

KAMS210029352024



**IN THE COURT OF THE II<sup>nd</sup> ADDITIONAL CIVIL JUDGE  
AND J.M.F.C., AT HEGGADADEVANAKOTE.**

**PRESENT: SUSHMA.M. B.A., LL.B.,  
II<sup>nd</sup> Addl.Civil Judge & J.M.F.C.,  
Heggadadevanakote.**

**Dated this the 1<sup>st</sup> day of APRIL 2025**

**O.S.No.389/2024**

**Plaintiff/s** : Sri.Krishna & others.

**(By Sri.H.G.V., Advocate)**

**- V/s -**

**Defendants** : Sri.Sannakumara & others.

**(By Sri.G.R.S., Advocate)**

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

I.A.No.I filed under Order 39 Rule 1 and 2 of Civil Procedure Code praying to an ad-interim order of temporary injunction restraining the defendants, their henchmen, servants or any other persons interfering with the plaintiffs peaceful possession and enjoyment of the suit schedule property till the disposal of suit.

**2.** It is the case of the plaintiffs that, suit schedule property originally belonged to plaintiffs father by name Gopalaiah S/o Javaraiah and it was granted through LND.N.DAR176/1963-64. After grant he sold the said property infavour of Agastin, then it was considered as P.T.C.L dispute and registered SPT NO.1146-1979-80, the said appeal was allowed by Assistant Commissioner, Hunasur on 13.07.1982. Challenging the said order the said Agastin filed revision petition before DC in PTCL NO.385/84-85. The said petition came to be dismissed and ordered to hand over the suit schedule property infavour of original owner as per order No.LNDPR156-1990-91 dated 16.08.1990. in pursuance of said order the plaintiffs were took the psychical possession of the suit schedule property and

having possession and enjoyment of the property along with his family without interference by anybody. The plaintiffs father was died on 18.09.2020 then his legal heirs got change the katha as per MRH6-2020-21 dated 22.07.2021.

**3.** It is further submitted that, after the demise of Gopalaiah S/o Javaraiah, the plaintiffs are being legal heirs continued to be in possession and enjoyment of the suit schedule property and paying tax to the suit schedule property. The defendants without having right or interest interfered with the plaintiffs suit schedule property on 17.12.2024 and destroyed the crops and caused loss to the plaintiffs. The defendants property bearing Sy. No.118 measuring to an extent of 4 acres is situated towards Southern side of suit schedule property. The defendants are having accesses towards Southern side of their property, even though they are interfering on South side of suit schedule property. The 2<sup>nd</sup> and 3<sup>rd</sup> defendant was granted Sy.No.78 measuring 4 acre 8 guntas during the year 2016 and illegally got the Saguvali chit, but said property is not demarcated and not identified. In order to snatch the suit schedule property defendants are trying to interfere with the suit schedule property. In this regard the plaintiffs have filed

compliant against the defendants it is registered as C.R.No.338/2024. Hence, prays to allow the application.

**4.** After service of summons defendants No.1 to 7 have appeared through their counsel and written statement and filed adoption memo adopting the written statement as objection to I.A.No.I. It is submitted that, the plaintiffs have not stated as to how many acres of land in Sy.No.78 and when it will be granted. It is entered in the Index of Land that the father was granted Sy.No.78 block No.3 in LND(4) 119/77-78 measuring to an extent of 2 acres in favour of and 1 acre 19 guntas and 21 guntas but no original documents are available. They have made entries in the RTC on false documents. Further the plaintiffs in appeal HDK/SPT1 as per original sanction. 146/79-80 have claimed that the sale deed dated 13.10.1969 was purchased by PTCL. The sale deed boundaries are East by land belonged to Keruru Javaraiah, West by Tarak channel, South by property belonged to Gopalaiah and North by Venkataiah. However, the plaintiffs have wrongly mentioned the plaint schedule boundaries. It is further submitted that, the defendants have been using the southern side road for about 40 years. They have

exchanged the properties and thereby causing trouble to the defendants and villagers.

**5.** It is further submitted that, the Thasildar order dated 19.11.2024 and govt notification govt and private lands used for the purpose of agricultural activities of farmers in the state. There are problems in moving around the lands for transporting agricultural equipments for agricultural purpose. The plaintiffs were informed about the right of way and other usufruct rights under rule 59 of land revenue act 1966, since they did not cooperate, they ordered the concerned authorities to clear the road as per easement act. The H.D.Kote.Kote police arrived at the spot on 17.12.2024 along with surveyor, have refused the words of the officials and formed unlawful assembly and threatened the villagers. Though officials cleared the road with the help of the police.

**6.** It is further submitted that, the defendants father Gopaladasaiah was granted Sy.No.118 measuring 4 acres he sold the said property and purchased the same in auction sale. Ever since, he has in possession and enjoyment of the property, similarly the defendant No.2 and 3 were granted Sy.No.78

measuring 4 acre 8 guntas in the year 2016-17. In pursuance of grant the defendant No.2 and 3 changed the katha and using the road which is situated on Southern side of defendants property. The plaintiffs illegally obstructed the road and lodged complaint against defendants with support of villagers. The plaintiffs have not made out grounds and suit of the plaintiffs is not maintainable. The plaintiffs have not approached the court with clean hands. Hence, pray to dismiss the application.

**7.** Heard the learned counsel appearing for the plaintiffs and also the defendants. Perused the applications, affidavits, objections, pleadings and documents produced from the both sides.

**8.** Upon hearing arguments and on perusal of materials placed on record the following points that arise for my consideration are:

- 1. Whether the plaintiffs have established prima facie case to grant temporary Injunction ?**
- 2. Whether the balance of convenience lies in favour of plaintiffs ?**

**3. Whether irreparable loss or hardship will be caused to the plaintiffs if Injunction as prayed in I.A.No.1 is not granted?**

**4. What order ?**

9. My findings 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 order for the following :**

**:: REASONS ::**

**10. Point No.1 to 3:** On perusal of said materials it appears that, the plaintiffs have filed this suit for permanent injunction against the defendants in respect of property bearing No.78 measuring to an extent of 4 acres. To substantiate their contention they have produced grant certificate, order copy in PTCL385/1984, RTC extract, Mutation register, compliant and photographs. Admittedly, suit schedule property was granted infavour of father of the plaintiffs by name Gopalaiah S/o Javaraiah through LND.176/1963-64, even since he had been in possession and enjoyment of the suit schedule property. It is

admitted by the defendants that, the plaintiff father had sold the said property infavour of one Agastin S/o Chikkanna and as per order of DC in LNDPR.156/1991 dated 16.08.1990 again suit schedule property was handed over to plaintiffs family. Since the date of said order the plaintiffs and his family members have been in peaceful possession and enjoyment of the suit schedule property. The RTC produced by the plaintiffs disclosed that, their father was in possession and enjoyment of the suit schedule property. After his demise, the plaintiffs are being the legal heirs got change the katha and continued to be in possession of the suit schedule property and paying tax. Presently RTC is stood in the name of plaintiffs. Undisputedly, the plaintiffs are in possession and enjoyment of the suit schedule property as on date of suit. It is pertinent to note that, on perusal of the grant certificate it reveals that, since it does not contain the boundaries. Therefore, at this stage it cannot be said the plaintiffs are in possession and enjoyment of the suit schedule property with in the boundaries as stated in the plaint. In order to show the plaint boundaries no documents are placed, except grant certificate. It is on record that, suit schedule property was granted in favour of their father and they are in possession of the property. The plaintiffs have produced one certificate which was

issued by the Village Accountant pertaining Sy.No.78 measuring 4 acres and it is certified that, coconut and millet crop grown in the Sy.No.78 which is stood in the name of one Manikamma D/o Late.Gopalaiah. It contains the boundaries as East by road and Sy.No.118, West by Taraka Channel, North by road and property belonged to Venkataiah and South by Puttaiah S/o Gopaladasaiah property i.e., plaint schedule boundaries. Per contra, the defendants have produced sale deed in respect of suit schedule property. As discussed above, on 13.10.1969 the plaintiffs father had sold the suit schedule property in favour of one Agastin. upon careful perusal of said document it disclosed that, the boundaries are shown in the said sale deed as East by Keruru Javaraiah, West by Tarak, South by property belonged to Gopalaiah and North by property belonged to Venkataiah. Whereas, in plaint schedule which are not mentioned. The sale deed boundaries and plaint schedule boundaries did not tally with each other. In plaint schedule it is mentioned as East and North by road but, as per sale deed there is no road on East and Northern side of suit schedule property. Therefore, the boundaries given by the plaintiffs did not match with boundaries of sale deed. In support his contention and in order to show the correct boundaries no documents are produced since

endorsement issued by the VA does not bear the date issuance of certificate. It is not clear as to when it was issued and it appears that it is not authenticated document.

**11.** It is true that the plaintiffs are in possession and enjoyment of the suit schedule property since the date of grant, nevertheless they have failed to show the correct boundaries of suit schedule property. On other hand, the defendants took up contention that, the plaintiff father was not granted total 4 acres in Sy.No.78/3, the said 4 acres was granted one side measuring 2 acres and another side 1 acre 19 guntas and 21 guntas. He was granted a bit of land in Sy.No.78. The plaintiffs have wrongly mentioned the boundaries, it is not the boundaries of the suit schedule property. The sale deed boundaries are not tallying with plaint schedule boundaries. As per order of Thasildar H.D.Kote and govt circular the adjacent land owners have to leave road to carry out the agricultural activities. But the plaintiffs is obstructing the use of road by the defendants. The defendants have no alternative road except this. In order to prove their contention they have produced sketch with respect of Sy.No.78, it shows as per the order of Thasildar H.D.Kote, the surveyor measured the road and preferred the sketch and

identified the road. It is pertinent to note that, even after identifying the road the plaintiffs have obstructed. As per granting rules, all grantees have to leave road to the adjacent land owners, the plaintiffs are being adjacent owners of the defendants are obstructing the use of road and not allowing to leave the road in the suit schedule property and violating the granting condition. The advocate for plaintiffs has argued that, the defendants having access towards Southern side of their property and plaintiffs have already left the road as per granting rules. It is pertinent to note that, it is shown in the plaint schedule as East and North side by road, but available material on record speaks no road is situated towards East and North side of suit schedule property. Therefore, the contention of the plaintiffs cannot be accepted. More over, the sale deed produced by the defendants shows the plaint schedule boundaries are not correct. Since, sale deed boundaries did not tally with plaint schedule boundaries. Hence, the plaintiffs have not made out prima facie case to grant discretionary relief of Temporary injunction. If plaintiffs want to get relief from the court they have to approach the court with clean hands. The plaintiffs have produced the photographs to show the alleged interference by the defendants. As per say of plaintiffs, if really road is situated

on Southern side of defendants property what prevented the plaintiffs to produce the photographs to show the said existing road on Southern side of defendants property.

**12.** The defendants have produced order copy in LND(dis) CR 729/2021-22 which was filed by the 1<sup>st</sup> defendant against the plaintiffs regarding leave of the road in respect land bearing Sy.No.78 situated at Kattemanuganahalli village, H.D.Kote. After having heard the both side, the Thasildar has ordered that, as per order of govt of karnataka vide circular no. R.D.23/L.G.P/2022 dated 20.11.2023, there is a problem of access to govt and private lands used by farmers for agricultural purpose and move agricultural equipments. The plaintiff and the defendants have not cooperated with each other in the matter of rights of way and other usufruct rights as mentioned in rule 59 of the KLRC 1966. As per the sec 1882, farmers have the right to enter their land for agricultural purpose and right to trade. Therefore the plaintiff and defendants can file an application before competent authority to seek permanent solution to their claim. The taluk surveyor, RI and VA have already ordered the ADLR and taluk surveyor, RI and VA to take action with the co

operation of the police department to temporarily open the road which demarcated in the Sy.No.78.

**13.** It is to be noted that, the said order speaks that the defendants are having access to their property in Sy.No.78. Admittedly, the said property i.e., Sy.No.78 is the government land. As per circular grantees have to leave road either in the private or govt land. There is no record available to show that, the plaintiffs have already left the road in the suit schedule property as per the granting rules. The road is basic need to every human being and it is basic amenity and No body has right to obstruct the right of way and the plaintiffs also not having right to obstruct the road. Since, it is not his absolute property, the plaintiffs were also granted by the government. As per the order of Thasildar dated 19.11.24 it is crystal clear that the defendant are temporarily permitted to use the road which is situated in the Sy.No.78.

**14.** The advocate for plaintiffs has argued that, the defendants property bearing Sy.No.118 measuring to an extent of 4 acres is situated towards Southern side of suit schedule property and the defendants are having accesses towards

Southern side of their property . However, the plaint schedule shows that East by road and Sy. No.118. Further argued that, the 2<sup>nd</sup> and 3<sup>rd</sup> defendant was granted Sy.No.78 measuring 4 acre 8 guntas during the year 2016 and illegally got the Saguvali chit. It is pertinent to note that it is not crux of the case as to whether Sy.No.78 was illegally granted in favour of defendants or not. This suit is restricted only to decide as to whether plaintiffs are in possession of the suit schedule property and alleged interference by the defendants. If at all it is illegal grant there is competent forum to challenge the illegal grant.

**15.** It is pertinent to note that, before granting T.I the court has to conduct mini trial as to whether the plaintiff has shown, prima-facie case or if injunction is not granted irreparable loss will be caused to the plaintiff and to whom greater hardship will be caused, if T.I is not granted. Here the plaintiffs have not made out grounds to allow or grant T.I in their favour. There is no document to show that, the defendants are causing interference to the suit schedule property. When plaintiff failed to show the possession over the suit schedule property, interference by the defendants would not arise. On perusal of over all materials on

record, it appears plaintiffs have failed to show the prima facie case to grant the relief of temporary injunction.

**16.** On perusal of documents produced by the plaintiffs as well as the defendants, it appears that the plaintiffs have given incorrect boundaries and there order in favour of defendants regarding access to their property. Since, defendants have seriously disputed that plaintiffs father was granted bit of land in Sy.No. 78 and remaining property elsewhere. Therefore, such questions cannot be determined at this stage. That 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.

**17.** The plaintiffs have not made out prima facie case in this case to grant temporary Injunction in favour of the plaintiffs. They are 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.

**18.** 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.**

**19. 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 plaintiff U/o XXXIX  
Rule 1 and 2 CPC is hereby rejected.

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 **1<sup>st</sup> APRIL 2025**)

**(SUSHMA. M),  
II<sup>nd</sup> Addl.Civil Judge & JMFC,  
Heggadadevanakote.**