

IN THE COURT OF CIVIL JUDGE AT CHITTAPUR

**Present: Sri.Prakash Arjun Banasode, B.A. LL.B.,
Civil Judge & JMFC.,
CHITTAPUR.**

Original Suit No. 66/2016

Dated: 28th Day of April 2017

Plaintiff : Shankramma W/o. Late Iranna Police Patil.

// V/s //

Defendant/s: 1. Shekappa S/o. Gopal and Another.

I.A.No.I

Petitioner/s: Shankramma W/o. Late Iranna Police Patil.

(Plaintiff)

// V/s //

Respondent/s: Shankramma W/o. Late Iranna Police Patil.

(Defendants)

**-:: ORDER ON I.A.No.I U/o 39 Rule 1 & 2 of CPC FILED
BY THE PLAINTIFF/ PETITIONER::-**

1. This is an application U/o 39 Rule 1 & 2 of CPC filed by the plaintiff/petitioner for seeking ad-interim exparte temporary injunction order against the defendants restraining them, their agents, servants or any other persons on their behalf from taking up construction of any type in the suit land bearing Sy.No.1/2 measuring 10 guntas situated at Banahatti village, Tq: Chittapur till the disposal of the suit in the interest of justice and equity.

2. The plaintiff/petitioner has contended in her annexed affidavit in support of I.A.No.I that, she is the owner and possessor of the suit land. That the suit land is an ancestral property of plaintiff and presently standing in the name of plaintiff. That earlier it was standing in the name of Shadashivappa S/o. Dodda Mallangouda. That above said Shadashivappa expired on 12.05.1999 unmarried issue less. Husband of the plaintiff Iranna and above said Shadashivappa were cousin brothers i.e. their fathers were real brothers among themselves. That since Iranna expired before Shadashivappa, after the death of Sadashivappa, the suit land was mutated in the name of plaintiff it being her ancestral property and since then she is owner and in possession of the suit land. The defendants are in no way concerned with the suit land or the family of the plaintiff. That suit land is just adjoining village Banahatti and so in the nearby lands of suit land, the villagers have constructed the houses. Taking the advantage of this fact, defendants having no any right or title in the suit land being rich and influential persons having political support are trying to take up the construction in the suit land without the permission of the plaintiff. The defendants are started taking up the construction of their houses in suit land highhandedly by threatening the plaintiffs wife dire consequences if she take any action against them. When the plaintiff went and asked them to stop the work, as the suit land belonged to her and they could not make any construction without her

permission, but defendants have not given any heed to her request thinking that she is widow lady having no any male support. Plaintiff made complaint in the police station and also concerned panchayat regarding the illegal activities of the defendant but they have also not taken any action against the defendants. Hence, plaintiff has left with no alternative but to knock the doors of the Hon'ble Court to seek redressal by filing the suit for declaration, perpetual injunction and mandatory injunction. The defendants are influential persons and they are highhandedly taking up the construction and so if they are not restrained by granting exparte injunction, they will complete the construction in which case plaintiff will be put to irreparable loss and injury and it will lead to multiplicity of litigation. Hence, this IA No.1. Therefore, the petitioner/plaintiff prayed to allow the application.

3. Per contra, the defendants have filed memo stating that the contents of written statement may be consider as objection to the IA No.1. The contents of written statement of defendants No.1 and 2 are as under. It is denied that the plaintiff is the owner and possessor of the suit land but it is true that suit land is the ancestral property of plaintiff. It is denied that suit property was standing in the name of plaintiff. It is submitted that the suit land is standing in the name of one Sadashivappa s/o. Dodda Mallannagouds @ Mallappa since 1954-55 till date. It is true that the said

Sadashivappa was expired on 12.05.1999 unmarried and issue less. It is also true that the husband of plaintiff Eranna and said Sadashivappa were cousin brothers i.e. their fathers were real brothers among themselves. It is denied that Eranna expired before Sadashivappa and after the death of Sadashivappa, the suit land was mutated in the name of plaintiff. It is denied that the defendants are no way concerned to the suit land. It is true that the suit land is just adjoining to the village Banahatti and so near by lands of the suit land, the villagers constructed the houses. It is denied that taking advantage of this fact defendants having no any right or title in the suit land being rich and influential persons having political support are trying to take up the constructions in the suit land without permission of the plaintiff by threatening her. It is denied that plaintiff made complaint against the defendants before the police and concerned panchayat.

4. **Further Plea:** It is submitted that the plaintiff's father-in-law, Sanna Mallappagouda, was youngest of the four real brothers, who were Dodmallappagouda, Mallappagouda, Bhimannagouda and Sanna Mallappagouda who are all sons of Gurusiddappagouda. so the pedigree tree starts from Gurusiddappagouda. It is to submit that the suit property belonged to and is standing in the name of Sadashivappa Gouda, the son of eldest brother, Dodda Mallappagoud. The other two brothers Mallappa Gouda and Bhimanna Gouda

had female issues. The last brother who is plaintiff's father in law, Sanna Mallappagouda, had only one son Iranna gouda husband of plaintiff. In this way, the plaintiffs husband and Sadashivappagoud in whose name the suit land stands are cousin brothers. It is to submit that on the basis of the above said relationship between Sadashivappa Gouda, the actual owner of the suit property. Eranna, the plaintiff's husband, it is not stated any where in the plaint by the plaintiff as to how and from when the plaintiff claims to be the owner of the suit property. It is to submit that the said Sadashivappa Gouda, the son of the eldest brother Dodda Mallappa Gouda died unmarried and issue less. So when the plaintiff's husband and said Sadashivappa Gouda are cousin brothers, the plaintiff cannot claim any exclusive right over the property owned by the cousin brother of the husband of plaintiff by the way of Hindu Succession Act, 1956, as there are two more cousin sisters of plaintiff's husband, Iranna Gouda. They are individually the daughters of plaintiff's father in laws, who are Sanna Mallappa Gouda's real brothers. It is to submit that, the defendants claim over the property is based on the fact that, in the suit land Sy. No.1/2, measuring 10 guntas, only 5 guntas was donated (Dana) to one Veerabadrappa, the great grandfather of defendants about 100 years back by the ancestors of plaintiffs father in law. Out of said suit land Sy. No.1/2, measuring 10 guntas, when an extent of 5 guntas was donated to Veerabadrappa, the great grandfather of

defendants, then the other 5 guntas should have been standing in the name Sadashivappagouda S/o Mallappa Gouda, but in the records of the panchayat all 10 guntas of the suit land is shown standing in the name of Sadashivappa Gouda. It was not changed as per the donation (dana). It is to submit that, about 100 years back Veerabadrappa family 's livelihood was from the earnings by way of exhibition of folk dramas at different places. With the permission of ancestors of plaintiff's husband, the said Veerabadrappa put up a hut for his family to live in as their permanent place of residence. And later on this 5 guntas of land on which Veerabadrappa had put up a hut was donated to him. in this way Veerabadrappa came to own 5 guntas of suit land, and since then Veerabadrappa and his descendants held the property jointly as successors of Veerabadrappa and thus they became the owners and possessors of the suit land. Later on the grand sons of Veerabadrappa by name Nagamurthy S/o Ramachandra, Gopal S/o Basappa, Veerbadra S/o Bassappa and Yellappa S/o Bassappa inherited the said 5 guntas of land in Sy.No. 1/2, who also continued the same family profession of exhibition of fold drama at different places. Now, it is to submit that, the defendant No.1, Shekappa S/o Gopal, and defendant No.2 Bhimappa S/o Yellappa are the great grand sons of Veerabadrappa and in addition to defendants there are other cousin brothers of defendants as shown in the pedigree table of defendants. The other cousin brothers are

not made parties to the suit. Hence, the suit is bad for non-joinder of necessary parties to the suit and hence, liable to be dismissed. That it is to submit that, later on, all the families of the defendants have put up huts separately for their living on the 5 guntas of the suit land and have got different Panchayat Nos. as 1-22,1-23,1-24, to their huts. They are paying the property tax of these huts since many years, but the tax receipts of the huts on the said suit property to the extent of 5 guntas, are maintained by the defendants from the year 2000, that is for about 16 years, which are submitted before the Hon'ble Court. It is also to submit that, since the donation of the part of the suit land of 5 guntas, Veerbadhrappa and then his successors up to the present generation were and are peacefully enjoying, uninterrupted and without any sort of interference from any quarter, and hence by virtue of this the defendants are the unquestioned owners and possessors of the 5 guntas of the suit land. But it is to submit that, at the present times the rate of the real estate have sky rocketed and due to the high rates of the land, the plaintiff with an evil and illegal intention of usurping the said suit land is harassing the defendants and trying to dispossess the defendants from their property. That it is to submit that, in the other 5 guntas part of the suit land a "Souchalay" was constructed for the family members, specifically for the convenience of female members of the family, by the ancestors of plaintiff's husband, Iranna Gouda, and it was given a panchayat

number by the sannati village panchayat as 1-64. It is to submit that the plaintiff got this 'Souchalaya' also dismantled about 3 years back without any concurrence from other family members and without the permission of the panchayat. The said plaintiff, being a quarrelsome lady, nobody objected to the demolition of the 'Souchalay'. This shows the plaintiff's evil intention of usurping the said suit land by her illegal act and conduct. That, it is to submit that, even though the defendants continue to be in the possession to the extent of 5 guntas in suit land Sy. 1/2, this correction is not made in the revenue records of the panchayat, which continued to show the name of Sadashivappa Gouda as the owner and possessor of the entire 10 guntas of suit land Sy. No.1/2 from the year 1954-55 to the current day, that is, 2016-17. As the defendants are very poor and illiterate, every time busy in earning their livelihood, it did not lash to their minds that the records with regard to the land donated to them are to be corrected. That it is to submit that the defendant's families are facing difficulties in earning enough money for their livelihood by way of their family profession of exhibition of folk drama at different places and hence had decided to permanently stay back in Bahahatti village along with their parents and they have taken up agriculture labuor work with a hope to earn enough money for their livelihood and hence started staying with their parents peacefully. In the mean time, the plaintiff being a high handed lady, with a view to illegally usurp the

property of the defendant's families, is unnecessarily harassing the poor defendants and is threatening them to dispossess them from their property. It is also to submit that the plaintiff had no objection to the occupation of the part of the suit land by the defendants for these many number of years. Now the plaintiff, with an evil and illegal intention of usurping the said part of the suit land, is planning to alienate the suit property without any rights over it, by dispossessing the defendants from their property. That it is to submit under such circumstances the suit of the plaintiff cannot be maintained and adjudicated unless the plaintiff complies with requirements of the law. Therefore, it is prayed to dismiss the application with costs.

4. Heard learned counsel for the plaintiff and defendant.
5. The points that arise for my consideration are as under: -
 1. Whether plaintiff/petitioner has made out prima facie case for granting ad-interim exparte T.I. order against the defendants?
 2. In whose favour the balance of convenience lies?
 3. Who will be put irreparable loss and injury if temporary injunction order is not granted?
 4. What Order?

6. My findings on the above points are as under:-

Point No.1 : In the Affirmative,

Point No.2 : In favour of Plaintiff,

Point No.3 : To the plaintiff,

Point No.4 : As per final order,

for the following...

-:: REASONS ::-

7. **Points No.1 to 3 :-** These points are interconnected to each other, to avoid the repetition of facts and for the sake of convenience, I have taken up these points together for common discussion.

8. The plaintiff/petitioner filed application U/o 39 rule 1 and 2 of CPC for seeking ad-interim exparte temporary injunction order against the defendants restraining them, their agents, servants or any other person on their behalf from taking up construction of any type in the suit land bearing Sy.No.1/2 measuring 10 guntas situated at Banahatti village, Tq: Chittapur till the disposal of the suit in the interest of justice and equity. The plaintiff had filed suit against the defendants for declaration and perpetual injunction in respect of suit schedule property. It is specific contentions of the plaintiff that, she is the absolute owner and possessor of the suit property. The defendants are no way concerned with the suit property but, they started illegal construction over the suit land. The defendant

opposed the application by filing counter to the IA No.1 under Order 39 Rule 1 and 2 of CPC inter-alia contending that, 5 guntas of land from the suit land has been donated to one Veerbhadrappa, great grand-father of defendants about 100 years back by the ancestors of the plaintiff's father-in-law. It is further contended that the suit land is standing in the name of Sadashivappagouda S/o Mallappagouda. It is further contended that it was not changed the name defendant, ancestors in the revenue records as per the donation of 5 guntas of land from the suit land. It is submitted that with the permission of the ancestors of the plaintiff's husband, the said Veerbhadrappa put up a hut for his family to leave in it as their permanent place of residence. In this way the said Veerbhadrappa has got 5 guntas of land from the suit property. It is further contended that since then Veerbhadrappa and his residence held the property jointly as successors of Veerbhadappa and thus they became owners and possessors of the suit land. The defendant's family facing difficulties in earning enough money for their livelihood by way of their family profession of exhibition of folk drama at different places and hence they have decided to stay permanently in Banahatti village along with their parents and have taken up agricultural labour work with a hope to earn more money for their livelihood and started staying with their parents peacefully. In the mean time, plaintiff being a high handed lady with a view to illegally

usurp the property of defendant's families is unnecessarily harassing the poor defendants and is threatening to disposes them from the suit property.

9. To prove the prima-facie case of the plaintiff for granting exparte temporary injunction order against the defendants, the plaintiff has got marked the 3 ROR's of the suit land, letter given by the plaintiff to the Secretary Gram Panchayat Sannati and Four photographs of the suit land. On perusal of the ROR's of the suit property it reveals that, the name of one Sadashivagouda and the name of plaintiff is appeared in the column No.9 and 12 of the ROR of the suit schedule property as owner and possessor. The photographs produced by the plaintiff prima-facie discloses that, some digging portion of land is appeared. On the other hand, the defendants have also got produced the documents in order to disprove the case of the plaintiff. The document No.1 is the form No.11 assessment register in respect of property No.1-64 (shoushalaya), document No.2 to 9 are the form No.12 assessment register in respect of property No.1-24 standing in the name of Veerabhadrappa S/o. Basappa, document No.10 to 12 are the form No.11 assessment register in respect of property No.1-24 standing in the name of Veerabhadrappa S/o. Basappa. Document No.13 and 14 are the Tax Paid Receipts in respect of property No.1-23 standing in the name of Veerabhadrappa S/o. Basappa. Document No.15

is the Mutation Register No.H11/2011-12. Document No.16 to 24 are the Form No.12 in respect of property No.1-23 which is standing in the name of Nagamurthy S/o. Ramachandra. Document No.25 to 29 are the Form No.11 in respect of property No.1-23 which are standing in the name of Nagamurth S/o. Ramachandra. Document No.30 is the certified copy of ROR for the year 1954-55 in respect of suit property. Document No.31 to 39 are the ROR of the suit property which are standing in the name of Sadashivappa S/o. Mallappa. Document No.40 to 48 are the Form No.12 in respect of property No.1-22 which are standing in the name of Yallappa S/o. Basappa. Document No.49 and 50 are the Form No.11 in respect of property No.1-22 which are standing in the name of Yallappa S/o. Basappa. Document NO.51 List of members tax paid receipts to the panchayat for the year 2016-17.

10. Upon considering the rival contentions of the parties and after hearing the counsel for the parties and after perusal of the documents available on record, it prima facie discloses that the plaintiff claimed that she is the owner and possessor of the suit land as the suit property is her ancestral property. But the defendant denied that the plaintiff's ownership and possession over the suit land. The document produced by the plaintiff it prima-facie discloses that the ancestral of he plaintiff i.e., one Sadashivappa S/o Doddamallanagouda was the owner of the suit land. But,

the defendants contended that five guntas of land from the suit property has been donated by the ancestors of the plaintiff to one Veerbhadrappa great grand father of the defendants about 100 years back. It is further contended that with the permission of the ancestors of the plaintiff, the said Veerbhadrappa had put-up hut over the said 5 guntas of land for his family to live in as their permanant place of residence. It is further contended that the name of Veerbhadrappa has not been entered in the revenue records, but the name of Sadashivappa has been continued in the ROR of the suit property which is not changed in the name of ancestors of the defendants as per dana (gift). The defendants have also produced so many documents pertaining to the suit property and other property. The plaintiff contended that the defendants are put-up construction over the suit property, that act of the defendants may be restrained by means of temporary injunction order. The claim the defendants is based on the dana (gift) in respect of 5 guntas of land from the suit land was alleged to be given by ancestors of the plaintiff in favour of one Veerbhadrappa who is grand-father of the defendants. But the said dana is oral or written is not stated by the defendants in their written statement. As per the settled principal of law that the registered gift deed is valid in law. But the defendants have not produced the any registered gift deed before the court. Therefore at the stage the plaintiff has made out prima-ficie case that she is owner and possessor

of the suit property. If the defendants allowed to put-up construction over the 5 guntas of land from the suit property then the very filing of the suit will be defeated. The claim of the defendants that the ancestrars of the plaintiff donated 5 guntas of land from the suit land to one Veerbhadrappa grand-father of the defendants and with permission of the ancestrar of the plaintiff the said Veerbhadrappa had put-up hut over the suit property. To decide this fact the full-fledged trial is necessary. Therefore it is matter of trial. Without trial, the fact in issue cannot be decided at this juncture. The balance of convinence is also lies in favour of plaintiff. Therefore, I am of the opinion that, the plaintiff has made out prima-facia case for granting ex-parte temporary injunction order against the defendants as sought for. The balance of convinence is also lies in favour of plaintiff. If the T.I order is granted in favour of plaintiff, no harm or loss would be caused to be defendants. On the other hand, if T.I order is not granted in favour of plaintiff, the heavy and irreparable loss will be caused to the plaintiff which cannot be compensated in terms of money. With this observation, I am of the opinion that the plaintiff has made out prima facie case for granting exprete TI order against the defendants in respect of suit property. The balance of convenience lies in favour of plaintiff. If the TI order is not granted in favour of plaintiff, the heavy and irreparable loss would be caused to the plaintiff. Hence, I answer points No.1

in the affirmative, point No.2 in favour of plaintiff and point No.3 in favour of plaintiff.

11. **Point No.4:-** In view of the above findings , I proceed to pass the following:

-:: O R D E R ::-

I.A.No.I under Order 39 Rule 1 and 2 of CPC filed by the plaintiff is hereby allowed.

The defendants are hereby restrained from taking up any sort of construction over the suit property till disposal of the suit by means of temporary injunction order.

(Dictated to the stenographer directly on computer, corrected and signed by me and then pronounced in the open court on the **28th day of April 2017**)

(PRAKASH ARJUN BANASODE)
Civil Judge & JMFC.,
CHITTAPUR.

**(Orders on IA No.I pronounced in open court vide
separate order)**

-:: O R D E R ::-

***I.A.No.I under Order 39 Rule 1 and 2 of
CPC filed by the plaintiff is hereby allowed.***

***The defendants are hereby restrained
from taking up any sort of construction
over the suit property till disposal of the
suit by means of temporary injunction order.***

**Civil Judge & JMFC.,
CHITTAPUR.**