

IN THE COURT OF 1ST ADDL. CIVIL JUDGE AT MALAVALLI

Dated this the 25th day of March, 2017

Present

Sri.RAJESH N.HOSAMANE, B.Sc. ML.

1st ADDL.Civil Judge, Malavalli.

O.S.NO.222/2015

Plaintiff:

Sri.Mallegowda @ Chikkanna S/o Late
Marigempegowda, 70 years,
R/o Yathambadi village, Kasaba Hobli,
Malavalli Taluk. Mandya District

(By Sri.H.P.R, Advocate)

Vs.

Defendantss:

1. Sri.Mallegowda S/o Late Siddegowda, 62 years,
2. Sri.Balarama S/o Late Siddegowda, 45 years,
3. Sri Krishna S/o Late Siddegowda, 43 years,
4. Sri. Rama S/o Late Siddegowda, 38 years,
5. Sri.Pundareeka S/o Late Siddegowda, 32 years,

All are residents of Yathambadi village,
Kasaba Hobli, Malavalli Taluk.

(By Sri R.P., Advocate)

**ORDERS ON IA 1 FILED UNDER ORDER 39 RULE
1 AND 2 OF CPC**

1. This is an application filed by the plaintiff under **Order 39 Rule 1 and 2 R/w 151 of CPC** seeking add-interim temporary injunction order against the defendants, their agents, servants or anybody on their behalf from interfering with the peaceful possession and enjoyment of plaintiff over the suit schedule property in any manner until disposal of the present suit.

2. This application is supported with the affidavit of the plaintiff, wherein he has stated that he has filed the present suit against the defendants for the relief of permanent injunction, he is the absolute owner in lawful possession and enjoyment of suit schedule property, which is inherited through his father along with other properties. All the revenue records are changed into his name, he is

cultivating the suit schedule property by growing different kinds of trees.

3. It is further submitted by the plaintiff that, the defendant No.1 is son of his uncle and other defendants are the sons of his deceased own brother Siddegowda. According to plaintiff, though the defendants have no any kind of right, title or interest or they never in possession of suit schedule property, they are unnecessarily causing interfering over the suit schedule property in order to grab the suit schedule property and they are cutting the standing trees and destroying the crops in the suit schedule property and as such, he made police complaints and the concerned police have directed the defendants not to cause such interference and the defendants have also executed undertaking letters. In spite of that, the defendants are continuing their illegal trespass over the suit schedule property. The plaintiff has got a prima-facie case and balance of convinces lies in his

favour. By stating all these facts, the plaintiff has prayed to allow the application.

4. On the otherhand, the defendants have filed a memo stating that the written statement may be adopted as objection to this IA. In the written statement it is contended by the defendants that the suit of the plaintiff is not maintainable, the boundaries mentioned in the plaint schedule is false and the correct boundary is that, East-by Shimsha river and land of one Chowdashedetty in Sy.No.28, West-by land of the defendants in Sy.No.27/5, North-by land of Ramesha S/o Erammana Mallegowda and the land belongs to Chowdashedetty in Sy.Nos.27 and 28 and towards South-by land of Chikkathayamma W/o Karigowda and Y.V.Ramegowda and Kenchegowda S/o Kenchegowda. As these defendants are the absolute owners of suit schedule property, there is no necessity for them to create any cart-road in the suit schedule property as alleged by the plaintiff. There is no any mud road in the suit schedule property, the

plaintiff has created and concocted these facts only for the purpose of this suit.

5. According to these defendants, the kartha of the family i.e, Marigempegowda and his wife Kempamma had two sons viz., Mallegowda and Marigempegowda and said Mallegowda had got 3 sons and 3 daughters i.e, Marigempegowda (father of plaintiff), Siddegowda (father of defendant No.1 and forefather of defendant Nos.2 to 5, Madegowda, Puttamadamma, Shiramma, Kullamma respectively and the 2nd son Marigempegowda had got two daughters only by name Doddamanamma and Dungamma. Accordingly, the 2nd son Mallegowda had got 2 sons and a daughter by name Siddegowda, Kempamma and Mallegowda.
6. According to defendants, in the partition held in the joint family, the suit schedule property had fallen to the share of Marigempegowda and Mallegowda had got major share

because he had 3 sons and 3 daughters, which is a oral partition and said Marigempegowda had got changed the katha into his name with respect to Sy.No.29 measuring 2.25guntas. According to defendants as Marigempegowda had no male issues, he fostered the forefather of defendant Nos.2 to 5 by name Siddegowda as his foster son and as such, said Siddegowda had got every legal possession and enjoyment over the suit schedule property and he had raised 86 coconut trees, 4 Bhage trees over the suit schedule property.

7. According to these defendants, the property bearing Sy.No.27/5 measuring 14guntas situated towards the northern side of suit schedule property, which had fallen to the share of Madegowda S/o Mallegowda has been exchanged with his own brother Siddegowda to the property situated in Sy.No.27/7-B measuring 10guntas including 2guntas of Kharab land and by this way, the said Siddegowda become the absolute owner and possessor of

said property along with suit schedule property and he has raised trees in the said property also and Siddegowda had developed the suit schedule property as a single plat by obtaining facility from Government. According to these defendants, now they are cultivating the suit schedule property and they have grown several varieties of trees in the suit schedule property. The police has created and concocted the revenue documents and has filed this suit only with a malafide intention.

8. According to defendants, there was a oral partition held between the 3 sons of Marigempegowda orally and in the said partition, the father of the plaintiff had got the properties in several survey numbers and he has sold most of the properties and now retained only 5.9guntas out of his share. It is further submitted that out of the properties of father of plaintiff and father of defendants, the Government had acquired the land in Sy.No.95/6 for formation of sites to needy persons. According to defendants, either the father of

the plaintiff or his brother Madegowda had got no right, title muchless possession over the suit schedule property. The defendants have given application for demarcate of suit schedule property, which is pending consideration and also they have given complaint against the plaintiff for his illegal trespass over the suit schedule property and the concerned police have directed these defendants to approach the civil court. By stating all these things, the defendants prayed for dismissal of the application.

9. I heard arguments of both the counsels and perused the documents available on record.
10. The following points arise for my consideration:

- 1. Whether the plaintiff proves that he has made out a prima-facie case?**

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

3. Whether the plaintiff further proves that he will be put to irreparable loss and hardship if no temporary injunction is granted?

4. What order or decree?

11. My answer to the above points are as follows :

Point No.1- in affirmative,

Point NO.2- in negative,

Point NO.3- in negative,

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

REASONS

POINT NO.1

12. **POINT No.1:** It is specific case of the plaintiff that he is owner of suit property and he inherited the same from his

father under Mutation register Extract No.-IHC-15/1979-80. He is in possession of suit property by raising wet crops and grown 100 coconut trees, 100 eucalyptus and 5 bage trees. 1st defendant is the son of his uncle Siddegowda and other defendants are sons of deceased own brother of 1st defendant by name Siddegowda. Defendants have no right, title or interest over the suit property and they are illegally interfering with his peaceful possession and enjoyment. The defendants illegally creating way through suit property with an intention to take sand from Shimsha river and also try to harvest the coconuts from the trees standing in the suit property. Therefore, he filed present suit against the defendants for permanent injunction.

13. The defendants filed their written statement and that admitted the relationship and further submitted that have the plaintiff has given wrong boundary to the suit property and they have created or creating cart-way to get the sand illegally from Shimsha river. The defendants are absolute

owner in possession of defendants. It is further submitted that the suit property Sy.No.29 measuring 2 acre 25guntas fallen to the share of son of Marrigempegowda under oral partition. Since, Marigempegowda has no male issues hence he has taken 2nd son of Mallegowda i.e., Siddegowda who is father of defendant No.1 as his legal successor hence Siddegowda become owner in possession of suit property. He has grown coconut trees in the suit schedule property and 4 bage trees. On 07.03.1979 the said Siddegowda has done Matta i.e., development of suit property from the assistance of Government. Further he has taken loan from MDCC Bank Agasanapur village, Malavalli Taluk, by mortgaging the suit property. Therefore, pleaded to dismiss the IA No.1 with costs.

14. In order to prove point No.1 plaintiff produced genealogical tree and RTC extracts 1969 to 2015. That on perusal of RTC extracts in respect of suit property which are standing in the name of plaintiff reveals that the suit

property from the year 1969 till to this day. The plaintiff further produced survey sketch in respect of suit property and complaint given to Halaguru police station on 07.06.2016 about the alleged interference by the defendants. The police have intimated the plaintiff for having received the complaint and also given endorsement to the same. He also submitted 13 tax paid receipts and 2 Patta receipt book stand in his name. Further plaintiff produced encumbrance certificate from the year 01.04.1950 to 14.06.2015, which is standing in the name of plaintiff and produced as many as 37 photographs in respect of suit property.

15. The defendants in order to show that they are having the possession of the suit property have produced RTC extract in respect of suit property for the year 1968-1973. It is contention of the defendants that in the said hand written RTC extract name of Mallegowda has strike out and name of Marigempegowda son of Mallegowda was increate.

In column No.10 of the said RTC extract. Paludhar is struck down and varasa is written. They further produced endorsement given by Tasildar. Further, defendants have produced RTC extract in respect suit property for the year 1987 where the name of the plaintiff is appeared under Mutation register Extract No.1HC 15/1979-80. Further defendants have produced survey sketch in respect of suit property and also produced 8 receipts received by Karnataka Agro Industries Corporation on Limited, Bangalore, in the year 1978-79. And they also produced letter written by divisional agricultural engineers, Mysore division, in the name of father of defendant No.1 and produced form No.6 issued by Deputy Registrar of co-operative society Mandya dated 03.07.1996, in the name of father of defendant No.1. And also produced money bank notices, receipts in order to show that they have taken loan in banks on the suit schedule property.

16. The learned counsel for plaintiff submitted that all the documents in respect of the suit property from the year 1969 are in the name of plaintiff and the defendants have not produced a single documents which shows their name to suit property, he further submitted that if the defendants are claimed to be in possession of suit property then why the katha has not been changed in the name of defendants. He further, argued that MR No.IHC-15/1979-80 which is more than 35 years and why the defendants have not challenged the said katha. Therefore looking from any angle it appears that the plaintiff is the owner of suit property at this juncture.

17. Learned counsel for defendant have argued that the suit property is fallen to the share of father of defendants Siddegowda and the said Siddegowda has develop the land by the assistance of Government also taken the loan by mortgaging the suit properties in various banks and co-operative societies. If the plaintiff is really in possession

then they would have filed IA No.1 along with suit but they have filed IA No.1 on 10.08.2015 whereas the suit was filed 22.06.2015. He further relied his arguments on RTC extract in respect of suit property for the year 1968-69 in which Mallegowda bin Marigempegowda has strait out and Mallegowda bin Marigempegowda has been inserted and on the basis of forged RTC extract subsequent RTC extract have been changed in the name of plaintiff and there are no title deeds nor mutation registrar to show that how the name of plaintiffs entered to the suit properties.

18. The present suit is filed for the relief of permanent injunction. Therefore, it is to be seen that who is in possession of the property rather than who is owner of the property. The plaintiffs produced RTC extracts in respect of suit property from the year 1969 to till to this day which shows his name over suit property. Further he produced tax paid receipts Patta books in respect of suit property. The encumbrance certificate from 1950 to 2015 also shows the name of the plaintiff over the suit property. Whereas

the documents produced by the defendants has not shows the name defendants. The documents produced by the defendants in respect of development the suit properties by the aid of Karnataka Agro corporation limited, Bangalore, does not bear any survey no of the land. Therefore, it is difficult to come to conclusion that the father of defendant no.1 by name Siddegowda has developed the suit properties with the aid of Karnataka Agro corporation. The defendants in order to show that they have taken loan on suit property in various co-operative societies have produced notices issued by various societies but they also not disclose survey no of the land on which they have taken the loan. Therefore, there are no documents to show that the defendants are having ownership rights over the suit property. Therefore, the plaintiff has made out a prima facie case to go for trial.

POINT No.2 and 3

19. The plaintiff should establish that the balance of convenience in the event of withholding the relief of temporary injunction, in all events, exceed that of the defendant in case he is restrained. The plaintiff must also show a clear necessity for affording protection to the alleged right, which would otherwise be seriously injured or impaired. An injunction will not be granted where the plaintiff has a remedy by way of damage. The injury must be irreparable and it must be continuous. By the term 'irreparable injury' is meant injury which is substantial and could never be adequately remedied or atoned for by damages, injury which cannot be possibly repaired.

20. The learned counsel for the defendants relied his arguments on number of decisions of Hon'ble Supreme court and Hon'ble High courts such as reported in **ILR 1999 KAR 1451** Sathyam @ Ramaiah and others Vs Karnataka Milk Federation co-operative limited.

CIVIL PROCEDURE CODE 1908 (Central ACT NO.5 of 1908) ORDER XXXIX Rules 1 and 2. Whether a

trespasser or a person who has no legal title but is in possession of the land is entitled to get temporary injunction? Held-Relying on PURAN SING AND OTHERS Vs STATE OF PUNJAB AIR 1975 SUPREME COURT 1674 the High court held that where a trespasser is in settled possession of the land is entitled to resist or defend his possession even as against the rightful owner who tries to dispossess him.

2015 (2) ICC 623

- A. **Specific Relief ACT. 1963**, Section 34 Declaration-When a party takes a specific plea that he has put the defendants in possession of the property on crop-sharing basis or that the defendants have entered into the lands with his permission, such a plea of plaintiff has to be proved

2015 (3) ICC 139 between **Sajjan Singh Versus Respondent Pritam Singh**

Civil procedure code, 1908, Order 39 Rules 1 and 2 injunction in a suit for injunction, title of the parties is not to be seen- Injunction can be granted in favour of the plaintiff in case he is found in established possession of the suit property- plea that no injunction can be granted against the true owner cannot be given much importance as the present against the true owner cannot be given much importance as the present suit is merely suit for injunction- It is not a suit for declaration or possession.

2015(3) ICC 599 (SC) between **Lakshmaiah Reddy Vs. Venkatesh Reddy** where in it was observed that, Mutation of records- Mutation entries do not convey or extinguish any title and those entries are relevant only for the purpose of collection of land revenue.

21. From citing above mentioned decisions the defendants contended that, the names of the plaintiff is only mentioned in the revenue records but the defendants are in actual possession and enjoyment of the suit property. Further it is contended by the defendants that, there is no

explanation of the plaintiff that how his name was entered to suit schedule property without any title documents. The plaintiff has not produced mutation register to show that he became owner of the suit schedule property. Further the defendants contends that they are real owners of the suit schedule property but the revenue records are not in their names. They are contending that, they dispute the ownership of plaintiff over the suit property. Therefore, the suit of the plaintiff is not maintainable without the relief of declaration of ownership. But it is not the stage who are the owners and who are not. But to see who are in possession and enjoyment of suit property.

22. It is pertinent to note here that, the plaintiff has not filed IA.No.1 for claiming ex-parte temporary injunction along with the suit. The plaintiff has filed suit on: 22-06-2015 and filed the present application on: 10-08-2015 i.e. after a gap of two months. It is further interesting to note here that, the plaintiff has filed a complaint to Halagur police on: 07-06-2015. I.e. before filing of the suit. If actually

the defendants are interfered in his peaceful possession and enjoyment of the suit schedule properties then why the plaintiff has not filed this application along with the suit. Further it is one important thing to note here that, in the complaint given to Halagur Police the plaintiff has mentioned in his complaint that, the defendant are creating the cart road and they are illegally transporting the sand. If the plaintiff is really in possession and enjoyment of the suit property how can the defendant formed the cart road and how can they transport the sand. In a day or two a cart road cannot be created. Moreover the plaintiff stated in his complaint that the defendant are transporting the sand. Which means they are continuing with the transportation of sand. Further the plaintiff mentioned in the complaint that the defendants are illegally harvesting the coconuts the coconut trees. As mentioned by the plaintiff in his complaint given by him to Halagur Police and CPI K.M.Doddi police station it clearly reveals that the defendants have created the cart road, harvesting the coconuts and transporting the

sand. These acts of the defendants are continuing in nature. One cannot overnight create the road, harvest the crops nor transport the sand. These acts of the defendants as stated by the plaintiff in his complaint through suspicion that the defendants may have the possession and enjoyment of suit schedule property and plaintiff is not in possession of the suit property. If the defendants are created the road in the suit schedule property then it appears that they are in possession of the property.

23. Further it is pertinent to note here that, the plaintiff has given wrong boundaries of the suit schedule property while filing of the present suit. After filing of the written statement and the defendants argued that the suit has been filed by mentioning the wrong boundaries, then the plaintiff has amended his plaint and corrected the boundary of the suit property towards west and towards south of suit schedule property. It is very strange that, the person who is in possession and enjoyment of suit property for more than 40 years, how come he would mention wrong boundaries of

his own property? This conduct of the plaintiff clearly throws suspicion about his possession over the suit property.

24. The defendants from the very beginning have claiming that they are owners in possession of the suit property and filed the affidavits of bajudars to show that they are the owners in possession of suit property. After that, the plaintiff has also filed affidavits of bajudars. The defendants have also filed an application to cross-examine the persons who have filed affidavits in favour of plaintiff. The said application though rejected by the court but this act of the defendants shows that, they are confident about their possession over the suit property. Another important thing to mention here that, the defendants have also filed application U/o 26 Rule 9 of CPC to appoint court commissioner to examine who are in possession of suit property. This application is objected by the plaintiff and still it is pending for consideration. Normally, the person who was not in possession of the property will not dare to file such a kind of application. Further defendants have field

application U/order 39 Rule 1 and 2 CPC for the relief of injunction against the plaintiff over the suit property. Therefore, at this stage of the suit it is very difficult to conclude who are in possession of the suit property. Both plaintiff and defendants have filed enormous number of documents in support of their case. But it becomes premature to appreciate those documents without there being evidence by the parties and subjected them to cross examine.

25. As observed above, now at this stage it is very difficult to form an opinion that who are in actual possession of suit property. No doubt the plaintiff has produced ample of documents in his name but from these documents it is not established that he in possession of property. The revenue entries are made only for the collection of the land revenue. On the otherhand the defendants may appear to be in possession but have also not established their possession over the suit schedule property to the satisfaction of the

court. Though the plaintiff has proved prima facie case in his favour but the existence of prima facie case alone is not sole criterion for issuance of a temporary injunction. The facts of each case must be examined to decide whether an injunction would be granted or not.

26. In the reported case of Dalpat Kumar and Another Vs. Prahlad Singh and others reported in 1992 (1) Supreme Court Cases 719 Hon'ble Supreme Court of India held that *"injunction is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the court in exercise of the power of granting ad interim injunction is to preserve the subject matter of the suit in the status quo for the time being. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is serious disputed question to be tried in the suit and that an act, on the facts before*

the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima-facie case" in his favour which needs adjudication at the trial. The existence of the prima-facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima-facie case is not to be confuse with prima-facie title which has to be established, on evidence at the trial. Only prima-facie case is a substantial question raised, bonafide, which needs investigation and a decision on merits. Satisfaction that

there is a prima-facie case by itself is not sufficient to grant injunction. The court further has to satisfy that non-interference by the court would result in “irreparable injury” to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that “the balance of convenience” must be in favour of granting injunction. The court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury

and if the court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the court has to exercise its sound judicial discretion in granting or refusing the relief of ad-interim injunction pending the suit.”

27. When both parties have not shown their possession over the suit schedule property to the satisfaction of the court at this stage, then, if the temporary injunction is granted in favour of any one will cause loss and hardship to the other party which cannot be compensated in money or in kind. Therefore, until the disposal of the suit the preservation of the property is very important by maintaining status quo in respect of suit property. Hence, it is needless to say that, the plaintiff has not made out balance of convenience tilting in his favour and irreparable injury. Therefore, I answer point No.2 and 3 in the negative.

POINT No.4

28. On the basis of observation made on point No.1 to 3, I proceed to pass the following:

ORDER

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

No order as to costs.

(Dictated to the Stenographer, corrected and then pronounced by me in the open Court on this the 25th day of March, 2017)

(Rajesh N. Hosamane),
I Addl.Civil Judge, Malavalli

**Order pronounced in the open
court vide separate order**

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

No order as to costs.

**I Addl.Civil Judge,
Malavalli**

