

**IN THE COURT OF THE CIVIL JUDGE & JMFC**  
**HEGGADADEVANAKOTE**

**PRESENT**

Sri Mohammed Shaiz Chouthai, B.A. LL.B. (Hons.), LL.M.(M.L.)  
 Civil Judge & JMFC.,  
 Heggadadevanakote

**Dated: 19<sup>th</sup> day of March 2021**

**O.S.No.183/2020**

Plaintiff/s : Smt.Devamma W/o.Bettanaika,  
 Aged about 40 years, R/o.K.Belthuru Village,  
 Saraguru Hobli, H.D.Kote Taluk.

*(By Sri.G.N.Narayanagowda, Advocate)*

**V/s**

Defendant/s : Lakshmana S/o.late Joganaika,  
 Aged about 38 years, R/o.K.Belthuru Village,  
 Saraguru Hobli, H.D.Kote Taluk.

*(By Sri.B.V.S., Advocate)*

Applicant : Smt.Devamma (Plaintiff)

V/s

Opponent : Lakshmana (Defendant)

**ORDER ON I.A.No.I FILED UNDER ORDER 39**

**RULE 1 AND 2 OF C.P.C.**

This instant application is filed by the plaintiff U/O.39 Rule 1 and 2 of C.P.C., to restrain the defendant from interfering in the suit schedule property.

2. The plaintiff has filed affidavit in support of her application deposing that, the suit property consists of vacant site, two commercial shops and residential house.

The said property was originally standing in the name of plaintiff's father-in-law-Bhoganaika. After his demise, the property came to be mutated in the name of his wife-Karagamma, which later came to be transferred in the name of the plaintiff. The name of the plaintiff is also mutated in the Grama Panchayath records and the Panchayath has issued Form No.11-B in her favour. Since then the plaintiff is the absolute owner and in possession of the suit property. In the year 2016-17 the plaintiff with an aid she received from the Government under Indira Awas Yojana by mortgaging the property in favour of Rajeev Gandhi Grameena Vasathi Nigama Niyamithi, Bengaluru, has constructed residential house and two commercial shops. The plaintiff without interference from anyone was enjoying the suit property.

3. The defendant has no right or interest over the suit property except he being the brother of the plaintiff's husband, who is residing separately. It is stated that, the property of defendant is situated towards Eastern and Northern side of the suit property, which is standing in the name of his wife. On 25/08/2020 when the plaintiff was carrying out a business in two commercial shops, the defendant demanded one commercial shop and caused interference in a possession of the plaintiff over the suit property. The Panchayath was summoned in the village,

however the defendant rejected the advise of the Panchayathdars. As such, the instant suit for the relief of permanent injunction. It is stated that, the plaintiff has *prima-facie* case, the balance of convenience tilts in her favour and if the injunction is not granted, irreparable loss would be caused to her. On the above grounds, the plaintiff prayed to allow the application.

4. The defendant appeared and filed written statement. He filed memo to treat written statement as also objection to I.A.No.I. The defendant denied all plaint averments except the relationship as set up by the plaintiff.

5. According to defendant, the husband of the plaintiff, i.e., Bettanaika and himself are the brothers and the sons of Late Joganaika and Late Smt.Karagamma along with one Thimmanaika and Ramanaika. The said Late Joganaika was in possession of the suit property during his lifetime and after his death, the Khatha in respect of the suit property came to be mutated in the name of his wife-Karagamma. As per the partition and family arrangement, all the three sons of Late Joganaika, i.e., Late Bettanaika (the husband of plaintiff), Thimmanaika and Ramanaika, confirmed that, they all have three houses of their own in the new extension of K.Belthuru Village. Since the defendant had no house, all the

three brothers consented under Oppandada Kararu Pathra, dated 25/09/2009, in which the house and backyard described in the suit schedule were allotted to the defendant. The plaintiff being a wife of Late Bettanaika, got her house at new extension and has no property in K.Belthuru Village. Similarly, the mother of the defendant, i.e., Late Karagamma gave her consent for a change of Khatha from her name in the name of defendant's wife-Smt.Neelavathi. The defendant constructed two shops by spending more than Rs.2,00,000/- in the share left to him and running shops after duly obtaining necessary licence from concerned Panchayath, which is being renewed from time to time.

6. The plaintiff with an ill-intention to grab commercial shops of the defendant, has filed this instant suit by creating documents. It is stated that, the plaintiff had demanded one commercial shop and experiencing the denial from the defendant, is causing interference in the possession of the defendant. The defendant is paying upto date property tax. Amongst other grounds, the defendant prayed to dismiss the application.

7. I have heard the learned counsel for plaintiff and defendant.

8. The points that arise for my consideration are:-

1. Whether the plaintiff proves that she has prima-facie case in her favour?
2. Whether the plaintiff proves balance of convenience in her favour?
3. Whether the plaintiff proves that irreparable loss would be caused to her if injunction is not granted?
4. What order?

9. My answer on the above points are as follows:-

- 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**

10. **POINT NO.1 TO 3:-** Both the plaintiff and defendant have filed necessary documents in support of their contentions. The plaintiff in order to show that, she is in possession of the suit schedule property within the boundaries and extent shown in the plaint schedule, has filed Form No.11-B issued by Grama Panchayath, K.Belthuru Village. She has also filed Tax Paid Receipts in order to show that she is paying property tax on the suit property.

11. The defendant has denied the possession of the plaintiff over the suit property. The defendant further denied

that, the plaintiff has constructed shops and a residential house and residing therein. Though the defendant has denied the possession of the plaintiff, but the records more particularly the Form No.11-B produced by the plaintiff would reveal that she is in possession of the suit schedule property. The boundaries as mentioned in plaintiff schedule are the same, which is reflected in Form No.11-B issued by Grama Panchayath. Except denying the possession of the plaintiff, the defendant has not produced any contrary documents to show that, he is in possession of two commercial shops situated over the suit property.

12. The defendant has produced Form No.9 and 11-A issued by Grama Panchayath, K.Belthuru, wherein his wife is shown to be in possession of the property bearing No.8/8/1, within the boundaries mentioned therein. The property covered by the said Form No.9 and 11-A are different from the property detailed in plaintiff schedule, over which the plaintiff is seeking the relief of temporary injunction. According to defendant, the property mentioned in Form No.9 and 11-A was transferred in the name of his wife after the demise of his mother-Late Karagamma, as consented by way of unregistered Consent Deed, dated 24/09/2009. The boundaries of the property detailed in unregistered Consent Deed doesn't fall in any of the corners of the plaintiff schedule

property. Therefore, it can be said that, the property detailed in plaint schedule is different from the property covered by the Consent Deed and Form No.9 and 11-A, which is standing in the name of the wife of defendant. The document produced by defendant styled as 'Consent Deed' is not registered. As such, it can't be said that, the defendant has *prima-facie* case in his contention.

13. Furthermore, according to defendant, he has obtained a licence from the concerned Grama Panchayath and has constructed commercial shops for running business. The defendant has produced a copy of General Licence dated 19/02/2019 and 21/09/2020, which reveals that, the licence has been issued in favour of the defendant to run business. In both the licence above referred there is no mention of property over which the defendant is carrying out business in commercial shops. The defendant at this juncture did not explain why the licence was obtained in his name when the property is standing in the name of his wife. There are no records to show that, the licence produced by the defendant are with respect to the commercial shops situated over the plaint schedule property.

14. The plaintiff has produced a copy of a Mortgage Deed, dated 12/07/2016, wherein it reveals that, she is sanctioned

a sum of Rs.1,20,000/- for construction of building under Indira Awaz Yojane over the suit schedule property. The details of the property mentioned in the Sale Deed is the same, which is reflected in plaint schedule. The deed further reflects that, on 12/07/2016 itself it got registered and the plaintiff was granted a sum of Rs.1,20,000/-. After obtaining the fund, the plaintiff has constructed shops without experiencing any challenge by the defendant. In other words, since from the year 2016, the defendant did not challenge the grant of advancement of amount of Rs.1,20,000/- from the Government under Indira Awaz Yojane in favour of the plaintiff. The defendant even did not challenge the construction work by the plaintiff. The material placed before this Court at this juncture would *prima-facie* reveal that, the plaintiff has constructed two commercial shops over the suit schedule property within the boundaries as mentioned therein. It also *prima-facie* appears that, the defendant is well aware about the sanction of advancement by the Government in favour of the plaintiff under Indira Awaz Yojane scheme, which is not challenged by him in any forum. Therefore, the documents placed before this Court at this juncture would show *prima-facie* case of the plaintiff. The documents produced by the defendant are with respect to a different property having no relevancy with the suit

schedule property. The building over the suit property being commercial shops, and if the injunction is not granted, irreparable loss would be caused to the plaintiff. The balance of convenience tilts in favour of the plaintiff. As such, the plaintiff is successful in proving all the ingredients for grant of injunction. Hence, I answer Point No.1 to 3 in the **Affirmative.**

15. **POINT NO.4:-** In view of the above findings and discussions, I proceed to pass the following:-

### **ORDER**

The application filed by the plaintiff U/O.39 Rule 1 and 2 of C.P.C., is hereby allowed.

The defendant or anybody acting on his behalf are restrained from interfering in the possession of the plaintiff over the suit property till the disposal of the suit.

The observations made in this order shall not come in the way of, affect or cause prejudice to the rights of the parties to prove their case by leading evidence during the trial.

*(Dictated to the Stenographer directly on computer, typed by him, the same is corrected, revised, signed and then pronounced by me in the open Court, the **19<sup>th</sup> day of March 2021**).*

**(MD SHAIZ CHOUTHAI)**  
CIVIL JUDGE & JMFC.,  
**H D Kote**