

KAHS710001382020



**IN THE COURT OF THE CIVIL JUDGE AT
HOLENARSIPURA**

DATED THIS THE 23rd DAY OF JUNE- 2023

PRESENT

**Sri. PRAVEEN R.J.S,
B.A.LL.B,
CIVIL JUDGE HOLENARASIPURA.**

ORIGINAL SUIT No.35/2020

- Plaintiff/s:**
1. Rangashetty S/o Rangashetty,
aged 65 years,
 2. Javarashetty S/o Kalashetty,
aged 55 years,
 3. Puttaswamysetty S/o Kalashetty,
aged 53 years,
 4. Kumarashetty S/o Kalashetty,
aged 51 years,
 5. Sureshshetty S/o Kalashetty,
aged 49 years,

6. Harishshetty

Dead by LRS.

6a. Lakshmi W/o Late Harishshetty
@ Harish,
aged 36 years,

6b. Arpitha M.H
D/o Late Harishshetty @ Harish,
aged 20 years,

6c. Harisht M.H. D/o Harish
@ Harshitshetty,
aged 19 years,

6a to 6c are R/at Maragowdanahalli
village, Kasaba Hobli,
Holenarasipura Taluk.

7. Rangaswamyshtetty
S/o Kalasheety,
aged 45 years,

8. Ningamma W/o Thimmashetty,
aged 65 years,

P1 to 8 are R/at
Maragowdanahalli village,
Kasaba Hobli,
Holenarasipura Taluk.

[Represented by MRR., Advocate]

-Vs

Defendant/s

1. Dyavamma W/o Rangaswamy,
aged 65 years,

2. Puttarajashetty
S/o Late Thimmashetty
aged 65 years,

3. Prakash S/o Rangashetty,
aged 60 years,

4. Rangaswamy S/o Puttashetty,
aged 58 years,

5. Ramesh S/o Puttarajashetty
aged 30 years,

6. Ravi S/o Puttarajashetty
aged 28 years,

7. Ravindra S/o Rangaswamy,
aged 22 years,

D1 to D7 are R/at
Maragowdanahalli village,
Kasaba Hobli,
Holenarasipura Taluk.

(D1 to D3 Represented by YS., Advocate.,)

ORDERS ON APPLICATION FILED BY THE
DEFENDANTS UNDER ORDER 39 RULE 1 AND 2 OF
THE CODE OF CIVIL PROCEDURE

1. The Defendants have filed the present application to
restrain the Plaintiffs from interfering into their possession

of the suit property. The respective contentions of the parties as per their pleadings are referred to for easy reference.

2. The Plaintiff's case is that originally the suit property belonged to one Appanni who was in possession of Sy.No.76/2 measuring 1 acre 07 guntas till his death after which there was a partition whereby the mother of the Plaintiff No.1, grandmother of the Plaintiffs No.2 to 7 and the mother-in-law of the 8th Plaintiff were parties and that in the said partition 16 guntas were allocated to the 1st Plaintiff, 15 guntas to the father of the Plaintiffs Nos.2 to and 7, 16 guntas to the husband of the 8th Plaintiff and that mutation in MR 16 of 1985-86 was also effected and taxes were paid to the State. The Plaintiffs would contend that the father of the Plaintiffs No.2 to 7 Kalashetty died on 05.11.2018 and after which the Plaintiffs No.2 to 7 succeeded to the same and that from the past 35 years

they have been in possession while the revenue authorities have corrected in their records Sy.No.76/2 without there being any correlative entry. The Plaintiffs would further contend that on 04.06.2016 there was a phode exercise pursuant to which MR No.141 of 2015-16 came to be effected as per which 1st Plaintiff had got 16 guntas in Sy.No.76/2, the husband of the 8th Plaintiff got 16 guntas in Sy.No.76/8 while the IRH 23 of 2019 reflected 15 guntas in Sy.No.76/9 and that the parties are in possession as per the same. The Plaintiffs would contend such being the scheme of affairs the Defendants are unnecessarily interfering with their possession of the suit property.

3. The Defendants No.1 to 4 and 6 would resist the case of the Plaintiffs and would contend that the Appanni S/o Ranga is different from the Appanni S/o Rangashetty as claimed by the Plaintiffs and that the said Rangashetty was never the owner of the suit property and that there are no

supporting documents to the effect that Appanni was also known as Rangashetty. The Defendants would contend that after the demise of the said Rangashetty claimed by the Plaintiffs his wife Gowramma had, in cahoots with the Revenue Authorities, got the khatha made illegally in their favour and that the Plaintiffs have no manner of right, title or interest over the suit properties. The Defendants would contend that the Plaintiffs could never have been the legal heirs of Appanni S/o Ranga and that it was the Defendants who were the legal heirs and it is they who have been in possession and it is they who have paid the requisite taxes. The Defendants would contend that the illegal khatha made as per MR 16 of 1985-86 was also the subject matter of an appeal before the Assistant Commissioner, Hassan in RA 663 of 2019-20. The Defendants would also dispute the fact that the father of the Defendants No.2 to 7 is Kalashetty and that their father is an entirely different

person and that since there is actually no 8th Defendant the question of the 8th Defendant being in possession is a falsehood. The Defendants would dispute that there was a phode whereby separate portions are said to be in possession of the Plaintiffs and that the present suit itself is at the instance of persons inimical to the Defendants politically and as such the application requires to be rejected.

4. Having heard the learned Counsel for the parties and perusing the record the points that arise for my consideration are as follows:-

POINTS

- 1. Whether the Defendants have made out a prima-facie case for grant of temporary injunction?*
- 2. Whether the balance of inconvenience is in favor of the Defendants?*
- 3. Whether the Defendants would suffer irreparable loss or injury if the prayer for injunction is not granted?*

4. What order?

5. My answer to the above points is as follows:-

POINT No.1 :- In the Negative

POINT No.2 :- Does not survive for consideration

POINT No.3 :- Does not survive for consideration

POINT No.4 :- As per my final order for the following :-

REASONS

6. **Point No.1 to 3:** The first aspect that requires to be noted is that there is a fundamental dispute as regards the original owner of the property itself in that while the Plaintiffs' claim that the properties belonged to Appanni @ Rangashetty, the Defendants would contend that the Rangashetty as claimed by the Plaintiffs is an entirely different person from the original owner Appanni S/o Ranga. This is required to be adjudicated at the outset since all subsequent succession, possession, the revenue entries and the exercise of proprietary rights stem from

this basic aspect because if the Plaintiffs are not the true heirs of the aforesaid Appanni, the consequent revenue entries made would have no legs to stand on. Likewise, the documents that the Defendants/applicants have at this stage produced are but proceedings before the Assistant Commissioner, RTC extracts, mutation order and the Index of lands. The Katha that has been made now is the subject matter of an appeal in RA 663 of 2019-20 before the Assistant Commissioner, Hassan. While the Revenue Authorities would not be competent to adjudicate as to who exactly are the legal heirs of a deceased person, the legality of a khatha made would definitely be within the jurisdiction of the Assistant Commissioner. Further the Defendants/applicants have also not produced documents in support of their contentions regarding the identity of the real Appanni/Ranga. In the light of the fact that there are too many disputed facts at this juncture, coupled with the

fact that there is no counter-claim on the part of the Defendants/applicants, this cannot be said to be a case where the Defendants/applicants would be entitled to an order of injunction.

7. For the aforesaid reasons it cannot be said that the Defendants have made out a prima facie case for grant of injunction. It is necessary to refer to the judgment of the Hon'ble High Court in the case of *Lakshminarasimhiah v. Yalakki Gowda*, reported in AIR 1965 Mys 310 wherein it has been held as under:

9. There is no power which is more delicate, which requires greater caution, deliberation, and sound discretion, or is more dangerous in a doubtful case, than the issuing an injunction. It is the strong arm of equity, that never ought to be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages. The right must be

clear, the injury impending or threatened, so as to be averted only by the protecting preventive process of injunction. But that will not be awarded in doubtful cases, or new ones not coming within well-established principles; for if it issues erroneously, an irreparable injury is inflicted for which there can be no redress, it being the act of a court, not of the party who prays for it. It will be refused till the courts are satisfied that the case before them is of a right about to be destroyed, irreparably injured, or great and lasting injury about to be done by an illegal act. In such a case the court owes it to its suitors and its own principles to administer the only remedy which the law allows to prevent the commission of such act. The discretionary power must be exercised with extreme caution and applied only in very clear cases; otherwise, instead of becoming an instrument to promote the public as well as private welfare, it may become a means of an extensive and perhaps an irreparable injus-

tice". (1) *Story's Equity Jurisprudence*(14th Edn.) Vol. II, pages 639-640.

10. *The rule regarding the caution to be observed by courts and the necessity for a clear cause for granting the relief of injunction has been succinctly stated in the American Jurisprudence as follows:—*

“Caution in Granting; Necessity of Clear Case: The extraordinary character of the Injunctive remedy and the danger that its use in improper cases may result in serious loss or inconvenience to an innocent party require that the power to issue it should not be lightly indulged in, but should be exercised sparingly and, cautiously only after thoughtful deliberation, and with a full conviction on the part of the court of its urgent necessity. In other words, the relief should be awarded only in clear cases, reasonably free from doubt, and, when necessary, to prevent great and irreparable injury. The Court should therefore be guided by the fact that

the burden of proof rests upon the complaint to establish the material allegations entitling him to relief.” (2)28 American Jurisprudence page 217.

Given the ambiguity in the present case and the fact that the state of affairs on the revenue side is yet to attain finality even at this stage, the Court is of the opinion that the present case is not fit for grant of injunction and it is has to be held that the Defendants have not made out a prima facie case and once that is the case, the question of this Court having to advert to the other aspects would not arise which is what has been held by the Hon’ble High Court in the case of ***Gowrishankara Swamigalu v. Sri Siddhaganga Mutt***, reported in **ILR 1989 Kar 1701** wherein it has been held as under

25. I need hardly add the existence of a prima facie case in these matters of granting injunction is really the harbinger or the all clear sign to go ahead in investigating other aspects of the

question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the Plaintiff would fall at the very first stile itself. But if there was a prima facie case then other considerations governing the grant of injunction would come into play and will also have to be evaluated before granting or refusing the injunction

Therefore for the aforesaid reasons I pass the following:

ORDER

IA No.V filed by the Defendants under Order XXXIX Rule 1 and 2 is dismissed. Call on 25.07.2023 for issues.

(Dictated to the Stenographer directly on computer, typed by her, corrected by me and then pronounced in the open Court on this **the 23rd day of June 2023**)

(PRAVEEN.R.J.S)
CIVIL JUDGE., HOLENARSIPURA.