

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE  
AND J.M.F.C., AT MALAVALLI**

**PRESENT**

**Smt. MAMATHA SHIVAPUJI**

B.A.L., LL.M.,  
Prl. Civil Judge & J.M.F.C.  
Malavalli.

**Dated this the 2<sup>nd</sup> Day of June 2022**

**O.S.No.129/2022**

Sri.Shivanna : Plaintiff  
S/o Boregowda @ Jogaiah,  
Aged about 55 years,  
R/o Holageredoddi village,  
Halaguru Hobli,  
Malavalli Taluk,  
Mandya District.

(By Sri.PSMK., Advocate.)

V/s.

Sri.Boregowda : Defendant  
S/o late Boregowda @ Jogaiah,  
Aged about 65 years,  
R/o Holageredoddi village,  
Halaguru Hobli,  
Malavalli Taluk,  
Mandya District.

(By Sri.RMH., Advocate.)

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**Parties in I.A.No.I U/o 39 Rule 1 & 2 of C.P.C. filed by  
Plaintiff**

**Applicant /  
Plaintiff/s** : **Sri. Shivanna**  
**V/s.**

**Opponent /  
Defendant/s** : **Sri. Boregowda**

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**Orders on I.A.I U/o 39 Rule 1 & 2 of C.P.C filed by the  
Plaintiff**

The plaintiff has filed I.A.No.I U/o. 39 Rule 1 and 2 of C.P.C. seeking for an ad-interim order of temporary injunction restraining defendant from interfering with the peaceful possession and enjoyment of the suit schedule property pending disposal of the suit.

2. In support of application the plaintiff has filed affidavit, documents and prayed to allow the application.

3. On the other side, defendant appeared through his counsel and has filed written statement and adoption memo and prayed to dismiss the application filed by the plaintiff.

4. Heard the arguments of both side counsels and perused the materials on record. The following points arise for my consideration:

- 1) Whether the plaintiff has made out a prima-facie case?
  - 2) Whether the balance of convenience lies in favour of plaintiff?
  - 3) Whether irreparable loss and injury would cause to plaintiff if temporary injunction as prayed in I.A.No.I is not granted?
  - 4) What order?
5. 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 final order for the following:

### **REASONS**

6. **POINT NO.1 to 3**:- The plaintiff has filed the suit seeking for relief of permanent injunction against defendant in respect of suit schedule property. In the affidavit accompanying above application, plaintiff has stated that he is the resident of Holageredoddi village, Halaguru Hobli, Malavalli Taluk, Mandya District. He is the absolute owner of the suit schedule property bearing Sy.No.277/5 measuring 37 guntas situated at Halaguru village. His father Boregowda had 04 sons and 02 daughters. During his life time, he has segregated all his ancestral properties through panchayath palparikattu. Defendant is his brother. Originally the suit schedule property was in the name of one Swamy @ Swamygowda who is the elder brother of plaintiff. Thereafter, the suit schedule property was partitioned into 04 shares measuring 09 guntas each. The plaintiff is having his share towards Eastern side to the share of defendant. The defendant has constructed his house by encroaching the share of

plaintiff on the Eastern side by depriving the right of the plaintiff over the suit schedule property. Hence, the plaintiff questioned the encroachment made by the defendant, but the defendant did not care the words of plaintiff and continued his illegal act. The defendant has no manner of right, title, interest over the suit schedule property of his share of 09 guntas, but the defendant trying to dispossess the plaintiff from the suit schedule property. It is further stated that, the defendant is a powerful person having political influence, but the plaintiff is a handicap and illiterate without having men and material in the locality. Taking advantage of the same defendant is trying to grab the suit schedule property of plaintiff share measuring 09 guntas. Hence plaintiff has filed the suit and prayed to allow the above application.

7. In support of plaintiff's case, he has produced RTC extracts, Copy of Panchyath Paluparikath, Photographs, C.D. Genealogical tree, Copy of Adhar card of plaintiff, copy of NCR, Death ceremony invitation of Boraiah @ Jogaiah, Voters I.D of Boregowda S/o Siddegowda, Copy of Gift Deed dated 15-02-2022 and family tree, Copy of Adhar Card of defendant Boregowda S/o Boregowda, Copy of Complaints to Tahasildar, Copy of notice by Revenue Inspector, Copy of letter to Tahasildar, News paper, Copy of Order of Assistant Commissioner dated 04-05-2022, Copy of death Certificate of Boraiah S/o Jogaiah, Copy of letter to Deputy Commissioner, Tahasildar, Copy of FIR in crime No.28/2022 of Malavalli Town and complaint.

8. On the other hand defendant in his written statement denied the case of plaintiff and contended that he is the elder

brother of plaintiff, they are the sons of Boraiah @ Jogaiah. Partition took place between the brothers and sisters of plaintiff, the suit schedule property was fallen to the share of defendant. Hence, all the revenue records of the suit schedule property is standing in the name of defendant. Thereafter, the defendant has executed the gift deed in favour of his son B.Shivalingegowda and the khata of the suit schedule property is transferred in his name. Now the said B.Shivalingegowda is in peaceful possession and enjoyment of the suit schedule property. But the plaintiff did not disclose the said fact. Hence, the suit filed by the plaintiff is void-ab-initio and liable to be dismissed. Further, sated that the plaintiff has not made out proper parties to the present suit. The plaintiff has already has residential house in the share allotted to him in Khata No.602/2 situated at Volageredoddi village, Halaguru Hobli, Malavalli Taluk. Meanwhile, the defendant has got the suit schedule property through partition took place among his brothers & sisters. Defendant has executed the gift deed in favour of his son B.Shivalingegowda and now he is constructing a residential house in the suit schedule property. But the plaintiff did not disclose the same before the Court. Hence prayed to dismiss the application filed by the plaintiff.

9. Defendant has produced RTC extracts, Copy of demand Register extract, Copy of death Certificate of Boraiah @ Jogaiah,

10. On perusal plaint, application, affidavit, objection, it is found that there is no dispute that the plaintiff and defendant are brothers who are the sons of one Boregowda @ Boraiah @ Jogaiah S/o Chikkasiddegowda. There is also no dispute that

originally the suit schedule property was belonging to the father of plaintiff and defendant. The RTC extracts of suit schedule property from the year 1974 to 1989-90, 2010-11 to 2019-2020 which are produced by the plaintiff prima-facie reveals that the suit schedule property totally measuring 37 guntas is standing in the name Boregowda S/o Chikkasiddegowda who is the father of plaintiff and defendant. There is also no dispute that said Boregowda S/o Chikkasiddegowda died on 06-01-1998 as per the death certificate produced by both plaintiff and defendant. It is observed that even from the date of death of Boregowda S/o Chikkasiddegowda the katha of the suit schedule property has not been transferred in the name of his legal heirs till 2021-22.

11. As per plaintiff he is the absolute owner of the suit schedule property, his Boregowda had 04 sons and 02 daughters, during the life time of his father, he has segregated all his ancestral properties through panchayath palparikattu. Suit schedule property was partitioned into 04 shares measuring 09 guntas each. The plaintiff is having his share towards Eastern side to the share of defendant. Plaintiff has produced Copy of Partition deed dated 13-07-1993 entered between Boregowda S/o Chikkasiddegowda and his 04 sons including the plaintiff and defendant herein. In the said Panchayath Parikatha it is recited that among 37 guntas of Sy no.277/6B eastern portion of the same measuring 12 guntas has been taken for site and out of that the defendant has been allotted with property measuring east west 30 feet and north south 75 feet situated in the western portion of 12 guntas. However the plaintiff has not produced the partition deed under which he has been allotted with 09 guntas out of 37 guntas as alleged in the plaint. It is pertinent to note

that even from the date of partition dated 13-07-1993 katha was standing in the name of Boregowda S/o Chikkasiddegowda but not changed in the name of allottees under partition deed. The reason for not changing of katha as alleged by him has to be clarified by the plaintiff during trial by producing cogent evidence and documents. Plaintiff alleged that defendant has constructed house by encroaching the share of plaintiff on the Eastern side by depriving the right of the plaintiff over the suit schedule property. However plaintiff has not produced any documents to show that which side of 37 guntas has been allotted to him. Moreover it is observed that plaintiff has filed the present suit with respect to entire 37 guntas but he is claiming only 09 guntas in the plaint. Plaintiff has not pleaded in his plaint that who are all allotted with which portion of 37 guntas in the suit schedule property. Further plaintiff has not pleaded how much of the property has been encroached by the defendant in his share of 09 guntas out of suit schedule property.

12. On the other hand as per defendant, Partition took place between the brothers and sisters of plaintiff and the suit schedule property was fallen to the share of defendant. Hence, all the revenue records of the suit schedule property is standing in the name of defendant. However it is pertinent to note that even defendant also not produced the alleged partition deed before this court to establish the same. More over katha has not been transferred in the name of defendant after the death of his father Boregowda @ Jogaiah S/o Chikkasiddegowda by virtue of alleged partition deed. Further as per defendant he has executed the gift deed in favour of his son B.Shivalingegowda and the khata of the suit schedule property is transferred in the name defendant's

son, now his son said B.Shivalingegowda is in peaceful possession and enjoyment of the suit schedule property. But it is noticed that in the alleged registered Gift deed dated 15-02-2022 the defendant who's name is Boregowda S/o Boregowda @ Jogaiah has shown as Boregowda S/o Chikkasiddegowda which is the name of his dead father who died on 06-1-1998 itself. It is not the case of defendant that his name as mentioned in the cause title of the plaint is wrong. Summons has been duly served and the defendant has been appeared before this court as Boregowda S/o Boregowda @ Jogaiah. The copy of Adhar Card of the defendant bears his name as Boregowda S/o Boregowda. The katha of the suit schedule property never changed in the name of defendant. When such being the case, it apperas that defendant by taking advantage of his name as Boregowda has personified himself as Boregowda S/o Chikkasiddegowda who is dead and who is the father of plaintiff and defendnat and executed the alleged Gift deed in favour of his son B.Shivalingegowda which is not as per law. On the basis of said Gift deed the katha of the suit schedule property has been transferred in the name of defendant's son B.Shivalingegowda.

13. It is importat to note that the plaintiff has challeged the katha standing in the name B.Shivalingegowda by preferring appeal before Assistant Commissioner, Mandya Sub -Division, Mandya in R.Mis N.425/2022 wherein the Assistant Commissioner vide order dated 04-05-2022 has stayed the order of the Tahasildar in MR No.122/21-22 and the said proceedings are pending. It is also observed that the plaintiff has lodged a police complaint against the defendant and others which is registered as Crime No.28/2022 of Malavalli Town Police station for the

offences punishable under Section 420,468,470,471,149 of IPC. Therefore from the facts and circumstances of the case it apperas that there is serious and series of litigations and dispute between the plaintiff and defendnat with respect to the possession of the suit schedule property as allged by the plaintiff. Hence both the plaintiff and defendant have to prove their contentions during trial by producing cogent evidence and documents. Therefore at this stage it apperas just and proper to protect and safe guard the possession of plaintiff's share that is 09 guntas out of the suit schedule property.

14. The plaintiff counsel has relied upon the following decisons in support of his case, which are aptly applicable tod the case on hand.

1. Fakirasab Vs Syedusab and others reported in ILR 2004 kar 4076, 2004(6) Kar LJ 50,
2. G.Trinadha Swamy Vs Gandham Satyanarayana and others reported in AIR 2006 AP 381, 2006(4) ALD 781, 2006(4) ALT 627.

15. On the other hand, the counsel for the defendant has relied upon the following decisions in support of his case, which are not applicable to the facts and circumstances of the present case.

1. In the Supreme Court of India, Civil Appeal No.5577 of 2021 between T.V.Ramakrishna Reddy and M.Mallappa & another,
2. Appeal (Civil) 6191 of 2001 between Anathula Sudhakar Vs. P.Buchi Reddy (dead) by L.Rs. & others,

3. High Court of Judicature at Allahabad between Smt.Shanti Bai and Narbada and others,
4. In the Supreme Court of India Civil Appeal No.4702 of 2004 between Union of India and others and Vasavi co-op.Housing Society Ltd., and others.
5. In the Supreme Court of India, Civil Appeal No.2176 of 2007 between Jagdish Prasad Patel (dead) thr.L.Rs and another and Shivnath and others.
6. In the Supreme Court of India in Civil Appeal No.9472 of 2018 between A.Subramanian and another and R.Pannerselvam,
7. In the Supreme Court of India in Civil appeal No.1330 of 2019 between Smt.Bhimabai Mahadeo Kambekar (d) through L.R and Arthur Import and Export Company and others.
8. Supreme Court of India, as 1963 AIR 1633, 1964 SCR (2) 673, between Madamanchi Ramappa and another Vs. Muthalur Bojjappa.

16. Therefore, under these circumstances it is clear that plaintiff has made out prima-facie case. The balance of convenience does lie in favour of plaintiff. The irreparable loss and injury would cause to the plaintiff if temporary injunction is not granted in favour of plaintiff as prayed for. Therefore, **Point No.1 to 3** are answered in the **Affirmative**.

17. **Point. No.4:-** For the reasons discussed for point No. 1 to 3 the following:-

**ORDER**

I.A.I U/o. 39 Rule 1 and 2 of C.P.C. filed by the plaintiff is hereby allowed.

Defendant or any body claiming under him or through him are hereby restrained from interfering with the peaceful possession and enjoyment of plaintiff's 09 guntas share out of suit schedule property pending disposal of the suit.

(Dictated to the Stenographer, corrected and pronounced in the open court on this the 2<sup>nd</sup> Day of June 2022).

**(MAMATHA SHIVAPUJI)**  
**Prl. Civil Judge & JMFC**  
**Malavalli**