

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

**Present:- Sri.D.Ramesh, B.AL., LL.B.,
Civil Judge and JMFC, Jewargi.**

Dated : This the 08th day of March, 2023

O.S.No.95/2022

Between:

Hanamawwa and Another : **Plaintiffs**

(By Sri.B.B., Adv.,)

And

Eramma and Another : **Defendants**

(By Sri.G.G.K., Adv.,)

I.A.No.2

Bhimabai : **Applicant/Plaintiff No.2**
W/o Venkatesh Goundi,
D/o Late guruswami,
Aged about : 45 years,
Occupation: Agriculture,
R/o Maradagi SM Village,
Tq: Yadrami, Dist: Kalaburagi.

V/s.

1. Eramma : **Opponents/Defendants**
W/o Late Gurusiddayya,
Aged about : 65 years,
Occupation: Agriculture.

2. Saibanna
S/o Late Gurusiddayya,
Aged about : 42 years,
Occupation: Agriculture,

Both are R/o Hipparaga Village,
Tq: Jewargi, Dist: Kalaburagi.

ORDERS ON IA No.2

The plaintiffs have filed the application U/o 39 rule 1 and 2 of CPC praying to restrain the defendants from obstructing agricultural work of plaintiffs over the suit property.

2. The brief averments of the affidavit annexed to the IA No.2 are as follows;

That, the contents of plaint paras may be treated as part and parcel of this affidavit to avoid the repetition of facts. The defendants without having any rights and interest over the suit property are trying to interfere into peaceful possession of plaintiffs by obstructing agricultural work with an intention to dispossess the plaintiffs from suit property. Further they have sworn that the plaintiffs have made out the prima facie case, balance of convenience lies in their favor. If T.I is granted no harm or prejudice would be caused to other side. If not, they will be put to heavy and irreparable loss which cannot be compensated in terms of money. Hence, prays to allow the application.

3. On the other hand the counsel for defendants filed objection to the application contending that the I.A.No.2 of the plaintiff is not in the prescribed format as per the Civil Rules of Practice in so far as not submitting double cause title for such interim application, as such the same is not eligible for adjudication & fit to be dismissed. The plaintiffs have not even explained the suit property in his I.A.No.2 nor in the affidavit annexed to I.A.No.2, the description of suit land Sy.No.83/17 is improper & insufficient in so far as the plaintiffs have not given proper description of it with their surrounding boundaries by their survey numbers hence under these circumstances the I.A itself is incomplete and do not comply the provisions of law for description of suit property properly. This apart the plaintiff have not made out any proper & cogent grounds in their application to seek such interim relief. The plaintiffs have not filed any corroborative documents other than ROR to show their alleged possession & enjoyment of suit property as on the date of suit or filing of I.A under reply. It is submitted that this suit land Sy.No.83/17 measuring 04 acres 04 guntas of Maradgi SM village was definitely owned & possessed by husband of plaintiff No.1 late Guruswamy S/o Buddayya Wadder but he has sold same to his brother Gurusiddayya i.e., father of defendant long back on 3-

11- 1989 for lawful & valid sale consideration and has executed valid agreement of sale on 3-11-1989 in presence of witnesses and gave possession of suit land to his father Gurusiddayya Waddar on the date of agreement of sale and since then Gurusiddayya was in exclusive possession & enjoyment of suit land and after his death the defendants continued to have exclusive possession & enjoyment of suit land till today which is very well within the knowledge & notice of plaintiffs of this suit. The suit of the plaintiff is itself bad for not seeking substantial relief of possession for the reason that the plaintiffs are not in physical possession & enjoyment of suit land as on the date of suit. Merely on the basis of ROR entries they cannot be said to be in possession of suit land. As such the plaintiffs suit for mere Injunction will not survive & they need to seek substantial relief of possession also and have to pay court fee upon market value of the suit land and hence when the plaintiffs are not entitled for main relief itself they are not deserving for interim relief also. The suit of the plaintiffs is bad for non-joinder of necessary & relevant parties to suit such as all the LRs of late Timmayya s/o Guruswamy who was predeceased son of plaintiff No.1 and without the LRs of said Timmayya the suit in the present form is not maintainable & liable to be dismissed. That, the plaintiffs are

seeking relief of Injunction in the present suit merely on the observation made by hon'ble Dist & Sessions Judge Court Kalburgi in R.A. no.5/2018 but in that appeal the plaintiffs herein were not having any cross- appeal or cross-objections and hence there was no order in the operative portion of judgment & decree of said appeal case in respect of suit land in favour of plaintiff no.1 & 2 herein. Thus the alleged possession of plaintiffs taking benefit of observations of court cannot be based to hold their possession in the instant case and they cannot be entitled for any relief of Injunction. That, since the said vendor Guruswamy died before he could execute registered sale deed, the entries in ROR remained in the name of Guruswamy although possession remained with the purchaser Gurusiddayya. All these facts & developments are very well within the knowledge of plaintiffs and it is for this reason only they did not initiate any suit or proceedings in any court of law claiming the possession of suit land up till now. But prompted by the observations made in said R.A. 5/2018 the plaintiffs are bolstered to file this suit on false contention of having possession of suit land & seeking injunction against us in order to evict us from suit land. That, it is for all these ongoing reasons the plaintiffs or Guruswamy in any of the suit or proceedings including O.S.116/2012 of Sr Civil Judge

Jewargi, R.A. 5/2018 of III Addl Dist & Sessions Judge Court Kalburgi, or in any of revenue appeals or revisions before A.C. or D.C courts, did not file any written statement or objections or make any claim or agitation in respect of this suit land and abruptly they came to file this suit on the basis of observations made in said R.A. 5/2018 of III Addl Dist & Sessions Judge Court Kalburgi. Thus the plaintiffs have made-out a false & fictitious case & wanted to seek possession of suit land by way this suit which is unjust & improper. It is point noteworthy that in past suit of O.S.116/2012 the present plaintiff was defendant no.2 in which suit this suit land was one of the suit item, but she did not file any written statement at all nor made any counter claim or led any oral or documentary evidence in that suit, hence her claim in this suit is clearly time barred and Article-58 of limitation Act will come into picture and she is disentitled from making any claim in respect of suit land or agitate over it in a subsequent suit. The plaintiffs who have allowed to forgo their right in respect of suit land in past suit of O.S.116/2012 on the file of Sr Civil Judge at Jewargi (vide D.D: 28/10/2017) have accepted the principles evolved in doctrine of ACQUIESCENCE" and now disentitled to agitate over it in subsequent suit, and hence the suit of the plaintiffs in the present form is not maintainable & liable to be

dismissed in limine, and thus they are not entitled to any interim relief also. That, all the sons & daughters of late Gurusiddayya (who are on record in R.A.No.5/2015 on the file of III Addl Dist & Sessions Judge Kalburgi) are having right, title & interest in the suit land and hence they are also relevant & necessary parties to suit else the suit is bad for non-joinder of necessary & relevant parties to suit. As already submitted that plaintiffs are not at all in possession & enjoyment of suit land as on date of suit or on the date of IA.no.II under reply. That, the plaintiffs have not made-out any prima-facie cause of action to file this suit & present I.A., the balance of convenience also does not lie in favour of plaintiffs, comparative hardship & irreparable loss would be more to us & we will be put to great hardship & irreparable loss which cannot be compensated in terms of money, and if T.I is granted as the plaintiffs have planned to dispossess us from settled possession & enjoyment of suit land by us and hence they are not entitled to any interim relief also and hence the I.A. filed by plaintiff is fit to be dismissed with costs, to meet the ends of justice & equity. The relevant portion of our written statement may also kindly be read over as part & parcel of this affidavit. Hence prays to dismiss the application.

4. Heard and perused the record.

5. The following points arise for my consideration.

Point No. 1:- Whether the plaintiffs have made out prima-facie case?

Point No.2:- Whether the plaintiffs have made out balance of convenience lies in their favour?

Point No.3:- Whether the irreparable injury caused to the plaintiff, if the I.A is not allowed?

Point No.4:- What Order?

6. I answer the above points 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 final order, for the following,

REASONS

7. **POINT NO.1:-** It is the specific case of the plaintiffs that, Guruswamy, Gurusiddaya and Hanumayya are natural brothers. Guruswamy is the husband of 1st plaintiff and father of 2nd plaintiff. Gurusiddaya is the husband of 1st defendant and father of 2nd defendant. Son of Hanumayya by name Siddaya filed a suit for partition and separate possession in O.S.No.116/2012 on the file of Senior Civil Judge at Jewargi with

respect of land bearing Sy.No.85 measuring 14 acres 17 guntas, Sy.No.75 measuring 15 acres 4 guntas and Sy.N.83 measuring 4 acres 4 guntas all situated at Village Maradagi SM. The said suit was decreed on 28-10-2017 and 1/3rd share was granted in all the said lands. That said judgment and decree has been challenged before the 3rd Additional District and Sessions Judge Kalaburagi in R.A.No.05/2018. The same was allowed in part and suit relating to land Sy.No.75 and 83 was dismissed. 1/3rd share was granted in respect of land Sy.No.85 of Village Maradagi SM. The judgment of R.A.No.05/2018 at Para No.32 came to conclusion that land Sy.No.83 measuring 04 acres 4 guntas (New Sy.No.83/6 measuring 4 acres) was the absolute property of deceased Guruswamy and his legal heirs are the exclusive owners in possession of said land. The judgment and decree passed in R.A.No.05/2018 has not been challenged and the same become final and conclusion. Hanumawwa is the wife of Guruswamy. Bhimabai is his daughter and Timmayya is his son. Guruswamy died and Timmayya also died. Timmayya had 3 sons by name Siddappa, Ayyappa and Yallappa. They being members of the family are in joint possession and enjoyment of the said land. Sons of Timmayya are not available at present to file the suit. Plaintiffs filed the suit representing the family against the

defendants as they are under apprehension of dispossession from the suit land in the hands of defendants. The plaintiffs along with their members of the family are in exclusive possession and enjoyment of the suit land. Such being the fact the defendants without having any rights or interest and title over the suit land knowing the result of the judgment in R.A.No.05/2018 with an intention to dispossess the plaintiffs from the suit land on 10-06-2022 trying to stop the agricultural activities of plaintiffs over the suit land.

8. The defendants have admitted that the suit land had been fallen to the share of husband of plaintiff No.1 Guruswamy S/o Buddayya Waddar in partition with his brothers Hanumayya & Gurusidday. Their specific contention is that but due to family and legal necessities Guruswamy decided to sell his suit land and upon making offer to husband of the defendant No.1 Gurusiddayya S/o Buddayya he agreed to purchase the same and accordingly upon payment of full consideration of Rs.15,000/- to said Guruswamy he executed agreement of sale on 03-11-1989 and gave possession of suit land to Gurusiddayya i.e., husband of defendant No.1 on the day of said agreement of sale and thus since the said date of agreement Gurusiddayya i.e., husband of

defendant No.1 used to be in exclusive possession and enjoyment of the suit land till now, and later by these defendants.

9. To substantiate the case of plaintiffs they have produced RTC, certified copy of judgment and decree in R.A.No.5/2018. The defendants did not produce any documents.

10. I have carefully gone through the documents. The RTC for the year 2021-22 in respect of land bearing Sy.No.83/17 measuring 4 acres of Maragadi SM village is standing in the name of plaintiff No.1. The certified copy of the judgment in R.A.No.5/2018 at Para No.32 Page No.30 Hon'ble Court came to conclusion that the land Sy.No.83/6 measuring 4 acres of exclusive property of defendant No.2 to 5 therein who are the plaintiff No.1 herein and others. These two documents are clearly show that plaintiffs are exclusively owners and possessors of suit property. The defendants admitted the ownership of husband of plaintiff No.1. But their specific contention is that husband of plaintiff No.1 Guruswamy had executed agreement for sale in favour of husband of defendant No.1 by name Gurusiddayya for the consideration amount of Rs.15,000/- and received the entire amount on 03-11-1989 and handed over the possession of suit land to the husband of defendant No.1. Though they have taken

such contention they did not produce any documents to prove their possession. The available documents i.e., RTC and certified copy of judgment in R.A.No.5/2018 makes it clear that plaintiffs are in possession and enjoyment of the suit property. This is a suit for perpetual injunction, the only question before the court is who is in possession. As per available documents the prima-facie show that the plaintiffs are in possession and enjoyment of the suit property. Therefore, I answer the Point No.1 in the Affirmative.

11. POINT NO.2 AND 3:- Both points are interlinked to each other, hence both are taken up together for common discussion to avoid the repetition of facts.

12. As discussed in point No.1 the plaintiffs have made out prima-facie case. And they have pleaded that the defendants are trying to interfere over the suit schedule property. Hence if the defendants are not restrained, they may dispossess the plaintiffs from the suit property. If they dispossess the plaintiffs from the suit property the plaintiffs will be put to great hardship which will not be compensated in terms of money. Hence balance of convenience also lies in favour of the plaintiffs, and if application is not allowed it will cause irreparable injury to the plaintiffs. Accordingly, I answer the Point No.2 and 3 are in the Affirmative.

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

ORDER

The I.A.No.2 filed by the plaintiffs under Order 39 Rule 1 and 2 of C.P.C is hereby allowed.

Consequently the defendants or any other person claiming through or under them are hereby restrained from obstructing agricultural work of plaintiffs over the suit property till further orders.

In the facts and circumstances of the case no order as to costs.

(Directly dictated to the Stenographer on the computer, corrected by me and then pronounced in the open court this the day of 08th day of March, 2023).

**(D.RAMESH)
Civil Judge & JMFC,
Jewargi.**