

KAMS210020482024



**IN THE COURT OF THE IInd ADDITIONAL CIVIL JUDGE
AND J.M.F.C., AT HEGGADADEVANAKOTE.**

**PRESENT: SUSHMA.M. B.A., LL.B.,
IInd Addl.Civil Judge & J.M.F.C.,
Heggadadevanakote.**

Dated this the 13th day of NOVEMBER 2024

O.S.No.308/2024

Plaintiffs : **1.** Jayammabai,
D/o Late.Narayananayaka,
Aged about 65 years,

2. Sri.Malleshnayaka,
S/o Late.Narayananayaka,
Aged about 42 years,

3. Sri.Chandru,
S/o Late.Narayananayaka,
Aged about 40 years,
P.1 to 3 are R/o
Nemmanahally village,
Kandalike Hobli,
Saraguru Taluk,
Mysore District.

4. Smt.Geethabai,
D/o Late.Narayananayaka,
W/o Lakshmananayaka,
Aged about 38 years,
R/o Kallahatty village,
Kasaba Hobli,
H.D.Kote taluk,
Mysore District.

(By Sri.B.V.M., Advocate)

- V/s -

- Defendants :**
1. Sri.Rajanna,
S/o Late.Ankappa,
Aged about 58 years,
 2. Sri.Girish,
S/o Rajanna,
Aged about 35 years,
 3. Sri.Aruna,
S/o Late.Ankappa,
Aged about 38 years,
All are R/o Nemmanahally village,
Kandalike Hobli,
Saraguru Taluk,
Mysore District.

(By Sri.B.L.T., Advocate)

**Orders on I.A. No.1 U/o XXXIX Rule 1 & 2 of C.P.C filed by
the plaintiff**

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

2. The plaintiffs have filed the suit for seeking relief of permanent injunction against the defendants in respect of suit schedule property. It is the case of plaintiffs that, the land bearing Sy.No.32 measuring to an extent of 4 acres of Nemmanahally village was granted under Dharakasthu infavour of grandfather of plaintiff No.2 to 4 and father-in-law of 1st plaintiff Meghanayaka on 29.04.1968. katha mutated in his name after his death his sons Govindanayaka and Narayananayaka have equally partitioned 2 acres each in the said property and also got changed the katha. After the death of husband of 1st plaintiff and father of plaintiff No.2 to 4 katha of suit schedule property jointly changed in the name of plaintiffs as per M.R.H.No.4/2023-24. The plaintiffs are in joint possession and enjoyment by cultivating the property and also paying tax to

the government. It is further submitted that, defendants property is situated towards Northern side of suit schedule property taking advantage of the same and without having any manner of right, interest or title over the suit schedule property, the defendants have illegally laid foundation in the suit schedule property. The plaintiffs have tried to stop the illegal construction but defendants did not stop the work. In this regard, the plaintiffs have lodged complaint before Saraguru police station on 12.06.2024. The police have advised the defendants to not to interfere with the plaintiffs property and stop the construction work. Even though, the defendants did not stop the work. Hence, plaintiffs have filed this application.

3. Per contra the defendant No.3 filed written statement and defendant No.1 and 2 adopted the written statement and also filed memo to treat the written statement as objection to this application. In the written statement the defendants denied all the allegation made in the plaint and submitted that, the defendant gave complaint on 30.04.2024 against plaintiffs that they are illegally tried to trespass to the written statement land and remove the portion of the fence. At the time of digging the

foundation fit by the defendant No.3 in the written statement schedule land the plaintiffs falsely filed complaint against this defendant. The defendant measured his land bearing Sy.No.32/49 new unique No.32 accordingly the defendant gave application to the Thasildar on 21.06.2024 to measure the land and to give police protection. Then Thasildar refer to the survey department to measure the defendant property. The surveyor preferred the sketch with boundaries and also identified the land of defendant. The plaintiffs are well aware of privious complaint lodged by the defendant dated 30.04.2024 and survey proceedings. The plaintiffs have filed false and frivolous case without identifying their alleged land and by giving defendant survey number boundaries.

4. It is further submitted that, the 3rd defendant constructed the building in his land up to lintel level and completed centering work and also put up solar fence with subsidy. Solar gate is also erected in the written statement schedule land on the Eastern side towards Nemmanahally Bankavadi road. The defendant also obtained electricity connection in the old tiled house and one RCC building with

electricity pole also installed by CHASCOM. The defendant father also gave space to construct water tank by Panchayath. The plaintiffs are trespassed in to the written statement schedule land and illegally put up some cement poles. The plaintiffs kept cement sheets in the road side of defendant land and take away the iron rods. Therefore, the defendant lodged complaint on 24.09.2024 against the plaintiffs.

5. It is further submitted that, this defendant mother executed registered gift deed dated 09.06.2009 in respect of land bearing Sy.No.32/49 new Sy.No.32. The plaintiffs have given wrong boundaries by claiming the portion of land of defendants. This defendant brother and others filed a suit for partition in O.S.No.104/2019 the said suit came to be compromised. The plaintiffs have given boundaries of defendants land and falsely claiming over the defendants land. The survey department identified the defendants written statement schedule land. The boundaries given by the plaintiffs is the portion of defendants written statement land. Hence, prayed for dismissal of application.

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

1) Whether the plaintiffs have made out a prima-facie case?

2) Whether the balance of convenience lies in favour of plaintiffs ?

3) Whether irreparable loss and injury would cause to plaintiffs if temporary injunction as prayed in I.A.No.I is not granted?

4) What order?

7. My answer to the above points are as under

Point No.1 : In the Negative.

Point No.2 : In the Negative.

Point No.3 : In the Negative.

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

:: REASONS ::

8. Point No.1 to 3: These points are taken up together for consideration to avoid repetition of facts. I have perused the plaint averments, affidavit, application and documents filed along

with plaint, the plaintiffs have contended that, suit schedule property bearing Sy.No.32 measuring to an extent of 4 acres was granted in favour of father-in-law of 1st plaintiff and grandfather of plaintiff No.2 to 4 under Dharakasthu dated 29.04.1968. After his death, his two children have equally partitioned the siad property. Accordingly, 2 acres has fallen to the share of father of plaintiff No.2 to 4. After demise of their father the plaintiffs are being legal heirs got changed the powthikatha as per M.R.H.No.4/2023-24 and they are in joint possession of the suit schedule property. In order to prove the same they have produced grant certificate, RTC, tax paid receipts and police acknowledgment. On perusal of grant certificate, it makes clear that, 4 acres was granted in Sy.No.32 block No.5 in the year 1968-69 in favour of Meghanayaka who is grandfather of plaintiff No.2 to 4 and issued grant certificate alongwith sketch. In the said grant certificate the boundaries are not mentioned. It is an undisputed fact that, Meghanayaka was granted 4 acres in Sy.NO.32/5 and he was in possession and enjoyment of the property and katha and RTC also mutated in his name. The RTC produced by the plaintiff shows that, he was in possession and cultivating the said property. After his death his children

Govindanayaka and Narayananayaka who is father of plaintiff No.2 to 4 and husband of 1st plaintiff have partitioned the said property and katha changed the katha in their favour as per M.R.No.1/1993-94. After the death of said Narayananayaka, the plaintiffs continued the possession and enjoyment of the property by changing the katha. The present RTC stands in the name of plaintiff, their names also entered in the column No.9 and 12 of the RTC. It is true that, the plaintiffs are in possession and enjoyment of the suit schedule property. Since, grant certificate does not contain the boundaries of the property. There is no document to show the exact boundaries of the suit schedule property.

9. It is the contention of the defendants that, land bearing Sy.No.32/49 measuring 4 acres was granted to their father Ankappa S/o Subbegowda. Prior to the said grant, they were in possession and enjoyment of the written statement schedule property. The defendants are laid foundation in their property and he measured his land bearing Sy.No.32/49 new number 32. The revenue officials have visited the spot and measured the defendants property and preferred sketch and

identified the land of defendants. The defendants put up solar fence and obtained electricity connection. It is further contended that, defendants mother executed registered gift deed in respect of Sy.No.32/49. The plaintiff has given the boundaries of written statement schedule. The suit schedule property is the part of written statement schedule property. The plaintiff is interfering with the defendants property. In this regard, the defendants filed several complaints against the plaintiff. In order to prove the said contention, the defendants have produced grant certificate, mutation, tax paid receipts, gift deed, RTC, acknowledgment, endorsement, plaint copy in O.S.No.104/2019, mahazure and reports, complaints and photographs. On perusal of said grant certificate, it clerly goes to show that, property bearing Sy.No.32/49 measuring to an extent of 4 acres was granted infavour of defendants father in the year 1970. By virtue of said grant certificate, katha mutated in the name of their father Ankappa. After his demise, his wife Kempalamma got changed the powthikatha and she was in possession and enjoyment of the written statement property by paying tax to the government. Further, she has executed gift deed in favour of his son dated 09.06.2009 in respect of written statement schedule property. In

the said gift deed, the boundaries are shown as East by Government road, West and North by property belongs to Devappa and South by property belongs to Madappa. On perusal of said boundaries, which reveals that, the plaintiffs property is not situated besides the written statement schedule property, but in the plaint schedule it is shown as North by defendants property. To show the plaint schedule boundaries the plaintiff has not produced relevant documents. After executing the gift deed, Aruna S/o Kempalamma has become the owner in possession of the Sy.No.32. After phodi Sy.No.32/49 renumbered as Sy.No.32. On 30.04.2024 the defendant has filed complaint against the plaintiff. Therefore, the Saraguru PS has issued acknowledgment and endorsement stating that, since it is civil dispute.

10. It is pertinent to note that, the 1st defendant and others have filed suit against the defendant No.3 and others in respect of Sy.No.32/49 measuring to an extent of 4 acres. The said suit is decreed in terms of compromise petition. The boundaries are shown in the gift deed, the same boundaries are shown in the said suit also. The same boundaries are also shown

in the written statement. The boundaries shown in the gift deed, in O.S.No.104/2019 and in the present suit are one and the same. After complaint before Saraguru PS it was referred to Thasildar Saraguru Taluk to measure the written statement schedule property. The surveyor visited and prepared sketch in respect of Sy.No.32. In the said sketch, it is mentioned that, the defendants are in possession of 4 acres in Sy.No.32 and also it is mentioned the boundaries as East by road, West, North and South by remaining property in Sy.No.32. In the sketch also, they did not mention as to which side of written statement schedule property, the plaintiffs property is situated. But, plaintiffs have shown as North by defendants property. The documents produced by the defendants clearly goes to show that, they are in possession and enjoyment of Sy.No.32/49 new Sy.No.32 measuring to an extent of 4 acres and also they have obtained solar fence, electricity connection and also constructed house in the written statement property. Now also defendants have constructed house in the written statement property. The photographs produced by the defendants clearly show that, centering work of building is also completed. The defendants have shown that they are in possession of their respective

property within the boundaries as shown in the written statement. The plaintiffs are also in possession of the suit schedule property. But, no documents are placed to show that, they are in possession within the boundaries as shown in the plaint schedule. At this stage, it cannot be said that, the plaintiffs are in possession of suit schedule property within the boundaries as shown in the plaint schedule. The defendants seriously disputed the boundaries and contended that, the plaintiffs have given portion of boundaries of written statement property. Suit schedule property is the portion of written statement schedule property. In the absence of sufficient documents it cannot be said that, the plaintiffs are in possession within the boundaries as shown. The documents produced by the defendants show that, they are in possession and enjoyment of their property. In support of their contention they have produced documents like endorsement, survey reports and sketch. The surveyor clearly identified the written statement property. Therefore, the said document can be taken into consideration. Subsequently, the plaintiffs have lodged complaint against the defendants. Prior to filing of said complaint the defendants have lodged complaint against the plaintiffs. The dispute between the parties in respect

of boundaries. At the stage, it cannot be said that, plaintiffs have given wrong boundaries and suit schedule property is the portion of written statement schedule property. Their question will be answered at the time of trial. Now such, questions cannot be answered. As per available records, the plaintiffs and defendants are in possession of their respective properties. But plaintiffs have failed to show that, they are in possession of suit schedule property within the boundaries as shown. To show the correct boundaries of suit schedule property no documents are placed. Since, grant certificate also did not contain the boundaries. Hence, the plaintiffs have failed to show the prima facie case to grant relief of temporary injunction.

11. On perusal of documents produced by the plaintiffs as well as the defendants, it appears that the plaintiffs are in possession of suit schedule property. Only on the basis of said documents it cannot be said that, plaintiffs are in possession of the suit schedule property. Since, defendants have seriously disputed the boundaries given by the plaintiffs. Therefore, such questions cannot be determined at this stage. They can be considered at the time of trial. Only the question of possession

and prima facie case have to be considered at this stage. Therefore I am of the opinion that, whatever questions raised by the defendants will have to be answered after the trial by considering merits of the case. Therefore, I am of the opinion that, whatever opinions, findings given in this order will not be considered at the later stage in this case. Therefore, I am of the opinion that, the plaintiffs have not established prima facie case.

12. The plaintiffs have not made out prima facie case in this case to grant temporary Injunction in favour of the plaintiffs they have to show that, there is balance of convenience in their favour more than the defendants. On perusal of material on the record, the balance of convenience does not lie in favour of the plaintiffs, when it is compared with the defendants case. Therefore, I am of the opinion that, the plaintiffs have not shown the balance of convenience to grant temporary Injunction.

13. The plaintiffs have also to establish that, if the temporary Injunction is not granted, they will be put, to greater hardship. The defendants have also to show that, they will be put to greater hardship, if the temporary Injunction is granted in favour of the plaintiffs. But, there are no materials to show that,

the greater hardship will be caused to the plaintiffs. Therefore, it is to be considered at the time of trial. Hence, I am of the opinion that, the plaintiffs have not shown that, they will be put, to greater hardship, if the temporary Injunction is not granted.

Accordingly, I answer the point No.1 to 3 are in the Negative.

14. Point No.4 : In view of above discussion on Point No.1 to 3 I pass the following :

ORDER

I.A.No.1 filed by the plaintiffs U/o XXXIX
Rule 1 and 2 CPC is hereby rejected.

Earlier T.I granted in this case shall stand
vacated.

No order as to cost.

(Dictated to the Stenographer, typed by her on computer and corrected by me,
then pronounced in the open Court on this day **13th NOVEMBER 2024**)

**(SUSHMA.M),
IInd Addl.Civil Judge & JMFC,
Heggadadevanakote.**