

**IN THE COURT OF THE CIVIL JUDGE &
JMFC., KRISHNARAJAPET**

**Present : Smt. SHAKUNTHALA. R., BA.LLB LL.M.
C/C Civil Judge & JMFC, Krishnarajapet**

Dated this the 19th day of October 2024

O.S.No.533/2016

PLAINTIFF : Manjegowda
S/o Nanjegowda

(By Sri.MNK,.Adv)

V/s

DEFENDANTS : Amasegowda
S/o Javaregwoda
And others

(D-1 to 8,10 by Sri.KNN,. Adv.,
D-9 is placed exparte)

IA No.I

APPLICANT : Manjegowda
PLAINTIFF S/o Nanjegowda

V/s

OPPONENTS : Amasegowda
DEFENDANTS S/o Javaregwoda
And others

ORDER ON I.A.NO.I

The plaintiff has filed this I.A. U/O XXXIX Rules 1 and 2 R/w. Section 151 CPC seeking to grant an interim order of Temporary injunction restraining the defendants

from interfering with the peaceful possession & enjoyment over the suit schedule property by the plaintiff.

2. In the affidavit it is stated that Sy. No. 31/2 measuring 1.29.00.00 guntas and Sy. No. 31/3 measuring 4 acres is his ancestral property under M.R. No. H10/2011-12, mutated in his name after the death of his parents. As such the plaintiff's contention is that he is in possession of the suit schedule property and is paying Kandayam regularly. The plaintiff had made efforts to survey the suit property, the defendants have not allowed to survey the suit schedule property. Though the defendants having no manner of right title, interest, possession over the same have interfering with his possession. The defendants being strangers are interfering and trespassing over the suit schedule property. Hence it constrained file the instant application.

3. Per contra the defendants have filed a memo to treat written statement as objection to IA No.III and in their written statement it is contended that the plaintiff

is not in possession of Sy. No. 32/1, 31/2 & 31/3. Sy. No. 31 totally measures 16.20.00.00 guntas which belonged to one Shreenivas Aiyangar. The said Shreenivas Aiyangar who died issueless and as such his property remained as 'Beelu' (ಸರ್ಕಾರಿ ಬೀಳು). Therefore the said property is not the ancestral property of the plaintiff. The defendants are in possession of the said property by making an application before Tahasildar under Akrama – Sakrama and during that time instead of mentioning Sy. No. 31, it was wrongly mentioned as Sy. No. 39. Further the contention of the defendant is that he has challenged M.R. No. 10/2011-12 by filing an Appeal, which is still pending. Hence prays to dismiss the application.

4. Heard arguments and perused the records.

5. Now the points that arises for consideration are as follows:

1. Whether the plaintiff is having prima- facie case in his favour?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether irreparable loss and

injury will caused to the
 plaintiff if temporary
 injunction order is not
 granted?

4. What order?

6. On the basis of the materials available on record, my findings to the above points are as follows:

Point No.1 to 3 : In the Affirmative.

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

REASONS

7. POINTS NO.1 TO 3: To avoid repetition in the discussion I will consider all these points together at a time. I have gone through the entire materials available on record. The defendant being the strangers are interfering with the peaceful possession.

8. The defendants contention is that he is in possession of the suit schedule property.

9. It is to be noted that at the time of considering interim application, the court need not consider the merits of the case, but interim application has to be disposed off with the help of available documents

produced by both sides. The plaintiff has produced M.R ., R.R. Index., RTCs., M.R., Hissa Tippani, Sketch RTCs, M.R. bearing No. 2011-12, Encumbrance, Simple Mortgage Deed, Encumbrance, Notice, Endorsement, Acknowledgment, Settlement Akar Bandh, Crop Certificate, A copy of the application to the Tax Branch.

The defendant has produced office orders, Certificate, Hissa Survey Atlas, Index of Lands, RTC. Firstly, the documents produced by the plaintiff prima facie shows that the plaintiff is in possession of the suit schedule property. That the plaintiff is alleging that the suit schedule property is his ancestral property and as such he is in possession of the same. The contention of the defendants is that they are in possession of the suit property under Akrama-Sakrama and as such the plaintiff is not entitled to injunction order. These facts has to be adjudicated by conducting full fledged trial. Hence, in my opinion, the plaintiff is having prima facie case. However the documents produced by the plaintiff i.e., the RR index, RTC, M.R., Sketch, prima facie shows that if the application is not allowed much hardship will

be caused to the plaintiff. Hence, the plaintiff is having balance of convenience. The arguments of the learned counsel for the plaintiff are acceptable one. Hence, above points are answered in the Affirmative.

10. POINT NO.4: For the reasons stated in the aforesaid paragraphs, I proceed to pass the following:

ORDER

I.A.No.III filed by the plaintiff under Order 39 rule 1 and 2 of CPC is hereby allowed with costs.

The defendants or their agents are here by temporarily restrained from causing any interference over the suit schedule property by the plaintiff till disposal of the suit.

(Dictated to the typist, transcribed and computerized by her, then corrected pronounced in the open court on this the 19th day of October 2024)

[Smt. Shakunthala.R]
Addl. Civil Judge and J.M.F.C,
Krishnarajapet.
