

IN THE COURT OF CIVIL JUDGE & JMFC., SHIGGAON.

: PRESENT:

MISS.NASRAT MUKHTAR AHMED KHAN, B.A. LLB, LL.M
CIVIL JUDGE & JMFC., SHIGGAON.

ORIGINAL SUIT No.150/2022

DATED ON THIS THE 16th DAY OF JANUARY-2023

Plaintiff : Smt. Kasthurevva w/o Muddappa Ranathur
Age: 48 years, Occ: Household work
R/o Kalyana village, Tq: Shiggaon,
Dist: Haveri,

[By Sri. G. Basavaraj., Advocate]

V/s

Defendants: Babanna s/o Mylarappa Bosale
Age: 58 years, Occ: Agriculture
R/o Kalyana village, Tq: Shiggaon,
Dist: Haveri,

[By Sri. R.M.H, Advocate]

PARTIES TO I.A.No.I

Applicants : Smt. Kasthurevva w/o Muddappa Ranathur
(Plaintiff) Age: 48 years, Occ: Household work
R/o Kalyana village, Tq: Shiggaon,
Dist: Haveri

V/s

Opponents : Babanna s/o Mylarappa Bosale
(Defendant) Age: 58 years, Occ: Agriculture
R/o Kalyana village, Tq: Shiggaon,
Dist: Haveri

ORDER ON I. A. No.I

Plaintiff has filed IA.No.I under Order XXXIX Rule 1 and 2 r/w Section 151 of CPC praying this Court to restrain the defendant and anybody claiming under him, from interfering with the peaceful possession and enjoyment of the suit schedule property.

2. The plaintiff has filed an affidavit accompanying the said IA averring that, the suit property is in the ownership and possession of the plaintiff continuously without anybody's obstruction and the suit property originally belonged to plaintiff's husband by name Muddappa Nagappa Ranathur and he was granted with the site through Hakku Patra under Vasati Yojana and from then he was in ownership and possession of the suit property and thereafter, Muddappa Nagappa Ranathur relinquished the said property in favor of plaintiff legally and she became the owner in possession of the suit property and

regarding this ,there was change in Khata with respect to suit property in the concerned gram panchayath and by this means the plaintiff is in ownership and possession of the suit property. The defendant in collusion with panchayath authorities illegally entered his name in Gavthana Government R.S.No 2 in the cultivator's column towards northern boundaries of the plaintiff's suit property in Bada Gram Panchayat and misusing the same, from the month of May-2022 the defendant is interfering with the plaintiff's peaceful possession and enjoyment of the suit property .Though he and the village elders told the defendant that , the said conduct is not proper , the defendant did not heed to the request of the defendant and threatened the interference over the suit property and thereby, pray the Court to allow IA.No.I.

3. The defendant has filed objection to said IA.No.I interalia contending that, said application is not maintainable in the eyes of law. The plaintiff in his plaint has skipped the defendant's property no117 tiled house and backyard property towards northern side of the suit property and by skipping the said property , he has shown the property of Khyroonbi towards Northern side which is lying on the southern side of the defendant's property but, towards North of the suit property there is Property No.117 tiled house and backyard of the

defendant . The said property was previously Gavthana property and it became panchayat property and then Kundur Mandal Panchayat authorities passed resolution No.8 as per matter No.6(7) in the year 1993 and granted said property to the defendant and the defendant has built house therein and residing with the family and his name is entered in the cultivators column and from the date of grant, he has been in possession and enjoyment of the said property without anybody's obstruction. After three years of approval of the said property to the defendant, the plaintiff was granted with the suit property towards North of the defendant's property in the year 1996 and plaintiff though is knowing the fact that, defendant's property is towards North of the suit property and though plaintiff know that , the defendant's property is of 40 x 30 measurement has filed this suit. The defendant has recently put up Zinc Sheet shed temporarily in his property, as his house fell due to the rain and is residing therein and he is been approved with the house by the government and feeling jealous of same, the present application is filed and hence, pray the Court to reject the IA.No.I of the plaintiff.

4. Heard both and perused the materials on record.

5. On perusal of the materials on record, following points arise for my consideration :

POINTS

1. Whether the plaintiff has made out prima-facie case?
2. Whether the plaintiff further shows that the balance of convenience lies in her favour?
3. Whether the plaintiff further shows that irreparable injury will be caused to her if the said IA is not allowed?
4. What order?

6. On perusal of materials on record and after hearing the arguments canvassed by both, my findings for the above points are hereunder:-

Points No.1 : In the Negative

Points No.2 : In the Negative

Points No.3 : In the Negative

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

REASONS

7. Points No.1 to 3:- As these points are interlinked with each other they are taken together for common consideration.

It is the case of the plaintiff that, suit property originally belonged to the plaintiff's husband i.e., Muddappa Nagappa

Ranathur and he got the said property by government under Vasati Yojana through Hakku Patra and thereafter ,he was in ownership and possession of the same and to substantiate the same, plaintiff has produced said Hakku Patra but, in the said Hakku Patra property number is shown as Site No 1 and not the suit property number i.e Gram Panchayat No.122 and though Akarne Yadi copy of suit property no.122 is produced reflecting name of Muddappa Nagappa Ranathur ,the said Akarne Yadi do not reflect the measurement and boundaries as given in the plaint and do not reflect the fact of said Hakku Patra showing site No.1 is the very property shown in Akarne Yadi of said Muddappa Nagappa Ranathur. Further plaintiff has produced tax paid receipt of property no.122 reflecting name of Muddappa but, again the said document do not reflect the measurement and boundaries of the suit property and do not reflect the fact that, it is the same property reflected in Hakku Patra. Further the version of plaintiff is that, plaintiff's husband has relinquished the suit property in the name of plaintiff but, title document is not produced to show the fact that, suit described property only was given to the plaintiff and though panchayat document , Akarne Yadis of property no.122 reflect the name of Muddappa been rounded off and name of the plaintiff been entered and tax paid receipts produced reflects the name of plaintiff for suit property no.122 ,the said documents do not

disclose the fact that, suit described property only is of the plaintiff.

8. The defendant has not denied the ownership of the plaintiff over the suit property no.122 and further defendant is not claiming any right over the suit property no.122 but, the contents of the defendant is that, towards North of the suit property is the defendant's property no.117 and his property is not been shown towards northern boundary of the suit property and property of one Khyroonbi is shown who is towards South of the defendant's property. Plaintiff has not produced any document at this juncture to show that, the boundaries given by her for the suit property are correct boundaries and that, the Northern boundary of the suit property shown in the plaint is the correct boundary and no property of defendant lies therein in fact, plaintiff herself has stated in the affidavit that, the defendant in collusion with panchayath authorities illegally entered his name in Gavthana Government R.S.No 2 in the cultivator's column towards northern boundaries of the plaintiff's suit property in Bada Gram Panchayat and the defendant has also produced Akarne yadi, Resolution and Tax paid receipts of the Property No.112 reflecting name of the defendant and plaintiffs has not produced any document at this juncture to show that, said entry of the defendant's name in cultivator's

column towards north of the plaintiff's property is illegal. Though Hakku Patra produced by the plaintiff reflects Northern boundaries as Gavthana and Khyroonbi house, it can be seen that, the said Hakku Patra is of site property no.1 and not the property no.122 and there is no document produced at this juncture to show that, said very site no 1 shown in the Hakku Patra was given the suit property number and hence, though plaintiff has averred that, the defendant is interfering in the possession of the suit property and has produced photographs, CD, NC 50/2022 and endorsement in this regard, as there is dispute regarding the suit property boundaries and no document is produced at this juncture to reflect that ,the boundaries given in the plaint are the correct boundaries , the plaintiff is not entitled for the said I.A relief . Though the defendant has submitted case citations i.e ***Nirmala w/o C.S.Srinivasa v/s Sri Naveen Chhaggar s/o Mangilal AIR 2007 Kant 40*** with due respect to it , same is not applicable to the present facts at hand as in the said case it is stated that, the general proposition is well settled that a plaintiff not in possession is not entitled to the relief without claiming recovery of possession and said aspect is not the issue of present case . Further the defendant has submitted case citation i.e ***M/s Patel Enterprises v/s M.P Ahuja I.L.R 1992 Kar 3772*** wherein it is said that, Court itself may

act upon relevant evidence produced clinching the issue –If material produced disputed , matter to be remitted for consideration . The defendant has not stated in the objection specifically as to which material produced is disputed in order to apply the said case citation to the present case at hand and hence, with due respect to it , it cannot be made applicable to the present case at hand . However the discussion made above shows that , plaintiff has failed to show prima facie case, balance of convenience and that irreparable injury will be caused to the plaintiff if the said application is rejected for the reasons stated above .Hence , Point No.1 to 3 are answered in Negative.

9. Point No.4 :- In view of the discussion made above, I proceed to pass the following:

ORDER

*IA.No.I filed by the plaintiff under Order XXXIX
Rule 1 and 2 r/w Section 151 of Civil Procedure Code
is hereby rejected with cost of Rs.200/-*

sd/-
(NASRAT MUKHTAR AHMED KHAN)
CIVIL JUDGE & JMFC.,
SHIGGAON.