

**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 11th DAY OF JANUARY 2021

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

Defendants : Riyaz Ahamad Bhagavan,
The Tahasildar, Hirekeur,
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.I

**Applicant/
Plaintiff** : Bheemappa S/o Choudappa Bogera.
- V/s -

**Opponents/
Defendants** : 1. Riyaz Ahamad Bhagavan,
The Tahasildar, Hirekeur,
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.I FILED BY THE PLAINTIFF

The plaintiff has filed the present application U/Sec. 80(2) of C.P.C., by seeking to leave of court to institute the suit without issuing notice as contemplated U/s 80(1) of C.P.C., to the defendants.

2. The application is resisted by the learned A.G.P., by filing memo wherein it is prayed to treat the contents of written statement as objections to the application.

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 plaintiff has made out the immediate or urgent reliefs to be obtained in the suit without issue of notice to the defendants as contemplated U/Sec.81(1) of C.P.C and made sufficient grounds to grant the leave?

2. What order?

5. The findings of this court on aforesaid points are as follows:-

Point No.1 : In the affirmative.

Point No.2 : As per final order for following:-

REASONS

6. Points No.1:- The applicant/plaintiff in his affidavit annexed to the the application has deposed that he has filed the suit against the defendants No.1 to 3 for the relief of permanent injunction; the suit schedule property had granted to the landless persons belonging to Schedule Cast, Schedule Tribes and other back word classes in order to bring them main stream of the society after following due procedure and by constituting land grant committee. The defendants have been making hectic efforts to disposes him from suit schedule property illegally and thereby claimed that in order to obtain immediate order of injunction to avoid the illegal act of the defendants which prevented him from issue of two months prior notice under section 80(1) of Cr.P.C. On afore stated grounds, the plaintiff has prays to allow the application by seeking leave of court to institute the suit without issue of statutory notice.

7. The learned A.G.P for the defendants No.1 and 4 has filed the memo, wherein he has prays to treat the contents of the written statement as objections to present application. In the written statement, the defendant No.1 by denying the entire case of the plaintiff in toto with regard to facts that the plaintiff's possession over the suit schedule property, has specifically contended that it is mandatory for the plaintiff to issue the notice as contemplated U/s 80(1) of the C.P.C. as the defendants are the government servants. The plaintiff has filed

the present application without sufficient grounds and even though there is no urgency in filing the suit and thereby prayed to direct the plaintiff to file the suit after compliance of section 80(1) of the C.P.C. On aforesaid grounds, it is prayed to dismiss the application with cost.

8. I have perused the application, its accompanying affidavit, contents of written statement. The plaintiff has filed the present suit against the defendants for the relief of permanent injunction to restrain them or anybody acting under them from illegal dispossession of him from the suit schedule property. It is the main contention of the plaintiff is that himself having unauthorizedly cultivated the suit schedule property bearing Sy.No.125 to an extent of 1 acre situated at Dudihalli Village for more than 30 years, the regularization committee had granted the suit schedule property by virtue of order No.RD 54 LGP:91 dated 05-01-1999. Subsequently, by virtue of order No.LGL:U:CR 2/7:1997-98 dated 11-03-1999, the defendant No.1, the Tahasildar of Hirekerur had also issued Salguvali Chit to that effect and the plaintiff claimed to have been in possession of the suit schedule property by growing crops like cotton, jowar. Such being the state of affairs, the applicant claimed to have learnt that the defendants No.1 to 3 with the instigation of the persons who are not in good terms with him and with political motive have been identified the suit schedule property to from the sites thereon for the distribution of same and being the

plaintiff belongs to oppressed class and not possessing any agricultural property, and in order to bring the persons belongs to schedule cast, schedule tribe and other backward classes to main stream in the society, the government said to has allotted the suit schedule property through the Land Grant committee. Such being the facts, the defendants by taking the advantage of their power are trying to disposes the plaintiff which constrained him to file the present suit for permanent injunction.

9. On perusal of the afore said averred pleading of facts and supportive affidavit contents it is satisfied that the defendants were intended to dispossess the plaintiff illegally which said to had granted to the him by the defendant No.1 authority through regularization unauthorized occupancy over the suit schedule property. Such being the facts, if the defendants are successful in dispossessing plaintiff from the suit schedule property, the very purpose of the filing the suit which is for mere permanent injunction to restrain the defendants or any body acting from illegal dispossession of the plaintiffs from the suit schedule property, would be defeated by delay in the event the plaintiff is directed to institute the suit after issue of two months prior notice to the defendants and also results in the multiplicity of the proceedings. The learned A.G.P., except stating that the plaintiff has ought to have issued the notice as contemplated U/s 80(1) of the C.P.C., has not made out any other reasonable grounds and

circumstances that the plaintiff has every opportunity to comply the statutory notice. Accordingly, the opinion of this court is that it is a fit case to exempt the notice as contemplated U/s 80(1) to the defendants and permit the plaintiff to proceed with the suit. Accordingly, this court has answered the point No.1 in the affirmative.

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

ORDER

The plaintiff is hereby exempted from issue of statutory notice as contemplated under section 80(1) of C.P.C., to the defendants and there is no reason to return the plaint for presentation after complaining the provisions of Section 80(1) of C.P.C.

(Dictated to the Stenographer, typed by him, once corrected and later initialed by me and then pronounced by me in the open court on this the 11th day of January - 2021)

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