

KAKL510012222021



IN THE COURT OF PRL. CIVIL JUDGE & ADDITIONAL JMFC.,

AT K.G.F

DATED THIS THE 20th DAY OF AUGUST 2021

: **PRESENT:**

MISS. NASRAT MUKHTAR AHMED KHAN, B.A. LLB, LL.M
PRL. CIVIL JUDGE & ADDL. JMFC., K.G.F.

O.S. No.132/2021

PLAINTIFF/s : 1. Sri. B.N.Shivakumar s/o Sri.Nanjappa,
Aged about 42 years,
R/at Jangamma Basapura,
Shilangeri Post,
Bangarpet Taluk.
Kolar District.

(Rep. by Sri. **S.A.H.**, Advocate.)

Vs

DEFENDANT/s : 1. M/s Bharath Gold Mines Ltd.,
Represented by
The Managing Director,
Suvarna Bhavan,
Oorgaum Post, K.G.F.

2. The Estate Officer,
Bharath Gold Mines Ltd.,
Suvarna Bhavan,
Oorgaum Post, KGF.

(Defendant no 1 placed exparte)

(Defendant no 2 Rep. by Sri. **K.J.R.**, Advocate.)

IA.NO.I

APPLICANT/s : 1. Sri. B.N.Shivakumar s/o Sri.Nanjappa,
(Plaintiff) Aged about 42 years,
R/at Jangamma Basapura,
Shilangeri Post,
Bangarpet Taluk.
Kolar District.

V/s.

OPPONENT/s : 1. M/s Bharath Gold Mines Ltd.,
(Defendants) Represented by
The managing Director,
Suvarna Bhavan,
Ooragaum Post, K.G.F.

2. The Estate Officer,
Bharath Gold Mines Ltd.,
Suvarna Bhavan,
Oorgaum Post, KGF.

* * *

ORDER ON I.A.NO.I FILED BY THE PLAINTIFF
UNDER ORDER 39 RULE 1 AND 2 R/W SEC.151 OF CPC.

Plaintiff has filed I.A.No.I under Order 39 Rule 1 and 2 r/w section 151 of CPC praying this court to issue an ad interim order of injunction restraining the defendants, their agents, servants and others acting on behalf of the defendants from illegally interfering with the peaceful possession and enjoyment and agricultural

operations thereon over the suit schedule property in any manner, pending the disposal of the suit.

2. Plaintiff has filed an affidavit accompanying the said IA averring that, he has been in possession and enjoyment of the suit schedule property as unauthorized occupant from number of years and in pursuance of the long possession he had filed application for granting the suit schedule property in his favour under Darkasth proceedings and in this regard , he had filed application for regularization of unauthorized cultivation in form No.57 and said application was placed before the land Grant Committee and in spite of number of applications, the authority failed to grant the schedule property for the reason that, the Land Grant Committee has not been constituted for the said Gattakamenahalli Robertsonpet Hobli, KGF. He had filed petition before Hon'ble High Court of Karnataka in WP No.2271/202021 seeking regularization of grant under Bahur Hukum Saguvali and he had filed the above said Writ Petition to consider his

case expeditiously and the said writ petition was disposed with the condition that, when such Committee is constituted, the Tahasildar shall place the application before the land Grant Committee for necessary decision and in meanwhile there is also the direction to all the parties to the above proceedings not to take any advantage of pendency of the application or the willingness to consider such application to change the nature of use of land and there is also direction that within 4 weeks from the receipt of certified copies of the order, the Tahasildar shall comply the orders of rule 108 CC of Karnataka land Revenue Rules 1966 along with the representation before the land grant committee for necessary decision.

3. He has also paid TT charges to the Government on 08.03.2019 in respect of the suit schedule property and on the direction of the then Tahasildar, Bangarpet Taluk, the revenue sketch has been prepared by Taluk surveyor, Bangarpet Taluk, denoting the suit schedule property for

the purpose of grant under Bahur Hukkum Saguvali and the sketch clearly denotes the possession and enjoyment of the plaintiff over the suit schedule property. The application for granting the land in his favour in respect of suit schedule property is pending before the Tahasildar, KGF Taluk, in view of jurisdiction being divided as Bangarpet Taluk and KGF Taluk and the subject matter in issue is coming within the purview of KGF Taluk and the records are pending for adjudication before the Tahasildar, KGF Taluk.

4. The Sy.No.25 consists of 291.36 guntas and in the said extent one Sri.Raghu s/o Govindasawamy has been granted 4 acres, D.Jagadish s/o Desan has been granted 2 acre, Kothanayaki w/o Kannan has been granted 2 acre, and M.Bharath Kumar s/o Magan Lal has been granted 4 acres and all the lands are in their respective possession and mutations have been affected and there is outstanding land of 279.36 guntas standing in the name of Government and that, the copy of RTC Extract

discloses the total extent of the land. He had also submitted application on 22.03.2021 for issuance of Saguvali chit. In pursuance of order in W.P.No.2271/2021 and said application has been endorsed by the Tahasildar, KGF. He has been in the unauthorized cultivation from number of decades. In pursuance of the possession, he had covered the suit schedule property with barbed wire fencing and has been raising seasonal crops like Ragi, Avare, Thogari and other seasonal crops in the suit schedule property from number of decades and at present, he has ploughed the suit schedule property for sowing Ragi and said aspect is within the knowledge of the defendants and the suit property does not fall within the purview of BGML property and BGML property and suit property are distinct and separate but, the defendants having no right, title, interest or possession over the suit property on 31.03.2021 along with band of unruly elements made illegal attempt to interfere with the peaceful possession

and enjoyment of the suit schedule property and made attempt to demolish the existing fencing in the suit property and with great difficulty, he resisted the illegal acts of the defendants, their agents, servants and others but, still the defendants are threatening them with dire consequences and he lodged the complaint to jurisdictional police to render police help but, they failed to take any action and brushed aside the case stating it to be civil in nature and hence this application.

5. The defendant no.1 is placed ex-parte .Defendant No.2 has filed objection to the said application denying plaintiff averments and interalia contends that, the application filed by the plaintiff is not maintainable and the averments pleaded by him is false and contends that, the defendant company is the owner of the suit schedule property under sale deed dated 28.03.1977 and defendant company is in possession of suit property and hence pray the Court to reject the said I A filed by the plaintiff.

- 6.** Heard both and perused the materials on record.
- 7.** On perusal 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 shows that the balance of convenience lies in his favour ?
- Point no.3: Whether the plaintiff further shows that, an irreparable injury will be caused to him if the said IA is not allowed ?
- Point no.4: What order ?

- 8.** On perusal of the materials on record and after hearing the arguments canvassed by both the counsels, my findings for the above points are as under:-

- 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. POINT NO.1:-** It is the case of plaintiff that, he has been in possession and enjoyment of the suit schedule property as unauthorized occupant from number of years

and in pursuance of the long possession, he had filed application for granting the suit schedule property in favour of him under Darkasth proceedings and in this regard, he has filed an application for regularization of unauthorized cultivation in Form No.57 and said application was placed before the Land Grant Committee and in spite of number of applications, the authorities failed to grant the schedule property for the reason that, the land grant committee has not been constituted for the said Gattakamenahalli Robertsonpet Hobli, KGF and he has filed petition before Hon'ble High Court of Karnataka in WP No.2271/2021 seeking regularization of grant under Bahur Hukum Saguvali and he had filed the above said Writ Petition to consider his case expeditiously and the said writ petition was disposed off with the condition that, when such committee is constituted, the Tahasildar shall place the application before the land grant committee for necessary decision and in meanwhile there is also the direction to all the

parties to the above proceedings not to take any advantage of pendency of the application or the willingness to consider such application to change the nature of use of land .

10. Further he states that, he has also paid TT charges to the Government on 08.03.2019 in respect of the suit schedule property and on the direction of the then Tahasildar, Bangarpet Taluk, the revenue sketch has been prepared by Taluk surveyor, Bangarpet Taluk, denoting the suit schedule property for the purpose of grant under Bahur Hukkum Saguvali and the sketch clearly denotes the possession and enjoyment of the plaintiff over the suit schedule property. The application for granting the land in his favour in respect of suit schedule property is pending before the Tahasildar, KGF Taluk, in view of jurisdiction being divided as Bangarpet Taluk and KGF Taluk, the subject matter in issue is coming within the purview of KGF Taluk and he has submitted application on 22.03.2021 for issuance of

Saguvali chit in pursuance of order in W.P.No.2271/2021 and said application has been endorsed by the Tahasildar, KGF.

11. He has been in unauthorized cultivation from number of decades. In pursuance of the possession, he had covered the suit schedule property with barbed wire fencing and has been raising seasonal crops like Ragi, Avare, Thogari and other seasonal crops in the suit schedule property from number of decades and at present, he has ploughed the suit schedule property for sowing Ragi and suit property does not fall within the purview of BGML property and BGML property and suit property are distinct and separate but, the defendants absolutely have no right, title, interest or possession over the suit property and on 31.03.2021 along with band of unruly elements made illegal attempt to interfere with the peaceful possession and enjoyment of the agricultural operations of him over the suit schedule property and made attempt to demolish the existing fencing in the suit

property and he lodged the complaint in this regard but, they failed to take any action in this regard and brushed aside stating it to be of civil in nature.

12. Whereas the defendant states that, the suit schedule property belong to the defendant and defendant company is the absolute owner of the suit schedule property and defendant company is in possession of the suit schedule property under sale deed dated 28.03.1977 and the defendant company has become the absolute owner of the survey number 25 which is the suit schedule property.

13. Plaintiff states that, Sy.No.25 i.e. suit schedule property survey number consists of 291.36 guntas and in the said extent one G.Raghu s/o Govindaswamy has been granted 4 acres, D.Jagadish s/o Desan has been granted 2 acre, Kothanayaki w/o Kannan has been granted 2 acre and M.Bharath Kumar s/o Magan Lal has been granted 4 acres and there is outstanding land of 279.36 guntas standing in the name of Government and

has produced RTC reflecting names of said Raghu, Jagadish, Kothanayaki for some extent in Sy.No.25 and remaining 279.36 land to be Sarkari Gomala and in said RTC, name of plaintiff is not reflecting and just because some portion is granted to others in the said Sy.No.25 wouldn't show the right of plaintiff over the extent claimed by him in Sy.No.25.

14. Further though he states that, he has filed an application for grant of suit property in his favour under Darkasth proceedings and he had filed an application for regularization of unauthorized cultivation in Form No.57 and said application was placed before land Grant Committee and in spite of number of applications, the authorities failed to grant the schedule property for reason that, the Land Grant Committee was not constituted for said Gattakamenahalli Village, Robertsonpet Hobli, KGF and has produced acknowledgement, it can be seen that, the said acknowledgement is for Sy.No.25 i.e. suit survey number

but not for 4 acre and extent is written as 3-0-0.00 and further the said acknowledgement wouldn't go to show or prove that, on receiving the application and giving of acknowledgement , the plaintiff has been in possession from long and raising crops therein.

15. Further though plaintiff states that, he has filed petition before Hon'ble High Court of Karnataka, in W.P.No.2271/2021 seeking regularization of grant under Bagur Hukum Saguvali and he has filed above said Writ Petition to consider his case expeditiously and Writ Petition was disposed off with the condition that, when such Committee is constituted, Tahasildar shall place application before land grant committee for necessary decision and meanwhile there is also direction to all the parties to above proceedings not to take any advantage of pendency of application and has produced certified copy of Order in W.P.No.2271/2021, it could be seen that, the present case is filed against the defendants i.e. BGML and Estate Officer of BGML and they are not the parties

to the said W.P.No.2271/2021 and further the said order reflects that, direction is given to respondent No.1 i.e. State of Karnataka represented by Prl. Secretary to Revenue Department, M.S.Building, Bengaluru, to constitute Bagar Hukum committee for purpose of redressal of petitioner's grievance within period of two months from the date of receipt of order and thereafter Bagur Hukum Committee is directed to examine the petitioner's grievance and redress the same within the period of three months from the date of constitution of aforesaid Committee and the said W.P. No.2271/2021 nowhere states that, the plaintiff is entitled for the grant of land which the plaintiff alleges to be in unauthorized occupation from number of years and further, it could be noticed that, the said W.P.No.2271/2021 was filed by the present plaintiff praying to issue Writ to respondent No.1 to constitute Bagar Hukum Committee to expeditiously consider the application submitted by petitioner as per acknowledgement dated 08.03.2019 and

the said acknowledgement as already stated ,is not for the 4 acres extent claimed in the suit schedule, but for 3-0-0.00 and further in acknowledgement, the boundaries are not given so as to know, whether it is pertaining to suit property only as Sy.No.25 is by plaintiff himself stated to be of larger area of 279.36 extent land.

16. Further though plaintiff has produced sketch and states that, Tahasildar, Bangarpet Taluk, has denoted suit schedule property for purpose of grant under Bagur Hukum Saguvali and sketch clearly denotes the possession and enjoyment of the plaintiff over the suit schedule property, it can be seen that, sketch reads as “Sy.No25 Paiki Manjurigagi” sketch and hence it doesn't indicate that, it is granted to the plaintiff and further in the said sketch, though name of the plaintiff is reflected for Sy.No.25 measurement 4 acre it could be seen that, the boundary on Southern side is left blank and western boundary is shown as “ Sarkari” and not as reflected in the plaint schedule as proposed road in Government

land. Further the boundaries in Sketch on East, West and North is written as mere "Government" and not written as "Government land in same survey number" as depicted in the plaint schedule. Further it could be seen that, the acknowledgement given by the plaint reflects the extent as 3 and it is not explained as to how the sketch came to be in the name of plaintiff for 4 acres in variance to acknowledgment.

17. Further the photographs produced, by themselves do not show the possession of the plaintiff for total extent and boundaries shown in the suit schedule. Further it could be seen that, though plaintiff has filed TT charges receipt in the name of plaintiff of Sy.No.25 measuring 4 acre, the same doesn't reflect boundaries to ascertain whether the plaintiff is in unauthorized cultivation of the very property stated in the plaint as, plaintiff states that, he is in possession of 4 acres of Sy.No.25 bounded on all side by same survey and to identify that, his cultivation

is in respect of the said schedule property, no document is forthcoming.

18. Further defendant states that, under the sale deed dated 28.03.1977, the defendant's company has become absolute owner of Sy.No.25 which is suit property and has produced document dated 26.03.1977 reflecting the suit property number 25 of Gattakamenahalli and hence the plea of the plaintiff that, the suit schedule property doesn't come within the purview of BGML property and BGML property and suit schedule property is distinct and separate property couldn't at his juncture be accepted fully. The citations produced by the defendant with due respect is not applicable to the present facts on hand . For the reasons stated above, plaintiff has failed to show his prima facie case and thereby, point no.1 is answered in the Negative.

19. POINT NO.2 AND 3:- As in point no 1, this court by giving reasons have concluded that, the plaintiff has failed to prove the prima facie case, there is no need to

discuss further regarding the balance of convenience and irreparable injury, as it is settled law that, when a party lacks the existence of prima facie case, the other two requirements such as balance of convenience and irreparable loss, loses their significance. In **Kashi Math Samsthan and Another -v/s- Srimad Sudhindra Thirtha Swamy and Another AIR 2010 SC 296** it has been held that, in order to obtain an order of injunction, the party seeking the grant of injunction, has to prove that he has made out the prima facie case to go for trial, balance of convenience is also in his favour and he will suffer irreparable loss if the injunction is not granted. But it is equally well settled that, when a party fails to prove a prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove a prima facie case to go for trial, it is not open to the court to grant injunction in his favor, even if he has made out a

case of balance of convenience and irreparable injury. Accordingly the point no. 2 and 3 are answered in Negative.

20. POINT NO.4:- In view of the discussion made above, I proceed to pass the following

O R D E R

I.A. No.I filed by the plaintiff under Order
39 Rule 1 & 2 read with Section 151 of Civil
Procedure Code is hereby rejected with cost of
Rs.200/-.

*(Dictated to the stenographer, typed by him on computer,
corrected by me and then pronounced in the open court on this the
20th day of September 2021).*

(NASRAT MUKHTAR AHMED KHAN)
Prl. Civil Judge & Addl. JMFC: K.G.F.

IN THE COURT OF PRL. CIVIL JUDGE & ADDITIONAL JMFC,

AT K.G.F

DATED THIS THE 04th DAY OF AUGUST 2021

: PRESENT:

MISS. NASRAT MUKHTAR AHMED KHAN, B.A. LLB, LL.M
PRL. CIVIL JUDGE & JMFC., K.G.F.

O.S. No.81/2020

PLAINTIFF/s : 1. Sri. K.Rajkumar
s/o late Kanagaraj,
Aged about 56 years.,

2. Sri. Nayeem Pasha
s/o Shaik Baba,
Aged about 46 years.,

Both are R/at Near RTO Office,
Coromandal Post,
K.G.F.

(Rep. by Sri. **S.A.H.**, Advocate.)

Vs

DEFENDANT/s : 1. M/s Bharah Gold Mines Ltd.,
Suvarna Bhavan,
Ooragaum Post, Kolar Gold Field.

Represented by its,

Managing Director,

Suvarna Bhavan,

Ooragaum Post, KGF.

2. Chief Security Officer/ Estate Officer,
Bharath Gold Mines Ltd.,
Suvarna Bhavan,
Ooragaum Post, KGF.

3. The Executive Enginner,
BESCOM, Champion Reegs, KGF.

(Defendant No.1 and 2 absent)

(Defendant No.3 Rep. by Sri. **K.K..M.**, Advocate.)

IA.NO.II

APPLICANT/s : 1. Sri. K.Rajkumar
(Plaintiffs) s/o late Kanagaraj,
Aged about 56 years.,

2. Sri. Nayeem Pasha
s/o Shaik Baba,
Aged about 46 years.,

Both are R/at Near RTO Office,
Coromandal Post,
K.G.F

V/s.

OPPONENT/s : 1. M/s Bharah Gold Mines Ltd.,
(Defendants) Suvarna Bhavan,
Ooragaum Post, Kolar Gold Field.
Represented by its,
Managing Director,
Suvarna Bhavan,
Ooragaum Post, KGF.

2. Chief Security Officer/ Estate Officer,
Bharath Gold Mines Ltd.,
Suvarna Bhavan,
Ooragaum Post, KGF.
3. The Executive Enginner,
BESCOM, Champion Reegs, KGF.

* * * *

ORDER ON I.A.NO.II FILED BY THE PLAINTIFF
UNDER ORDER 39 RULE 1 AND 2 R/W SEC.151 OF CPC.

Plaintiff has filed I.A.No.II under Order 39 Rule 1 and 2 r/w section 151 of CPC praying this court to issue and ad interim order of injunction restraining the 3rd defendant, his agents, servants and others acting on behalf of the defendant No.3 from illegally disconnecting the Electricity connections from the suit schedule properties in any manner, pending disposal of the suit.

2. Plaintiff has filed an affidavit accompanying the said IA averring that,

3. The

and hence pray to reject the IA No.1.

5. Heard both and perused the materials on record.
6. On perusal 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 shows that the balance of convenience lies in his favour ?
- Point no.3: Whether the plaintiffs further shows that, an irreparable injury will be caused to them if the said IA is not allowed ?
- Point no.4: What order ?

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

- 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

8. **POINT NO.1:-** It is the case of plaintiff that,
9. Further

I answer point no.1 in the Negative.

11. POINT NO.4:- In view of the discussion made above,

I proceed to pass the following

ORDER

I.A. No.II filed by the plaintiff under Order
39 Rule 1 & 2 read with Section 151 of Civil
Procedure Code is hereby rejected with cost of
Rs.200/-.

*(Dictated to the stenographer, typed by him on computer,
corrected by me and then pronounced in the open court on this the
04th day of July 2021).*

(NASRAT MUKHTAR AHMED KHAN)
Prl. Civil Judge & Addl. JMFC: K.G.F.