

**IN THE COURT OF THE ADDL. CIVIL JUDGE AND JMFC AT
MULBAGAL.**

Dated this the 30th day of October -2021.

OS.No.136/2020

Present :

**Smt. A.N. Kanthamma, B.A.,LLB,
Addl. Civil Judge & JMFC
Mulbagal**

Plaintiff: Sri. M.Srinivas

V/s

Defendants: Sri. M.G. Naraynamswamy and others

Parties to I.A.No.1

Applicant: **Sri. M. Srinivas**
Plaintiff S/o late Mugappa,
Aged bout 40 years,
R/o Ambedkar Nagar,
Mulbagal.

(By **Sri. S. Basheer Ahamed**–Advocate)

V/s

Opponents: **1. Sri. M.G.Narayanswamy**
Defendants S/o Gantlappa,
Aged about 55 years.

2. Sri. Nagarajuna
Aged about 32 years.

3.Sri. Sivaraj Kumar
Aged about 28 years,

4.Sri. Suresh

Aged about 26 years,

Defendants No.2 to 4 are
sons of M.G. Narayana Swamy and
all are residing at:
Ambedkar Nagar,
Mulbagal.

(By **Smt. Noor Praveen-**
Advocate)

**ORDERS ON I.A.NO.1 FILED U/O 39 RULE 1 AND 2 OF
CPC**

I.A. No.1 filed by the Plaintiff U/O 39 Rule 1 and 2 R/w Sec. 151 of CPC for seeking the grant of Temporary Injunction in favour of Plaintiff and thereby temporarily restrained the Defendants, their agents, servants, coolies, workers, P.A.Holders or any person or persons claiming through them from interfering in the peaceful possession and enjoyment of the Plaintiff over the suit schedule property till the disposal of the suit.

2. The brief facts of the Plaintiff case is that

The Plaintiff submits that he is absolute owner in possession and enjoyment of the suit schedule property bearing Sy.No.601, M.R.H.No.41/201-20, katha No.888, measuring 15 guntas situated at Mulbagal Rural Village, Kasab Hobli, Mulbagal Taluk. The Plaintiff submits that his father and grandfather were in possession and enjoyment of suit schedule property as they are Neerganti Inamars and they

are cultivating suit schedule property. The Plaintiff submits that on 13-03-2019 the Government re-granted suit schedule property in favour of Plaintiff as per law of Inam Abolition Act 1961 and issued re-grant certificate in his favour.

3. It is submitted by plaintiff that the Defendants are trying to interfere in possession of Plaintiff over the suit schedule property. Hence the Plaintiff has filed above suit. The Plaintiff states that he has made out a prime facie case and balance convenience lies in his favour and if this Hon'ble Court has not granted temporary injunction, he will be put to great loss and hardship. Accordingly, the Plaintiff prays to allow the application.

4. Upon service of summons the Defendants have appeared through their counsel and the Defendant No.1 has filed written statement, wherein he has denied the averment made in the plaint and the defendants No.2 to 4 have adopted the written statement filed by the Defendant No.1 and Defendants have filed memo to adopted written statement as objections to I.A No.1. It is submitted by the Defendants that the Plaintiff has given wrong boundaries to suit schedule property. It is submitted by the Defendants that Venkatrama S/o Guddi Yallaga is great grandfather of Defendants and he was their great grandfather and during life time of their great grandfather he was Neeraganti Nowkaridhar in property Sy.No. 729 and Sy.No. 731 of Busalakunte and municipal katha

Sy.No. 593, Sy.No. 601 of Joganathanagunte. It is submitted by the Defendants that after death their great grandfather, his sons Sanjeevappa and Yallappa were in continuous possession and enjoyment of the above said property and after their death Sanjeevappa's Guntallap and Govindappa S/o Yallappa had succeeded the estate of said properties. It is submitted by the Defendants that after death of Gantlappa, Govindappa, M.G. Narayanaswamy i.e, the Defendants have filed application before revenue authorities for grant the said properties. It is submitted by the Defendants that after enquiry the revenue authorities have re-granted the properties Sy.No.729 and 731 i.e., Sy.No.593, but property land bearing Sy.No.601, Sy.No. 593 situated at Joganathana Kunte has been left by oversight and as such the Defendant has filed necessary application before the Deputy Commissioner 03-08-2012 and thereafter, D.C. Kolar has directed to Thasildar, Mulbagal to re-grant said land property Sy.No.601 to Defendant No.1 dated 6-12-2019. Thereafter the Defendants have enquired said matter before Thasildar, Mulbagal and Thaildar has assure the Defendant No.1 that he will discuss said matter with the D.C. The Defendant No.1 submits that they are in possession and enjoyment of the suit schedule property from past his five decades rendering their service as a Neeraganti Inamthi and doing agriculture in the said properties. It is submitted by the Defendants that the Plaintiff was Thalari Inmathi family and the Government granted the property bearing Sy.No.1 and said property and the above said

property on are quiet different and the Plaintiff and Plaintiff is grand son of Venkatarmappa S/o Sandhappa. It is submitted by the Defendants that their family also got Neeraganti land and Thalari Inmathi lands and the properties of Plaintiff's family are not tallies with each other. It is submitted by the Defendants that the Plaintiff by using men and money having bad elements has filed the above suit against these Defendants. It is submitted by the Defendants that Plaintiff are not shareholder and related to Defendants family and in order to grab the property belongs to the Defendants, the Plaintiff has filed this untenable suit against the Defendants. It is submitted by the Defendants that the Plaintiff has filed application before Thasildar, Mulbagal. It is submitted by the Defendants that neither the Plaintiff nor his family members have no any right , title, interest and possession over the suit schedule property and Plaintiff is having property Sy.No. 729, Sy.No.731, of Busala Kunte and Sy.No.593 and 601 situated at Joganathana Gunte and the Plaintiff in order to given trouble to Defendants has filed above suit. The Defendant No.1 submits that the great grand father of the Defendant No.1 is Venkatarama S/o Guddi Yallaga and Plaintiff's great grandfather is Venkataramappa S/o Sandappa the Plaintiff by utilizing the said name has filed above suit colluding with revenue authority and included their names in RTC extract on 06-12-2019. It is submitted by the Defendants that after due to enquiry they have filed petition and remanded matter before Tahsildar, Mulbagal and on 04-07-2020 Revenue Inspector

visited spot and verified the same on 02-07-2020. Accordingly, the Defendants prayed to dismiss the application.

5. It is submitted by the Defendants that Plaintiff has not made out a prime facie case and balance convenience lies in their favour and if this Hon'ble Court has granted temporary injunction they will be put to great loss and hardship Accordingly, Defendants pray to dismiss the application.

6. Heard the counsel for Plaintiff and Defendants on IA No.1 Perused the materials available on record.

7. The points for consideration of this Court IA No.1 are as follows:

- 1. Whether the Applicant/Plaintiff has made out prima facie case?**
- 2. Whether the balance of convenience lies in favour of Plaintiff?**
- 3. Whether the irreparable injury or hardship will be caused to the Plaintiff if TI is not granted?**
- 4. What order?**

8. My findings to above points are as below for the reasons herein after mentioned.

Point No. 1: In the **Negative**.

Point No. 2: In the **Negative**.

Point No. 3: In the **Negative**.

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

REASONS

9. Points No.1 to 3:- As these points are interconnected they are taken up together for the purpose of avoiding repetition of facts.

10. The Plaintiff has filed the above suit for Permanent Injunction against the Defendants. In support of his case the Plaintiff has produced the following documents order copy, RTC extracts, mutation register extract, death certificate of Mugappa.

11. In support of his contention the Defendants have produced following document G.Tree, order copies, RTC extracts, mutation register extract, R.R and IL copy, preliminary order copy, Neeraganti pension record, Photos.

12. At this stage without going to the merits of the case and holding mini trial, this court has considered the aspect of prima-facie case. At this stage, this court makes it very clear that this court is looking towards prima-facie case and not prima-facie title. It is well settled principles of law that at the time of disposing the Temporary Injunction application, the court cannot go in to the prima-facie title and only to considered whether

the Plaintiff has made out a prima-facie case for granting interim relief.

13. The primary purpose for granting interim relief is the preservation of thing in dispute till legal rights and conflicting claims of the parties before the Court are adjudicated. In other words, the object of granting an order of interim relief is to evolve workable formula to the extent called by the demands of the situation. It is further admitted legal position that the granting of Temporary Injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future from the possible injury.

14. The power of granting Temporary Injunction is at the discretion of the court. This discretion, however should be exercise reasonable, judicially and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.

15. As such the Plaintiff has to establish the prima-facie

case, balance of convenience and also irreparable loss and injury. On careful perusal of the pleadings and documents of the Plaintiff, it appears to this court that the

Plaintiff has claimed that he is absolute owner in possession and enjoyment of the suit schedule property bearing Sy.No.601, M.R.H.No.41/201-20, katha No.888, measuring 15 guntas situated at Mulbagal Rural Village, Kasab Hobli, Mulbagal Taluk. The Plaintiff contends that his father and grandfather were in possession and enjoyment of suit schedule property as they are Neerganti Inamars and they are cultivating suit schedule property. The Plaintiff contends that on 13-03-2019 the Government re-granted in favour of Plaintiff as per law of Inam Abolition Act 1961 and issued re-grant certificate in his favour and if the Temporary Injunction is not granted, the Defendants can interfere in possession of suit schedule property. It is contention of the Defendants that the Plaintiff's father has created documents and obtained grant certificate from the Government. In support of his contention the defendants have produced G.Tree, order copies, RTC extracts, mutation register extract, R.R and IL copy, preliminary order copy, Neeraganti pension record, which shows that great grand father of the defendants was in possession of Sy.No.601, measuring 15 guntas.

The provisions of [Section 61\(1\)](#) clearly defines the exclusive jurisdiction of Revenue Courts to determine, decide or dispose of any matter which is empowered to do so under the Act and no Civil Court shall exercise jurisdiction as to any such matters. That is, the assessment, the recovery of land revenue, the land revenue administration and other matters mentioned in Section 61(2) of the KLR Act i.e.,

- (a) claims against government relating to any property pertaining to any office or for any service whatsoever,
- (b) objections- (i) to the amount or incidence of any assessment of land revenue, or
(ii) to the mode of assessment or levy, or to the principle on which such assessment or levy is fixed, or
(iii) to the validity or effect of the notification of survey or settlement;
- (c) claims connected with or arising out of any and the proceedings for realization of land revenue or other demands recoverable as arrears of land revenue under the Act, or any other law for the time being in force;
- (d) to set aside the claims, on account of irregularity, mistake or any other ground, except fraud, sales for arrears of land revenue etc.

16. The provisions of [Section 61](#) of the Act is the exclusive Jurisdiction of Revenue Courts and bar of jurisdiction of Civil Courts. The only relevant exception is Sub-Section (c) of [Section 62](#) of the Act which provides that, suits between private parties for possession of any land being a whole survey number or sub-division of a survey number or part thereof, but, this is not a suit falling within the ambit of the provision. When the Civil Court has no jurisdiction to hold that an entry made in any record of revenue survey or settlement is wrong, it cannot, in law, proceed to grant the relief as prayed for by the plaintiff because the relief is based on such a finding to be recorded by the Civil Court.

(a) suits against the State Government to contest the amount claimed or paid under protest, or recovered as land revenue on the ground that such amount is in excess of the amount authorized in that behalf by the State Government or that such amount had previous to such claim, payment or recovery been satisfied in whole or in part or that the plaintiff or the person whom he represents is not the person liable for such amount;

(b) suits between private parties for the purpose of establishing any private right, although it may be affected by any entry in any land record;

(c) suits between private parties for possession of any land being a whole survey number or sub--division of a survey number or a part thereof.

17. A plain reading of the said provision makes it clear that [Section 61](#) of the Act would not bar a suit coming under any of the Clauses (a), (b) and (c) of [Section 62](#) of the Act. [Section 62](#) of the Act states that nothing in [Section 61](#) shall be held to prevent the Civil Courts from entertaining suits, between private parties for the purpose of establishing any private right, although it may be affected by any entry in any land record and suits between private parties for the purpose of establishing any private right, although it may be affected by any entry in any land record and suit between private parties for possession of land being a whole survey number or sub-division of survey number or Part thereof under Clauses (b) and (c) of [Section 62](#) of the Act.

18. Chapter XI of the KLR Act deals with 'Record of Rights'. [Section 127](#) deals with Preparation of Record of Rights in every village and such record shall include the names of persons who are holders, occupants, owners, mortgagees, landlords or tenants of the land or assignees of the rent or revenue thereof; the nature and extent of the respective interest of such persons and the conditions or liabilities (if any) attaching thereto; the rent of revenue, (if any) payable by or to any of such persons; and such other particulars as may be prescribed. Sub-sections (2) and (3) deal with Record of Rights which shall be maintained by such officers in such areas as may be prescribed and different officers may be prescribed for different areas. When the preparation of the record of rights referred to in Sub- section (1) is completed in respect of any village, the fact of such completion shall be notified in the official Gazette and in such manner as may be prescribed. In view of the provisions of Section 62(b) of the KLR Act, the Civil Courts have no jurisdiction in the above case. Hence, in the present case this court has no jurisdiction in respect of matters specified in section 61(2) (a) to (h), which indicate that they primarily relate to assessment, land revenue, entire to be made in the land records. Hence the parties have to approach the competent form to seek proper relief.

19. Further, the defendants have produced revenue records, which shows that great grand father of the defendants was in possession of Sy.No.601, measuring 15 guntas. This

shows that the plaintiff has suppressed the material facts before the court and plaintiff has not approached this court with clean hands. The temporary Injunction is an equitable remedy as well as it is governed by law. Therefore, equitable principles are of very much importance in granting or rejecting injunction. Equitable principle is that, the person who seeks equity must come with clean hands. The temporary injunction is a discretionary and equitable relief and so the party who suppressed the material fact from the court, does not deserve to get any discretionary relief much less an order of temporary injunction. The principle of equity that, he who seeks equity must do equity.

20. In my considered opinion at this juncture the Plaintiff has not made out the prima-facie case and also the Plaintiff has not established the balance of convenience. It is relevant to note that both parties have ample opportunities to prove their case at the time of trial. Whether the plaint schedule property is belonging to Plaintiff or not it has to be answered subsequent to the completion of full-fledged trial. In the instant case Plaintiff has also not established what type of hardship will be caused to him if the Temporary Injunction is not granted. Hence, I answer **Point Nos.1 to 3** in the **Negative.**

21. Point No.4:- Having thus discussed in detail referred to above, I proceed to pass the following.

ORDER

IA No.1 filed by the Plaintiff under order 39 Rule 1 and 2 R/w Sec.151 of CPC is hereby rejected.

Parties are directed to bear their own costs.

For compliance for sec.89 of CPC. Call on 15-11-2021

(Dictated to the Stenographer, transcribed by him, transcript revised, corrected and pronounced by me in open court on this the 30th day of October- 2021.)

(A. N. Kanthamma)
Addl. Civil Judge & JMFC.,
Mulbagal.