



**IN THE COURT OF THE II ADDL, SENIOR CIVIL  
JUDGE & JMFC., HUBBALLI.**

Present: **Smt. Padmashree Ratnakar Patil.,**

B.A. LLB. (Spl.)

II Addl. Senior Civil Judge & JMFC.,  
Hubballi

**O.S. No.135/2022**

**Dated this the 20<sup>th</sup> day of March, 2024**

PLAINTIFF/S : Shivappa S/o Tippanna Badiger,  
Age: 45 yrs, Occ: Agriculture,  
R/o: Revadihal, Po: Tarihal,  
Tq: Hubballi, Dist: Dharwad  
and others

**( By Sri L.D.Kulkarni, Adv.)**

// Versus //

DEFENDANT/S : Paremashwar S/o Kalappa  
Badiger  
Age: 51 yrs, Occ: Agriculture,  
R/o: Revadihal, Po: Tarihal,  
Tq: Hubballi, Dist: Dharwad  
and others

**( By Sri. S.R.Ambli, Adv.)**

**PARTIES TO I.A NO.5**

**APPLICANT/** : Shivappa S/o Tippanna Badiger,  
**(Ori. Plaintiff)** and others



**V/S**

**OPPONENTS/** : Paremeshwar S/o Kalappa  
**(Ori. Defendant)** Badiger and others

**ORDER ON I.A. NO.2 AND 5 FILED U/O 39 RULE 1**  
**AND 2 R/W SEC.151 OF CPC**

The plaintiffs filed this application on 15-03-2022 under Order 39 Rule 1 and 2 of CPC in I.A.No.2 seeking to restraining the defendants from interfering the present possession of the suit schedule property not to alienate any third party any financial institution till disposal of this case.

2. The plaintiffs filed I.A.No.5 on 16-02-2024 under order 39 Rule 1 and 2 R/w Sec.151 of CPC with prayer that restrain the defendants from illegal construction in agriculture land of the suit schedule property depriving the legitimate right of the plaintiffs.

3. The plaintiff No.4 in affidavit filed along with I.A.No.2 it is stated that, the plaintiff filed this suit for the relief of declaration and permanent injunction against the defendant. The father of plaintiff Tippanna



and Kallappa brothers and Kallappa was not having any land and he was dependent on Tippanna only, Tippanna who was hard worker and out of courtesy Kallappa being his brother, was allowed to helping cultivating the agricultural land owned and possessed by Tippanna to the extent of 6 acres, 15 guntas. That in the year 1985 due to the family difference being arose, and with the intervention of the elders, Tippanna allowed Kallappa to cultivate 2 acres 26 guntas of land for the time being to maintain and lead his family towards Eastern side out of the entire property 06 acres 15 guntas, remaining 03 acres, 29 guntas was cultivated by Tippanna towards western side. Therefore, the possession of deceased Kallappa to the extent of 2 acres 26 guntas in Sy.No.79 was permissive possession. The Kallappa making use of goodness of Tippanna created and concocted Revenue entry on 01-04-1986 behind the back of Tippanna. The defendant No.1 to 4 by taking undue advantage of the unlawful mutation entries without any knowledge and consent and behind the back of plaintiff are not restrain from disturbing peaceful possession of the plaintiff over the suit property. Therefore, prayed for allow the application.



4. The defendant No.1 to 4 appeared through their counsel and filed memo on 29-09-2020 stating that, the contents of Written Statement be considered for the objection to the application.

5. The plaintiff No.4 in the affidavit filed along with I.A.No.5 submits that, the plaintiffs were away from the hometown to attend the marriage ceremony of their relatives and when they rerun home, they came to know that, defendants hurriedly erecting the structure by depriving the legitimate right of all the plaintiffs. The plaintiffs have objected for the same, however the defendants are unable to hear their words. Therefore, plaintiff approached this court.

6. Further it is submitted that, the construction of building is going on in the suit schedule property. The plaintiffs contended that they are the owners of the suit schedule property and the defendants are constructed illegal building obstructing rights of the plaintiffs over the suit schedule property. The defendant No.1 to 4 have no right to alienate the suit schedule property. Further it is submitted that, the defendant No.1 to 4 by



taking undue advantage of the illegal and unlawful gift deeds executed by defendant No 1 to defendant No 2 and 3 without his knowledge and consent and behind the back of plaintiff. Therefore prays to allow the application.

7. On the other hand counsel for defendant filed his objection to the application and submits that defendants are in actual and physical possession of the property measuring 3 acres 29 guntas bearing RS No 89/2. There was a cattle shed measuring East-West 30 feet and north south 34 feet in the middle portion situated on the southern side of the property. Unfortunately this cattle shed caught fire on 05.05.2023 and fodder and the cattle field the value of which was Rs 65,000/- was burnt. The defendants immediately file a police complaint before Rural Police station Hubballi. The place and also the concerned village accountant visited the spot. The same was reported by the village accountant to the Tashildar Hubballi for compensation. The Tahasildar gave Rs 3,000/- as compensation.

8. It is further stated that, the defendant started making the construction of the cattle shed on 28.



12.2023 and the defendants have made construction on the same place. The entire construction of the cattle shed is almost complete and the defendants have produced the photography to show the completion of the construction. Further it is contended that they are not at all the owners of the property of which the constructions is made. Therefore prays to dismiss the applications filed by the plaintiff.

9. In view of the above said pleading following points arises for consideration of this court in both the applications:

1. Whether the Plaintiffs prove Prima-facie case?
2. Whether the plaintiffs prove balance of convenience lies in their favour and irreparable loss would be caused to them if injunction is denied?
3. What Order?

10. Heard both side.



11. My finding on the above points is as under:

Point No. 1:- In the Negative

Point No. 2:- In the Negative

Point No. 3:- As per final order  
for the following

### **REASONS**

12. **Point No.1** :-The plaintiff filed this suit for the relief of declaration, they are the owner and in possession of the suit schedule property to the extent of 2 acres 26 guntas, which is in R.S. No 79/2 and as a consequential relief that the defendant be direct to hand over the actual physical possession of suit schedule property to the plaintiffs by holding that the defendants are in permissive possession.

13. It is the case of the plaintiffs that they are absolute owners of 6 acres 15 guntas which is devolved to the plaintiff by virtue of legal heirs of deceased Tippanna and out of 6 acres 15 guntas, 2 acres 26 guntas agricultural property is the suit schedule property.



14. It is submitted that one Sri Govind S/o Jeewaji Desai and others were the original owners of the three properties bearing Sy No 100 measuring 11 acres 18 guntas, sy No 101 measuring 4 acres 15 guntas and Sy No 102 measuring 14 acres 36 guntas. Situated at Revadihal village Taluka Hubballi Dist: Dharwad. The said lands were sold by Govind Jeewaji Desai and others and same were purchased by Sri Modinsaheb Vallad Rajesaheb Mulla through Registered sale deed on 07.06.1943 and thereafter Modinsaheb became the absolute owner of these three properties as per sale deed.

15. It is further submitted that subsequently out of three lands R.S. No 101 measuring 4 acres 15 guntas was sold in entirety to one Tippanna S/o Anneppa Badiger and in R S No 100 only two acres out of 11 acres 18 guntas were sold to Tippanna S/o Anneppa Badiger who is none other than father of the plaintiff No1 and 4 and grandfather of 3 and 4. So in all two properties were sold by Sri Modinsaheb Vallad Rajesaheb Mulla to Tippanna was 6 acres 15 guntas but not 7 acres 18 guntas. Therefore Modinsaheb



Vallad Rajesaheb Mulla continued as owners of R.S. No. 100 to the extent of 9 acres 18 guntas and R.S. No. 102 measuring 14 acres 36 guntas. Therefore by virtue of sale deed, Sri Tippanna S/o Annappa Badiger became the absolute owner of 6 acres 15 guntas.

16. It is self acquired property of Tipanna. The father of plaintiff Tippanna and Kallappa brothers and Kallappa was not having any land and he was dependant on Tippanna only, Tippanna who was hard worker and out of courtesy Kallappa being his brother, was allowed to helping cultivating the agricultural land owned and possessed by Tippanna to the extent of 6 acres, 15 guntas. That in the year 1985 due to the family difference being arose, and with the intervention of the elders, Tippanna allowed Kallappa to cultivate 2 acres 26 guntas of land for the time being to maintain and lead his family towards Eastern side out of the entire property 06 acres 15 guntas, remaining 03 acres, 29 guntas was cultivated by Tippanna towards western side. Therefore, the possession of deceased Kallappa to the extent of 2



acres 26 guntas in Sy.No.79 was permissive possession. The Kallappa making use of goodness of Tippanna created and concocted Revenue entry on 01-04-1986 behind the back of Tippanna. The defendant No.1 to 4 by taking undue advantage of the unlawful mutation entries without any knowledge and consent and behind the back of plaintiff are not restrain from disturbing peaceful possession of the plaintiff over the suit property.

17. Whereas it is the contention of the defendants is that late Tippanna S/o Annappa Badiger and Late Kallappa S/o Annappa Badiger are own brothers and they were staying together under one shelter. Tippanna being the elder brother was looking after the affairs of the family as a manager. The land bearing R.S.No. 101 measuring 04 acres 15 guntas and part of R.S.No. 100 was purchased by Tippanna as manager of joint family. The said survey numbers were subsequently renumbered as Block No. 79. Subsequently in the year 1986 both brothers decided to partition the properties of the joint family and accordingly Block No. 79 was partitioned before



the elders and Block No. 79 was sub-divided into Block No. 79/1 and 79/2. In the said partition Western portion of 03 acres 29 guntas of Block No. 79 came to the share of Late Tippanna S/o Annappa Badiger, which was subsequently numbered as Block No. 79/1 and Eastern portion of 03 acres 29 guntas of Block No.79 came to the share of Late Kalappa S/o Annappa Badiger, which was subsequently numbered as Block No. 79/2. As per the said partition and application was submitted to Tahasildar Hubballi on 31.03.1986 by Tippanna Badiger saying that, partition is entered into in respect of Block No. 79 measuring 07 acres 18 guntas. Late Tippanna respective names are intestate in the record of rights. The said application was signed by both Tippanna and Kalappa and also the panchas. Accordingly M.E. No. 630 was effected.

18. The further truth of the matter is that though Tippanna purchased 04 acres 15 guntas of land in R.S. No 101 and 02 acres of land in R.S. No. 100/2, totally measuring 06 acres 15 guntas, which was later renumbered as Block No. 79, late Tippanna



was granted additional land of 01 acres 03 guntas from the Government of Karnataka under Karnataka Prevention of consolidation of Holdings and Fragmentation Act, 1966. Thereby the holdings of late Tippanna was 07 acres 18 guntas but not Karnataka under the said act, the consolidation officer Dharwad in the year 1969 this Additional land has been ordered to be merged with original land measuring 02 acres which subsequently became 03 acres 03 guntas. The same is reflected in revenue records. From the date of order i.e., 10-06-1969 late Tippanna became the owner of 07 acres 18 guntas in Block No. 79. In revenue records also Tippanna was shown as the owner of 07 acres 18 guntas. Late Tippanna continued his possession over 07 acres 18 guntas of land till 1986. Even in the application submitted before Tahasildar Hubballi on 31-03-1986 late Tippanna has submitted the same extent of land in his application. This clearly shows that Block No. 79 was 07 acres 18 guntas but not 06 acres 15 guntas. The plaintiffs are trying to hide all these facts and documents and have filed this frivolous suit.



19. The further truth of the matter is that Kalappa after becoming the owner of property bearing Block No. 79/2 to the extent of 03 acres 29 guntas started cultivating as a true and lawful owner enjoyed the property for several years. Later late Kalappa executed Gift deed in favour of defendant No. 3 and 4 on 29-11-2011 in respect of the said property and since then the defendants No. 3 and 4 are cultivating the said lands as true and lawful owners. This being the state of affairs the defendants No. 3 and 4 have become the owners legally and the plaintiff cannot challenge the same.

20. It is submitted that, Defendants are the absolute and lawful owners of the land to the extent of 03 acres 29 guntas of Block No. 79/2 and are in actual and physical possession, enjoyment, wahiwat and personally cultivating the suit land for last 36 years. The plaintiffs have no locus standi or any authority to raise their voice against these defendants.



21. It is pertinent to mention here that when the property was divided between late Tippanna and late Kallappa way back in the year 1986, the extent of land was shown as 07 acres 18 guntas. The same is reflected in record of rights of Block No. 79 meaning thereby that the order passed by the Consolidation Officer Dharwad under Karnataka Prevention of Consolidation of Holdings and Fragmentation Act, 1966 was effected in revenue records and the extent of land was shown as 07 acres 18 guntas way back in the year 1969. The division between late Tippanna and late Kallappa is also 03 acres 29 guntas each, which means that 01 acre 03 guntas of the land was included when partition took place between late Tippanna and late Kallappa.

22. It is pertinent to mention here that the plaintiffs No. 2 and 3 are the sons of plaintiff No. 1. The Plaintiff No. 4 is the brother of plaintiff No.1. Both plaintiff No. 1 and have sold portion of Block No. 79/1 measuring 01 acre 35 guntas to one Shri. V Edvin Kamaraj S/o Y Anthony and his name has appeared in the records for the land measuring 01



acre 35 guntas which is sub-divided as Block No. 79/1A. It appears from the records that plaintiff No. 4 has received the entire sale consideration from the purchaser and given up his right in favour of Plaintiff No. 4 has received the entire sale consideration from the purchaser and given up his right in favour of Plaintiff No. 1 in respect of remaining portion of the land measuring 01 acres 34 guntas which bears of the land measuring 01 acres 34 guntas which bears Block No. 79/1B. In this regard as document has been executed and registered by plaintiff No. 4 in favour of plaintiff No. 1 on 22-09-2014. Hence the plaintiff No. 4 is no more the owner of any property and he has no locus standi to file the present suit.

23. Looking to the pleadings of the both side parties, the plaintiffs claiming that they are the owners of the suit schedule property whereas defendants claiming that they are the owners of the suit schedule property. As permanent the pleading of the plaintiff and argument canvased by the counsel for plaintiff, the property is in permissive possession of the defendants. Therefore restraining the



defendants from interfering does not arise at this juncture. Further there is no pleading regarding the defendants are alienating property any financial institution. Further as permanent the objection and pleading of the defendants and arguments of their counsel, they already constructed the shed, therefore the application became infrastructure. Counsel for plaintiff at the time of arguments submits that status-quo may be order for or restrained the defendants not use the said shed other purpose apart from raring cow.

*The Hon'ble High court of Karnataka in its recent order passed in MFA 101088/20 dated 24.08.2020 Between Shree Samathan Mahabaleshwar Deva Gokarna and others Vs U.F.M. Ananthraj and others.*

*The Hon'ble High Court laid down following principle of law that discretion of the court, while granting order to temporary injunction in favour of the plaintiff, must meet following requirement,*



*(i) Existence of prima facie as pleaded necessitating protection of rights of issue of Temporary injunction.*

*(ii) when the need for protection of plaintiffs rights is compared with or weighed against the need for protection of defendants rights, or material infringement of defendants rights, the balance of convenience in favour of the plaintiffs or defendants.*

*(iii) clear possibilities of irreparable injury being caused to the plaintiffs if the temporary injunction is not granted. in addition the temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiffs conduct is free from blame and he approaches the court with clean hands.*

*The Hon'ble High court above said decision coted this citation reported in ILR 2006 (KAR)3961 between Reebok Company Vs Gomzi Active.*

*para 15] A party would be entitle to relief under order 39 Rule 1 and 2 provided it satisfies the court*



*that it has a prima-facie case, that balance of conveniences in his favour and that irreparable loss and injury would be caused to him if interim relief is not granted. The aforesaid three phrases, as emphasized time and again, are not rhetoric phrases but elastic words to meet a wide range of situation in given set of facts and circumstantial. The Burden is always on the plaintiff/applicant to satisfy the court that a prima-facie case exists in his favour.*

24. Looking to the facts and circumstances of the plaintiff's case, at this juncture plaintiffs failed established the prima-facie case in their favour. For these reasons this court holds point No.1 In the Negative .

25. **Point No.2** :- Injunction relief is equitable relief. At this juncture as guidelines laid by the Hon'ble High court, the plaintiffs have failed to satisfied all the three ingredients. For all these reasons and discussions this court holds point No.2 in the Negative .



26. **Point No. 3:-** In the result proceed to pass the following order.

**:ORDER:**

The application No. II and V filed U/o 39 Rule 1 and 2 of CPC by plaintiffs is hereby dismissed.

(Dictated to the stenographer directly on computer typed by her, the same is corrected and then pronounced by me in the open court on this the 20<sup>th</sup> day of March 2024.)

**(Smt. P.R.Patil )**

II Addl. Senior Civil Judge and  
JMFC, Hubballi



(Order pronounced in the open court vide separate Order)

**:ORDER:**

The application No.II and V  
filed U/o 39 Rule 1 and 2 of CPC by  
plaintiff is hereby dismissed .

For Issues, call on 06-04-2024.

**(Smt. P.R.Patil )**

II Addl. Senior Civil Judge and  
JMFC, Hubballi