

**IN THE COURT OF CIVIL JUDGE(JR.DN) & JMFC.,
KRISHNARAJAPETE.**

Dated: This is the **21st** day of **April-2017**

Present:

Sri. KUMARA.S. , B.A.LLB
Civil Judge (Jr.Dn) & JMFC.,
K.R.Pete.

O.S. No. 420/2014

PLAINTIFF : Gangadhara S/o late
Lakkaiah
Aged about 45 Years
R/o Sarangi village
Santhebachahalli Hobli
K.R.Pete Tq,Mandya Dist.

(Rep,by **Sri.K.R.Mahesh**

Advocate)

V/s

DEFENDANTS: 1.Papaiah S/o Late Rajikalaiah
Aged about 65 years
2.Kumara S/o Papaiah
Aged about 33 years
3. Somashkara S/o Papaiah
Aged about 32 years
All are R/o Sarangi village
Santhebachahalli Hobli
K.R.Pete Tq,Mandya Dist.

(Rep,by, **Sri.K.N.Nagaraj** Advocate)

PARTIES TO I.A. NO.I

APPLICANT : Gagadhara
(Plaintiff)

V/s

OPPONENTS : Papaiah and other
(Defendants)

ORDER ON I.A. NO.1

The plaintiff/ applicant has filed IA No.1 under order 39 rule 1 and 2 CPC requesting the court to restrain the defendants, agents or anybody on behalf of the defendants from interfering with the plaintiff peaceful possession over the suit schedule property, till disposal of the suit.

2. IA.No.1 is accompanied with the affidavit of the plaintiff .

3. The defendants have appeared before the court through their counsel and filed their written statement and filed memo adopting the written statement as objection to the IA No.1 .

4. I have heard the arguments advanced by the learned counsel for the plaintiff and defendants. Perused records and materials placed before the court.

5. The following points that would arise for my consideration and determination.

1) Whether plaintiff/ applicant has made out prima-facie case?

2) Whether plaintiff proves that balance of convenience lies in his favour?

3) Whether plaintiff proves that irreparable loss would be caused to him if temporary injunction is not granted?

4) What order?

6. My answer to the above points are as under;

Point No.1 : In the affirmative

Point No.2 : In the affirmative

Point No.3 : In the affirmative

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

REASONS

7. Point No 1: It is the case of the plaintiff that, the grand father of the plaintiff by name Lakkaiah had two sons by name

Rajikalaiah and the father of the plaintiff by name Lakkaiah and said Rajikalaiah had only son who is defendant no.1 and said Lakkaiah had two sons one is the plaintiff, another one is Shivaramu. Plaintiff and Papaiah and brother Gangadhara have partitioned the ancestral and joint family properties on 10/03/2000 under partition deed. And as per the partition deed dated:10/03/2000 they have been in possession and enjoyment of the suit schedule property as a owner with their respective shares. And schedule property was fallen to the share of the plaintiff as per partition and plaintiff is in possession and enjoyment of the suit schedule property as per partition and khatha of suit property was mutated in the name of the plaintiff and has paid Kandayam to the Government and plaintiff is in lawful possession and enjoyment of the suit schedule property. But defendants have no manner , right, interest over the suit property, they interfered with

plaintiff possession and enjoyment of the suit property by tress-passing over the suit schedule property . In this regard plaintiff has lodged police complaint and defendants have continuously interfere with plaintiff possession and enjoyment over the suit schedule property and defendants have not law abiding citizens. Plaintiff has a prima facie case and balance convenience lies in his favour and if temporary injunction is not granted plaintiff will be put to hardship and loss. Hence, pray for allow the application.

8. The defendants in their written statement denied case of plaintiff and contented that the suit survey no.163 totally consist 3 acre 38 guntas, situated at Sarangi village, said property was granted to father of the defendant no.1 by name Rajikalaiah on 13/12/1983. From the date of the grant, father of the defendant no.1 is in possession of the said property and after the death of the said Rajikalaiah,

defendants are in possession and enjoyment of the suit schedule property. The father of the defendant no.1 and his brother partitioned 50 years back in the year 1979-80. The suit property measuring 3 acre 38 guntas was granted infavour of the father of the defendant no.1 and in the said property , plaintiff has no right, ownership and possession and it false to say that suit property was fallen to the share of the plaintiff and plaintiff and his brothers are colluded with revenue officials and created revenue documents and mutated khatha in their name and in this regard defendant no.1 is challenged the khatha mutated in the name of the plaintiff and his brothers before Assistant commissioner court and plaintiff is not in possession of suit property. Hence, pray for dismiss the application with cost.

9. It is settled principles of law that the person seeking equitable relief of temporary injunction should make out prima-facie case

for grant of interim injunction. The prima-facie case means, a case which involves serious question of law and facts and which requires trial of the case which is arguable one. The party should also prove that the balance of convenience lies in his favour and that irreparable loss would be caused to him if interim injunction is not granted. The equitable circumstances should also be taken in to consideration while granting or refusing the interim injunction.

10. The plaintiff has filed present suit against defendants for the relief of permanent injunction with respect to suit property. On perusal of materials on record it appears that, this case involves serious question of law and facts, and which requires trial. Whether the plaintiff is in possession and enjoyment of the suit schedule property as on the date of the suit? Or Whether the suit property was fallen in to the share of plaintiff as per partition deed? Or whether the defendants

interfered with plaintiff peaceful possession and enjoyment of the suit property? Or whether the plaintiff is entitled for the suit relief of permanent injunction as sought in the suit ? and all other things came to picture only after full pledged trial. Therefore, this case involves serious question of facts and law which are tried by the court. Hence, the plaintiff has made out prima-facie case for trial. Accordingly, point No.1 is answered in the affirmative.

11. Point No.2 and 3 : In order to avoid repetition of facts and discussion, these two points are taken together for common consideration.

The plaintiff to substantiate his claim he produced certain documents. The plaintiff has produced unregistered partition deed wherein it appears that the suit property was allotted to the share of the plaintiff as per partition deed dated:10/03/2000, Copy of mutation register extract produced by the plaintiff shows that Khatha of suit property

was mutated in the name of the plaintiff as per partition deed by the revenue department. RTC extract produced by the plaintiff shows that the ancestral and joint family property of the plaintiff was partitioned among the plaintiff and his brother and as per partition deed the khatha of suit property and other joint family property mutated in the name of the sharers. The RTC extract produced by the plaintiff further shows that the plaintiff is in possession and enjoyment of the suit schedule property and in RTC column 9 where in it mentioned that the plaintiff is in possession and enjoyment of the suit schedule property. Further, the defendants produced endorsement issued to Rajikalaiah , by Thasildar, wherein it is stated that after payment of premiums and said Rajikalaiah is acquired right to the property bearing Sy.number 173 measuring 3 acre 38 guntas. Mutation register extract produced by the defendants shows that, the suit Sy.number

173 measuring 1 acre 61 guntas, khatha was mutated in the name of the Rajikalaiah, the RTC extract produced by the defendants shows that in Sy.number 173, 2 acre 14 guntas khatha was mutated in the name of the defendant no.1 as per panchayath palu parikatha and defendant no.1 is in peaceful possession of said property. Though the defendants claimed that 3 acre 28 guntas is granted to Rajikalaiah but as per revenue records it appears that 1 acre 61 guntas was granted to Rajikalaiah but not 3 acre 38 guntas. Though the defendants have claimed that in Sy.number 173 measuring 3 acre 38 guntas was granted in favour of Rajikalaiah but no grant certificate was produced by the defendants shows that in Sy.number 173, 3 acre 38 guntas was granted in favour of Rajikalaiah and revenue records produced by the parties shows that in Sy.number 173 consist only 1 acre 61 guntas was granted in favour Rajikalaiah by the land tribunal.

Patta book shows in Sy.number 173 defendant No.1 is Khathedar of property measuring 1 acre 39 guntas. Therefore, on going through the materials placed before the court by parties it appears that the plaintiff is in possession and enjoyment of the suit schedule property as per panchayath palu parikath and he is in possession and enjoyment of the suit schedule property . Therefore, on going through the materials on records it appears that balance of convenience lies infavour of plaintiff and if temporary injunction is not granted ,then the plaintiff will be put to great hardship and loss. Therefore, I am of the opinion that plaintiff is entitle for the relief of temporary injunction as sought in the application . Accordingly , I answer the point no.2 and 3 in the affirmative.

12.Point No.4 : In view of the above discussion and reasoning to the above points, I proceed to pass the following;

ORDER

**A) IA.No.1 filed by the plaintiff/
applicant under order 39 rule 1 and
2 of CPC is hereby allowed.**

**B) The defendants or their servants
or anybody acting on behalf of
defendants are hereby restrained
from interfering with the plaintiff
peaceful possession enjoyment suit
schedule property and, till
disposal of the suit.**

**C) Under the circumstance of the
case, no order as to costs.**

(Dictated to the Stenographer, the transcript revised by me and
pronounced in open court, this the 21st day of April-2017)

(KUMARA.S)

Civil Judge(Jr.Dn) & JMFC.,
K.R. Pete.

