

KAHS310031432023



**IN THE COURT OF THE CIVIL JUDGE AND
JMFC, ARKALAGUD**

PRESENT: **CHAMPASHREE R.,** *B.A.L., LL.B., LL.M.,*
Civil Judge & JMFC,
Arkalagud.

DATED THIS 21st DAY OF APRIL, 2025

ORIGINAL SUIT NO: 707/2023

BETWEEN:

1. Sri. Manjegowda H.R. S/o Rangegowda,
Aged about 46 years,
Ward No.15, Hentagere village,
Kasaba Hobli,
Arkalagud taluk.

.....Plaintiff

(Sri.R.K.Manjunatha., Advocate)

AND:

1. Lakshmamma
W/o Late Chandregowda @ Chandra
Dead by his LR.s
2. Shobha D/o Late Chandregowda @ Chandra,
Aged about 42 years,
3. Bhagya D/o Late Chandregowda @ Chandra ,
Aged about 39 years,

4. Vijayalakshmi @ Vijaya
D/o Late Chandregowda @ Chandra,
Aged about 37 years,
 5. Sathisha
S/o Late Chandregowda @ Chandra ,
Aged about 35 years,
 6. Srinivasa @ Seena S/o Late Chandregowda
@ Chandra ,
Aged about 31 years,
 7. Sowmya D/o Late Chandregowda @ Chandra,
Aged about 27 years,
defendant No.1 to 7 are
R/at Hentagere village,
Kasaba Hobli,
Arakalagud Taluk
Hassan District.**Defendants.**
- (Sri Dhananjaya Y.C.. Advocate for Defendant No. 1, 5 to 7)**
(Sri. P.S.Prasad., advocate for Defendant No.2 and 4)
(Defendant No.8 Ex-parte)

I. A.No.I

BETWEEN:

Sri. Manjegowda H.R. S/o Rangegowda,
Aged about 46 years,
Ward No.15, Hentagere village,
Kasaba Hobli,
Arakalagud taluk.

.....**Plaintiff**

AND:

Sri.Lakshmmamma and others

...**Opponents/Defendants**

1.	Provision under which application is filed	Order XXXIX Rule 1 and 2 R/w 151 of CPC
2.	Relief sought for	Temporary injunction

3.	The date on which the application is filed	19/12/2023
4.	Number of application	I
5.	The date on which the objections are filed by different opponents	23/09/2024
6.	The date on which the orders were passed on the said application.	21.04.2025

ORDERS ON I.A.No.I

Plaintiff filed present application under Order XXXIX Rule 1 and 2 R/w 151 of Code of Civil Procedure, 1908 seeking for an ad-interim temporary injunction order to restrain Defendants or any person acting on their behalf from trespassing into the suit property and interfere with the plaintiff's possession in suit property till disposal of suit.

2. Along with the application, Plaintiff filed an affidavit stating that he filed present suit against the defendants for the relief of perpetual injunction. It is stated that, plaintiff and defendants are not blood relatives but they belong to same village and they are in the property toward the western side of the suit property. It is stated that suit schedule property originally belongs to Swamygowda S/o Late Thimmegowda, he executed registered sale deed to plaintiff under registration No.4926/2022-23 and through M.R.No.H71/22-23 revenue documents with respect to suit property was mutated to plaintiff. It is stated that, since from the purchase of suit property plaintiff is in possession, enjoyment and surveyed the suit property and has been tax to the Government.

3. It is stated that, defendants have no any sort of right, possession with respect to suit property but defendants with an intention to gulp the suit

property, as the value of the property is increased from past one month defendant No.1 to 7, under the influence of defendant No.8 are causing interference to plaintiff's possession. It is stated that, on 02.12.2023 plaintiff surveyed the suit property and in-carved iron rods but defendants tried to remove those rods and scolded plaintiff in bad language and defendant No.1 to 7 tried to assault the plaintiff. It is stated that, defendant is economically strong and politically influenced person, therefore, plaintiff approached the Arakalagud police station and complained against the defendants but said police has issued N.C.R., if defendants are not restrained from causing interference to the plaintiff possession in suit property, irreparable loss which cannot be compensated in terms of law will be caused to the plaintiff. Hence, present application.

4. Counsel for defendant No.1,5 to 7 and for defendant No.2 to 4 filed their written statement and prayed to treat said written statement are objections to I.A.No.I. Counsel for defendant No.1, 5 to 7 denies the application averments and specifically contends that plaintiff has approach the Court suppressing the real facts, defendant No.1 has already instituted suit against the plaintiff for the relief of perpetual injunction in O.S.670/2023, in said case present plaintiff appeared but now by creating a false story plaintiff filed present suit.

5. It is contended that, defendant No.1 had purchased the property bearing No.86/5 through registered sale deed on 07.12.1966 from Thimmegowda and earlier there was sale transaction on 24.02.1949 among the vendors of Lakshamma and Thimmegowda but by oversight Survey number have been mentioned as 85/5 instead of 86/5, however the boundaries mentioned in the sale deed dated 23.02.1949 and 07.12.1966

are same but Survey number has been erroneously written as 85/5. It is stated that, however the boundaries are tallying, therefore, boundary prevails over the survey number but old survey number 86/5 after phody is numbered as 86/18, therefore, plaintiff has no right over the land. It is stated that, further suit is bad for non-joinder of necessary parties and defendants reserves their file written statement after plaintiff producing original document to the Court. It is stated that some of the defendants were dead, therefore, suit has already abated against them. Therefore, present suit is not maintainable. Hence, prays to reject the application.

6. Defendant No.2 to 4 filed their objections contending that plaintiff has approach the Court suppressing the real facts, defendant No.1 has already instituted suit against the plaintiff for the relief of perpetual injunction in O.S.670/2023, in said case present plaintiff appeared but now by creating a false story plaintiff filed present suit.

7. It is contended that, defendant No.1 had purchased the property bearing No.86/5 through registered sale deed on 07.12.1966 from Thimmegowda and earlier there was sale transaction on 24.02.1949 among the vendors of Lakshamma and Thimmegowda but by oversight Survey number have been mentioned as 85/5 instead of 86/5, however the boundaries mentioned in the sale deed dated 23.02.1949 and 07.12.1966 are same but Survey number has been erroneously written as 85/5. It is stated that, however the boundaries are tallying, therefore, boundary previles over the survey number but old survey number 86/5 after phody is numbered as 86/18, therefore, plaintiff has no right over the land. It is stated that further suit is bad for non-joinder of necessary parties and defendants are reserves their file written statement after plaintiff producing original

document to the Court. It is stated that some of the defendants were dead, therefore, suit has already abated against them. Therefore, present suit is not maintainable. Hence, prays to reject the application.

8. On the basis of application and objections, following points arose for consideration:

: POINTS FOR CONSIDERATION :

1. **Whether Plaintiff has made out prima-facie case to grant temporary injunction as sought?**
2. **Is balance of convenience lies in favour of Plaintiff?**
3. **Whether Plaintiff will be put to irreparable loss and injury in the event of refusal of temporary injunction which cannot be compensated in terms of money?**
4. **What Order?**

9. Heard the learned counsel for Plaintiff and Defendants. Perused materials placed on record. Findings of this Court on the above said points are as follows:

Point No.1: In the Affirmative.

Point No.2: In the Affirmative,

Point No.3: In the Affirmative,

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

REASONS :

10. Point No.1: It is specific case of Plaintiff that, suit property was purchased by plaintiff under sale deed registration No.4926/2022-23, his name was mutated as per M.R.No.H71/2022-23 therefore plaintiff has been in possession and enjoyment and exercising his ownership rights. Defendants are not his blood relatives but they are the owner of the property situated towards the western side of suit property and plaintiff has been paying the tax to the Government. Defendant No.1 to 7 under influence of defendant No.8 causing interference to plaintiff possession in suit property on 02.12.2023 plaintiff got surveyed the suit property and has in-carved iron rods to the suit property at that time defendants also scolded plaintiff and tried to assault defendant No.1 to 7, though plaintiff filed complaint, said police has given N.C.R., to the plaintiff. Defendants contends that defendant No.1 purchased the suit property from Thimmegowda on 24/02/1949 but while executing the sale deed survey number has been erroneously by oversight mentioned as 85/5 instead of 86/5 , however the boundaries of the property are correct. Suit is bad for non joinder of necessary parties.

11. On going through the records it is clear that, present suit is filed for the relief of perpetual injunction seeking to restrain Defendants or any person acting on their behalf from causing interference to plaintiff's possession in suit property. In present nature of suit and in this stage Plaintiff shall prima-facie prove that she is in possession of suit property as on date of suit.

12. Plaintiff to prove prima-facie her case, she mainly relied on sale deed dated 18/01/2023 M.R.No.H71/2022-23, R.T.C extract pertaining to period 2023-24 and tax paid receipt dated 07/12/2023. On going through the sale deed dated 18/01/2023 it is noticed that, Sy.No.86/18 in Arakalagud village,

Kasaba Hobli, measuring 0-11 guntas was purchased by Manjegowda i.e, plaintiff from Swamygowda S/o Late Thimmegowda of Hentagere, Arakalagud Taluk. On going through the said sale deed and comparing the suit property it is appears that Survey. Number, extent of property and boundaries of property are same. On going through M.R.No.H71/2022-23 it is apperas that, through mutation order dated 02.02.2023 name of Manjegowda i.e., plaintiff was mutated to Sy.No.86/18 through registered sale deed. On going through the R.T.C extract pertaining to Sy.No.86/18 pertaining to year 2023-24 it is appers that, name of plaintiff is appearing in column No.9 of the said document. Column No.9 in R.T.C extrat ment to mention name of a person in possession. As the name of plaintiff is appearing in column No.9 of R.T.C extract pertaining to suit property it appears that plaintiff in suit property as on date of suit.

13. Counsel for defendants argues that, defendant No.1 purchased the suit property through sale deed on 07.12.1966 from Lakshamma and Thimmegowda who purchased the said property in 24.02.1949. Though suit property was purchased by defendant No.1 and Thimmgowda while entering the survey number instead of mentioning the Sy.No.86/5 same has been mentioned as Sy.No.85/5, but the survey number has been erroneously mentioned as Sy.No.85/5 instead of Sy.No.86/5 the boundaries of the suit property and the property purchased by defendant No.1 tallies. Though counsel for defendant mainly argues that Survey number of the suit property has been erroneously mentioned but till date defendants have not taken any steps to rectify the said sale deed. It is stated by defendants that, they purchased the suit property during the year 07.12.1966, therefore, defendants had got sufficient time to take appropriate steps but till date it appears defendants have not taken any steps for the same. Further, counsel for defendants argues that boundaries prevails over the survey number of the

property but when there is a dispute with the property and other person appears to have sale deed with respect to the property mentioned between the boundaries comparison of boundaries with the survey numbers does not arise.

14. On meticulous observing the document produced by the plaintiff that i.e., sale deed, mutation extract, R.T.C extract pertaining to the year 2023-24 appears that plaintiff is in possession and enjoyment of suit property

15. As present suit is for relief of perpetual injunction and in this kind of suit only possession of Plaintiff in suit property as on date of suit is to be looked into and one's possession in any property can be ascertained by looking in to revenue record of said property. Herein present case documents produced by plaintiff it appears that, plaintiff is in possession of suit property as on date of suit. Therefore, it prima-facie appears that Plaintiffs is in possession of suit property.

16. For the discussion made about and mainly considering the fact that in present nature of suit only the possession of Plaintiff as on date of suit is to be considered and in present case, Plaintiff name is appearing in the revenue record as on date of suit and Defendant till date have not challenged the revenue entries which are standing in the name of Plaintiff , this Court is of opinion that Plaintiff has made out prima-facie case. **Hence, this Court proceeds to answer this Point in affirmative.**

17. **Point No.2:** Plaintiff proved prima facie case in his favour as he prima facie proved his possession in suit property as on date of suit. This being the fact if Defendants are not restrained from interfering, then more inconvenience will be caused to Plaintiff . Therefore, this Court is of the view that balance of

convenience tilts in Plaintiff favour. **Hence, this Court proceeds to answer this point in Affirmative.**

18. Point No.3: On the above discussion this Court is of the opinion that Plaintiff has made out prima facie case and if the injunction is refused then more chance of hardship is likely to be caused to Plaintiff, as Plaintiff proved her possession in suit property as on date of suit and if Defendants are not restrained from interfering in suit property then irreparable loss will be caused to Plaintiff which cannot be compensated in terms of money. **Hence, this Court proceeds to answer this Point in Affirmative.**

19. Point No.4: In view of the above discussions, this Court proceeds to pass the following :

: O R D E R :

I.A.No.I filed by Plaintiff under Order XXXIX Rule 1 and 2 R/w Section 151 of Code of Civil Procedure, 1908 seeking to restrain Defendants or any person acting their behalf from interfering with the plaintiff's possession in suit property till disposal of suit is hereby allowed.

Consequently, defendants or any person acting on their behalf are hereby restrained from interfering with the plaintiff's possession in suit property till disposal of suit.

(Dictated directly to the stenographer on Computer, the same is revised, edited and corrected by me and then pronounced in the Open Court on this 21st day of April, 2025).

(Smt. CHAMPASHREE R.)
Civil Judge and JMFC,
Arakalagud.