

KAHS710029142024



**THE COURT OF THE I ADDL. CIVIL JUDGE & J.M.F.C., AT
HOLENARASIPURA**

DATED THIS THE 20th DAY OF JUNE 2026

PRESENT

**Smt. Aishwarya S.Gudadinni, B.A. LL.B., LL.M.
I Addl. Civil Judge & JMFC,
Holenarasipura.**

O.S. No.502/2024

**PLAINTIFFS : Lakshamma W/o. Late Krishna @ Rajegowda
and others
(By Sri.R.P., Advocate)**

V/s

**DEFENDANTS : Krishnegowda S/o. Mandigowda and others
(By Sri.S.S.N/M.E.S., Advocate)**

I.A.No.II

**APPLICANTS : Lakshamma W/o. Late Krishna @ Rajegowda
and others**

V/s

OPPONENTS : Krishnegowda S/o. Mandigowda and others

**ORDER ON IA NO.II FILED U/O 39 RULE 1 and 2 OF
CPC**

Plaintiffs have filed this IA seeking an restraining order of temporary injunction against the defendants from interfering with the possession of the plaintiffs over the suit schedule properties.

2. The set of facts discernible from affidavit is summarized as follows:

The suit schedule properties comprise land bearing Survey No. 13/19 measuring 1 acre 03 guntas and land bearing Survey No. 13/10/11 measuring 20 guntas and 8 guntas respectively. And the suit schedule properties are ancestral properties, and they have been in lawful possession and enjoyment thereof. It is their case that the propositus of the family, Sri Krishna @ Rajegowda, died on 15.10.2014, and upon his death, the suit schedule properties devolved upon his two wives, namely Gangamma and plaintiff No.1. Subsequently Gangamma also died and thereafter the plaintiffs continued in possession and enjoyment of the suit schedule properties. The plaintiffs further contend that on 11.09.2020 the defendants without having any right or interest over the suit schedule properties attempted to interfere with their peaceful possession and enjoyment by entering upon the lands and causing damage to the crops grown therein.

Therefore plaintiffs constrained to approach having been left this court seeking with no efficacious alternative relief or permanent alternative injunction in injuries are conveyed in suit and by way of plaintiffs further seeking seek a restraining order against the defendants from interfering with the suit schedule properties till disposal of the suit.

3. Per contra, Defendant Nos. 1 to 3 have opposed the application contending that the averments made by the plaintiffs are false and untenable. It is their specific contention that Survey No. 13/9 is a Gramatana property and that they have been in possession and

enjoyment of a portion thereof measuring 15 guntas from time immemorial, having constructed residential houses therein. It is further contended that several residential houses exist on the eastern side of the suit schedule property and that the area has long since become part of the village habitation, though it continues to be reflected as agricultural land in the revenue records. The defendants further contend that the plaintiffs are not in possession and enjoyment of the property described in the plaint schedule and that the boundaries and description furnished in the schedule are incorrect. On these grounds, the defendants submit that the plaintiffs are not entitled to the relief sought and pray for dismissal of the application.

4. Defendant No. 7 has also opposed the application contending that the suit is not maintainable in law, is barred by law, and does not disclose any cause of action. It is contended that the suit schedule property originally formed part of Survey No. 13 and was subsequently assigned Survey No. 13/5, which belonged to the father of Defendant No. 7 and measured 12 guntas. According to the defendant, the said property was partitioned among the sons of late Javare Gowda, namely M.J. Sreenivas, M.J. Devaraju, and M.J. Nagaraju, each of whom was allotted 4 guntas. Pursuant to the partition, the revenue records were mutated in their names through M.R. No. 7/1976-77. It is further contended that Defendant No. 7 purchased an extent of 4 guntas in Survey No. 13/5 under a registered sale deed dated 14.10.2004, and thereafter the revenue records were mutated in his name vide M.R. No. 6/2004-05. Since then, Defendant No. 7 claims to have been in lawful possession and enjoyment of the said property and to have been cultivating the same. It is further contended that certain discrepancies

arose in respect of the phodi of Survey No. 13. Aggrieved by the same, Defendant No. 7 preferred an appeal before the Deputy Director of Land Records (DDLR). The DDLR, upon consideration of the appeal, ordered cancellation of the phodi and directed amalgamation of the sub-divisions into the original survey number. Thereafter, when Defendant No. 7 applied for Tatkal Phodi proceedings, the plaintiffs allegedly obstructed the same and subsequently instituted the present false suit. It is also specifically contended that the plaintiffs are not in possession and enjoyment of the property described in the plaint schedule. On these grounds, Defendant No. 7 seeks dismissal of the application.

5. Heard respective counsel.
6. Upon hearing the arguments and on perusal of the materials placed on record the following points arises for the consideration of this court.

POINTS

1. Whether the plaintiffs have made out prima-facie case?
2. Whether the plaintiffs have balance of convenience in their favour?
3. Whether the plaintiffs would be subjected to irreparable losses if the temporary injunction is not granted?
4. What order?
7. Upon appreciation of the averments placed on record in the background of the arguments advanced, court's findings for the above points are as under:

Point No.1: In negative

PointNo.2: In negative

Point No.3: In negative

Point No.4: As per final order for following-

REASONS

8. Point No.1 to 3: As these points require the discussion on same set of facts, in order to avoid the repetition these two points have been taken up for a common discussion.

On perusal of the pleadings and the material available on record, it is noticed that the plaintiffs have sought an order of temporary injunction on the assertion that the suit schedule properties are ancestral properties and that they are in possession and enjoyment of the same. However, except the oral assertions made in the plaint and affidavit, no documentary material has been produced to prima facie establish either their possession or their entitlement to the suit schedule properties. On the contrary, Defendant Nos. 1 to 3 have specifically contended that a portion of the property is a Gramatana area in which they have been residing for several years after constructing residential houses, while Defendant No. 7 has asserted independent rights over a portion of the property on the strength of a registered sale deed and consequential revenue entries. Thus, the identity, nature, extent and possession of the suit properties are seriously disputed. *In Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs. and Others, (2008) 4 SCC 594*, the Hon'ble Supreme Court has held that where the title of the plaintiff is under a cloud or where there is a serious dispute regarding title and possession, the matter requires adjudication on evidence and a bare claim of possession cannot by itself be accepted. In the present

case, the plaintiffs have not produced any document to prima facie demonstrate their possession as on the date of the suit. Mere assertions, in the face of specific denial and rival claims supported by a plea of long-standing possession, are insufficient to hold that a prima facie case exists in favour of the plaintiffs. Since the very foundation of possession is under serious dispute and remains to be established during trial, this Court is unable to conclude that the plaintiffs have made out a case warranting protection by way of temporary injunction. Consequently, the balance of convenience also does not lean in favour of the plaintiffs. Consequently, these points No.1 to 3 are answered in ***negative***.

9. **Point No.4:** For the said reasons, this Court proceeds to pass the following:

ORDER

*The I.A. No II filed by the plaintiffs
under order 39 rule 1 and 2 is hereby
rejected.*

No order as to cost.

(Dictated to the stenographer directly on the computer, typed by her, corrected by me and then pronounced in the open Court, this 20th day of June 2026).

**(Smt. Aishwarya S.Gudadinn)
I ADDL. CIVIL JUDGE & JMFC.,
HOLENARASIPURA.**