

**IN THE COURT OF ADDITIONAL CIVIL JUDGE & JMFC**  
**AT ARKALAGUD**

**PRESENT :** SMT. SAROJA. M, M.A., L.L.M.,  
Addl. Civil Judge & JMFC,  
Arkalgud

**O. S. No. 38/2016**  
**Dated this 25<sup>th</sup> day of January, 2021**

**Plaintiff** :- R. G. Srinivasa

**(Sri. ODG, Advocate for Plaintiff)**

-V/s-

**Defendants:-** Sundregowda

**(Sri. ARJ, Advocate for Defendant)**

**Parties to IA No. II**

**Applicant :** R. G. Srinivasa S/o Late R. T. Govindgowda,  
Aged about 62 years,  
R/o Rudrapattana Village,  
Ramanathapura Hobli,  
Arakalgud Taluk

-V/s-

**Opponents :** Sundregowda S/o Late Krishnegowda,  
Aged about 50 years,  
R/o Rudrapattana Village,  
Ramanathapura Hobli,  
Arakalgud Taluk.

**ORDERS ON IA NO. II FILED UNDER ORDER 39 RULES 1 AND 2**  
**OF CODE OF CIVIL PROCEDURE**

It is the case of the plaintiff that suit schedule property originally belonged to his uncle R. J. Suryanarayana who acquired the same as per registered partition deed dated 9/3/1970 which was entered between him and his brothers. From the date of partition, suit schedule property was in possession and enjoyment of R. T. Suryanarayana and he sold the same in favour of plaintiff's father as per sale deed

dated 05/02/1973. The plaintiff's father died on 27/2/1989 leaving behind his 3 male children namely R. G. Srinivasa, the plaintiff herein, R. G. Parashurama and R. G. Prabhakara. After the death of plaintiff's father, plaintiff and his brothers divided the ancestral properties as per oral partition and suit schedule property fell into the share of the plaintiff. From the date of oral partition, the plaintiff is in possession and enjoyment of the suit schedule property. Even though defendant has no right over the suit schedule property in order to snatch the suit schedule property, he obstructed the change of khatha of the suit schedule property into the name of plaintiff. As such the plaintiff issued notice to the defendant on 01/11/2015 but the defendant did not reply to the same even after service of notice. Later the defendant issued notice to the plaintiff, PDO Rudrapattana Grama Panchayath, CEO, Taluk Panchayath on 08/01/2016 asking not to change khatha of the property bearing Sy. No. 5 measuring 3 guntas but he has not shown any boundaries in the said notice. Further the defendant stating that suit schedule property is a survey number property he has been allotted with Janatha House tried to dug up the land but the plaintiff restrained him with the help of elders of the Village. Later the plaintiff has given application for change of Khatha which is pending on the instigation of defendant. There is no relation between suit schedule property and 3 guntas stated in the notice issued by the defendant. In order to snatch the suit schedule property, the defendant is interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property. Hence this application.

2. Defendant denied the contents of the affidavit annexed to the application but admitted the relationship of plaintiff and defendant and partition dated 09/03/1973. He contended that his father acquired 3 guntas in Sy. No. 5/3 in the said partition whereas instead of 3 guntas, it has been wrongly mentioned as 3 yards in the partition deed. The defendant's father was in possession and enjoyment of the said 3 guntas till his death. After the death of defendant's father, his only son i.e.,

defendant is in possession and enjoyment of 3 guntas and the plaintiff being politically and financially powerful trying to construct a house by encroaching the said property. The property in Sy. No. 5/3 measuring 3 guntas belongs to defendant and plaintiff has no right, interest or possession on the same. The suit filed by the plaintiff is not maintainable as there is no cause of action and court fee paid is insufficient. Further the suit of the plaintiff is bad for non joinder of necessary parties and the plaintiff has given false boundaries to the suit schedule property. Hence prayed to dismiss the application with costs.

3. Heard Sri. ODG., Advocate appearing for plaintiff and Sri. ARJ., Advocate appearing for defendant.

4. The following points would arise for my consideration:

1. Whether the plaintiff has made out prima facie and triable case and balance of convenience lies in his favour for the grant of injunction?
2. Whether the plaintiff has made out that withholding of the restraining order will cause irreparable loss and injury to him?
3. Whether the plaintiff is entitled to the relief sought for?
4. What order?

5. My answer to above points are as under:

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. Points No. 1 to 3:** In order to avoid repetition of facts, these points are taken up together for discussion. It is the case of the plaintiff that he is the owner of the suit schedule property and is in peaceful possession and enjoyment of the same. Defendant without any right or title trying to construct a house by encroaching into it. Defendant contended that his father acquired 3 guntas in Sy No. 5/3 and he is in possession and enjoyment of the same but plaintiff by giving false boundaries is trying to snatch his property.

7. Learned counsel appearing for the plaintiff argued that the suit schedule property is in peaceful possession and enjoyment of the plaintiff and the defendant is trying to interfere with the peaceful possession and enjoyment of the plaintiff over the suit schedule property. Boundaries stated in the plaint schedule is correct and the sale deed produced before this Court depicts the same. Hence prayed to allow the application.

8. Learned counsel appearing for Defendant argued that plaintiff is claiming his right on the basis of partition deed whereas he has failed to produce the same to support his claim. Plaintiff's father had three sons and the plaintiff has alone filed the suit for declaration and permanent injunction which is not maintainable as his brothers are not made parties to this suit. Suit is bad for non joinder of necessary parties. Plaintiff is claiming right on the basis of oral partition but no document is produced show that plaintiff is in possession of the suit property. In the partition deed, defendant's father acquired 3 guntas but it has been wrongly mentioned as 3 yards and the plaintiff is taking disadvantage of the same, claiming his right over the suit property. RTC of Sy No. 5/3 earlier stood in the name of Defendant's father and after his death, it has been mutated in the name of the defendant and suit property is situated in Sy No. 5/3. Plaintiff has not challenged the partition deed and has not given documents pertaining to backyard as well. Prima case is not

made out by the plaintiff and no balance of convenience lies in his favour. Plaintiff has suppressed the material facts and has given false boundaries to the suit property. Hence prayed to dismiss the application with costs.

9. Plaintiff has produced the sale deed dated 05/05/1973 which was executed by R. T. Suryanarayana in favour of plaintiff's father pertaining to suit schedule property. On perusal of the same, it reveals that plaintiff's father acquired the suit property as per said sale deed whereas the plaintiff has not produced any documents to show that he is the only one who acquired the suit property as per oral partition. It is clear from the pleadings of the plaintiff that he has two brothers and they are not made parties to this suit. Plaintiff has sought for the relief of declaration and permanent injunction and in the interim application he has sought to restrain the defendant from interfering with his peaceful possession and enjoyment of the suit property. On perusal of entire records, there is nothing on record to believe the possession of the plaintiff. Plaintiff has averred that he approached the revenue authority to change khatha pertaining to suit property and defendant objected to the same. The plaintiff has neither produced any representation made to the revenue authority regarding change of khatha of suit property into his name nor any objections made by the defendant before this court. Defendant is claiming that he is in possession and enjoyment of the suit property. At this juncture, it is the opinion of this court that the plaintiff has not made out prima facie aspects in his favour and there is nothing on record to believe the possession of the plaintiff over the suit property. Prima facie case for grant of injunction is not at all forthcoming in favour of the plaintiff as there are rival claims to the suit schedule property by both plaintiff and defendant. Further, no balance of convenience lies in favour of the plaintiff. Therefore without expressing anything on the merits of the case, this court feels it appropriate to say that the burden is upon the plaintiff to prove his case so as to entitle him for the relief sought for but he has failed to do so. Moreover the

plaintiff has not made out that he would be put to trouble if the injunction order is denied. Plaintiff has failed in convincing this court regarding the hardship, which would allegedly be suffered by him in the event, if the present application is dismissed. Therefore, considering the prevailing concepts under injunction for the purpose of application filed under Order 39 Rule 1 and 2 of CPC, all the above parameters have not been fulfilled by the plaintiff, the application stands rejected. Without saying anything on the merits of this case, I answered **point No.1 to 3 in the Negative.**

**10. Point No. 4:-** For the above discussed reasons to point No. 1 to 3, I proceed to pass the following :-

**: O R D E R :**

The interim application filed by Plaintiff/applicant against the defendant under Order 39 Rule 1 and 2 of CPC is hereby dismissed.

(Dictated to the stenographer, transcribed by her, revised by me and after corrections pronounced in the open court on this the 25<sup>th</sup> day January , 2021)

**(SMT. SAROJA. M )  
Addl. Civil Judge & JMFC  
Arakalgud**