

IN THE COURT OF THE PRL.CIVIL JUDGE & JMFC HARIHARA

Present: SRI.MAHADEV KANATTI,  
B.Com.LLB.(Spl),  
Prl. Civil Judge & JMFC, Harihara

Original suit No.65/2023

Dated this the 3<sup>rd</sup> day of July -2023

Shivanna and others

....PLAINTIFFS

//Versus//

A.U.Kadasiddappa and others

.....DEFENDANTS

PARTIES TO I.A.NO.I

Shivanna and others

..... APPLICANTS

//Versus//

A.U.Kadasiddappa and others

..... OPPONENTS

ORDER ON I.A.No.I

The present interim application filed on behalf of the plaintiff U/Order XXXIX Rule 1 and 2 of CPC., seeking temporary injunction against the defendants restraining them from interfering with peaceful possession and enjoyment of the suit schedule property by way temporary injunction till disposal of the suit.

2. It is stated in the accompanying affidavit of I.A.No.I that the suit schedule property is originally ancestral property of the plaintiffs and the same has been mutated

into the name of the plaintiffs as per the order of Assistant Commissioner, Davanagere in RACR No.10/2021 dated 15-09-2022. Accordingly, mutation is effected in their names as per MR.No.T90/22-23 and also khata has been transferred under RRTCR No.110/22 dated 17-10-2022. Accordingly, they are in peaceful possession and enjoyment of the suit schedule property by paying kandayam to the Government. This being so, the defendants are the distant relatives of the plaintiffs without having any right, title or interest over the suit schedule property are interfering with their peaceful possession and enjoyment of the same and threatening them to dispossess from the suit schedule property. It is further stated that the defendants are having money and muscles power and also politically influenced persons. If they are not restrained, they will dispossesses the plaintiffs from the suit schedule property. In this regard the plaintiffs have approached the jurisdictional police but they have orally referred the plaintiffs to approach the Civil Court. Hence, they filed the present suit along with present application. On these grounds prays to allow the application.

3. The defendants appeared through their counsel and filed written statement by denying the contents of the plaint averments in toto and filed memo treating the contents of the written statement as objection to the I. A. No.I. They have taken a specific contention that they are in

peaceful possession and enjoyment of the suit schedule property since from their ancestors. The suit schedule property is mutated in the name of the defendants in the year 1980-81. Since, then they are in possession of the same and paying Kandayam to the Government. The plaintiffs challenged the said mutation before the A.C, Davanagere after 40 years and got order and on the basis of the same got mutated their name into the suit schedule property. But the order of the Assistant Commissioner, Davanagere has been challenged before the Deputy Commissioner, Davanagere, wherein the D.C has order to maintain status-quo. The plaintiffs without having any right over the suit schedule property on the strength of the order of Assistant Commissioner filed false suit against the defendants in order to harass them. On these grounds prayed to rejected the application.

4. Heard arguments of both the sides.
5. The following points arise for my consideration;
  1. Whether the plaintiffs have made out prima-facie case ?
  2. Whether plaintiffs have made out the balance of convenience in their favour ?
  3. Whether the plaintiffs will be put to irreparable injury, if the temporary injunction as claimed by them refused?
  4. What Order ?
6. My findings on the above points is as under:-  
Point No.1: In the Affirmative

Point No.2: In the Negative

Point No.3: In the Negative

Point No.4: As per final order, for the following.

#### REASONS

7. Point No.1 to 3:- In order to get the order of temporary injunction parties have to show that, prima-facie case is in their favour and balance of convenience lies in their favour. Further they have to show that in case of temporary injunction order as sought by is not granted, they will be put to heavy and irreparable loss, which cannot be compensated in terms of money. Before going to merits of the case, I would like to discuss what is the prima-facie case, balance of convenience and irreparable injury.

8. The prima-facie case: means the court must be satisfied with that the applicant has raised a bonafide disputes which needs investigation and the decision on merits and fact there is a probability of the applicant being entitle to the relief claimed by her. The burden is on the plaintiff to prove that, there is prima-facie case in her favour. While determining whether the prima-facie case has been made out the relevant consideration is whether on evidence lead, it is possible to arrive at the conclusion in question and not whether what is the only conclusion which could be arrived on that evidence.

9. Balance of convenience: Before granting the injunction the court must be satisfied that, the hardship likely to be caused to the applicant, by refusing the

injunction is greater than that likely to affect the opponent. If on weighing conflicting probabilities the court is of the opinion that, the balance of convenience is in favour of applicant it must grant the injunction.

10. Irreparable Injury: The applicant must satisfy the court that, she will suffer irreparable loss, injury if the injunction is refused as there is no other remedy by which she can be protected from consequences apprehending injury. The grant of injunction is an equitable relief and it can be exercised when judicial intervention is necessary to protect the applicant. And injunction can be regarded as irreparable where there is no pecuniary standard for measuring damages.

11. Keeping all these cardinal principles in mind, I have gone through the material placed on record. The plaintiffs have filed this suit against the defendants for the relief of permanent injunction restraining them from interfering from the suit schedule property. The plaintiffs claiming to be the owners in peaceful possession and enjoyment of the suit schedule property and same is originally belongs to their ancestors and in the year 2022, as per the order of the Assistant Commissioner, Davanagere their names have been mutated in to the suit schedule property. Accordingly, they are in peaceful possession and enjoyment of the suit schedule property. In support of their contention, have produced order of Assistant Commissioner dated 15-09-

2022 and certified copy of mutation extract MRT 49/2022-23 and ROR for the year 2022-23. On perusal of the same the name of the plaintiff No.4 is appearing in the ROR of the suit schedule property as per the order of the A.C and on the basis that mutation has been effected. On the other hand, the defendants have specifically contended that the plaintiffs are not having any rights over the suit schedule property. They are the owners in peaceful possession of the suit schedule property. The name of the defendants is appearing in the ROR since 40 years and they are paying the kadayam, but the plaintiffs on the basis of the order of the A.C is falsely claiming to the suit property. The defendants further submitted that the order of the A.C is challenged before the D.C, Davanagere. Wherein the D.C has stayed the order of the A.C, Davanagere and ordered to maintain status-quo. The defendants to support their contention have produced numbers of documents to show their title and possession over the suit schedule property.

12. On perusal of pleadings of both parties and the documents produced by them, the plaintiff and defendants are the descendants of the common ancestor. The suit schedule property also belongs to their ancestor. The khata/ mutation has been effected into the name of the defendants in the year 1980-81. Since then the name of the defendant has appearing in the ROR and further documents shows that the defendants are pyaing the

kandayam to the suit schedule property, recently the mutation i.e, IHC No.25/1980-81 has been challenged by the plaintiffs before the A.C, Davanagere in RACR No.10/21 and got cancelled the same by A.C, Davanagere dated 15-09-2022. On the basis of that the name of the plaintiff No.4 has been mutated and accordingly khata has been transferred. But the said order has been challenged before the D.C, Davanagere in RACR No.51/22-23. Wherein, D.C has ordered to maintain status quo in respect of the order of the A.C, Davanagere. During the period of 1980 to till date the defendants have got partitioned the suit schedule property by way of registered Partition Deed.

13. On careful perusal of the pleadings of both parties as well as the documents produced by them there is a serious dispute regarding the title and possession in respect of the suit schedule property. Hence, without full fledged trial at this stage it cannot be come to the conclusion that who is in possession of the suit schedule property. Hence, there is serious issue to be tried. Hence, the plaintiffs have made out prima-facie case. Accordingly, point No.1 answered in the affirmative.

14. Point No.2 and 3 : Mere prima-facie case is not sufficient to grant temporary injunction. The plaintiff has to prove that balance of convenience also lies in their favour and if the temporary injunction is not granted they will be put into greater hardship and irreparable loss would be

caused to them than the defendants. As stated supra there is a serious dispute to be tried regarding who is in possession of the suit schedule property. The documents produced by the defendants which are born at a undisputed point of time i.e since last 40 years the revenue records are standing in the name of defendants and there is a partition among them through a registered deed in respect of the same. Only in the year 2022 as per the order of the A.C, Davanagere the name of the plaintiff No.4 is appearing in the ROR of the suit schedule property and same has been also stayed by the D.C, Davanagere. Hence, at this stage, it is opined the materials on record shows that the defendants are having prime facie possession over the suit schedule property. However, same has to decided only after full pledged trial. At this stage, any opinion on the merits of the case would prejudice the minds of the parties. Hence, without going to the merits of the case of the case, it is humbly opined that the balance of convenience lies in favour of the defendants, and if the temporary injunction is granted it is the defendants who will be put more hardship than the plaintiffs. Hence, the plaintiffs are not entitled for the temporary injunction as sought for. Accordingly, Point No.2 and 3 are answered in the Negative.

15. Point No.4:- In view of the above discussion, I proceed to pass the following:

**O R D E R**

I.A.No.I filed by the plaintiffs U/O 39  
Rule 1 and 2 R/w Sec. 151 of CPC., is hereby  
rejected.

No order as to costs.

(Dictated to the Stenographer, typed by her, revised and corrected by me and then pronounced in the open court on this the 3<sup>rd</sup> day of July, -2023).

Sd/-

(Mahadev Kanatti)  
Pri. Civil Judge & JMFC,  
Harihara.

Order pronounced in the open court,  
(Vide Separate order)

ORDER

I.A.No.1 filed by the plaintiffs U/O  
39 Rule 1 and 2 R/w Sec. 151 of CPC., is  
hereby rejected.

No order as to costs.

Prl.Civil Judge & J.M.F.C,  
Harihar.