

KAHS510007602021



Presented on : 09-06-2021
Registered on : 09-06-2021
I.A.No.2 Decided on : 03-02-2024
Duration: 2 years, 7 months, 25 days

**IN THE COURT OF
CIVIL JUDGE AND JMFC AT BELUR, HASSAN.**

Presided Over by PRASANNA KUMAR C.,_B.A.L.,LL.B.
Civil Judge and JMFC, Belur.

Dated this the 3rd day of February 2024

O.S./203/2021

Between:

1. Shri.Gopalashetty S/o Basappashetty,

Aged about 50 years,
R./at: Shambuganahalli Village,
Kasaba Hobli,
Belur Taluk, Hassan District.

2. Shri.Dharmaraj S/o Late.Basappashetty,

Aged about 56 years,
R/at: Devanga Beedi, Belur Town,
Belur Taluk, Hassan.

.... Plaintiffs

(Shri.K.L.Nataraja, Advocate for Plaintiff)

And:

1. Shri.Hemaraju S/o Thirumalabovi,

Aged about 45 years,

2. Shri.Manjunath S/o Late.Channabovi,

Aged about 38 years,

3. Shri.Venkatesh S/o Thimmabovi,

Aged about 40 years,

4. Shri.B.T.Raju S/o Thimmabovi,

Aged about 39 years,

5. Shri.Suresh S/o Annaiah,

Aged about 34 years,

6. Smt.Vedamma W/o Chinnabovi,

Aged about 53 years,

7. Smt.Rukmini w/o Budesh,

Aged about 39 years,

8. Smt.Somakshi W/o Aditya,

Aged about 35 years,

All are R/at: : B.Hosalli Kasaba Hobli,

Belur Taluk, Hassan District.

Belur Taluk, Hassan District.

... Defendants

(Sri.C.M. Chandregowda, Advocate for Defendants)

PARTIES TO THE APPLICATION IA NO. II

Shri.Gopalashetty and another

.. Plaintiffs/Applicants

V/s

Shri.Hemaraju and others

..Defendants/Opponents

Provisions of Law of I.A.No.II	Under Order 39 Rule 1 and 2 of Civil Procedure Code
Relief sought for on I.A.No.II	Temporary injunction against the defendants
Date of application	09-06-2021
Number of the application	2
Date of objection filed	13.12.2021
Date of order	03-02-2024

ORDERS ON I.A. NO.II

This application is filed by the plaintiffs along with the main suit under Order 39 Rule 1 and 2 of Civil Procedure Code seeking for order of temporary injunction against the defendants to restrain the defendants from trespassing and causing interference to the possession and enjoyment of the plaintiffs over the suit land bearing Sy.No.67/P2 (67), measuring 4 acres situated at B.Hosahalli Village, Kasaba Hobli, Belur Taluk, Hassan District.

2. It is contended by the Plaintiffs in the affidavit filed in support of the application as well as in the plaint averments that the land belonging to the father of plaintiffs by name Sri. Basappashetty was acquired by the Government for Yagachi Reservoir Project and as such, as per official Memorandum of the Special Land Acquisition Officer, HRP, Hassan, vide No.ಯ.ಭೂ.ಮಾ 8/1992-93 dated 18.11.1992 and on the basis of grand order of the Tahasildar, Belur dated 01.01.1993, the suit

land was granted to father of plaintiffs Sri. Basappashetty. Accordingly, the khatha was also effected in his name vide M.R. No.4/1992-93, and thus he was in possession and enjoyment of the same as its absolute owner during his life time. It is further contended by the plaintiffs that after death of their father about 10 years ago, the plaintiffs have paid the requisite revenue to the government and have grown silver trees and such other jungle wood trees and also cultivating Ragi, Maize, Potato, ginger and such other crops by fencing the suit property.

3. It is further contended by the plaintiff that the defendants even though have no manner of right, title and possession over the suit schedule property, have been making illegal attempt to trespass into the suit property and trying to interfere with the possession of plaintiffs over the suit property and causing obstruction in order to snatch away the suit property. Further the defendants are trying to destroy the fencing around the suit property and also allowing their cattle to graze in the suit property and thus restricting the plaintiffs from carrying out agricultural activities. When the same was questioned, the defendants have abused the plaintiffs in filthy language threatened them with dire consequences. The defendants belonging to scheduled tribe community threatening the plaintiffs to lodge false complaint under the SC/ST Atrocity Act. The plaintiffs being not able to tolerate the illegal acts of the

defendants have given oral complaint to the police. The Police have called the defendants and advised them. But the same has went in vain and the defendants have not stopped their illegal acts. As such, the police have given endorsement to the plaintiff to approach civil court stating that the dispute is civil in nature.

4. It is further contended by the plaintiffs that, the Defendant Nos.2 to 8 have instituted a suit in O.S. No.142/2021 before this court in respect of property by including the property belonging to the plaintiffs in order to get order from the court by unlawful means and knock off the suit property. The suit property was numbered at Sy. No.67/P2 at the time of grant in favour of their father and it had continued till the year 2019-2020 as Sy. No.67/P2. But in the defendants by colluding with the revenue officers without the knowledge of the plaintiffs have got changed the property number as Sy. No.67 in the RTC extracts. The defendants are having men and money in their command with political support and may destroy the fencing around the suit property at any point of time. The said illegal deeds of the defendants cannot be resisted without the order of this court. Hence, the plaintiffs have filed this suit along with instant application.

5. On service of summons/notice, the defendants entered appearance through their counsel. They have filed their joint written statement and adopted the same as objections to the

instant application by filing a Memo. At the outset, the defendants in their written statement have denied the right, interest and possession of the plaintiffs over the suit property. It is contended that the suit property was not granted to the father of plaintiffs. Further, the 2nd plaintiff has filed another suit in O.S. No.154/2019 against one Sri. Venkatesha Raju. Likewise, the 2nd Plaintiff has also filed different suit in O.S. No.202/2021 against the defendants before this court in respect of the very same suit schedule property. The plaintiffs have not included the necessary parties to this suit. The defendants have never trespassed into any property alleged to be belonging to the plaintiffs.

6. The defendants have specifically contended that in the land bearing Sy. No.67 there exists total extent of 23 Acres 20 guntas which is government land. The defendants have been in possession of said land since the time of their grand father under unauthorized occupation. They have been cultivating ragi, maize, silver trees and also formed coffee land and also have constructed residential houses for their respective families. The defendants have denied description of the suit property. It is also contended that the plaintiffs are not aware as to the location and existence of the suit property in total extent of 23 Acres 20 guntas and he has not got prepared the sketch. Further, the land in which the defendants are in possession, the remaining

land is vacant. As such, the plaintiffs in order to knock off the property in which the defendants are in possession have filed this suit basing on the false and concocted documents. The documents produced by the plaintiffs are not at all related to the suit schedule property.

7. It is also contended by the defendants that, since the plaintiffs herein tried to snatch away the property belonging to the defendants, they have also filed a suit in O.S. No.147/2021. Only as a counter to the said suit, the plaintiffs have filed the present suit. It is also contended that the boundary described to the suit property is in respect of property belonging to the defendants. Therefore, the defendants have sought for dismissal of the instant application and consequently the suit.

8. Basing on the application, affidavit, written statement of defendants adopted as objections to the instant application, the following points would arise for consideration of this court.

POINTS

- 1) Whether the plaintiffs have made out prima facie case?
- 2) Whether the balance of convenience lies in favour of the Plaintiffs?
- 3) Whether the plaintiffs will be put to irreparable loss and injury if the order of temporary injunction as prayed for is not granted?

4) What order?

9. Heard arguments of both sides. On the basis of Application, affidavit, Written statement of defendants adopted as objections to the instant application, pleadings and also all the materials available on record, answer of this court to the above points is 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

10. **Point No.1 to 3:** Since all these three points are interconnected and interlinked with each other, they are taken up together for discussion in order to avoid repetition of facts.

11. This suit is filed by the plaintiffs against the defendants for the relief of permanent injunction. It is the case of the plaintiffs that as per official Memorandum of the Special Land Acquisition Officer, HRP, Hassan, vide No.ಯ.ಭೂ.ಮಾ 8/1992-93 dated 18.11.1992 and on the basis of grant order of the Tahasildar, Belur dated 01.01.1993, the suit land was granted to father of

plaintiffs Sri. Basappashetty who had lost his land under the Yagachi Reservoir Project. Accordingly, the khatha was also effected in his name vide M.R. No.4/1992-93, and thus he was in possession and enjoyment of the same as its absolute owner. After his death the plaintiffs continued in possession of the suit land. The plaintiffs have produced the said Grant Order made in the name of Sri. Basappashetty in respect of Sy. No.67/P2 measuring 4 Acres as well as the official memorandum. The plaintiffs have also produced mutation register in M.R. No.4/1992-93. As on the date of institution of the suit for the year 2020-2021, the name of Sri. Basappashetty is entered in the RTC extract, but the survey number mentioned as Sy. No.67 not 67/P2. The plaintiffs have produced the sketch which is pertaining to Sy. No.67 Phodi Nos.1 to 4. The plaintiffs have produced another RTC extract bearing Sy. No.67 wherein an extent of 3 Acres is standing in the name of Plaintiff No.1 and remaining extent 23 acres 20 guntas is shown as Gomala Land.

12. Further another RTC extract pertaining to Sy. No.67 is produced wherein an extent of 4 Acres each in the names of Erappashetty, Basappashetty, Dharmaraju is reflected along with the name of Smt. Lakshmi to an extent of 2 Acres. The plaintiffs have produced RTC extract of Sy. No.67/P2 for the year 2011-2012 standing in the name of father of plaintiffs Sri. Basappashetty which continued till the year 2019-2020. It is

alleged by the plaintiffs that the defendants by colluding with the revenue officers without the knowledge of the plaintiffs have got changed the property number from 67/P2 to Sy. No.67 in the RTC extracts. But no such documents are produced as to under what document the survey number was changed to 67.

13. Per contra, it is the case of the defendants that in the land bearing Sy. No.67 there exists total extent of 23 Acres 20 guntas which is government land. The defendants have been in possession of said land since the time of their grand father under unauthorized occupation. They have been cultivating ragi, maize, silver trees and also formed coffee land and also have constructed residential houses for their respective families. They contended that the plaintiffs are not aware as to the location and existence of the suit property in total extent of 23 Acres 20 guntas and they have not got prepared the sketch. Further, the land in which the defendants are in possession, the remaining land is vacant. As such, the plaintiffs in order to knock off the property in which the defendants are in possession have filed this suit basing on the false and concocted documents. In order to establish this fact, the defendants, at this stage of the suit, have not relief upon any document. It is also contented that the defendant Nos.2 to 8 have also filed a suit in O.S. No.147/2021 seeking the relief of permanent injunction against the plaintiffs and one Sri. Dharmaraju and the same is pending consideration.

14. The Plaintiff No.1 herein has also previously filed a suit in O.S. No.154/2019 against Sri. Venkatesh and Raju, which is pending consideration in respect of 3 acres of land in very same Sy. No.67 . In the said suit, the defendant No.1 has produced documents wherein the land bearing Survey number 67 measuring 30 acres 22 guntas is originally government Gomala land. The plaintiffs in this suit has also produced RTC extract of said RTC extract pertaining to the year Subsequently, in the year 1991-1992, an extent of 15 acres 21 guntas was phoded and 15 acres 1 gunta was remaining wherein it is mentioned that the said land is reserved for the rehabilitation of villagers who have lost their lands under Yagachi Reservoir Project. Thereafter, in the year 1992-1993, the land bearing Sy.No.67 measuring 4 acres was re-numbered and assigned with Sy.No.81 and shown as Government waste land. As of the year 2016-17, the land bearing Sy.No.83 measuring 3 acres is mentioned as Government waste land in the RTC extract.

15. As per the said documents produced by the defendant No.1 in O.S. No.154/2019, the Sy.No.67 was re-numbered in respect of different extents as Sy.No.80, 81, 82 and 83, but the plaintiff No.1 herein has contended that Sy.No.67, block No.4 was re-numbered as 67. But and extent of 23 Acres 20 guntas still showing as government gomala land in which the defendants claim to be in possession. When such being the case, it is clear

cut case that there is dispute with regard to identification of the property by plaintiffs though they are assumed to be in possession of 4 acres of land. Under the said circumstances, prima facie, rises question as to the possession of plaintiffs.

16. On the other hand, the plaintiffs have failed, prima facie, to establish that as per Grant Certificate and sketch produced, they are in possession of the property bearing Sy.No.67 measuring to an extent of 4 acres. The sketch produced by the plaintiffs is pertaining to Sy. No.67 phode Nos.1 to 4. Out of it the Plaintiffs herein have already filed a suit in O.S. No.154/2019 in respect of Sy. No.67 Block No.4 measuring 3 Acres. Under the circumstances, there is dispute with regard to identification of the suit property and there is need to ascertain as to whether the Sy.No.67 was originally numbered as 67/P2 and if it is changed to only Sy.No.67 under what document the same was changed are not forthcoming at this stage.

17. Furthermore, in the RTC extract produced by the plaintiffs themselves, there is remaining extent of 23 acres 20 guntas which is Government Gomala land. In the schedule of the suit property described in the plaint, the said Gomala land measuring 23 acres 20 guntas is not mentioned either to the East, West, north or southern side. Therefore, in order to ascertain the right, interest and possession of plaintiffs over the

suit property, there is need for holding full fledged trial, without which this court cannot come to the conclusion in this regard. Therefore, the balance of convenience is not lying in favour of the plaintiffs. The plaintiffs failed to establish that the suit property is in danger of being wasted by the act of the defendants. Though the complaints are lodged by the plaintiffs before the concerned police, without ascertaining the actual possession and alleged interference after holding full fledged trial, this court, at this stage cannot come to proper conclusion in this regard. Therefore, if this court in the absence of any acceptable materials on the part of the plaintiffs refuses to grant order of temporary injunction, no prejudice or hardship or injury will be caused to the plaintiffs. Therefore, the plaintiffs are not entitled to the equitable relief of order of temporary injunction. Hence, the application deserves to be dismissed. Accordingly, this court answered Point No. 1 to 3 in the **Negative.**

18. **Point No.4:** For the foregoing reasons and discussions made above, this court proceed to pass the following:

:: ORDER ::

- I.A.No.II filed by the plaintiffs Under Order 39 Rule 1 and 2 of Civil Procedure Code is hereby dismissed.

- No order as to costs.

(Dictated to the stenographer, transcribed by her, transcription corrected by me and then pronounced in the open court, on this the 03rd day of February 2024)

(Prasanna Kumar C.)
Civil Judge & JMFC, Belur.

03-02-2024

Plff by **Sri.KLN**

Deft-1 by **Sri.CMC**

Def-2 - Abated

For Orders on IA-II

(Order on I.A. No.II signed and pronounced in the open court vide separate order)

:: ORDER ::

- I.A.No.II filed by the plaintiff Under Order 39 Rule 1 and 2 of Civil Procedure Code is hereby dismissed.
- No order as to costs.
- For Issues by: **20.03-2024**

**(Prasanna Kumar C.)
Civil Judge & JMFC, Belur.**