

12. **POINT NO.4:-** In view of the above findings and discussions, I proceed to pass the following:-

ORDER

The application filed by the plaintiff U/O.39 Rule 1 and 2 of C.P.C., is hereby allowed.

The defendants or anybody acting on their behalf are restrained from interfering in the possession of the plaintiff over the suit property till the disposal of the suit.

The observations made in the order shall not come in the way of affect or cause prejudice to the rights of the parties to prove their case by leading evidence during the trial.

(Typed by me on my laptop, corrected by me, print taken by stenographer and then pronounced by me in open court on this **28st day of july, 2023**)

Sd/-

(Kum. Shama Srivatsa)
I Addl Civil Judge & JMFC.,
Channagiri.