

**IN THE COURT OF THE CIVIL JUDGE AND JMFC., AT
HANGAL**

Dated this the 17th day of October 2016

**Present: Sri. K.M.Puttaswamy B.Sc.,LL.B.,
Civil Judge and JMFC., Hangal.**

ORIGINAL SUIT NO. 229/2016

Plaintiff: Rudrappa Malleshappa Kodihalli, Age:
43 years, Occ: Agriculturist, R/o
Kelavarakoppa, Tq: Hangal, Dist:
Haveri.

(By Sri. B.S.Dalavai, Advocate)

- Versus -

Defendants: 1.Smt.Bhanubi W/o Mehabubsab
Hondaderi, Age: 50 years, Occ:
Household work, R/o Jallapur, Tq:
Savanur, Dist: Haveri and others.

(By Sri.K.B.Doddamani, Advocate)

PARTIES IN I.A. No.I

**Applicant/
Plaintiff** : Rudrappa Malleshappa Kodihalli.

- Versus -

**Opponent/
Defendants** : Smt.Bhanubi Hondaderi and others

ORDER ON I.A. NO.I FILED UNDER ORDER 39 RULE 1 AND
2 OF C.P.C :

The plaintiff has filed this application seeking temporary injunction restraining the defendants from interfering over the schedule property till disposal of the suit.

2. The applicant/plaintiff in his affidavit filed along the application has stated that he is the absolute owner and in peaceful possession of the suit schedule property to an extent of 1As-20Gs and originally R.S.No.111/B was measuring 84As-12Gs and out of it 45 acres is the Kharab land and remaining 39Gs-12Gs was the Kulkarni linam land and one Sri. Hanumanta Thimmaji was in possession of the said property and after his death the name of his son Sri.Ramarao Hanamantarao has been entered in the mutation as per M.R.No.43 and thereafter the said Ramarao Hanumantarao was in peaceful possession and enjoyment of the said property till his death, and after his death the name of one Janakibai has been entered in the mutation register as per M.R.No.188 who is the legal heir of said Ramarao Hanumantarao Desai and thereafter in the partition out of 39As-12Gs of land have been divided except 9As-1Gs. In the meanwhile one Siddappa Rudrappa Mattihalli, Gouravva W/o Haklappa Kodihalli had apply to the Land Tribunal for grant of 5As-10Gs and 2 acres each who were in possession of the said property and

accordingly their applications were allowed and granted the above said extents to the Siddappa Rudrappa Mattihalli, Gouravva W/o Haklappa Kodihalli. Further it is submitted that one Mahadevappa Neelappa Kuradur had also applied to grant of 2 acres of the land to the Land Tribunal but it was rejected and as such the original owners were in possession of 32As-2Gs of the above said property.

3. Further it is submitted that the plaintiff has purchased the suit schedule property from its previous owner Smt. Sudhabai W/o Raghavendra Upadhya through a registered sale deed on 27-05-2013 and since then he is in peaceful possession and enjoyment of the schedule property as an absolute owner. Though the defendants are not all having any right, title or interest over the suit schedule property, inspite of it they are trying to interfere over the suit schedule property and trying to interference for cultivation of the suit schedule property and accordingly the plaintiff has constrained to file application seeking the temporary injunction till disposal of the suit.

4. On the other hand the defendants have filed their detailed written statement and denied the entire case of the plaintiff and they have adopted the contents of written statement as objection to the present application and accordingly they have contended that the application of the

plaintiff as well as the present suit are liable to be dismissed. The defendants specifically contended that, the suit of the plaintiff is not maintainable as he has not made necessary parties to the suit as contended in their written statement. Further it is contended that, R.S.No.112/b/3 measuring 1A-03G and R.S.No.112/A1 measuring 3-00 acre were the tenanted properties of the family of the defendants and its original owners were Gopal Rao Shan Ram Desai and Mainabai W/o Murahari Rao Desai respectively. One Sri Allisab Hussainsab Agasar @ Hondaderi and Peersab Hussainsab Agasar and others have filed Form No.7 claiming tenancy rights and as such the Land Tribunal granted the occupancy right in their favor.

5. Further it is contended that, the defendants have divided these properties among the sharers and the said R.S.No.112/B/3 ad 112/A/1 are having common boundaries and the defendants are in possession of the same since long back and the plaintiff has mentioned the wrong block numbers to the boundaries of the schedule property and the plaintiff has created the sale deed and the land of said R.S.No.111 is virtually a hill peak and the vendors of the plaintiff herself does not know where exactly their property is situate and on the guise of the false sale deed, the plaintiff himself is trying to interfere over the above said R.S.No.112/B/3 ad 112/A/1. Further it is contended that the defendants have raised Maize

crop in their property by spending huge amount and the plaintiff is not entitled to any relief much less the relief of injunction and the plaintiff has not made out prima facie case and hence balance of convenience is also not lies in his favor and accordingly they pray to dismiss the application.

6. Heard the arguments and perused the entire materials available on records. The plaintiff has relied upon the citation reported in *AIR 2014 Kar 140 between A.N.Nagarajaiah V/s B.Aravind and others and ILR 2004 Kar 1074 between Naganna V/s Shivanna.*

7. Now the points that arise for my consideration are as follows:

- 1) ***Whether the plaintiff has made out prima-facie case?***
- 2) ***Whether the balance of convenience lies in favour of plaintiff?***
- 3) ***Whether the irreparable loss will be caused to the plaintiff, if the T.I is refused?***
- 4) ***What order?***

8. My findings on the above points are as follows:

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : In the Affirmative

Point No.4 : As per the final order

for the following:

REASONS :

9. **Point No.1 to 3** : In order to avoid repetition of facts, I have taken these points together for common discussion. I have perused the plaint averments, written statement averments and the documents produced on behalf of both the parties. It is the specific case of the plaintiff that he is the absolute owner and in possession of the suit schedule property and he purchased the same from its previous owner on 27-05-2013 and since then he is in possession of the suit schedule property and the defendants are trying to interfere over the suit schedule property. On the other hand it is the specific case of the defendants that the plaintiff is not the absolute owner and in possession of the suit schedule property and he created the sale deed and he himself is trying to interfere over the properties of defendants bearing R.S.No.112/B/3 ad 112/A/1 with an ulterior intention to disposes the defendants from the above said properties and accordingly they pray to dismiss the application. Both the plaintiff and defendants have produced revenue documents on their behalf and also they have produced affidavits of some of the persons who are said to be the land

owners abutting to the suit schedule property. On perusal of the documents produced by both the parties, it is clearly noticed that- the defendants are in possession of the above said R.S.No. 112/B/3 ad 112/A/1 and the plaintiff is in possession of the schedule property. The plaintiff has produced the original sale deed dated 27-05-2013 and on perusal of the same it is noticed that he is the absolute owner of the schedule property and accordingly RTC also changed in his name. In pursuance of the said sale deed mutation is also entered in the name of the plaintiff. As such at this juncture the plaintiff has established that he has got a prima facie case in his favour. Even in the citation produced by the plaintiff, the Hon'ble High Court of Karnataka has clearly held that the recitals of sale deed itself reveals that the plaintiff is in possession of the suit schedule property and in the said sale deed itself it has been stated that the possession of the schedule property has been handed over to the plaintiff. The defendants have produced so many documents in this case, but they have not produced a single document to show that the defendants are in possession of R.S.No.111/B of suit schedule property. The contention of the defendants at this juncture itself goes to show that they are trying to interfere over the suit schedule property. Whether the schedule property is in existence or not is a matter of trial and at this juncture it cannot be looked into. As such on perusal of the entire case of both the parties it is clearly established that

at this juncture the plaintiff is in possession of the suit schedule property and as such no hardship or prejudice would be caused to the defendants if temporary injunction is granted in favor of the plaintiff and accordingly the plaintiff has made out prima facie and obviously the balance of convenience lies in his favor and hence I answer the above points No.1 to 3 in the Affirmative.

10. **Point No.4:** In view of above findings and discussions, I proceed to pass the following.

ORDER:

✓. I.A. No.I filed under Order 39 Rule 1 and 2 of C.P.C by the plaintiff is hereby allowed with cost.

✓. Defendants are hereby restrained from interfering over the suit schedule property till the disposal of the suit.

(Dictated to the stenographer and got typed by him, corrected and initialed by me and then pronounced by me in the open court on this the 17th day of October 2016.)

(K.M.PUTTASWAMY)
Civil Judge and JMFC.,
Hangal.