

**IN THE COURT OF ADDITIONAL SENIOR CIVIL JUDGE &
JMFC, KGF**

PRESENT: Shri. MAHESH S. PATIL, B.Sc., LL.B
Additional Senior Civil Judge & JMFC,
K.G.F.

Dated 21st day of January 2021

O.S. 114/2018

PLAINTIFF :: **Sri. A. Ramamurthy,**
S/o Late Aswathappa,
Aged about 50 years,
R/at Aniganahalli Village,
Hudukula Post,
Bangarpet Taluk,
Kolar District.

(R/by Sri. S.A. Harinath – Adv.,)

V/s

DEFENDANTS :: **1) Sri. Mune Gowda,**
S/o Late Pillegowda,
Aged about 60 years,

2) Sri. Venkateshappa,
S/o Late Eragappa,
Aged about 60 years,

3) Sri. Srinivasa Gowda,
S/o Late Chikka Munivenkatappa,
Aged about 65 years,

4) Sri. K. Gopal,
S/o Late Patel Kempegowda,
Aged about 55 years,

Defendant Nos.1 to 4 are
r/at Aniganahalli Village,
Hudukula Village & Post,
Bangarpet Taluk, Kolar District.

- 5) **The President,**
Chikka Angadlahalli Grama
Panchayath, Kasaba Hobli,
Bangarpet Taluk,
Kolar District.
- 6) **The Panchayath Development
Officer,**
Chikka Angadlahalli Grama
Panchayath, Kasaba Hobli,
Bangarpet Taluk,
Kolar District.
- 7) **The Secretary,**
Chikka Angadlahalli Grama
Panchayath, Kasaba Hobli,
Bangarpet Taluk,
Kolar District.

**(D1 to 4 by Sri. K.R. Srinivasaiah –
Adv., D6 by – Sri. K.C. Nagaraj -
Adv., D5 – Exparte)**

ORDER ON I.A.NO.II

The learned counsel for the Plaintiff has made this interim application at I.A.No.II under Order XXXIX Rule 1 & 2 read with Section 151 of CPC seeking an order of add- interim temporary injunction, restraining the Defendant Nos.1 to 4, their family members, agents or any persons acting on behalf of them from interfering with the peaceful possession and enjoyment of the suit schedule properties and Gopalaswamy Temple Activities in any manner pending disposal of the suit.

2) The Schedule Properties as mentioned in the plaint as well as in I.A.No.II are as under:

i) All that part and parcel of the Land bearing Survey No.59, measuring 2 acres 6¼ guntas situated at Aniganahalli Village, Kasaba Hobli, Bangarpet Taluk and the same is bounded on the: East by : Property of Gopalappa, West by : Kolar – Bangarpet Main Road, North by : Property of Gopalappa now in possession of Muduvathi Narayanappa and South by : Aniganahalli Road and the said property is comprising of Gopalaswamy Temple.

ii) All that part and parcel of the Land bearing Sy.No.88, measuring 6 guntas, situated Aniganahalli Village, Kasaba Hobli, Bangarpet Taluk and the same is bounded on the: East by : Property of Sathish, West by : Kolar – Bangarpet Road, North by : Rajakaluve and South by : Government Land.

3) The said application is accompanied with the affidavit of the Plaintiff herein, wherein the Plaintiff has prayed to refer the plaint averments and the documents produced along with the plaint as part and parcel of this Affidavit. Hence, it is necessary to peruse the material plaint averments.

4) As per the pleadings, it is the specific case of the Plaintiff that the suit schedule properties were given on the basis of Quit Rent for the worship of Gopalaswamy Temple and the suit schedule property granted to the grandfather of the Plaintiff – Sri. Sheshappa and since then the Plaintiff's family has been worshipping the said Temple and the suit properties granted to the family of the Plaintiff on the basis of Quit Rent Certificate and on 11-09-2018 when the Plaintiff addressed the letter to the concerned Panchayath

Development Officer the said Panchayath Development Officer endorsed stating that the khatha number stands in the name of Defendant Nos.1 to 4 and few other persons. Therefore, it is clear that these persons have illegally mutated on the basis of this illegal entry the Defendants are interfering with the Plaintiff's peaceful possession and enjoyment over the suit propertied and hence the Plaintiff approached the jurisdictional police which inturn directed the Plaintiff to approach Civil Courts since the dispute is of civil in nature. Hence, left with no other option the Plaintiff is constrained to file the present suit against the Defendants for the relief of declaration of his title and for permanent prohibition injunction in respect of the suit schedule properties.

5) As against this the Defendant Nos.1 to 4 have submitted their written statement and filed Memo to adopt the written statement as objections to I.A.No.II. In the written statement the Defendants contended that the suit is not maintainable. The parawise plaint averements are specifically and categorically denied herewith. It is further contended that Quit Rent Certificate produced pertains to Haliganahalli but not Aniganallay and the Sy.No.59 as contended by the Plaintiff does not measure 2 acres 6¼ guntas but it measures 0-32 guntas only including kharab land and the boundaries shown by the Plaintiff pertains to the property are imaginary and there is no survey number as Sy.No.88 existing and the Gopalaswamy Temple is constructed by one Sri. Pape Gowda

and Sri. Arase Gowda in 1945 and hence on such other grounds prays for dismissal of the suit.

6) I have heard the arguments of learned counsels for the Plaintiff and Defendants. Perused the records.

7) The Points that are arise for my consideration are:

- 1) Whether the Plaintiff has made out a prima-facie case in his favour to grant the interim order as prayed for in I.A.No.II?
- 2) Whether the balance of convenience lies in favour of the Plaintiff?
- 3) Whether the Plaintiff will be put to irreparable loss and hardship if I.A.No.II is not allowed as prayed for?
- 4) What Order?

8) My answer to 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 the final Order for the following:

REASONS

9) Point No.1 : It is the specific case of the Plaintiff that suit properties were granted to the grandfather of the Plaintiff by name Sri. Sheshappa and the Quit Rent Certificate was issued by the concerned department and the

Plaintiff is now in possession and enjoyment of the suit schedule properties. The Defendants, in furtherance of their illegal names having been mutated in respect of the suit properties, are interfering with the Plaintiff's peaceful possession and enjoyment over the suit schedule property. Hence, the suit.

10) In order to establish his case the Plaintiff has produced the Quit Rent Certificate and Endorsement issued by Chikka Angadlahalli Grama Panchayath, Assessment Register Extract and Demand Register Extract. I have carefully perused these documents. But the Quit Rent Certificate produced by the Plaintiff pertains to Haliganahally but not to Angandlahalli Village as claimed by the Plaintiff. Therefore, as rightly contended by the Defendants, the Quit Rent Certificate does not pertain to the suit properties but pertains to some other properties probabaly situated at Haliganahally Village. As regards the Assessment and Demand Register Extracts are concerned, there is mention of Gopalaswamy Temple and the Defendants have also produced the very documents, but contended that the said Temple is constructed by one Papegowda and Arasegowda. In this regard the Defendants have produced the photographs wherein there is mention of the name of Papegowda and Arasegowda and the year of 1945. Moreover though the Plaintiff has not produced any RTC pertaining to Sy.No.59 and / or Sy.No.88, but the Defendants have produced the RTC pertaining to Sy.No.59 of

Aniganahalli. But the said Sy.No.59 measures 0-32 guntas not 2 acres 16 guntas as stated by the Plaintiff in the plaint. Moreover the boundaries as stated by the Plaintiff in respect of suit properties do not match when they are compared to the Tax Assessment Extract for the year 1989-90 produced by the Defendants. Therefore, the same goes to show that the Plaintiff in the guise of these documents is claiming some other property and not at all connected to the suit properties and therefore as of now it seems that the very suit of the Plaintiff itself is not maintainable and therefore the question of considering the Plaintiff's prima facie as of now does not arise. Hence, left with no other option this Point is answered accordingly.

11) Point Nos.2 and 3: Both these points are interlinked to each other and hence they are taken up together for common discussion to avoid repetition of facts.

Since the Plaintiff has not made out prima facie, the question of discussing these two points does not arise. Therefore the Plaintiff is not entitled for the relief as sought for in I.A.No.II. Hence, I answer these two points accordingly.

12) Point No.4:: In view of the above, I proceed to pass the following:

ORDER

**The I.A.No.II filed by the Plaintiff under
Order XXXIX Rule 1 and 2 read with Section 151
of CPC is hereby rejected.**

No order as to costs.

(Dictated to the stenographer transcribed by him corrected by me and then pronounced in the open court on this the 21st day of January 2021.)

Sd/-

(Mahesh S. Patil)

Addl., Senior Civil Judge & JMFC,
K.G.F.