

IN THE COURT OF THE II ADDL. CIVIL JUDGE & JMFC
AT K.G.F.

Dated this the 05th day of February 2021

:: PRESENT::
KIRAN S.P., B.B.M., LL.B.,
II Addl. Civil Judge, K.G.F.

OS No 330/2019

Plaintiff : - Sri. M.Krishnappa @ Siddappa

V/s.

Defendants :- Sri. Ramakrishna Reddy & Another

Cause Title On IA NO. I

Applicant: - Sri. M.Krishnappa @ Siddappa,
S/O.Muniyappa @ munigantlappa,
Aged About 63 Years,
R/at.No. A-75, Near Committee quarters,,
Oorgaum Post,
KGF..

(By Sri. N.S., Advocate)

V/s.

- Respondents:-**
- 1. Sri. Ramakrishnareddy,**
S/O. Late Chickaobala Reddy,
Aged About 72 Years,
R/at. Samanahalli Village,
Thopanahalli Post,
Bangarpet Taluk.
 - 2. Sri. Narayana Reddy,**
S/O. Late Muniswamy Reddy,
Aged About 52 Years,
R/at. Nachandahalli Village,
Bethamangala Hobli,

Parandahalli Post,
KGF Taluk.

(By Sri. S.A.H., Advocate,)

Cause Title On IA NO. II

Applicant: -

- 1. Sri. Ramakrishnareddy,**
S/O. Late Chickaobala Reddy,
Aged About 72 Years,
R/at. Samanahalli Village,
Thopanahalli Post,
Bangarpet Taluk.
- 2. Sri. Narayana Reddy,**
S/O. Late Muniswamy Reddy,
Aged About 52 Years,
R/at. Nachandahalli Village,
Bethamangala Hobli,
Parandahalli Post,
KGF Taluk.

(By Sri. S.A.H., Advocate,)

V/s.

Respondents:-

Sri. M.Krishnappa @ Siddappa,
S/O.Muniyappa @ munigantlappa,
Aged About 63 Years,
R/at.No. A-75, Near Committee quarters,,
Oorgaum Post,
KGF..

(By Sri. N.S., Advocate)

: COMMON ORDER ON IA NO.I & II :

The plaintiff has filed IA no.1 U/O 39 Rule 1 & 2 R/W sec. 151 of CPC seeking temporary injunction restraining the defendants, their family members,

servants, representatives from interfering with plaintiff's peaceful possession and enjoyment of the suit schedule property during the pendency of the suit.

02. The defendants have filed IA no.2 U/O 39 rule 1(A) and (c) R/W sec.151 of CPC, seeking temporary injunction restraining the plaintiff, his family members, agents, servants and others acting on behalf of the plaintiff from illegally interfering with the possession and enjoyment of the defendants over the written statement schedule property during the pendency of suit.

03. The suit schedule property is described as under;

“Land bearing survey no.13, measuring 1 acre, out of total land of 2 acre 10 guntas, assessment Rs.3.81, situated at Nachandlahalli Village, Bethamangala Hobli, KGF Taluk, bounded on the East by: Narayana Reddy and Ramakrishna Reddy lands, West by: Srirama Reddy and remaining land, North by: Ramachandra Reddy and Jayarama Reddy lands, South by: Ramachandra Reddy land.”

04. The written statement schedule property is described as under;

“All that piece and parcel of land bearing survey no.6, measuring 5 acres 9 guntas inclusive of 4 guntas of kharab, assessed at Rs.8.68 paise situated at Natchandlahalli Village, Bethamangal Hobli, KGF Taluk and the same is bounded with present boundaries on the East by: Buchepalli Hosakere Ridge, West by: Muniswamy Reddy now in possession of Jayarama Reddy, Hanumantha Reddy's land now in possession of Srirama Reddy and Shanbogue Inamathi land now in possession of Krishna Reddy, North by: Landed property of Papakka now in possession of Amresh S/O. Venkataramappa and South by: survey no.7 in possession of Muniswamy Reddy, Muniswamy navara Chikka Thippa Reddy, Bodi Reddy and Rajakaluve. The said property comprises of open well. “

05. In the accompanying affidavit of IA no.1, it is stated that, plaintiff is the absolute owner in exclusive possession of the suit schedule land having acquired the same under registered sale deed dated 17-12-2007 from D.R.Krishna Murthy for valuable consideration. That in pursuance of the sale deed the khatha is effected in his name vide MR no. 02/2007-08 and the khatha and pahani is appearing in the name of the plaintiff. He earlier to the plaintiff sale deed the katha was appearing in the name of his vendor D.R.Krishna Murthy vide MT no. 12/1986-87. Plaintiff has been in lawful possession of the suit schedule growing crops therein. That he has been exercising all right of ownership over the suit schedule. That the defendants are strangers and have absolutely no right, title to or interest of any kind over the suit schedule land and the defendants are not in possession of the same. That the defendants are owning their lands on the Eastern side of the suit schedule land and taking advantage of the same, they are illegally interfering with plaintiff's peaceful possession and enjoyment of the suit schedule land and they are illegally and unlawfully attempting to encroach into the suit schedule land. The suit schedule land is distinct and separate and it is clearly demarcated by boundary stones but inspite of it the defendants who are powerful persons doing these acts, in order to knock of the suit land, when plaintiff wanted to cultivate the suit land as there was rains recently, the defendants came on 04-09-2019 and are not allowing to cultivate

the suit schedule land and be in peaceful possession and enjoyment of the same. The matter was informed to the police but they have not taken any action on the ground that the dispute is civil in nature and hence plaintiff forced to filed the suit and seek interim relief. That if an order of injunction is not granted, he will be put to irreparable injury and loss. On these grounds he prays to allow the IA no.1.

06. In the accompanying affidavit of IA no.2, it is stated that, one Sri H.S Joseph had purchased land bearing survey no. 6 measuring 5 acres 9 guntas of wet and garden land of Natchandlahalli Village from one Sri D.Ramappa S/O. D.Ramappa under registered sale deed dated 17-03-1983 along with open well and all the relevant documents stood in the name of the said Joseph in order to prove his right title interest and possession over the said survey no.6 for a considerable period of time and that the said Sr. D.R. Krishna Murthy is the signatory to the sale deed of his father. That subsequent to the registered sale deed dated 17-03-1983 mutation has been effected in the name of the said Sri. H.S. Joseph and RTC were standing in the name of Sri. H.S.Joseph. That the said Sri H.S.Joseph was looking out of prospective purchaser in order to alienate the land bearing survey no. 6 measuring 5 acre 9 guntas on Nachandlahalli village and that defendant no.1 and one Sri.Muniswamy Reddy S/O. Gantla Reddy being the father of the 2nd defendant have come forward to

purchase the same and by virtue of the deal a registered sale deed dated 23-01-1985 has come into light and the said Sri. H.S. Joseph has put defendant no.1 and Sri. Muniswamy in possession and enjoyment of the said survey no.6. That by virtue of the registered sale deed dated 23-01-1985, mutation has been effected in the name of defendant no.1 and Sri. Muniswamy Reddy vide Mutation proceedings bearing M.R no. 6/1986-87 pertaining to survey no.6 measuring 5 acres 9 guntas. That defendant no.1 and 2nd defendant being the son of Sri. Muniswamy Reddy have changed the mutation proceeding subsequent to the death of the said Sri. Muniswamy Reddy vide mutation proceedings bearing M.R 4/H1/2016-17 by changing in the name of Sr. Muniswamy Reddy by replacing the name of the 2nd defendant Sri. Narayana Reddy in its place.

07. It is further submitted that by virtue of the mutation proceedings, the relevant entries were changed into the names of defendant no.1 and the 2nd defendant and the RTC extracts clearly disclose the same and prior to it, it was standing in the name of defendant no.1 and said Muniswamy Reddy. That the plaintiff quoted wrong boundaries and claiming the property of defendants on trick and stratagem by including the property of defendants. That one Sri D.Ramappa had sold the property bearing survey no.6 measuring 5 acres 9 guntas inclusive of 4 guntas of karab in favour of the said Sri H.S Joseph and in turn

the said Sri. H.S Joseph had sold the property in favour of the said Sri. Muniswamy Reddy and defendant no.1 and the plaintiff's alleged vendor being the signatory to the sale deed of Sri. H.S.Joseph and now the plaintiff has set up a survey no. as 13 and claiming the property of them and trick and stratagem. That the alleged sale in favour of the plaintiff is null and void and does depict the real state of affair existing at the spot and peruse the alleged entries does not substantiate the alleged possession of the plaintiff over the suit schedule property and all the said sale and entries fall within the category of concocted and fabricated documents. That on the guise of the fictitious survey no. as survey no. 13 the plaintiff is illegally interfering with the peaceful possession and enjoyment of defendant over the written statement schedule property and the plaintiff on 22-09-2019 made attempts to interfere and dispose defendants from the written statement schedule property and with great difficulty defendants have resisted the illegal act of the plaintiff and his unruly elements and the plaintiff and unruly elements are still threatening them that they will interfere with the peaceful possession and enjoyment of them over the written statement schedule property and disposes them from the written statement schedule property and that defendants lodged a complaint before the jurisdictional police to render police help and that the jurisdictional police failed to take any action in the matter as the same is civil in nature and having no other alternative defendants have

to file this counter claim seeking permanent injunction in respect of the written statement schedule property. On these grounds they pray for allow IA no.2.

08. IA no.1 is resisted by the defendants by filing objections. Objections filed to IA no.1 is nothing but the replica of affidavit averments annexed to IA no.2.

09. IA no.2 is resisted by the plaintiff by filing memo to adopt reply to counter claim as objections. It is nothing but the replica of affidavit averments annexed to IA no.1.

10. Heard both side. Perused the materials on record.

11. Points that would arise for final determination of these applications are as follows;

Point No.1: Whether the Plaintiff has made out prima-facie case for grant of temporary Injunction as sought in IA no.1?

Point No.2: Whether the balance of convenience lies in favour of the Plaintiff?

Point No.3: Whether the Plaintiff will be put to irreparable loss and hardship, if IA No. 1 is not allowed?

Point No.4: *Whether the defendants have made out a prima facie case for grant of temporary injunction as sought in IA no.2?*

Point No.5: *Whether the balance of convenience lies in favour of the defendants?*

Point No.6: *Whether the defendants will be put to irreparable loss and hardship, if IA No. 2 is not allowed?*

Point No.7 : *What Order?*

12. The findings on the above points are as follows;

- Point No.1: In the Affirmative
- Point No.2: In the Affirmative
- Point No.3: In the Affirmative
- Point No.4: In the Negative
- Point No.5: In the Negative
- Point No.6: In the Negative
- Point No.7: As per final order for the following

R E A S O N S

13. **Point no 1 and 4** : These points are interlinked each other. Hence they have taken together

for common discussion in order to avoid fact and circumstances. The plaintiff has filed the suit for the relief of permanent injunction with respect to suit schedule property.

14. The defendants have filed counter claim for the relief of permanent injunction with respect to written statement schedule property.

15. It is the specific case of the plaintiff that he is the absolute owner in exclusive possession of the suit schedule land. He acquired the same under registered sale deed dated 17-12-2007 from D.R. Krishnamurthy. In pursuance of the sale deed the katha is effected in the name of plaintiff vide MR no. 2/2007-08 and the katha and pahani is appearing in the name of plaintiff. The said D.R.Krishnamurthy was owning 1 acre 21 guntas out of the suit survey no. 13 and out of the said land he has sold 1 acre to the plaintiff and 21 guntas was sold to one Bharathamma. Said Bharathamma has also agreed to sell the said 21 guntas to the plaintiff under registered sale agreement dated 04-10-2008. The plaintiff has been in lawful possession of the suit schedule growing crops therein.

16. In addition to above contention the plaintiff has produced xerox copy of village map, RTCs bearing survey no.13, survey no. 14/1, survey no. 15, survey no. 16, survey no.17/1, Police acknowledgement, certified

copy of complaint, xerox copy of sale deed dated 17-12-2007, xerox copy of sale deed dated 04-10-2008, mutation register number 2/2007-08.

17. Upon perusal of xerox copy of sale deed dated 17-12-2007, it shows that one D.R. Krishnamurthy has executed the sale deed in favour of plaintiff with respect to suit schedule property. The boundary and extent mentioned in the said sale deed is tally with the suit schedule property. On perusal of RTC bearing survey no.13, it shows that RTC of suit schedule property is standing in the name of plaintiff. The suit schedule property is situated at survey no.13. It further shows that total extent in survey no.13 is 2 acre 10 guntas out of which 1 acre is standing in the name of plaintiff, 29 guntas is standing in the name of Srirama Reddy and 21 guntas is standing in the name of Bharathamma. The source of possession of plaintiff in said RTC is shown as on the strength of MR2/2007-08. On perusal of mutation number 2/07-08, it shows that suit schedule property was mutated in the name of plaintiff on the basis of sale deed dated 17-12-2007. So the contention of plaintiff that he purchased the suit schedule property from one D.R.Krishnamurthy and khatha effected in his name is substantiated by the said documents.

18. It is the specific case of the defendants that one H.S.Joseph had purchased the written statement schedule property from D.Ramappa dated 17-03-1983.

subsequent to sale deed, mutation has been effected in the name of said H.S. Joseph and RTC were standing in his name. Defendant no.1 and father of defendant no.2 have jointly purchased the written statement schedule property from said H.S. Joseph dated 23-01-1985. By virtue of the registered sale deed dated 23-01-1985, mutation has been effected in the name of 1st defendant and father of defendant no.2. Defendant no.1 and defendant no.2 being the son of Sri. Muniswamy Reddy have changed the mutation proceedings subsequent to the death of the said Sri. Muniswamy Reddy vide mutation proceedings bearing M.R.4/H1/2016-17.

19. In addition to above contention, the defendants have produced sale deed dated 17-03-1983, certified copy of sale deed dated 23-01-1985, mutation register number M.R 4/84-85, mutation register no. MR 4/H1/2016-17, RTCs bearing survey no.6.

20. Upon perusal of sale deed dated 17-03-1983, it shows that one Ramappa has executed the sale deed in favour of one H.S. Joseph with respect to written statement schedule property. On perusal of certified copy of sale deed dated 23-01-1985, it shows that said Joseph has executed the sale deed in favour of defendant no.1 and father of defendant no.2 by name Muniswamy Reddy. The boundary and extent mentioned in the aforesaid sale deeds are tally with the written statement schedule property. On perusal of RTC bearing

survey no. 6, it shows that RTC of written statement schedule property is jointly standing in the name of defendants. The written statement schedule property is situated at survey no. 6 to an extent of 5 acre 9 guntas out of which 4 guntas in karab. On perusal of mutation register no. 6/1985-86, it shows that written statement schedule property was mutated in the name of 1st defendant and father of defendant no2 on the basis of sale deed dated 23-01-1985. On perusal of mutation register no. MR4/H1/2016-17, it shows that written statement schedule property is mutated in the name of defendant no.1 and 2 on the basis of pavathi varis. So the contention of defendants that one Ramappa sold written statement schedule property to one Joseph and said Joseph sold the same in favour of 1st defendant and Muniswamy Reddy. Defendant no. 1 and defendant no.2 being the son of Muniswamy Reddy have changed the mutation proceedings subsequent to death of the said Muniswamy Reddy is substantiated by the aforesaid documents.

21. In this suit identification of properties are in dispute. Admittedly suit schedule property and written statement schedule properties are agricultural land and they have situated in survey no. 13 and survey no.6 of Nachandlahalli Village respectively. On perusal of xerox copy of village map, it shows that survey no.13 and survey no.6 are adjacent lands. According to plaintiff, defendants have landed property in survey no. 6

towards Eastern side of suit schedule property. But defendants have denied the boundary and they contended that plaintiff has quoted wrong boundaries and claiming the properties of defendants. According to defendants, one Sriram Reddy and Shanbogue Inamathi land are situated towards Western side of written statement schedule property. But plaintiff has denied the boundary and contended that the defendant by making false description of the written statement schedule property has included the plaintiff's plaint schedule property and described the Western boundary as Muniswamy Reddy, Jayarama Reddy, Hanumatha Reddy and Srirama Reddy.

22. In order to show the boundary of written statement schedule property, the defendants have not produced any documents but they contended that plaintiff's vendor by name Sri. D.R.Krishna murthy was the attester to defendant's vendor's vendor sale deed dated 17-03-1983. Hence plaintiff's vendor has admitted the boundary of defendants. No doubt said D.R.Krishna Murthy was signatory to sale deed dated 17-03-1983. Mere signatory to sale deed is not a proof of identification of boundary. As already stated above defendants have not produced single document to show the boundary of written statement is true and correct.

23. In order to show the boundary of suit schedule property, plaintiff has relied on 11 E-sketch annexed

with sale deeds dated 17-12-2007 and 04-10-2008. Sale deed dated 17-12-2007 is pertaining to plaintiff. 11 E-sketch annexed with sale deed dated 17-12-2007 which reveals that block no.II measuring 1 acre land in survey no. 13 is situated towards Eastern side and it is belonging to plaintiff. Sale deed dated 04-10-2008 is pertaining to one Bharathamma. 11 E-sketch annexed with sale deed dated 04-10-2008 which reveals that block no. II measuring 21 guntas in survey no. 13 is situated towards Western side of suit schedule property. Village map which reveals that written statement schedule property is situated towards Eastern side of survey no. 13. So the contention of the plaintiff that landed property of defendants is situated towards Eastern side of suit schedule property is substantiated by the said documents. The plaintiff has purchased the suit schedule property on 17-12-2007 before executed the said sale deed, 11 E-sketch has been prepared by the tahshildar Bangarpet. If the boundary mentioned as per 11 E-sketch is not correct, nothing has been prevented the defendants to challenge the said sketch prepared by the tahshildar Bangarpet. The documents produced by the plaintiff itself would have sufficed to show that plaintiff has claimed the correct boundary and defendant described the written statement schedule property has included the suit schedule property. By considering the facts and circumstances of the case, the plaintiff has made out prima facie case and defendants have failed to made out prima facie case. Accordingly,

point no.1 is answered in the Affirmative, point no. 4 is answered in the Negative.

24. **Point No.2 & 3:** These points are interlinked each other. Hence they have taken together for common discussion in order to avoid fact and circumstances. The plaintiff has established prima facie case to proceed with the case. It is the apprehension of the plaintiff that defendants are trying to interfere with the possession of plaintiff over the suit schedule property. If the defendants illegally interfere with the possession of plaintiff over the suit schedule property, much inconvenience will be caused to the plaintiff in this case. In such circumstances, the plaintiff will be put to heavy and irreparable loss. So, also, it may lead to multiplicity of proceedings. By considering the facts and circumstances of the case, the plaintiff has established that balance of convenience lies in his favour and he will be put to more hardship and loss, if the temporary injunction is not granted. Accordingly point no.2 and 3 are answered in the Affirmative.

25. Point No.5 & 6: These points are interlinked each other. Hence they have taken together for common discussion in order to avoid fact and circumstances. While answering point no 4 this court holds that defendants have failed to make out the prima facie case. Hence, question of considering the aspect of irreparable loss or balance of convenience will not arise for consideration. Therefore,

the defendants are not entitled for any relief on IA no.2.
Hence I answer the point no 5 and 6 in the negative

26.**Point No.7:** For the foregoing reasons I proceed to pass the following;

ORDER

IA no.1 filed by the plaintiff U/O 39 Rule 1 and 2 R/W sec. 151 of CPC is hereby allowed with cost of Rs. 100/-.

The defendants, their family members, servants, and representatives are hereby restrained from interfering with peaceful possession and enjoyment of the plaintiff over the suit schedule property till disposal of suit.

The IA no.2 filed by the defendants U/O39 rule 1(A) and(c) R/W Sec. 151 of CPC is hereby dismissed with cost of Rs. 100/-

(Dictated to the stenographer, transcribed by her, corrected and then pronounced in the open Court on this the 05th day of February 2021)

**Sd/-
(KIRAN S.P)**

II Addl. Civil Judge & JMFC,KGF