

KADG220028752024



**IN THE COURT OF THE PRL. CIVIL JUDGE & J.M.F.C.,
CHANNAGIRI**

-: PRESENT :-

**Shri. Siddalingayya B. Gangadharamath,
B.Com. LL.B. (Spl),
Prl. Civil Judge & J.M.F.C.,
Channagiri.**

Dated: This the 17th Day of January 2025

O.S.No.205/2024

PLAINTIFF : Sri. Mahaboob Khan

V/s

DEFENDANTS : Sri. Hidhayathulla and another

I.A.NO.I

Applicant/Plaintiff : Sri. Mahaboob Khan

V/s

Opponents/Defendants : Sri.Hidhayathulla and another

1.	Provision under which the application is filed	Under Order 39 Rule 1 and 2 R/w Sec.151 of CPC
2.	Relief sought for	Ad Interim Temporary Injunction
3	Date on which the application is filed	30.09.2024

4.	Number of the application	I.A.No.I
5.	Date on which the objections are filed by different opponents	05.12.2024
6.	The date on which the orders is passed	17.01.2025

ORDER ON I.A.NO.I

It is the application of defendant No.2/counter claimant, filed under Order 39 Rule 1 and 2 R/w Sec.151 of CPC. It has been filed along with the written statement and the counter claim.

2. SOME AND SUBSTANCE OF THE AFFIDAVIT AS UNDER:

In the affidavit, the second defendant has stated that, the counter claim schedule property was purchased by the defendants from one Ramoji Rao S/o Hanumanthappa, vide registered sale deed dated 06.01.1972. Consequently, necessary mutations were held under MR No.49/71-72, in the name of defendants. Accordingly, the revenue records are standing in the name of defendants. Since then the defendants are in actual possession of the suit schedule property. The first defendant died on 20.01.2024. The plaintiffs without there being any kind of right, title or interest in and over the counter claim schedule property tried to interfere in its possession, on 15.07.2024. They gave threat of dispossession and as such the defendants approached the Santhebennuru Police for necessary protection. The police directed the parties to get order from the court as it covers the civil dispute. The counter claimant/defendant No.2 has made out

prima facie case and balance of convenience is in his favour. Accordingly, he prays to allow the application.

3. STATEMENT OF OBJECTIONS OF PLAINTIFFS

The plaintiffs filed the objection to the application. They stated that, the plaintiffs filed suit under public interest litigation. The property bearing Sy.No.9999/P2, measuring 4 Acres of Sulekere Village was Government land. The defendants without there being any actual possession, title or interest in and over the suit schedule property they are making every attempt to measure the suit schedule property. According to the plaintiffs, the suit schedule property is gramatana land and belongs to the Government. No such grant was done in favour of the defendants by the Government. However, the defendants did influence upon the Tahasildar, Grama Panchayat and thereby entered their names on the basis of created sale deed dated 06.01.1972, through MR No.16/1970-71. The said sale deed is created one and it does not disclose any survey number. The villager, namely, Syed Ali S/o Syed Syman, Hosuru village filed objection to the Tahasildar questioning the mutation held in the name of defendants in so far as the revenue records of suit schedule property. The same was registered as RRTCR1252/2015-16. Wherein, the Tahasildar gave endorsement that there is no reasons to consider the objection. There against the said person preferred an appeal before the Assistant Commissioner, Honnali, in RA/CR/20/2023-24. Wherein, the defendants have come up with the defence that, they purchased the property under registered sale deed dated 06.01.1972,

executed by one Ramoji Rao S/o Hanumanthappa, Kerebilachi village. On perusal of the said document, it appears that, the property was sold without the survey number. Therefore, the said sale deed is created one and on the basis of such created document the defendants are claiming right, title or interest and also created revenue records in collusion with the Government officials. The appeal preferred by the Syed Syman came to be rejected on 23.11.2023. Thereafter, the plaintiff filed the suit. Thus, the plaintiffs pray to reject the application.

4. Based on material available on record, the following points would emerge for my consideration;

POINTS

1. Whether the defendant No.2 has made out prima facie case?
2. Whether the balance of convenience lies in favour of defendant No.2?
3. Whether the defendant No.2 will be put to irreparable loss, if the order as prayed for is not granted?
4. What order?

5. Heard the learned counsels appearing for the plaintiffs and defendants. Perused the records and on perusal of the same, my findings to above said points are as under :

POINTS

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

6. **Point No.1 to 3:-** These three points are interconnected, as such are taken at once for discussion.

7. In order to prove the prima facie case, the defendant No.2/counter claimant has produced an endorsement dated 29-12-2024. Whereunder, the right to information officer of Santhebennuru Police Circle provided information regarding the statement recorded by the police in pursuance of the application of the defendant No.2. The acknowledgment dated 01.03.2023 has been produced and it discloses the alleged obstructions of villagers, youths by playing cricket in Sy.No.9999, measuring 4 Acres of land standing in the name of defendants. The statement of Rehaman Khan, Syed Ali has also been produced and which discloses the dispute amongst the villagers and the defendants as regards the alleged encroachment in the school land. The defendants produced 3 positive photographs, one CD and the receipt. The defendants have also produced the RTC of counter claim schedule property, covering the 2020-21, 2021-22, 2022-23, 2023-24, 2024-25. In all the RTCs, the names of defendants are appearing at column No.9 as well as column No.10

and their extent is described as 4 Acres of land in Sy.No.9999. The defendant/counter claimant has also produced an endorsement issued by the Tahasildar, Channagiri, dated 26.09.2024. Whereunder, the Tahasildar, Channagiri has categorically stated that, the land measuring 9 Acre 36 Guntas of Sulekere Gramatana has been assessed in Sy.No.9999 at computerized RTCs since the year 2000-2001.

8. Having taken note of all these documents, it appears that, the defendants are in possession of the counter claim schedule property for long duration and accordingly their names putforward in the revenue records of counter claim schedule property by the authority for the collection of land revenue.

9. On the other hand, the plaintiffs have produced the RTC of Sy.No.9999, covering the period 2024-25 and it discloses the name of defendants at column No.9 and 12, for an extent of 4 Acres of land. The defendants have also produced the copy of sale deed dated 19.02.1970. I have carefully perused the said copy of sale deed and wherein it can be gathered that, the representative of Jumma Masjid, namely, K.B.Mohammed Beg and Valli Buden Beg jointly alienated the property measuring 4 Acre 37 Guntas of land to one Ramoji Rao S/o Hanumanthappa. Though the said document does not reveal the survey number, but it reveals the boundaries and are tallying with the boundaries as described in counter claim property schedule, I.A.No.I property schedule and the suit schedule property. The said document must be read in consonance with the endorsement given

by the Tahasildar, Channagiri and having perused the said document, it appears that, the gramatana of Keribilachi village numbered as Sy.No.9999, that too, at later point of the year 2000-2001. Thus, the said sale deed pertains to the very property claimed by the plaintiffs and the defendants.

10. The plaintiffs have also produced the copy of sale deed dated 06.01.1972, through which the defendants purchased the property described in counter claim schedule, from one Ramoji Rao S/o Hanumanthappa. This document also discloses handing over of possession of the property to the respective purchasers as on the date of sale deed itself. The plaintiff produced the RTC of the year 1992-93, 1974-1975, 1989 to 2001, 2001 to 2002. In all the RTCs the name of defendants are appearing at column No.9, to the extent of 4 Acres of land. The plaintiffs produced the copy of plaint filed in O.S.No.22/99, valuation slip of the said suit, order sheet of the said suit. The said suit was filed by the defendants against one Sri.Julfikhar Ali Khan and Sri.Siddik Ali Khan, which was dismissed for default. The same is not bearing on the alleged claim of the plaintiffs.

11. The plaintiffs have produced the order sheet of Assistant Commissioner, Honnali, Sub Division, Honnali, maintained in RACR 20/2023-24 and the certified copy of order dated 23.11.2023. Whereunder, the Assistant Commissioner had directed the parties to approach the civil court in order to know the legality, validity and genuinity of the sale deeds claimed by the defendants. The plaintiffs

have also produced the certified copy of sale deed dated 19.02.1970, executed by Buden Sab in the name of Ramoji Rao S/o Hanumanthappa. They have also produced 4 positive photographs and one CD along with the bill.

12. Having taken note of the prima facie material documents placed by both the parties, what it appears is, the defendants purchased the property in the year 1972 and prior to that their vendor purchased the property from the Buden Sab and others. Consequently, necessary mutations were held in the name of defendants since the year 1970, till today. The said documents categorically reveals the long standing possession of the defendants in the suit schedule/counter claim schedule property. Admittedly, the suit schedule property is the landed property. Though, it is stated as gramatana, it is vacant land. As per the revenue records backed by the title deed, which have not been adjudicated by the competent courts of law as void, the defendants are holders and the possessors of the property. The defendants have categorically established their possession in and over the suit schedule property.

13. On the other hand, the plaintiffs have filed the suit with representative nature without complying the mandates of Order 1 Rule 8. Under such circumstances, I am of the considered opinion that, the plaintiffs have no such locus to question the very possession of the defendants in and over the suit schedule property. Moreover their suit is absolutely not tenable in the absence of compliance of Mandatory provisions of Order 1 Rule 8 of CPC. The

prima facie case includes the maintainability of the suit also. Therefore, the plaintiffs cannot claim any right on their individual capacity apart from the alleged collective interests thereon. Accordingly, the defendant No.2/counter claimant has made out prima facie case. Moreover, the defendant No.2 has produced the copy of necessary complaint put before the police authority and even the plaintiffs have set up counter plea of their possession in the suit schedule property by filing necessary rejoinder to the counter claim filed by the defendant No.2. Under such circumstances, it is well settled law that, the same is virtual interference of the property. Therefore, the defendant No.2 has made out prima facie case to grant ad interim temporary injunction. On looking to the materials, the balance of convenience also leans in favour of defendant No.2. If the order as prayed for is not granted, then the defendant No.2 will be put to greater hardship and irreparable loss. Accordingly, the **Point No.1 to 3** are held in the **Affirmative**.

14. **Point No.4:-** As a result, I proceed to pass the following:

ORDER

**The I.A.No.I filed U/O.39 Rule 1 and 2
R/w Sec.151 of CPC by the defendant
No.2/counter claimant is hereby allowed.**

**Consequently, the plaintiffs, their
family members, supporters or anyone
claiming through them are hereby**

restrained from interfering with the possession and enjoyment of the defendant no.2/counter claimant in and over the counter claim schedule property till disposal of this suit.

No order as to costs.

(Dictated to the stenographer typed by her, corrected by me and then pronounced in the open court on this the **17th Day of January, 2025.**)

Sd/-
(Siddalingayya B. Gangadharamath)
Prl. Civil Judge & J.M.F.C.,
Channagiri.