

KAHS710017252022



IN THE COURT OF THE CIVIL JUDGE AT HOLENARSIPURA

DATED THIS THE 13th DAY OF SEPTEMBER 2022

PRESENT

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

ORIGINAL SUIT No.281/2022

Plaintiff/s:

1. Venkatachalaiah
S/o Nanjundaiah,
aged 85 years,

2. Guruprasad H.V.
S/o Venkatachalaiah,
aged 47 years,

Both are R/of Hariharapura village,
Halekote Hobli,
Holenarasipura Taluk.

[Represented by BNR Advocate]

-Vs-

Defendant/s

1. Suma W/o Ramesh
aged 33 years,

2. Ramesha S/o Puttegowda,
aged about 38 years,

3. Puttegowda S/o Nanjegowda,
aged about 75 years,

All are R/of Hariharapura village,
Halekote Hobli,
Holenarasipura Taluk.

4. The Chief Secretary,
Represented by Government of
Karnataka, Vidhana Soudha,
Bangalore.

5. The Chief Executive Officer,
Jilla Panchayath, Hassan District,
Hassan.

6. The Executive Officer,
Taluk Panchayath, Holenarasipura
Taluk, Holenarasipura.

7. The Gram Panchyatha
Development Officer, Harihara Gram
panchayath, Halekote Hobli,
Holenarasipura Taluk, Hassan
District.

**(D1 to 3 Represented by Sri.HRN
D6 & 7 by Sri.SNS., Advocate
D4 and 5 not yet served)**

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

The Plaintiffs by way of this application are seeking an order of temporary injunction to restrain the Defendants No.1 to 3 from putting up any further construction over the suit property.

2. The Plaintiffs contend that the suit property is the ancestral property of the 1st Plaintiff and that he has been in possession of the same and the suit property presently comes within the jurisdiction of Hariharapura Gram panchyath; that the Plaintiffs often travel to Bangalore and taking advantage of their absence the Defendants No.1 to 3 have encroached the suit property and have commenced construction from about a month back; that despite the Plaintiffs seeking necessary information about any licence having been granted from the 7th Defendant to the Defendants No.1 to 3 no constructive response has been received by the Plaintiffs compelling them to file the present suit.

3. The Defendants No.1 to 3 have disputed the entire case of the Plaintiff contending that the suit property is the ancestral property of the 3rd Defendant who has been in possession of the same for the past 40 years; that the property therein was a tiled house; that there was a partition in the family of the 3rd Defendant and that the suit property fell to the share of the 2nd Defendant and since the house therein was in a dilapidated condition and since a portion of the property was acquired for road expansion the Defendants 1 to 3 had sought permission from the appropriate authority for refurbishing the house and thereupon they constructed a RCC house and that their possession has been recognized by the panchyath authorities has been reflected in the panchayath records; that they have paid necessary taxes as well; that necessary grant has also been accorded by the Government; that there is no road to the south of what the Plaintiffs are claiming to be their property; that the present suit has been filed by giving false boundaries and that within

the schedule given by the Plaintiffs it is the Defendants property that is situate and as such the suit and the application are required to be rejected.

4. CONTENTION OF THE PARTIES

* Contentions of the Plaintiffs- The learned Counsel for the Plaintiffs, Sri BNR would urge the following contentions:

- a) that the suit property is the ancestral property;*
- b) that an illegal grant has been made in favour of the Defendants;*
- c) that the endorsement dated 06.07.2022 would indicate that earlier katha stood in the name of the Plaintiffs;*
- d) That there is a clear admission in page 4 of the written statement of the Plaintiffs right over the suit property;*
- e) that if the construction is stopped no damage would be caused to the Defendants No.1 to 3;*
- f) that even in the documents produced by the Defendants no boundaries are mentioned;*
- g) that if indeed land was acquired as claimed by the Defendants necessary documents to show the acquisition process have not been placed before the Court and that even in the letter of 2018 no khatha number is specified and the tax paid is also in respect of another property;*

* **Contentions of the Defendants-** The learned Counsel for the Defendants Smt.H.M.Pallavi would urge the following contentions:

a) That the khatha number and the assessment number are not in dispute but rather it is the boundaries that the Plaintiffs have given which are in dispute;

b) that the photographs clearly indicate the condition of the house and the fact that the same has been renovated;

c) That the Plaintiffs were aware even as on the 03.02.2018 about the fact that the Defendants No.1 to 3 were granted amount for necessary construction and if it was indeed the case of the Plaintiffs that the suit property belonged to them there was no impediment for them not to object to the same at that very point of time;

d) That no documents have been produced by the Plaintiffs to show that the suit property indeed does come within the boundaries so indicated by them;

e) That the Plaintiffs have not explained as to why no information regarding the boundaries have been sought under the Right to Information Act ;

f) that the Plaintiffs are not even residents of Holenarasipura;

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

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

POINT No.1 :- In the Negative

POINT No.2 :- Does not arise for consideration

POINT No.3 :- Does not arise for consideration

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

REASONS

7. **Point No.1 to 3-** At the outset it is to be seen that even according to the Plaintiffs the Defendants No.1 to 3

have put up construction which has reached a substantial level and it is not as if the construction has just commenced or is about to commence. The reason why this assumes significance is for the reason that way back in the year 2018 a financial grant is said to have been made in favor of the Defendants 1 to 3 to put up construction. If it indeed it were to be the case of the Plaintiffs that financial assistance was wrongly given in the Defendants No.1 to 3 to put up construction in what the Plaintiffs claim right and title it passes comprehension as to why the same was not objected to at the earliest point of time. Even if it were to be assumed that the Defendants No.1 to 3 are putting up construction over the Plaintiffs' property, proof of which has to be seen after trial, the photographs clearly indicate that the construction is not an overnight development and as on the date of suit itself there has been substantial construction and once that is the admitted position, question of granting temporary injunction to restrain further construction would

not arise. Reference in this regard may be had to the judgment of the Hon'ble Apex Court in ***ECE Industries Limited (2) Vs. S.P Real Developers Private Limited and Another*** reported in (2009) 12 SCC 776 wherein it has been held as under;

26. It is well settled that when construction has been made on a land, which is of considerable magnitude, and when the plaintiff shall not face any substantial injury, if no order of injunction is granted because of payment/deposit of the entire amount payable by the defendant to the plaintiff under the agreement, though belatedly, we are of the view that the Court will not, as a matter of course, pass an order of injunction against the other party restraining the other party from raising any construction on the suit property till the disposal of the suit.

27. If ultimately, the suit filed by the appellant-plaintiff is decreed, he can be compensated in damages or the respondent-defendants may be directed to pull down the construction and

deliver vacant possession to the appellant-plaintiff when no equity can be claimed for such construction by the respondent-defendants.

28. *On the other hand, in our view, if at this stage, an order of injunction is granted against the respondent-defendants from proceeding with further construction in the suit property, it will undoubtedly destroy the constructions already made by the respondent-defendants and the respondent-defendants will suffer irreparable loss and injury for not allowing them to make construction on the suit property.*

Therefore even if it is argued by the Plaintiffs that the Defendants 1 to 3 have put up construction over their property, fact is, their diligence in not assailing the same at the earliest point of time and the stage at which the construction is presently at, compels this Court to reject the prayer of the Plaintiffs.

8. Much was argued by Sri.BNR learned counsel for the Plaintiffs that the Defendants 1 to 3 have admitted the khata number of the Plaintiffs and as such injunction ought to be granted. Perusal of the written statement would indicate that it is the specific case of the Defendants No.1 to 3 that the Plaintiffs have filed the present suit based on wrong boundaries and that what has been claimed by the Plaintiffs is but the boundaries of the Defendants No.1 to 3. Therefore even if the khatha number were to be admitted yet the case of the Defendants 1 to 3 as a whole is that the suit is misconceived in that the claim has been founded on wrong boundaries. Therefore even if injunction were to be granted, when there is a serious dispute regarding the boundaries, an anachronistic situation would arise if the injunction would not be able to be implemented solely on the ground of a discrepancy in the boundaries. Therefore unless the boundaries are clear it would prove counterproductive for this Court to pass any order of injunction.

9. The action of the panchayath authorities in according financial grant to the Defendants No.1 to 3 over the property which the Plaintiffs' claim to be theirs' is one that would require a challenge before the appropriate forum and not by way of this suit and before this Court, given the scope of the present suit.

10. The allegation that the grant made under the Rajeev Gandhi scheme to the Defendants 1 to 3 smacks of irregularities is also one that this Court is not empowered to scrutinize and streamline since that is not the scope of this suit nor is it within its jurisdiction. The contention that the name of the 1st Plaintiff finds a place in the khatha register as on 1991-92 cannot be accepted since the same would not be a title document for the Plaintiffs' to assert their right to stop any construction. An entry made in the register would be but for the purpose of collection of tax and nothing more. An entry of the year 1991 cannot be a fiat for this Court to

presume the title of the Plaintiffs' even in the year 2022. The relevance of Katha has been explained by our Hon'ble High Court in *Jayamma v. Assistant Revenue Officer*, reported in **ILR 2009 Kar 458** as under

6. The word 'katha' is not found in the Act, but in common parlance, over the years, is synonymous with the certificate issued by the Corporation in exercise of jurisdiction under Section 114 of the Act, recording the name of the owner/occupier of the immovable property, primarily responsible to pay the Corporation taxes. It is also true that this 'katha', is important on account of its relevancy for variety of purposes, be it securing a gas connection, telephone line, driving licence, ration card, mortgage by deposit of title deeds, conveyance of immovable property, licence to erect a building, so on and so forth, though does not confer right title or interest in the immovable property.

Having regard to the scope of the suit as filed by the Plaintiffs, the Court is of the opinion that this is not a case for grant of Temporary Injunction. Reference in this regard may

be had to the dictum 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 injustice". (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.

Therefore in the light of the aforesaid discussion this Court would have to hold that the Plaintiffs have not made out a prima facie case for grant of temporary injunction. 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

11. **POINT No. 4:-** Therefore, for the aforesaid reasons I pass the following:

ORDER

Application filed by the Plaintiffs under
Order XXXIX Rules 1 and 2 is dismissed. Call on
13.10.2022 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 13th day of September 2022)

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