

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE &
JMFC., HIREKERUR**

**PRESENT: Sri. Janardhana. S.K. B.A.L.,LL.B.,
Addl. Civil Judge & JMFC.,
Hirekerur.**

O.S. No.95 of 2020

DATED THIS THE 27th DAY OF JANUARY 2021

Plaintiff : Bheemappa S/o Choudappa Bogera.
(By Sri. G.V. Kulkarni – Adv.)

V/s.

Defendants : Riyaz Ahamad Bhagavan,
The Tahasildar, Hirekerur,
and three others.

(Def. No.1 & 4 by A.G.P)
(Def. No.2 & 3 by Sri. U.B. Jogihalli)

PARTIES TO I.A. No.III

**Applicant/
Plaintiff** : Bheemappa S/o Choudappa Bogera
R/o: Doodihalli Village, Tq: Hirekerur.

- V/s -

**Opponent/
Defendants** : 1. Riyaz Ahamad Bhagavan,
The Tahasildar, Hirekerur.
R/o: Hirekerur, Dist: Haveri.

2. Taluka Panchayath,
Tq: Hirekerur, Dist: Haveri.

3. The Grama Panchayath, Channalli,
Rept., by its Panchayath Development
Officer, R/o: Channalli, Tq: Hirekerur,
Dist: Haveri.

4. The Deputy Commissioner,
Haveri District.

(Sri. Janardhana. S.K.)
Addl. Civil Judge & JMFC.,
Hirekerur.

ORDERS ON I.A. No.II FILED BY THE
APPLICANT/PLAINTIFF

The plaintiff has filed this application U/o 39 Rule 1 and 2 R/w 151 of C.P.C., by seeking to restrain the defendants from illegal dispossession of him from suit schedule property by way of ad-interim temporary injunction till the disposal of the suit.

2. In pursuance to suit summons and emergent notice on application, the defendant No.1 and 4 were appeared through the learned A.G.P and filed the objections to application inter alia among various grounds.

3. I have heard the arguments of both the sides and perused the materials available on record.

4. The points that would arise for the consideration of this court are as follows:-

POINTS

- 1. Whether the applicant has made out prima faice case?**
- 2. Whether the balance of convenience is lies in favour of the applicant?**

3. Whether irreparable loss would be caused to the applicant if injunction is refused?

4. What order?

5. The findings of this court on aforesaid 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 final order for following:-

REASONS

6. Points No.1 to 3:- The applicant/plaintiff in the affidavit annexed to the application has specifically deposed that suit schedule property bearing Sy.No.25 measuring 1 acre situated at Dudihalli village, Hirekerur Taluk, Haveri District bounded:-

East by: land belongs to Suresha S/o Choudappa

Bhogera,

West by: Morarji Residential School

North by: land belongs to Hanumantappa Karegella,

South by: forest land, being unauthorizedly cultivated by him for more than 30 years, the regularization committee by order No.RD 54 L.G.P: 91 dated 05-01-1999 has allotted the suit schedule property in his favour. To that effect the Tahasildar of Hirekerur by order No.LGL:U:CR-2/7:1997-98 has issued Saguvali chit in Form-2. It is further claimed that from the date of allotment, the applicant has been cultivating the suit schedule property by growing cotton, maize and high

breed maize. It is further contended that the defendant No.1 to 3 upon the instigation of persons who are not in good terms with him and with the influence of politicians, learn to have identify the suit schedule property for the purpose of formation of sites. The Government in order to bring the persons belongs to Schedule Cast, Schedule Tribes and other back word classes to the main stream of the society and to lead their peaceful life has allotted the suit schedule property after complaining the due procedure of law as contemplated under provisions of Land Revenue Act. Such being the case, the defendants No.1 to 3 by taking advantage of their power has been making hectic efforts to dispossess him from the suit schedule property. Being apprehended by the possible dispossession by the defendants No.1 to 3, the applicant has sought for order of temporary of injunction on aforesaid grounds.

7. Per contra, the learned A.G.P in the objections has categorically contended that the Deputy Commissioner of Haveri by order LGL/ವೃ/10/2019-20 dated 28-02-2020 has reserved the 4 acres of land in Sy.No.125 out of total extent of 19 acres 8 guntas of grazing land situated at Dudihalli village, Hirekerur for the purpose allotment of sites to the persons belonging to S.C and S.T. The plaintiff/applicant having no manner of right and interest over the entire 19 acres 8 guntas of land in Sy.No.125 much less 1 acre of suit schedule property. The defendants are the owners and in possession of

entire extent of Sy.No.125. It is further contended that the regularization committee has allotted the suit schedule property in favour of the plaintiff on 05-01-1999. However, the villagers of the plaintiff by challenging the said order of grant had preferred an appeal before the Karnataka Appellate Tribunal, Bangaluru in Revision Petition No.53 of 1999, wherein the said Appellate Court by allowing appeal by order dated 30-01-2001 has canceled the order of Regularization Committee in granting the land to 36 persons in which the present applicant/plaintiff is arrayed as respondent No.36. The said order of cancellation has not been challenged by none of the parties. It is further claimed that the suit schedule property is still in possession of the Government and not in possession of plaintiff. As such, the question of defendants hectic efforts to dispossess the plaintiff from the suit schedule property does not arise at all. It is further contended that the plaintiff has not established the prima faice case and balance of convenience not lies in his favour and irreparable loss or injury will not cause to the plaintiff if the application is dismissed. The plaintiff has filed the suit with mala faide intention to stall the welfare work to be done by the Government. On afore stated grounds, the learned A.G.P has prays to dismiss the application.

8. I have perused the instant application, its accompanying affidavit, objections thereto, pleadings of both the sides including other materials made available on record

by both the sides at this stage. The plaintiff has filed the present suit against the defendants No.1 to 4 by seeking relief of permanent injunction to restrain the defendants and anybody acting under them from illegal dispossession of him from the suit schedule property by way of permanent injunction. It is the specific contention of the applicant is that he being unauthorizedly cultivated the suit schedule property to an extent of 1 acre 8 guntas in Sy.No.125 situated at Dudihalli village, Hirekerur Taluk, the regularization committee by virtue of order dated 05-01-1999 in order No.R.D 54 L.G.P-91 has allotted the suit schedule property in his favour. Subsequently, the Tahasildar of Hirekerur has said to have issued Saguvali chit in Form-2 by virtue of order No.LGL:U:CR 2/7:1997-98 and from the date of allotment he is claimed to be in lawful possession of suit schedule property by growing cotton, maize, and high breed maize in the suit schedule property.

9. The factum of allotment by way of regularization of unauthorized occupation of the suit schedule property is not in dispute as same is admitted by the defendants No.1 and 4. It is further contended that the Government has allotted the suit schedule property in order to bring the people of S.C and S.T and other back ward classes to the main stream of the society by allotting the same to the land less persons. The allotment of suit schedule property is substantiated by the Saguvali chit issued by the Tahasildar of Hirekerur dated 11-

03-1999. To that effect the applicant/plaintiff has also produced the Saguvali chit to that effect.

10. By denying the alleged hectic efforts to dispossess the plaintiff from the suit schedule property, the defendants No.1 and 4 have categorically contended that the suit schedule property still in the possession of the defendants and plaintiff/applicant is not at all in possession of same. In this regard the defendants No.1 and 4 have specifically stated that the villagers of the plaintiff were challenged the order of grant in favour of the plaintiff and other persons before the Karnataka Appellate Tribunal, Bangaluru in Revision Petition No.53 of 1999, therein the said appellate authority by allowing the appeal by order dated 30-01-2001 has pleased to set aside the order of grant made by regularization committee to which the plaintiff is also arrayed as respondent No.36. Subsequently, none of the aggrieved persons never challenged the said order of cancellation and accordingly, it is claimed that the Government is still in possession of the entire extent of 19 acres 8 guntas which includes suit schedule property in Sy.No.125.

11. In the said context, on perusal of photostat copy of orders passed by Karnataka Appellate Tribunal, Bangaluru in Revision Petition No.53/1999 is categorically discloses that by upholding the contentions of the petitioners therein who are non other than villagers of the plaintiff that Sy.No.125 along with other survey numbers in Dudihalli village being reserved

for grazing purposes has set aside the orders of Tahasildar in granting and allotting the land in Sy.No.125 and other landed properties. On further perusal of record of rights with respect to Sy.No.125 situated at Dudihalli village, the entire extent of 19 acres 8 guntas which includes the suit schedule property is in the name and in possession of the Government and reserved as Hullugavalu land. As such, aforesaid R.T.C. coupled with order of the Hon'ble Karnataka Appellate Tribunal, Bangaluru which set aside the order of Tahasildar in allotting the land in Sy.No.125 to the respondents No.2 to 36 clearly primaface revels that the Government in possession of the suit schedule property and further substantiate the fact regarding lack primaface case of the plaintiff that he is in possession of the suit schedule property and defendants are making hectic efforts to dispossess him from the suit schedule property. The applicant has not produced any ayota of documents at this stage to believe his primaface case that he is in possession of the suit schedule property even though Hon'ble Karnataka Appellate Tribunal, Bangaluru has set aside the order of Tahasildar in granting and issuing the saguvali chit in his favour with respect to suit schedule property. Even otherwise the plaintiff has not produced any substantive peace of documents to disbelive the record of rights with respect to Sy.No.125 to an extent of 19 acres 8 guntas in the name of the Government. The plaintiff has produced the photographs to substantiate his possession over the suit schedule property. However, mere photographs is not

sufficient to infer that he is in possession of suit schedule property so as to contradict the record of rights produced by the defendants No.1 and 4 which primaface establish their possession at this stage. It is pertinent to refer that neither the Tahasildar of Hirekerur nor the applicant/plaintiff who is arrayed as respondent No.36 in Revision Petition No.53 of 1999 never preferred challenging the order of set aside the allotment of Sy.No.125 including suit schedule property as contended by the plaintiff. There is no materials on record at this stage to show that the order of Karnataka Appellate Tribunal, Bangaluru in Revision Petition No.53 of 1999 has been set aside or challenged. Such being the situation the applicant/plaintiff's contention that he is still in possession of suit schedule property even though allotment was canceled by the Karnataka Appellate Tribunal, Bangaluru is to be determined during the course of trial.

12. On the other hand, on perusal of documents produced by the defendants in the form of record of rights and order of Karnataka Appellate Tribunal, Bangaluru which is not challenged so far, at this stage goes to show that more balance of convenience lies in favour of defendants and the irreparable loss or injury would caused to the defendants if the injunction is granted. Accordingly, it is clear opinion of this court is that the plaintiff has not made out primaface case and balance of convenience not lies in his favour. On the other hand, no irreparable loss or injury would be caused to the applicant if

the injunction is refused. It is pertinent to refer that observation made above while disposal of the present application if touches the merits of the case, does not come in the way of parties to establish their case during the trial and on merits of the case. Accordingly, with above observations point No.1 to 3 are answered in the negative.

13. Point No.2:- In the light of aforesaid reasons and discussions, this court is proceed to pass following:-

ORDER

The I.A. No.II filed by the plaintiff/applicant U/o 39 Rule 1 and 2 R/w 151 of C.P.C. is hereby dismissed.

In the circumstances of the case no order as to cost.

For appearance of parties and compliance of section 89 of C.P.C.

Call on 25-02-2021.

(Dictated to the Stenographer, typed by him on compute, once corrected and later initialed by me and then pronounced by me in the open court on this the 27th day of January - 2021)

**Addl. Civil Judge & JMFC.,
Hirekerur.**

(Order pronounced in the open
court vide separate order)

ORDER

The I.A. No.II filed by the plaintiff/applicant U/o 39 Rule 1 and 2 R/w 151 of C.P.C. is hereby dismissed.

In the circumstances of the case no order as to cost.

For appearance of parties and
compliance of section 89 of C.P.C.

Call on 25-02-2021.

Addl. Civil Judge & JMFC.,
Hirekerur.