

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE & JMFC., AT
HEGGADADEVANAKOTE.**

PRESENT

SRI. SARFARAZ HUSSAIN KITTUR, B.A., L.L.B. (HONS), L.L.M,
Additional Civil Judge & JMFC
Heggadadevanakote

Dated: 12th day January 2016.

O. S. No.321 of 2014

PLAINTIFF/s : Karigowda

V/s

DEFENDANT/s: Boregowda and another

I. A. No.1

APPLICANT/S: Karigowda.....(*Plaintiff*)

V/s

OPPONENT/S: Boregowda and another...(*Defendants*)

ORDERS ON IA No.1

This IA is filed under Order 39 Rule 1 and 2 of CPC seeking for an ad interim order of temporary injunction to restrain the defendants from interfering with plaintiff's peaceful possession and enjoyment of the suit schedule property.

2. It is the case of the plaintiff that the suit schedule property belonged to Smt.Javamma wife of Karigowda vide grant Order of Special Tahsildar dated 14.05.1980 and ever since she continued to be in possession. That during her lifetime, she along with the plaintiff and his brother had jointly mortgaged the plaint schedule property in favour of Canara Bank for availing a loan of Rs.5,25,000/- Smt. Javamma died

leaving behind the plaintiff and his brother Siddappaji. After the death of Smt.Javaramma, the plaintiff got the khata transferred in his name and is in possession of the same as the cultivator. That the defendants being owners of the adjacent land bearing Sy.No.6 measuring 2 acre 20 guntas are causing interference with plaintiff's possession of the suit schedule property. Though the plaintiff approached the police, they did not take any action. That plaintiff is afraid that the defendants will dispossess him. On these grounds the plaintiff filed this IA along with the suit.

3. The defendants appeared and filed their written statement and adopted the same as their objections to IA No.1 by filing a memo. The defendants have denied the entire plaint averments and contended that khata in respect Sy.No.5 and 6 of Malahalli village measuring 5 acres stands in the name of Defendants i.e., land to an extent of 2 acre 20 guntas stands in the name of defendants No.2 and remaining 2 acre 20 gunatas stands in the name of defendants. That defendants are in possession of the same. That land bearing Sy.No.17 was ordered in favour of Defendant No.1 vide KLRP No.150/1975-76 but defendants are in possession of total 5 acres in Sy.No.5 and 6 since 45years. As the survey numbers have changed, the plaintiff is in possession of Sy.No.17 to an extent of 3acres. As there are wrong entries in some revenue documents, even today the plaintiff is in possession of 3acres of land in Sy.No.17 and he is not in possession of the land having boundaries mentioned in the plaint schedule. That the said boundaries pertain to Sy.No.5 and 6 and that the defendants are in possession of the same. That revenue officials are conducting inspection in this regard. That defendants have not caused any interference with plaintiff's possession and that plaintiff are not in possession of the land described in the plaint schedule. On these grounds the defendants pray for dismissal of IA No.1.

4. The following points arise for consideration:
 - i. Whether the Plaintiff has made out a *prima facie* case?

- ii. Whether the balance of convenience lies in favour of the Plaintiff?
- iii. Whether irreparable loss and injury would be caused to the plaintiff if Temporary Injunction is not granted?
- iv. What Order?

5. Heard both sides and the case law referred by the plaintiff has been taken into consideration.

6. My answers to the above points is as follows

Point No.1 : **In the Negative**

Point No.2 : **In the Negative**

Point No.3 : **In the Negative**

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

REASONS

7. **Point No.1:** Perused the IA, supporting affidavit, objections, pleadings and documents produced. The plaintiff claims to be in possession of the suit schedule property situated at Siddenahalli village, however the defendants have claimed that the plaintiffs are not in possession in the land surrounded by the boundaries mentioned in the plaint schedule. The defendants claims to be in possession of the same. In support of his IA the plaintiff has produced Akaraband, the copy of the Grant Order in favour of Smt. Javaramma, Moola Tippani, two challans, notice issued to Smt. Javaramma, copy of the order sheet in case No.164/75-76, RTCs for the year 1971-72 to 1999-00, death certificate of Smt. Javaramma, MR extract, RTC for the year 2013-14, certified copy of the Mortgage Deed, MR extract in respect of Sy.No.6, and encumbrance certificate.

8. It is pertinent to note that though the plaintiff produced RTC

for the year 2013-14 in respect of Sy.No.5 and name of plaintiff is shown in column No.9, it is to be noted that the RTC is in respect of Malahalli village and not Siddenahalli village as mentioned in the suit schedule. Be it as it may. It is the case of the plaintiff that during the life time of Javaramma, he along with Smt.Javaramma and his brother Siddappaji had executed a Mortgage Deed in favour of the Canara Bank for obtaining loan by mortgaging the suit schedule property. On perusal of the said mortgage deed dated 28.10.2005 produced by the plaintiff, the boundaries mentioned in the schedule appended to the mortgage deed described Land bearing Sy.No.5 measuring 3 acres as situated at Mallahalli village, Hampapura Hobli, H.D. Kote Taluk and is shown to be bounded on the East by Road, West by Road, North by Government Property (Cattle field) and South by Road, whereas in the plaint schedule it is shown to be bounded in the East by Land of Sri.Marilakkegowda, West by Land of Kalasegowdana Basavegowda, North by Road and South by Land of Siddaraju. This becomes relevant since the defendants have contended that the plaintiff is not in possession of the land bounded by the boundaries mentioned in the plaint and claim that plaintiff is in possession of some other land. In this view, a doubt is cast on the very possession of the plaintiff. The plaintiff relied upon the decision of the Honourable High Court of Karnataka in **Pampanangouda v. Smt. Deepa** reported in 2015 (4) KCCR 3761, wherein it was held at para No.4 that *“The mutation entry which has remained unchallenged is rightly taken as one of the important materials to prove the prima facie possession of the plaintiff.”* However, it is pertinent to note that the facts and circumstances of this case are different as the defendants in this case have disputed the boundaries mentioned in the plaint schedule. The Mortgage Deed, being the document produced by the plaintiff himself, which is executed by the plaintiff himself with two others to obtain loan from the bank by mortgaging the suit schedule property, is at variance with the boundaries mentioned in the plaint schedule. Thus casting a

doubt on the actual possession of the plaintiff and hence the ratio in the above decision of the Honourable High Court of Karnataka would not help the plaintiff in this case. No doubt that the defendants have not produced any document to show that they are in possession of the land bounded by boundaries mentioned in the plaint schedule but that cannot be a ground for holding that plaintiff has made out a prima facie case. The Akaraband, Molla Tippani, Grant Order and other documents produced by the plaintiff also do not throw any light on the aspect of boundaries. It is necessary for the plaintiff to clarify all these aspects at the time of a full-fledged trial. In the facts and circumstances of the case and foregoing discussion and reasons, at this stage, it cannot be said that plaintiff has made out a prima facie case.

9. Hence, in view of the above discussion and for the foregoing reasons, point No.1 is answered in the **negative**.

10. Points No.2 and 3: It has been held in the case of *Gourishankar Swamigalu v. Siddhaganaj Mutt & Ors* reported in ILR 1989 KAR 1701 “If there was no prima facie case at all... further questions of balance of convenience and irreparable loss need not be considered....”

11. Accordingly, in the light of answer to point No.1 and the reasons assigned therein, Point No.2 and 3 are also answered in the **negative**.

12. Point No.4: It is necessary to add that the observations made herein above 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. In view of my answers to the above points and the reasons assigned therein, the following:

ORDER

IA No.1 filed by the Plaintiff under Order XXXIX Rule 1 and 2 is hereby **dismissed**.

No order as to cost.

*(Dictated to the Stenographer directly on the computer, corrected, signed and then pronounced by me in open court on **12th day of January 2016**)*

(SARFARAZ HUSSAIN KITTUR)
Additional Civil Judge & JMFC
Heggadadevanakote.