

IN THE COURT OF PRL. CIVIL JUDGE, MADDUR

Present:- B. Priyanka, B.A., LL.B.,
Prl. Civil Judge and JMFC,
Maddur.

Dated this the 18th day of April, 2024

O. S. No. 545/2023

Plaintiff : R.Nanjundegowda S/o Ramegowda,
57 years, Kadiluvaagilu Village,
C.A.Kere Hobli, Maddur Taluk

(By Sri HLS., Advocate)

V/S

Defendants : 1. K.M.Ramesha S/o Lakshmegowda,
35 years,
2. K.N.Devaraju S/o Nanjundegowda,
33 years
3. Kumara @ Nanjundegowda
S/o Lakshmegowda, 31 years

All are R/o Kadiluvagilu Village,
C.A.Kere Hobli, Maddur Taluk.

(By Sri BNS., Advocate)

RANK OF THE PARTIES IN IA No.1

**Applicant : R.Nanjundegowda
(Plaintiff)**

V/s

**Opponents : K.M.Ramesha and others
(Defendants)**

**ORDERS ON I.A.NO.1 FILED UNDER
ORDER 39 RULE 1 AND 2 R/W. SEC.151 CPC**

The plaintiff has filed IA No.1 under **Order 39 Rule 1 and 2 of CPC** with a prayer to restrain the defendants, their men, agents servants or any other person on their behalf from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule properties until disposal of the suit in the interest of justice and equity.

2. The suit schedule properties are described as the land bearing Sy.No. 108/3 measuring 15 guntas and Sy.No. 102/2 measuring 8 guntas situated at Kadiluvagilu Village, C.A.Kere Hobli, Maddur Taluk. Sy.No.108/3 bounded on

East	:	Land of Devaraju and Javaregowda
West	:	Land of Thimmegowda
North	:	road
South	:	Land of Sannegowda, Madegowda, Mallegowda and Krishnappa

Sy No.102/2 bounded on

East	:	Sy.No. 101
West	:	Land of Shivamma
North	:	K.N.Devaraju and Sy.No.102
South	:	road

3. In the affidavit annexed to the IA, the plaintiff has contended that the present suit has been filed against the defendants for the relief of permanent injunction and the suit schedule properties originally belongs to one B.P.Ramya and the same was purchased by the plaintiff under the registered sale deed dated 17.06.2022 and 24.11.2022 for valuable consideration of Rs.1,30,000/- and Rs.86,000/- respectively and after execution of the sale deed, the plaintiff was put in possession of suit schedule properties and from the said date, the plaintiff is in possession and enjoyment and the katha of suit schedule properties have also been changed to the name of the plaintiff vide MR.H.52/2021-22 and M.R.No.H.27/2022-23 and the plaintiff is paying tax to the suit schedule properties regularly. It is further submitted that the defendants being the bajudars of the suit schedule properties without any right, title or interest interfering with peaceful possession and enjoyment and also abused the plaintiff with filthy language without any

reason and on 30.08.2023 the defendants came near the suit schedule properties and attempted to dispossess the plaintiff and destroyed the agricultural work and the villagers advised the defendants not to interfere with plaintiff`s peaceful possession and enjoyment, but the defendants did not heed with them and hence, he lodged complaint before K.M.Doddi police and on 08.09.2023 the defendants being powerful persons in the locality having man and money power will succeed in their attempt and that the balance of convenience lies in his favour and prima-facie case is in his favour and if the IA is not allowed more hardship and loss would be caused to the plaintiff and among these grounds prays for the IA to be allowed.

4. The defendants on the other hand have filed objections to the IA and have contended that the suit of the plaintiff itself is not maintainable and therefore, the suit is not maintainable and therefore the question of granting an order of injunction does not arise. That the plaintiff has no absolute right or possession over the suit schedule properties and the defendants are in constructive possession of suit schedule properties on behalf of their cousin and are carrying out agricultural activities and they are not claiming anybody else's property. That the plaintiff has not properly described the boundaries of the suit schedule properties and the present suit

is a mischievous suit filed only to harass the defendants and the plaintiff has suppressed the real facts and the defendants are really helping their cousin in agricultural activities and if the injunction is granted, it will have serious impact on the rights of the defendants and the plaintiff has suppressed the actual state of affairs and has not approached the court with clean hands and has sworn to false affidavit and among these grounds prays for IA to be dismissed.

5. Heard Sri. HLS, Advocate appearing on behalf of the plaintiff and Sri. BNS Advocate appearing for defendants and perused the records carefully and meticulously.

6. The following points arise for my consideration.

1. Whether the plaintiff has made out a prima-facie case for the grant of temporary injunction?

2. Whether the balance of convenience lies in favour of the plaintiff?

3. Whether the plaintiff will be put to irreparable loss and hardship in case of refusal of temporary injunction?

4. What order?

7. My answer to the aforesaid points are as follows:

Point No.1 : In the

Point No.2 : In the

Point No.3 : In the

Point No.4 : As per final order for the

following:

REASONS

8. **Point No.1:-** The present suit has been filed by the plaintiff for the relief of permanent injunction and the present IA is filed by the plaintiff with a prayer to restrain the defendants from interfering with his peaceful possession and enjoyment of suit schedule properties.

9. The plaintiff in support of his case has produced the sale deed dated 17.06.2022 and 24.11.2022. He has also filed the RTC extracts with respect to Sy.No.108/3 measuring 15 guntas standing in the name of B.P.Ramya for the period 2022-23 and Sy.No.102/2 wherein an extent of 8 guntas is standing in the name of B.P.Ramya for the period 2022-23. The plaintiff has produced the RTC extracts for Sy.No.108/3, 102/2 for the period of 2022-23 wherein the katha is standing in the name of plaintiff herein and mutated as per the sale deed. He has also produced the acknowledgment issued by K.M.Doddi police and

tax paid receipts. The plaintiff has also produced Mutation Register Extract and endorsement issued by Police Sub-Inspector, K.M.Doddi Police station.

10. The defendants on the other hand, have produced the copy of plaint and order sheet in O.S.No.130/2023 wherein the plaintiff of the present suit has been arrayed as defendant No.5 and the suit has been filed for the relief of partition and separate possession which includes the suit schedule properties.

11. The defendants have also produced RTC extracts for Sy.No. 108/3 standing in the name of one Kenchegowda S/o late Thimmegowda for the period of 2020-21, RTC extracts for Sy.No. 102 for an extent of 8 guntas standing in the name of Kenchegowda S/o Biligowda for the period 2020-21, copy of the proceedings in RP No.122/22 before Deputy Commissioner, Mandya, copy of proceedings in RP No.173/21 with respect to suit item No.1 property before Deputy Commissioner, Mandya, Mutation Register Extract bearing No. MRH 27/2020-21, genealogical tree and several photographs to show that the cousin of defendants are in possession and enjoyment of suit schedule property.

12. The defendants have argued that the suit schedule

properties originally belonged to Kenchegowda and was allotted to him under the family partition and he was managing the said property as kartha along with his daughter K.K.Chandrakala and he also had a son Shankaregowda and the katha of the property for the purpose of facilitating payment of tax was transferred to the name of K.Shankaregowda and the said Shankaregowda is the husband of the plaintiff's vendor B.P.Ramya and after the death of her husband and father-in-law the vendor Ramya being the daughter-in-law without having any absolute right has sold the suit schedule property in favour of the plaintiff and the same has been objected by K.K.Chandrakala and the defendants are the cousins of Chandrakala who is the daughter of Kenchegowda and they are helping out the said Chandrakala in cultivating the suit schedule property and she has also filed a suit for partition including the present suit schedule properties which are arrayed as item No.6 and 8 in that suit. It is further argued that the plaintiff has intentionally not revealed about these facts and has filed this suit only with an intention to harass Chandrakala and the defendants and hence, the plaintiff has not come to the court with clean hands.

On careful perusal of the plaint, the plaintiff has only mentioned that he has purchased the suit schedule property

from B.P.Ramya for valuable consideration and that the defendants are the bajudars of the suit schedule properties. He has not mentioned anything regarding the suit filed with respect to suit schedule properties for the relief of partition. The plaintiff has not mentioned on which side of the suit schedule property the defendants are the bajudars, the names of the defendants is not seen anywhere in the boundaries of the suit schedule properties. Moreover, the defendants have contended that they are in constructive possession of the suit schedule properties along with their cousin Chandrakala who has filed the suit for partition and questioning the sale of the suit schedule properties to the Plaintiff. It is also pertinent to note that the Plaintiff has sought the suit relief under the present IA. To allow the IA, the Plaintiff has to make out a case much higher than a prima-facie case. But it appears that the Plaintiff has not fully disclosed all the facts and circumstances and has suppressed the material facts before this court. Moreover the defendants also claim to be helping out their cousin who is in possession of the suit schedule properties. Whether the Plaintiff is in possession or not is a question that has to be decided after the evidence is led. Considering all these circumstances, this court is of the opinion that the Plaintiff has failed to make out a prima facie case. Hence, Point No.1 is answered in negative.

13. **POINT NO. 2 AND 3:** When the prima-facie case is not made out by the plaintiff, the question of loss or irreparable injury and balance of convenience does not arise. Hence, I proceed to answer point No.2 and 3 in the negative.

14. **POINT NO.4 :** In view of my findings on point No.1 to 3, I proceed to pass the following:

ORDER

IA No.1 filed by the plaintiff under order 39
Rule 1 and 2 of CPC is hereby dismissed.

(Dictated to the Stenographer, corrected and then pronounced
by me in the open court on this the 18th day of April, 2024)

(B. Priyanka)
Prl. Civil Judge, Maddur.