

**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 11th day of October, 2022

O.S.No.96/2021

Between:

Shantamma : **Plaintiff**

(By Sri.J.V.H., Adv.,)

And

Basavaraj : **Defendant**

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

I.A.No.1

Shantamma : **Applicant/Plaintiff**
W/o Chanappa Malled,
Aged about: 52 years,
Occupation: Agriculture
and Household,
R/o Balabatti Village,
Yadrami Taluka, Kalaburagi District.

V/s.

Basavaraj : **Opponent/Defendant**
S/o Siddappa Hawaldar,
Aged about: 65 years,

Occupation: Agriculture
and Household,
R/o Balabatti Village,
Yadrami Taluka, Kalaburagi District.

ORDERS ON IA No.1

The plaintiff has filed the application U/o 39 rule 1 and 2 R/w 151 of CPC and prayed to restrain the defendant from interfering into peaceful possession and enjoyment of plaintiff over the suit schedule property.

2. The brief averments of the affidavit are as follows;

That, the plaintiff is the absolute owner and in possession of the suit property. The suit property is stridhana property of plaintiff. The suit property is allotted to the share of plaintiff from her father by name Basanna S/o Shivaraya Hawaldar with the consent of all the family members and the name of the plaintiff is mutated by Mutation No.35 dated 28-11-1990 and corresponding entries have been taken place after following due procedures of law. It is further pleaded that the father of the plaintiff had laid bund made out of mud and stones on four corners of the suit property. The KBJNL authority have laid the canal in the suit property running from south to northern side in the middle

portion of suit property. The plaintiff, defendant and other adjacent land owners by name Neelamma and Ayyappa have made joint application to KBJNL for preparing Phodi and Form No.10 on 08-01-2004 and same was prepared confirming the possession over the suit property. The plaintiff has made an application to the ADLR at Jewargi on 26 05-2018 for Tatkal phodi and on 23-02-2019 the survey authority have conducted the Tatkal phodi. And prepared Form No.10 on 16-09-2019 and found the possession of plaintiff over the suit property. It is further contended that the DDLR at Kalaburagi in File No.App/236/2019-20 passed an order to conduct the re-survey of suit property and adjacent lands in Sy.No.149 on 19-03-2020. Thereafter once again the ADLR has conducted the survey after following the due procedures on 30-09 2020 and found the Form No. 10 prepared earlier holds good and valid. The defendant is not at all concerned to the family and property of plaintiff in any manner what so ever. The defendant without having any rights, title, or interest is trying to interfere into possession and enjoyment of plaintiff over the suit property. The defendant actually came upon the suit property on 10-08-2021 and tried to interfere into possession and enjoyment of plaintiff over the suit property. The plaintiff has got prima facia case, balance of convenience lies in

favour of plaintiff, if Injunction as prayed for is not granted the plaintiff would be put to heavy and irreparable loss which can not be compensated in terms of money and involved into multiplicity of judicial proceedings hence temporary injunction may be granted as prayed for.

3. On the other hand the counsel for the defendant filed memo and prayed to consider the written statement as objection to the IA No.1.

4. Heard and perused the record.

5. The following points arise for my consideration.

Point No. 1:- Whether the plaintiff has made out prima-facie case?

Point No.2:- Whether the plaintiff has made out balance of convenience lies in her 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 case of the plaintiff that, she is the absolute owner and in possession of the suit property. The suit property is her Stridhana property. The suit property is allotted to the share of plaintiff from her father by name Basanna S/o Shivaraya Hawaldar with the consent of other two daughters by name Ayyamma and Nagamma and the name of the plaintiff is mutated by Mutation No.35 dated 28-11-1990 and corresponding entries have been taken place after following due procedures of law. The other two sisters of plaintiff by name Ayyamma and Nagamma have given declaration that the suit property is given to the share of plaintiff. The father of the plaintiff had laid bund made out of mud and stones on four corners of the suit property. The KBJNL authority have laid the canal in the suit property running from south to northern side in the middle portion of suit property. The plaintiff, defendant and other adjacent land owners by name Neelamma and Ayyappa have made joint application to KBJNL for preparing phodi and Form No.10 on 08-01-2004 and same was prepared confirming the possession over the suit property. The plaintiff has made an application to the ADLR at Jewargi on 26-05-2018 for Tatkhal phodi and on 23-02-2019 the

survey authority have conducted the Tatkal phodi. And prepared Form No.10 on 16-09-2019 and found the possession of plaintiff over the suit property. The DDLR at Kalaburagi in File No.Appl/236/2019-20 passed an order to conduct the re-survey of suit property and adjacent lands in Sy.No.149 on 19-03-2020. Thereafter once again the ADLR has conducted the survey after following the due procedures on 30-09-2020 and found the Form No.10 prepared earlier holds good and valid. The defendant is not at all concerned to the family and property of plaintiff in any manner what so ever. The defendant without having any rights, title, or interest is trying to interfere into possession and enjoyment of plaintiff over the suit property. The defendant came upon the suit property on 10-08-2021 and tried to interfere into possession and enjoyment of plaintiff over the suit property. Hence this application to restrain the defendant from interfering over the suit property.

8. To substantiate the case of the plaintiff, she has produced an unregistered original agreement dated 30-04-1990, document of declaration given by Parwati W/o Ningappa, document declaration given by the Nagamma S/o Chandrashekhar, Mutation extract, RTCs, Copy of application given by the plaintiff, defendant and other land owners to KBJNL dated 28-05-2003,

Copy of application for Tatkal Phodi given by plaintiff dated 26-05-2018, Copy of notice given by ADLR, Sketch map, Form No.10, Phodi Tippani, Copy of order of ADLR in appeal No.236/2019-20, copy of Mutation extract and two pen drives.

9. On the other hand the defendant contended that description of the suit property is not correct, there was oral arrangements in the family and extent of 6 acres 5 guntas allotted to the father of defendant, and after father of the defendant, mother of defendant have been in possession and enjoyment of the property to the extent and after her death succeeded by defendant has been in possession and enjoyment of the property. As there was Nala flowing as result the land was barren and that Nala flowing from East to West to the Southern side of the said land and to the adjoining boundary towards of the land of the defendant turned towards North flowing, thereafter the KBJNL, the Nala merged under canal and due to that heavy water flow the land was not fertile at that time and accordingly in the family arrangement between elder family members of the plaintiff and defendants the said extent stated supra allotted to the defendant's family i.e., 6 acres 5 guntas out of which 20 gunta land was acquired by the KBJNL and 1 gunta Phot Kharaba and now the defendant in possession of the land to the extent 5

acres 24 guntas. As per the oral arrangements between ancestors of the family 28 guntas and 02 gunta Phot Kharab and 5 acres 38 gunta is total land was in possession of father of the plaintiff and since their ancestors the same possession is continued and enjoying as absolute owners and possessor and oral report made by father of plaintiff behind the back suppressing the reacts thus the same was not found in the entry resulted to the route cause for quarrel by the plaintiff after the long time of death of her father. The share allotted by the father of plaintiff was also without any survey and possession on the spot and thus all systematic foul play been played by the husband of plaintiff and at his behest the suit filed denying realities and suppressing arrangements of the family with malafide the intention. An extent of 3 acres land allotted to Neelamma W/o Adivappa and an extent of 4 acres 29 guntas allotted to Ayyappa S/o Adivappa. All shares allotted in the land Sy.No.149 in total extent of 20 acres 20 guntas of tallied with Akarband. Ayyanna no more since 2008 and no one come records as result the ROR carried out in the name deceased. The DDLR appeal pleadings written in short as advised by DDLR and it is not fatal for the defense taken by this defendant. The father of defendant and his mother were illiterates and they did not made

any efforts to correct the entries, as this defendant was in Government service until his retirement, he was discharging his duties other places, after the retirement when he started, all the foul play started by the plaintiff.

10. To substantiate the case of the defendant, he has produced an endorsement dated 27-11-2018 issued by the ADLR, True copy of the Map prepared by the survey authority, True copy of Hissa Phodi Tippani, Copy of letter given by the ADLR to the Tahsildar, Copy of the RTCs, True copy of the report prepared by R.I and Village Accountant, true copy of the orders dated 31-10-2019 passed by the DDLR, copy of mutation extract, Certified copy of orders of Assistant Commissioner, Kalaburagi, True copy of the letter written by the defendant No.1 to the Assistant Commissioner, True copy of the order passed by the DDLR, Copy of the memorandum of appeal filed before the Assistant Commissioner.

11. According to the plaintiff the suit property is allotted to the share of plaintiff by her father Basanna and her other two sisters have given consent for that. Accordingly the revenue documents are transferred in the name of plaintiff. The plaintiff, defendant and other adjacent owners by name Neelamma and

Ayyappa have made joint application to the KBJNL for preparing phodi and form No.10. And the same was prepared by confirming the possession of the plaintiff over the suit property. The plaintiff made an application to the ADLR at Jewargi for Tatkhal phodi. Accordingly the survey authority have conducted the Tatkhal phodi and prepared Form No.10 and found the possession of plaintiff over the suit property. The DDLR at Kalaburagi passed an order to conduct the re-survey of suit property and adjacent lands in Sy.No.149 in the appeal No.236/2019-20. Thereafter once again the ADLR has conducted the survey after following the due procedures and found the Form No.10 prepared earlier holds good and valid. The defendant is not concerned to the family and property of plaintiff, however trying to interfere into possession over the suit property.

12. The case of the defendant is that, plaintiff is not in possession and enjoyment of the suit property. The defendant was allotted 6 acres 5 guntas property, out of which 20 guntas land and 1 gunta kharab land was acquired by the KBJNL. And now the defendant is in possession of land to the 5 acres 24 guntas. As per the oral arrangements between the ancestors of the family 28 guntas and 02 gunta Phot Kharab and 5 acres 38 gunta is total land was in possession of father of the plaintiff and

since their ancestors the same possession is continued and enjoying as absolute owners and possessor and oral report made by father of plaintiff behind the back suppressing the reacts thus the same was not found in the entry resulted to the route cause for quarrel by the plaintiff. The share allotted by the father of plaintiff was also without any survey and possession on the spot. The father and mother of the of defendant were illiterates and they did not make any efforts to correct the entries, as this defendant was in Government service until his retirement, he was discharging his duties other places, after the retirement when he started, all the foul play started by the plaintiffs.

13. Learned counsel for the defendant mainly relied on the sketch (SI.04130518398623) prepared by the survey authority for the land bearing Sy.No.145 of Balabatti Village. I have carefully gone through the said sketch, wherein date was not mentioned and it is found that as per the RTC the defendant herein was in possession of 4 acres 28 guntas and 1 gunta kharab, but he is in actual possession of 5 acres 24 guntas. In the same way the plaintiff herein was in possession of 6 acres 38 guntas and 2 guntas gharab as per the pahani, but she is in actual possession of 5 acres 38 guntas. Learned counsel for the defendant relying on the said document argued that the plaintiff is not in

possession in the measurement shown by the plaintiff in the suit property. I have also carefully gone through the documents furnished by the plaintiff, the RTCs furnished by the plaintiff clearly show that the plaintiff is in possession and enjoyment of the land bearing Sy.No.149/2 measuring 7 acres 26 guntas and 2 guntas kharab of Balabatti village i.e., suit schedule property. Even the latest RTC for the year 2021 also shows the same. The copies of the From No.10, Sketch furnished by the plaintiff clearly shows that the plaintiff is in possession of land measuring 7 acres 28 guntas of Sy.No.149 and the defendant herein is in possession and enjoyment of 5 acres 5 guntas. But the above said Sketch furnished by the defendant shows that the plaintiff is in possession of 5 acres 38 guntas and defendant is in possession of 5 acres 28 guntas. But the order passed by the DDLR Kalaburagi in appeal No.236/2019-20, makes it clear that the said sketch (SI.04130518398623) furnished by the defendant is set aside and directed the ADLR to conduct survey once again. So it is clear that the defendant relied upon the sketch which was already set aside by the DDLR. The RTC of the defendant makes it clear that the defendant is in possession of land bearing Sy.No.146 measuring 4 acres 24 guntas. Therefore whether the sketch furnished by the defendant is valid or documents furnished by the

plaintiff are valid to be decided only after full fledged trial. At this juncture the available documents makes it clear that the plaintiff is in possession and enjoyment of the suit schedule property. Therefore at this stage the prima-facie satisfied that the plaintiff is in possession and enjoyment of the suit schedule property. Accordingly, I answer the Point No.1 in the Affirmative.

14. 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.

15. As discussed in point No.1 the plaintiff has made out prima-facie case. And she has pleaded that the defendant is trying to interfere over the suit schedule property. Hence if the defendant is not restrained, he may encroach the suit property. If he encroach the suit property the plaintiff 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 plaintiff, and if application is not allowed it will cause irreparable injury to the plaintiff. Accordingly, I answer the Point No.2 and 3 are in the Affirmative.

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

ORDER

The I.A.No.1 filed by the plaintiff under Order 39 Rule 1 and 2 R/w section 151 of C.P.C is hereby allowed.

Consequently the defendant or any person claiming through him is hereby restrained from interfering into the possession and enjoyment of plaintiff over the suit property by way of temporary injunction till further orders.

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

(Dictated to the Stenographer directly on Computer corrected and then pronounced by me in the open court on the 11th day of October-2022.)

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