

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

: PRESENT :

Smt.Fakirawwa Kelageri, B.A.,LL.B.,
Civil Judge and JMFC., Hangal.

ORIGINAL SUIT NO. 157/2018
Dated this the 11th day of November 2019

Plaintiffs: Smt.Shantavva W/o Basavantappa
Lamani, Age: 30 years, Occ:
Household work, R/o Malapur, Tq:
Hangal, Dist: Haveri.

(By Sri.C.P.J., Advocate)

- Versus -

Defendants: Sri.Umesh Shankrappa Lamani, Age:
35 years, Occ: Military Police, R/o
Malapur, Tq: Hangal, Dist: Haveri and
others.

(By Sri.M.A.S, Advocate)

PARTIES IN I.A. No.I

**Applicant/
Pltff.** : Smt.Shantavva W/o Basavantappa
Lamani.

- Versus -

**Opponent/
Deft.No.1** : Sri.Umesh Shankrappa Lamani and
others.

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

The plaintiff/applicant has filed I.A.No.I U/Order 39 Rule 1 and 2 of CPC seeking the relief of temporary injunction against the defendants restraining them from interfering or obstructing in the peaceful possession and enjoyment of suit property mentioned in the hand sketch map by letters CDEFG in any manner till disposal of the suit.

2. The applicant/plaintiff sworn to an affidavit in support of her application and submitted that, the plaintiff had filed this suit seeking the relief of permanent injunction restraining the defendants from obstructing over the suit property which is shown in the hand sketch map by letters CDEFG. She further submitted that, the suit property is the property of her husband and the husband of plaintiff has divided joint family property and the suit property has fallen to the share of husband of plaintiff, the the husband of plaintiff has relinquished the suit property in favour of plaintiff. Afterwards the plaintiff is in possession of suit property since from her ancestors till today without any obstructions.

3. Further plaintiff submitted that, there was a old mud house in the suit property and it was in dilapidated condition, the plaintiff had applied for grant of house to panchayat of Kelavarakoppa village. The said panchayat had allotted the house to plaintiff under the Rajeev Gandhi Grammeen Vasati Yojene and the plaintiff is constructing the said house towards

Western side of suit property by leaving open space towards Eastern side of suit property. The said open space is using by the plaintiff for agricultural purpose and the plaintiff left a open space for constructing a shed towards Eastern side of house and for cowshed and had put haystack in the said open space and the said house erected up to half portion and the plaintiff and the cows, bullocks are coming to the South road from Eastern area and the plaintiff is using the said space for going to her backyard with bullock card and the plaintiff is putting the red soil in the suit property to enjoy the same.

4. Further the plaintiff submitted that, she is absolute owner and in peaceful possession of the suit property which is shown as ABCD in the hand sketch map and the plaintiff is using the open space which is shown as CDEFG in the hand sketch map towards East for going to her backyard with bullock cart and cows. The defendants were using the road to reach their house towards West which is shown as ABGKHNML in the hand sketch map and they are using the same since from 50-60 years. Now the defendants are trying to obstruct the possession of Eastern open space in the suit property as mentioned in the hand sketch map by letters CDEFG. In this regard the plaintiff has complained to the panchayat authorities. But the panchayat has not taken any action against the defendants. Hence prayed for passing an order of exparte Ad-inerim temporary injunction restraining the defendants from obstructing in the plaintiff's peaceful possession and enjoyment of the suit property till disposal of the suit.

5. On the other hand the defendants have filed objections to the said application. In their objection they contended that, the plaintiff has not stated proper description of the suit property in the schedule annexed to the plaint and the plaintiff has not made out any grounds to the suit. So the plaintiff has not entitle for any reliefs as prayed in the prayer column of plaint. Further the defendants contended that, the suit property bearing VPC No.118 of Mallapur village which is mentioned by letters in the hand sketch map produced by the plaintiff along with the plaint by letters ABGFEA is belongs to Darga Hazarath Syed Suleman Badasha Khadri at Mallapur village situated in Kelavarakoppa village panchayat in its bearing VPC No.118 measuring 35 x 40 ft of Mallapur village.

6. The said suit is belongs to Hazarath Syed Suleman Badasha Khadri which is situated in Kelavakoppa village panchayat limits bounded by towards East: 8 ft open space road reaching to the house of defendants and house of Basavantappa S/o Bheemappa Lamani, towards West: open space of Gangappa Yenkappa Lamani, towards North: Open space and house of plaintiff and towards South: Panchayat road. Further the defendants contended that, the villagers of Mallapur village and other villagers requested the authorities of Gram Panchayat to grant land in Gaonthana of Mallapur village. As per the request of the villagers, the VPC No.118 of Mallapur village had granted in the name of Hazarath Syed Suleman Badasha Khadri and resolution had passed and accordingly the name of

Hazarath Syed Suleman Badasha Khadri had mutated in the year 1990-91 in respect of suit property.

7. Further contended that, all devotees and peoples of Mallapur village constituted a Darga Committee and sent for registration and approval in the name of "Shri.Hazarath Syed Suleman Badasha Khadri Uruf Dud Peeran Committee" to the Karnataka Board of Wakfs, Bangaluru on 16-06-2003 along with registration of said Darga in its register. The Karnataka State Board of Wakf had issued a public notice on 05-09-2003 calling for any objections from public. Then as there were no objections were filed by any one for the said registration, afterwards the certificate of registration had issued in its No.KSBW/REG/213/HVR/2003-04/901 dated 06-12-2003 by the Chief Executive Officer of the Karnataka State Board of Wakfs.

8. This being the fact, the husband of plaintiff was obstructing peaceful possession and enjoyment of the said Darga. The plaintiff had forged the records as VPC No.118/A and VPC No.118/B of Mallapur village. The husband of plaintiff has transferred his title in respect of suit property in favour of plaintiff in VPC No.118/A and got sanctioned Rs.1,64,800/- for construction of house in the suit property. There is no such property as VPC No.118/B in Mallapur village. The plaintiff has no any right, title or interest over the suit property. The Karnataka State Board of Wakf has absolute title over the suit

property since 2003 till today. On these grounds it is requested the court to dismiss the application filed by the plaintiff.

9. Heard both the counsels.

10. Upon hearing the arguments and on perusal of materials placed on record the following points that would arise for consideration:

- 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?*

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

Point No.1 to 3 : In the Affirmative

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

REASONS:

12. **Point No.1 to 3:** Since these points are interlinked with each other, in order to avoid repetition, they are taken together for common discussion as under:

13. It is undisputedly the suit property is originally belongs to Gram Panchayat, Kelavarakoppa village. In order to show prima-facie case, the plaintiff has produced extract of

bearing VPC No.118/A, attested copy of work order, copy of photo, three extracts bearing VPC No.118/A, copy of certificate issued by Gram Panchayat, Kelavarakoppa village, Vardi issued by Gram Panchayat, Kelavarakoppa, acknowledgement issued by Adur PS, two copies of general receipt and affidavit of Motleppa Hemalappa Lamani, copy of general information issued by Kannada Primary School, Malapur village.

14. In order to prove their contention the defendants have produced certified copy of plaint and order sheet in KWT/HVR/SR/No.10/18 which filed before Karnataka Wakf Tribunal Balagavi, extract of VPC No.118 for the year 2015-16, extract of VPC No.118/A, 118/B, 118/A, copy of certificate issued by Gram Panchayat, Kelavarakoppa, copy of tax register issued by Gram Panchayat, Kelavarakoppa, certificate of registration issued by District Wakf Officer, Haveri, copy of certificate issued by Gram Panchayat, Kelavarakoppa, another copy of certificate issued by Gram Panchayat, Kelavarakoppa, extract of VPC No.5/B/2, certified copy of mortgage deed issued by Sub-Registrar, Hangal, encumbrance certificate in respect of VPC No.5/B/2, copy of certificate of registration issued by Karnataka State Board of Wakf.

15. On perusal of records produced by the plaintiff, it could be seen that after the death of husband of plaintiff the name of plaintiff entered to property of VPC No.118/A. On perusal of records produced by the defendants the suit property bearing No.118 of Mallapur village as mentioned in the hand

sketch map by letters ABGF EA is grant in the name of Hazarath Syed Suleman Badasha Khadri and resolution had passed and accordingly the name of Hazarath Syed Suleman Badasha Khadri has been entered in the year 1990-91. Further records reveals that, the the Darga Committee was sent for registration and approval in the name of Hazarath Syed Suleman Badasha Khadri Urus Dud-Peeran Committee to the Karnataka State Board of Wakf. The said Wakf Board issued certificate of registration No.KSBW/REG/263/HVR/2003-04/901 dated 06-04-2003 by the Chief Executive Officer of Karnataka State Board of Wakf. But the defendants have not produced any documents in respect of Darga Committee which is registered or not as per law.

16. Admittedly the property No.118 of Kelavarakoppa village is Government property. The suit property came to the plaintiff from her husband. The plaintiff is constructing the said house towards Western side of the suit property by leaving open space towards Eastern side of the suit property and the said open space is using by the plaintiff for agricultural purpose and the plaintiff has leaved open space for constructing shed towards Eastern side the house and for putting haystack.

17. The defendants have taken specific contention that, there is no existence property therein as mentioned in the plaint. Whether the suit property is ancestral property of husband of plaintiff or not as pleaded in the plaint. Whether the suit property VPC No.118 of Kelavarakoppa village had granted

by the Government by following due procedure of law to Hazarath Syed Suleman Badasha Khadri or not? These are matter of trial and it requires full-pledged trial. The documents produced by the plaintiff itself indicates that, the plaintiff is in possession and enjoyment of the suit property as on the date of filing of suit. But either the plaintiff or defendants have not produced any documents with regard to exact measurement of suit property. Whether the suit property is the property of her husband and the husband of plaintiff has divided joint family property and the suit property has fallen to the share of husband of plaintiff or not and whether the said suit is belongs to Hazarath Syed Suleman Badasha Khadri which is situated in Kelavakoppa village or not and therein suit property is exist or not ? It is matter of trial and it required full pledged trial.

18. On perusal of photo-state copy, it discloses that, the plaintiff constructed the building over the suit property and it is almost completed. Since the construction is going on and plaintiff has already invested huge amount, at this stage, if construction is stopped, it is plaintiff who will be put to irreparable loss, hardship and injury. As stated above, if the defendants succeeded in the above suit, the defendants may demolish the building which is constructed by the plaintiff in the disputed property. Hence the plaintiff has made out prima facie case.

19. Further if injunction as prayed by the plaintiff is not granted, the plaintiff will be put to hardship. On the other hand

no hardship and injury will be caused to the defendants if temporary injunction as prayed is granted. Hence it is necessary to restrain the defendants from interfering or obstructing in the peaceful possession and enjoyment of the suit property till disposal of the suit. Hence I answer point No.1 to 3 in the Affirmative.

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

ORDER

IA-I filed by the plaintiff U/order 39 rule 1 and 2 of CPC is hereby allowed.

The defendants are hereby restrained from interfering or obstructing in the plaintiff's peaceful possession and enjoyment of suit schedule property bearing VPC No.118/A i.e., half constructed house and open space measuring East-West: 40 ft, North-South: 52 ft as shown in hand sketch by letters CDEFG, till disposal of the suit.

No order as to cost.

For compliance U/Sec.89 of CPC by
07-01-2020.

(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 11th day of November 2019.)

(Fakirawwa Kelageri)
Civil Judge and JMFC.,
Hangal.

Order pronounced in Open court as under
(vide separate Order):

ORDER

IA-I filed by the plaintiff U/order 39
rule 1 and 2 of CPC is hereby allowed.

The defendants are hereby restrained
from interfering or obstructing in the
plaintiff's peaceful possession and
enjoyment of suit schedule property
bearing VPC No.118/A i.e., half
constructed house and open space
measuring East-West: 40 ft, North-South:

52 ft as shown in hand sketch by letters CDEFG, till disposal of the suit.

No order as to cost.

For compliance U/Sec.89 of CPC by 07-01-2020.

(FAKIRAWWA KELAGERI)
Civil Judge and JMFC.,
Hangal.