

KAHS310026912023



**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 19th DAY OF OCTOBER, 2024

ORIGINAL SUIT NO: 573/2023

BETWEEN:

1. Mr. Lakkaiah
S/o Late Piddaiah @ Sannapiddaiah @ Sanna Siddaiah
Aged about 68 years,
2. Prakasha L. S/o Lakkaiah,
Aged about 38 years,
R/at Koratikere village,
Doddamagge Hobli,
Arakalagud Taluk,
Hassan District.

...Plaintiffs

(Sri. Kithoor Dharmappa., Advocate)

AND:

1. Gowramma W/o Late Swmaiah,
Aged about 60 years,

2. Eraji @ Shekhara S/o Late Swamaiah,
Aged about 35 years,

3. Lakshamma W/o Late Erajaiah,
Aged about 50 years,
Defendants are R/at
R/at Koratikere village,
Doddamagge Hobli,
Arakalagud Taluk,
Hassan District.

...Defendants

**(Sri. P.S. Prasad, Advocate for Defendant No.1 and 2)
(Defendant No.3 Placed Ex-parte)**

I. A.No.II

BETWEEN:

Prakasha L. S/o Lakkaiah,
Aged about 38 years,
R/at Koratikere village,
Doddamagge Hobli,
Arakalagud Taluk,
Hassan District.

...Applicant/Plaintiff No.2

AND:

Mrs. Gowramma and others,

...Opponents/Defendants

| | | |
|----|--|---------------------------------|
| 1. | Provision under which application is filed | Order XXXIX Rule 1 and 2 of CPC |
| 2. | Relief sought for | Temporary injunction |
| 3. | The date on which the application is filed | 25.09.2023 |
| 4. | Number of application | II |

| | | |
|----|---|------------|
| 5. | The date on which the objections are filed by different opponents | 27.03.2024 |
| 6. | The date on which the orders were passed on the said application. | 19.10.2024 |

ORDERS ON I.A.No.II

Plaintiffs filed present application under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, 1908 seeking for an ad-interim injunction order to restrain Defendants, their agents, servants or anybody acting on their behalf from disturbing the peaceful possession and enjoyment of the Plaintiffs in suit property, till disposal of the suit.

2. Along with the application, Plaintiffs No.2 filed an affidavit stating they filed present suit for the relief of Perpetual Injunction, suit property originally Government land, his father was cultivating the suit property from 50 years therefore, he filed an application seeking to grant suit property to his father and during 1985-86 suit property was granted to his father and he was also issued grant certificate and subsequently suit property was also mutated to Plaintiffs father name under M.R. No.24/1985-86 and khata was also transferred to his father. It is stated that, since from then Plaintiff No.2 and his father are in possession of suit property and towards the western side of suit property Defendants property is situated. It is stated that, Plaintiffs have been paying tax to the concerned department and is in possession and enjoying the suit property.

3. It is stated that, Defendants colluding with each other had come to the suit property and started interfering with Plaintiffs possession and stated that suit property belongs to them and used to threaten Plaintiffs. It is stated that, though Plaintiffs have no intention to sell the suit property, Defendants are disturbing Plaintiffs possession in suit property. It is stated that, few days ago when Plaintiffs was watering the crops in suit property, Defendants with their agents trespassed into the suit property and interfered with the Plaintiffs possession, but Plaintiffs along with his family members restrained Defendants from entering into suit property. It is stated that, Plaintiffs lodged complaint with respect to the said interference, but said police have failed to take any action and suggested to approach civil Court. It is stated that, Defendants are financially and politically strong persons, if said application is rejected irreparable loss which cannot be compensated in terms of money would be caused to the Plaintiffs. Hence, prays to allow the application.

4. Counsel for Defendant filed objection to the said application denying entire application averments and contends that, Defendants are in possession of suit property since from their ancestors, therefore, Plaintiffs have on local standing to file present nature of suit as Defendants are in possession. It is contended that, Plaintiff No.1 has daughters, but said daughters are not made as parties to the suit, therefore, suit is bad for nonjoinder of necessary parties. It is contended that, present nature of suit is not maintainable by Plaintiffs, as Plaintiffs are not in possession of suit property. Hence, prays to reject the application.

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

: POINTS FOR CONSIDERATION :

1. **Whether Plaintiffs have made out prima-facie case to grant temporary injunction as sought?**
2. **Is balance of convenience lies in favour of Plaintiffs ?**
3. **Whether Plaintiffs 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?**

6. Heard the learned counsel for Plaintiffs 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 :

7. **Point No.1:** It is specific case of Plaintiffs that, suit property was originally government land and same was cultivated by Plaintiffs father. Plaintiffs father filed an application before the concerned department seeking to grant suit property to him, therefore, in 1985-86 suit property was granted to Plaintiffs father and his name was mutated to the revenue records under M.R.No.1985-86. Since from then Plaintiffs father and Plaintiffs were in possession of suit property. Towards the western side of suit property, property Defendants is situated. Defendants colluding with each other are causing interference to Plaintiffs possession, they trespassed into the suit property and causing disturbance to Plaintiffs possession and enjoyment in suit property. Plaintiffs lodged police complaint before the jurisdiction police, but said police suggested Plaintiffs to approach the jurisdiction court as litigation is of civil nature.

8. On going through the records it is clear that, present suit is filed for the relief of perpetual injunction seeking to restrain Defendants from disturbing Plaintiffs possession in suit property. In present nature of suit and in this stage Plaintiffs shall prima-facie prove that they are in possession of suit property as on date of suit.

9. Counsel for the Plaintiffs argues suit property originally belongs to suit property was originally government property and same was cultivated by Plaintiffs father. Plaintiffs father filed an application before the concerned department seeking to grant suit property to him, therefore, 1985-86 suit property was granted to Plaintiffs father and his name was mutated to the revenue records under

M.R.No.1985-86. Since from then Plaintiffs father and Plaintiff was in possession of suit property. Towards the western side of suit property property Defendants is situated. Defendants colluding with each other are causing interference to Plaintiffs possession, they trespassed into the suit property and causing disturbance to Plaintiffs possession and enjoyment in suit property. Plaintiffs lodged police complaint before the jurisdiction police, but said police suggested Plaintiffs to approach the jurisdiction court as litigation is of civil nature.

10. Counsel for Defendants argued that Defendants are in possession of suit property since from their ancestors, therefore, Plaintiffs have on local standing to file present nature of suit as Defendants are in possession. It is contended that Plaintiff No.1 has daughters, but said daughters are not made as parties to the suit, therefore, suit is bad for nonjoinder of necessary parties. It is contended that, present nature of suit is not maintainable by Plaintiffs, Plaintiffs are not in possession of suit property.

11. Plaintiffs to prove prima-facie case, they mainly relied on grant certificate dated 18.07.1985, R.T.C extract pertaining to period 1966-67 to 2023-2024, mutation entry No.T10/1920 tax paid receipted No. 97. As discussed earlier in present nature of suit and at this early stage Plaintiffs shall prima facie prove that Plaintiffs are in possession of suit property as on date of suit. On going through R.T.C extract of suit property pertaining to period 2023-24 it is noticed that, 20 guntas of land in Sy.No.97, Koratikere village Arakalagud Taluk out of total 60 acres 08 guntas are standing in the name of Plaintiff No.1 and said entry was mutated under M.R.No.24/1985-86. Further, it is noticed

that though out of 60 acres 08 guntas in Sy.No.97, Koratikere village Arakalagud Taluk only 20 guntas of property standing in the name of Plaintiff No.1, but on going through entire R.T.C extract nowhere the name of Defendants are appearing.

12. On going through the R.T.C extract pertaining to period 2023-24 it is noticed that Plaintiff No.1 name is appearing in column No.9, which ment to mention the name of a person who is in possession of suit property. Further on going through tax paid receipt pertaining to year 2023 it appears that Plaintiffs paid property tax to suit property.

13. Counsel for Defendant argued that as Defendants are in possession of suit property Plaintiffs cannot file suit and Plaintiffs daughter are not made as party to the suit, therefore, suit is bad for non-joinder of necessary parties. As discussed earlier in present nature of suit only the possession of suit property as on date of suit is to be considered and even if case is decreed only finding with respect to possession of suit property will be decided, therefore, it is not necessary to implead all LR's of Plaintiff to the suit. Therefore, for the reasons mentioned above contentions of Defendants are not acceptable.

15. As present suit is for relief of perpetual injunction and in this kind of suit only possession of Plaintiffs in suit property as on date of suit is to be looked into and one's possession in any property can be ascertain by looking in to revenue record of said property. Herein present case as well, Plaintiffs to prima-facie prove her possession relied on revenue records and in said revenue records name of

Plaintiffs is appearing, 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 Plaintiffs as on date of suit is to be considered and in present case, Plaintiffs name is appearing in the revenue record as on date of suit and Defendants till date have not challenged the revenue entries which are standing in the name of Plaintiffs, this Court is of opinion that Plaintiffs has made out prima-facie case. **Hence, this Court proceeds to answer this Point in affirmative.**

17. **Point No.2:** Plaintiffs proved prima facie case in their favour as they prima facie proved their 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 Plaintiffs. Therefore, this Court is of the view that balance of convenience tilts in Plaintiff's 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 Plaintiffs have made out prima facie case and if the injunction is refused then more chance of hardship is likely to be caused to Plaintiffs, as Plaintiffs proved their 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 Plaintiffs 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.II filed by Plaintiffs under Order XXXIX Rule 1 and 2 R/w Section 151 of Code of Civil Procedure, 1908 seeking to restrain Defendants or agents from interfering with Plaintiffs possession and enjoyment of suit property till disposal is hereby allowed.

No order as to costs.

(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 the 19th day of October, 2024).

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