

KAHS810013002024



Presented on : 03-05-2024
Registered on : 03-05-2024

**IN THE COURT OF THE ADDL. CIVIL JUDGE &
JMFC., SAKALESHPURA.**

-.PRESENT:-

Sri. Lakshmi Narasimha R.V. B.A.L., LL.B.,
Addl. Civil Judge & JMFC., Sakaleshpura

Dated this the 05th day of June, 2024.

O.S. No.142/2024

PLAINTIFF

**: Sri. Ashuthosh Goenka
Rep by his SPA
Sri.Harsh Goenka**

V/s.

DEFENDANT

: Sri.Indrashekar and others

I.A. No. III

Plaintiff/Applicant

**: Sri. Ashuthosh Goenka
Rep by his SPA
Sri.Harsh Goenka**

V/s.

Defendants/Opponents

: Sri.Indrashekar and others

ORDERS ON APPLICATION FILED BY THE PLAINTIFF
UNDER ORDER XXXIX RULE 1 AND 2 OF C.P.C

The plaintiff has filed this application under order XXXIX Rule 1 and 2 of CPC praying this court to pass an order of an ad-interim temporary injunction restraining the defendants from interfering with the possession of the suit schedule property till the disposal of the suit.

2. In the affidavit annexed along with the application, the SPA Holder of the plaintiff has averred that he has filed the present suit for the relief of permanent injunction in respect of the suit schedule property. The suit schedule property is a government land and the plaintiff is in possession of the same since 1986-87 till day. He has paid TT to the government as per the order vide No.30/1996-97 dated 05.06.1996 from 1986-87-1995-96. Thereafter, due to government policy he has not paid. The plaintiff is

cultivating the coffee plantation in the suit schedule property. He has filed an application for regularization of unauthorized cultivation of the the suit schedule property on 06.02.2023. The government has passed the resolution to continue the tenancy for the coffee plantation.

- 3.** He has further contented that the defendants are nowhere related to the suit schedule property, are trying to interfere with the possession of the suit schedule property. The plaintiff is the permanent resident of Chennai and he is having lands and maintaining coffee plantation in and around of the suit schedule property. The defendants are trying to interfere with the possession and enjoyment of the suit schedule property. In spite of several requests, went in vain. The plaintiff has got prima-facie case and balance of convenience in his favour. If the application is not allowed, he will be put to irreparable loss and injury. Hence prayed to allow the application.

4. Upon the service of summons, the defendants have appeared before the court through their counsel and filed objections. It is their contention that, as per the plaint, the age of the plaintiff is 53 years. Thus, as on 1986, his age would be 16 years. Hence, paying the TT to the government and being in unauthorized cultivation does not arise. The plaintiff got created the documents and filed the suit. He has also got created the documents by filing application for regularization on 06.02.2023 only with an intention to grab the suit schedule property from the defendants. The plaintiff has not maintained coffee plantation in the suit schedule property. The plaintiff is the resident of Tamilnadu state. Hence Karnataka Land Revenue Act does not apply to him.

5. He has further contended that the land bearing Sy No.42, measuring 07 acres 17 guntas is the government land and out of which, the defendants are in unauthorized cultivation and possession and enjoyment of the land to an

extent of 02 acres 28 guntas by growing crops and various trees thereon. That on 19.09.1991 they have filed an application under form No.50 and thereafter form No.57 on 24.02.2023 before Tahsildar for regularization of the property in Sy No.42. Defendant No.2 is in possession of the suit schedule property. One B.B.Shivashankar had interfered with possession of the said property. As such defendant No.2 had filed a suit vide O.S.No.124/2024 and this court has also granted temporary injunction. The plaintiff being the business man from Tamilnadu is trying to grab the government land by dispossessing the defendants from the suit schedule property. If the application is allowed the defendants would put to irreparable loss and injury. Accordingly prayed to dismiss the application.

6. On basis of the application, plaint, written statement and documents on record, the following points that arise for the determination of this court.

1. Whether the plaintiff has made out prima- facie case in his favour?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff will be put to great hardship and irreparable loss if, order of temporary injunction is not granted?
4. What order?

7. Heard arguments. Perused the application, affidavit, objections and records placed before this court.

8. My finding on above points are as follows:-

Point No.1 : In the *Negative*

Point No.2 : In the *Negative*

Point No.3 : In the *Negative*

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

::REASONS::

9. **Point No.1 to 3:** Since these points are inter connected with each other, they are taken together for the

discussion in order to avoid the repetition of the facts and circumstances.

10. The plaintiff has filed the present suit for the relief of permanent injunction in respect of the suit schedule property. He has mainly contended that the suit schedule property is the government land and he is in unauthorized cultivation of the same since 1986 by paying TT. It appears from the RTC in respect of Sy No.42 of Vaddarahalli Village that the suit schedule property is the government land and as per the endorsement of Assistant Commissioner, Sakaleshpura division, no grant has been made in respect of Sy No.42. The plaintiff has produced the copy of receipt vide No.30/1996-97 dated 05.06.1996 and receipt dated 21.11.2006 for having paid the TT for the year 1986-87 to 1995-96 and 1996 to 2006. Whereas, he has not produced any documents to show that he is in possession of the suit schedule property as on the date of suit.

11. Further, the plaintiff has produced the RTC in respect of Sy No.39/6, measuring 2 acres 22 guntas of Vaddarahalli village for having purchased the same. However, he has not produced the sale deed of the same. As per column No.10 of the RTC, it is mutated vide MR No.1989-90. Thus, the question arises as to when the plaintiff has purchased the properties in the year 1989 or subsequent, and he being the permanent resident of Chennai, Tamilnadu, how he came into the possession of the suit schedule property has to be determined. Moreover, the plaintiff has not produced any documents at this stage to show that he is in possession of the suit schedule property as on the date of the suit.

12. At the time of arguments, the learned counsel for the the plaintiff has mainly relied upon the receipt for having paid the TT and and application fee dated 06.02/2023 and submitted that he is in possession of the suit schedule

property. On the other hand, the learned counsel for the defendants has relied upon the copy of survey report issued by Taluk Surveyor, Sakaleshpura dated 07.03.2024 and submitted that defendant No.2 is in possession of the suit schedule property to an extent of 2 acres 28 guntas in Sy No.42 of Vaddarahalli village, Hetthuru Hobli, Sakaleshpura. It also appears on prima-facie that defendant No.2 has filed a suit vide O.S.No.124/2024 in respect of Sy No.42, to an extent of 2 acres 28 guntas, situated at Vaddarahalli village, Hetthuru Hobli, for the relief of permanent injunction against one B.B.Shivashankara. As per the documents and admissions of the both the parties, the suit schedule property is a government land. Hence, at this stage, it appears that there is a cloud as to possession of the suit schedule property and the same has to be determined after full fledged trial.

13. At the time of arguments, the learned counsel for the plaintiff has relied upon a decision reported in 2002 (2) KCCR 1667 (Maruthi and others V/s Govind and others) and submitted that ***“It is settled position of law that a person in peaceful possession is entitled to retain his possession and in order to protect such possession, he may even use reasonable force to keep out a trespasser. A rightful owner, who has been wrongfully dispossessed of the land may retake the possession, if he can do so peacefully and without use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse of law”***. Accordingly, prayed to allow the application. The Hon’ble High Court of Karnataka in the said decision held that A rightful owner, who has been wrongfully dispossessed of the land may retake the possession, if he can do so

peacefully and without use of unreasonable force. But the the plaintiff in the case on hand, is not the rightful owner. The suit schedule property is the government land. It is granted neither the plaintiff nor the defendants. Thus, still is remained as government land. Furthermore in the said decision, The land tribunal has granted the land in favour of the persons and the same has reflected and continued to be in the revenue records. In the case on hand, it is not so. The suit schedule property has not been granted in favour of any one and no documents have been reflected the name of plaintiff. Thus, the said decision is applicable to the facts and circumstances of the present case.

14. Hence, by looking into all the facts and circumstances of the case and also the documents, at this stage, the plaintiff has failed to make out prima facie case, balance of convenience is in his favour. He has also failed to show the irreparable loss and injury if the application is not

allowed. Accordingly Point No.1 to 3 are answered in the *Negative*.

15. Point No.4:: For the above discussed reasons, this court proceeds to pass the following:

::ORDER::

Application No.3 filed by the plaintiff under order XXXIX Rule 1 and 2 of C.P.C. is hereby dismissed.

No costs.

[Dictated to the stenographer directly on computer and then corrected by me and thereafter pronounced in the open court on this the 05th day of June, 2024]

[Lakshmi Narasimha R.V.,
Addl. Civil Judge and JMFC,
Sakaleshpura.