

**OS 19 of 2023 dated 27.04.2024**

**ORDERS ON APPLICATION FILED BY THE PLAINTIFF  
UNDER SECTION 151 OF THE CODE OF CIVIL PROCEDURE**

1. The Plaintiff is seeking that this Court direct the police to assist in the enforcement of the order of this Court dated 22.05.2023 and it is contended that despite the Order of this Court the Defendants are repeatedly interfering with the possession of the Plaintiff and have further locked the suit house and as such necessary orders are to be passed.

2. The Defendants would resist the said application contending that an appeal in MA 10 of 2023 has been filed challenging the order of this Court dated 22.05.2023 and as such no relief of the kind that the Plaintiff is seeking can be granted. According to the Defendants the properties at Sy.No.5/1 measuring 16 guntas, Sy.No.5/4 measuring 8 guntas, Sy.No.5/5 measuring 8

guntas are the ancestral properties of the Defendants and it is they who are in possession of the same paying taxes. According to the Defendants a suit in OS 144 of 2018 had been filed which was decreed in favour of the Defendants on 09.11.2022 and that the Plaintiff in the present case has colluded with the Panchayath Authorities and obtained a E-swathu. According to the Defendants the present suit is an attempt by the Plaintiff to knock off the property of the Defendants and as such there is a need to see if the suit properties belong to a Gramthana or a survey number and the same requires a trial and as such the present application requires to be rejected.

3. The Plaintiff's counsel would submit that the order passed by this Court would remain on paper if necessary help from the Police is not granted. The Defendants' counsel would urge all those contentions that he had urged at the time of the application for injunction being disposed. In addition he would

further submit that since an appeal is pending the application filed by the Plaintiff is not maintainable and further that an application for appointment a Commissioner is pending and as such the present application ought not to be entertained.

4. Having heard the learned Counsel for the parties the points that arise for my consideration are

1. *Whether the Plaintiff can be granted Police Aid for enforcement of the order of temporary injunction as prayed for?*

2. *What order?*

5. My answer to the aforesaid Point No.1 is in the *In the Affirmative* for the following

### **REASONS**

6. The contentions of the learned counsel for the Defendants that there has been a decree in favour of the Defendants; that the Plaintiff has colluded with the Panchayath authorities and obtained an E-Swathu which did not exist as on the date of OS

144 of 2018; that the suit property is the ancestral property of the Defendants; that they trace their title to the year 1943; that the Plaintiff is an abject stranger to the suit properties are all those which were urged, considered and held against the Defendants by this Court vide order dated 22.05.2023. Reiterating the very same contentions for this application as well would advance the case of the Defendants very little. The only recourse which the Defendants have as against the said order is to challenge the same in an appeal which they have admittedly done so. Therefore all those contentions cannot be gone into by this Court again for the purpose of this application since this Court is not sitting in appeal or reviewing the Order dated 22.05.2023. Therefore the said contentions are rejected. Secondly mere pendency of an appeal would not operate as a stay of the order of injunction granted by this Court. Unless and until the Defendants are able to establish that the Order of

this Court has been set aside by the higher Court the Defendants cannot contend that the present application is not maintainable. Thirdly the contention of the Defendants' counsel is that if the door of the suit house was locked then it raises a question as to how the Plaintiff can seek police protection for return of the key. This appears to be a misreading of the application filed by the Plaintiff since the latter has specifically stated in her application that despite the order of the injunction the Defendants have repeatedly interfered with her possession and as such a direction is required to the police to assist the Plaintiff in enjoying the fruits of the Order. The order of injunction is specifically confined to the Defendants not interfering with the possession of the Plaintiff. If the Plaintiff is not at all in possession as the Defendants' claim to be, there is nothing that the police can do and who would only return the warrant of this Court with an

endorsement that the Plaintiff is not in possession. Therefore the contentions of the Defendants appear to be misplaced and misconceived. The other contention urged by the Defendants' counsel is that an application for appointment of Court Commissioner is pending. This again is a misconceived contention for the reason that the application for appointment of a Commissioner proceeds on a different footing as compared with an application seeking the assistance of the police for implementation of an order of injunction. The two cannot be mixed up with one another. If ultimately a Commissioner is indeed appointed and the Commissioner indeed finds that it is the Defendants who are in possession and that the Plaintiff was never in possession it is the Plaintiff who takes the consequences of the same. That however cannot be a ground to defer the present application since if no orders are passed on the application of the Plaintiff the order passed by this Court on

22.05.2023 would remain on paper and for academic purpose. None of these contentions hold much water in the light of what the Hon'ble High Court in *Karisiddamma v. Sanna Kenchamma*, reported in ILR 2010 Kar 1197 has held as under

*11. In the wake of the case-law to which the references are made hereinabove, I decline to interfere in the matter. However, if the petitioners have any genuine grievance over the mentioning of the particulars of the properties in operative portion of the temporary injunction order, it is always open to them to seek variance or modification of the said order. In the light of granting the temporary injunction order after hearing both the sides, if a party in whose favour the temporary injunction order is made, complains to the Court that the other side is obstructing her use of the road and that the police are not coming to her rescue, the Trial Court is well within its limits to pass an order directing the police to give*

*the necessary aid in the enforcement of the temporary injunction order. The Court can grant police aid exercising its inherent powers. Otherwise the interests of the litigants can not be protected against a party, who violates the temporary injunction order.*

7. The learned counsel for the Plaintiff would place reliance on the judgment of the Hon'ble High Court in case of ***Rudrappa Vs. Riyaz Ahamed and Another*** in ***Writ Petition No.201716 of 2016 dated 01.06.2016*** to contend that police protection would have to be granted. The Defendants' counsel would submit that the said judgment would not be of any assistance to this Court since the same has been rendered by the High Court in the writ jurisdiction and that there is no reference to any appeal considering an order of an injunction in the said writ petition. Judicial propriety demands that the orders of the Hon'ble High Court under Article 226 and 227 and of the Hon'ble Apex Court under Articles 141 and 142 of the

Constitution are followed by the entire Judiciary. The District Judiciary cannot pick and choose orders of the Hon'ble High Court or the Apex Court and say that it would follow only orders under the Appellate or Revisional jurisdiction and would not follow orders passed under the writ jurisdiction. An order of the Hon'ble High Court or the Apex Court is expected to be followed by all the Courts irrespective of the jurisdiction under which they were passed. An order of the Hon'ble High Court is an order, be it any jurisdiction under which it was passed. Therefore the contention of the Defendants' counsel has to be rejected. Therefore I pass the following

**ORDER**

The application filed by the Plaintiff is allowed.

The PSI, Hallymysore Police station is requested to assist the Plaintiff in executing the order passed by this Court on 22.05.2023. The office is further directed to

enclose a copy of the order dated 22.05.2023 to the  
PSI, Hallymysore Police station for further action. The  
PSI Hallymysore Police shall place a report, reporting  
compliance and if not possible with reasons for the  
same.

Call on 26.6.2024

CIVIL JUDGE  
HOLENARSIPURA.