

KAMS300006762024



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE AND
J.M.F.C AT HUNSUR**

Present: Smt.Anitha, B.A. (Law) L.L.B.,
Addl. Senior Civil Judge & JMFC.,
Hunsur.

Dated this the 01st day of April, 2025

OS No.129/2024

Plaintiff: Sri.Mahadeva, S/o Late Ramaiah,
Aged about 60 years,
R/at Beejaganahalli village,
Kasaba Hobli, Hunsur Taluk,
Mysuru District.

-Vs-

Defendants: 1. Smt.Prabhavathi,
W/o Late Shivalingegowda,
Aged about 49 years,
2. Naveena, S/o Late Shivalingegowda,
Aged about 30 years,
Defendants No.1 and 2 are residing at
Yemmekoplu village, Kasaba Hobli,
Hunsur Taluk, Mysuru District.
3. Swamy, S/o Krishnabovi,
Aged about 39 years,
R/at Mookanahalli village, Kasaba
Hobli, Hunsur Taluk, Mysuru District.

1.	Provision under which the application is filed	:	Under Order 39 Rule 1 and 2 R/w Section 151 of CPC
2.	Relief sought for	:	For grant of Temporary Injunction
3.	The date on which the application is filed	:	28.05.2024
4.	Number of the application	:	IA No.I
5.	The date on which the objection is filed by different opponents	:	06.11.2024
6.	The date on which the orders passed on the said application	:	01.04.2025

ORDERS PASSED ON IA NO.I

The plaintiff filed the present application under Order 39 Rule 1 and 2 R/w Section 151 of CPC seeking for the relief of temporary injunction restraining the defendants, their agents, or anybody acting on behalf of the defendants from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property.

2. The application is supported with the affidavit of the plaintiff wherein it is stated that, the suit schedule property is the ancestral property of the plaintiff and it was granted to his father Ramaiah and now the Khata is standing in his name. It is further stated that, the defendants have go an eye over the suit schedule property and on 18.03.2024 at about 11:30 am the defendants came to the suit schedule property along with two policemen and warned the plaintiff to vacate the suit schedule property. The defendants are not having any manner right, title and interest over the suit

schedule property. The defendants with an intention to grab the land belonging to the plaintiff illegally trying to disturb the peaceful possession and enjoyment of the plaintiff and created galata with dire consequences and the acts of the defendants are illegal. The plaintiff lodged a complaint before Bilikere PS on the same day and instead of taking action against the defendants, the police advised the plaintiff to approach the civil court since it is civil in nature. The plaintiff is unable to restrain the illegal acts of the defendants without the order of the court. If the application is not allowed the plaintiff will be put to great hardship. On the other-hand if the application is allowed no hardship is going to be caused to the other side. Hence, prayed to allow the application.

3. The defendants filed the written-statement. The defendants have not chosen to file any separate objection to the present application. Hence, the written-statement is considered as objection to the present application. In the written-statement the defendants have contended that, the suit is not maintainable under law or on facts. The defendants have denied the entire case of the plaintiff. It is further contended that, the plaintiff is having no right, title, interest or possession over the suit schedule property. It is also contended that, one Ningegowda is the father-in-law of the 1st defendant and grandfather of the 2nd defendant. The husband and father-in-law of the 1st defendant are no more. The defendants further contended that Ningegowda was un-authorized occupant of government land bearing Sy.No.42/14 measuring 2 acres of Udduru village and he cultivating the land and he made an application for regularization of un-authorized occupation in respect of said

property and after holding inquiry Thahasildar Hunsur Taluk has passed orders in LND PR No.24/1992-93 dated 11.05.1992. It is also contended that on 24.07.2000 the father-in-law of the 1st defendant paid Rs.1,290/- to the government and Saguvali Chit was issued in the name of father-in-law of the 1st defendant. Form No.7 was also issued in respect of the said property. Since 1987 Ningegowda and his family members are in possession and enjoyment of the said property and they were also cultivating the same without any disturbance and the name of Ningegowda was mutated as per MR No.8/2000-01. It is further contended that, on 08.06.2012 Ningegowda died and on 11.09.2006 Shivalingegowda the husband of the 1st defendant also died and after his death the name of 1st defendant, her mother-in-law and sister-in-law was got mutated as per MR No.H8/2012-13. It is further contended that, on 14.02.2013 the mother-in-law and sister-in-law of the 1st defendant got executed a Relinquishment Deed came to be executed in favour of the 1st defendant and on the basis of the said deed MR No.H8/2013-14 was accepted in the name of the 1st dependent. It is further contended that, the plaintiff and others are strangers and they never cultivated any part of Sy.No.42/14 measuring 2 acres land nor they ever worked on the said land in any capacity. By taking advantage of the political influence the plaintiff is interfering with the peaceful possession of the defendants over Sy.No.42/14 measuring 2 acres. The defendants also lodged complaint against the plaintiff and at last the 1st defendant filed OS No.155/2015 against the plaintiff before Principal Civil Judge and JMFC., Hunsur for permanent injunction and on 06.11.2013 the suit came to be

decreed in favour of the first defendant and against the said judgment and decree the plaintiff preferred appeal in FR RA No.23/2024 before learned Principal Senior Civil Judge and JMFC Hunsur. It is also contended that, the boundaries mentioned in the suit schedule property is totally incorrect and against the sketch issued by the revenue authorities. The suit is not maintainable for non joinder of necessary parties. The suit is barred by limitation and the plaintiff has got no cause of action and not paid proper court fee. The plaintiff has suppressed the material facts and prayed to dismiss the application with costs.

4. Thereafter, heard arguments addressed by learned counsels for the plaintiff and defendants and perused the case papers. After hearing the arguments and on perusal of the case papers, the points that arise for consideration are as hereunder:

POINTS

1. Whether the plaintiff has made out a prima-facie case?
2. Whether balance of convenience lies in favour of the plaintiff?
3. Whether irreparable loss and hardship is going to be caused to the plaintiff if an order of temporary injunction is not granted which cannot be compensated in terms of money?
4. What order?
5. The findings of the above points are as hereunder:
 - 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

6. **Point No.1 to 3:** Since, these points are inter connected with each other and needs common discussion on the same set of facts and to avoid repetition of facts, these points are taken up together for discussion.

7. The plaintiff filed the suit against the defendants seeking the relief of declaration that he is the absolute owner of the suit schedule property and also sought for consequential relief of permanent injunction restraining the defendants, their agents, servants, children or anybody acting on their behalf from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property. As per the plaintiff the suit schedule property is originally granted to his father as per LND PR No.10/1978-79 on 24.04.1978 and thereafter as per LND PR No.294/1992-93 dated 03.04.1993 Saguvali Chit has been issued in favour of his father and in the year 1995 the father of the plaintiff died leaving behind his only son the plaintiff and MR No.42/1995-96 has been mutated in the name of the plaintiff. It is further alleged that the 1st defendant filed a suit against the plaintiff in OS No.155/2015 by giving false boundaries for the relief of permanent injunction and the said suit came to be decreed on 06.11.2023 and now the defendants are trying to interfere with the possession and enjoyment of the plaintiff over the suit schedule property.

8. On the other-hand the defendants contended that an extent of 4.00 acres in Sy.No.42/14 was in unauthorized occupation of the father-in-law of the 1st defendant by name Ningegowda and

the said property has been granted in the name of Ningegowda by the Tahasildar Hunsur in LND PR No.24/1992-93 dated 11.05.1992 and the Saguvali Chit has been issued in the name of Ningegowda. It is the further case of the defendants that, on the basis of the said grant the name of Ningegowda was mutated as per MR No.8/2000-01 and on 08.06.2012 Ningegowda died and on 11.09.2006 the husband of the 1st defendant died and as per MR No.H18/2012-13 the name of the 1st defendant, her mother-in-law and her sister-in-law has been mutated and thereafter on 14.02.2013 the mother-in-law and sister-in-law of the 1st defendant executed a registered relinquishment deed in favour of the 1st defendant and MR No.H8/2013-14 has been certified in the name of the 1st defendant and the defendants are in peaceful possession and enjoyment of the said two acres in Sy.No.42/14 and they are cultivating the same.

9. The defendants have admitted about the filing of OS No.155/2015 and also admitted that the said suit came to be decreed. The defendants further contended that the said decree is under challenge before learned Principal Senior Civil Judge and JMFC., Hunsur and also contended that, the plaintiff by showing false boundaries of the suit schedule property filed the suit. In support of the case the plaintiff got produced the RTC pertaining to the suit schedule property since 1994-95, 2002-03, 2011-12 to 2023-24 and also produced the copy of tax paid receipt. Admittedly in the said RTC an extent of four acres is standing in the name of the plaintiff. It is pertinent to note that, as per the RTC for the year 2023-24 the total extent of Sy.No.42 is 311 acres 36 guntas. As per the RTC for the year 2021-22 the total extent of Sy.No.42 is 544

acres. The plaintiff has not produced any documents about the boundaries of the suit schedule property. It is pertinent to note that the plaintiff filed the suit for the relief of declaration and consequential relief of permanent injunction. In order to show prima-facie the plaintiff is required to produced the title documents. It is his specific case that the suit schedule property has been granted to his father by the government and in this regard the plaintiff has not produced any single document.

10. Further in the plaint the plaintiff has referred about the mutation entries, but he has not produced any documents regarding the same. On the other-hand the defendants specifically contended that, the plaintiff by showing false boundaries filed the suit. In support of the case the defendants have produced the copy of the plaint in OS No.155/2015, the copy of the written-statement filed in the said suit, the copy of the memo of adoption, the copy of the issues, the copy of evidence of PW1 to PW3 in OS No.155/2015, the copy of saguvali chit in the name of Ningegowda in respect of 2.00 acres in Sy.No.42/14, the copy of challan, the copy of MR No.8/200-01, the copy of death certificate of Ningegowda, the copy of relinquishment deed, the copy of MR No.H8/2013-14, the copies of RTC, the copy of tax paid receipt, the copy of evidence of DW1 in OS No.155/2015, the copy of saguvali chit in favour of the father of the plaintiff, the copy of the sketch, the copy of judgment and decree in OS No.155/2015.

11. As per the above documents the 1st defendant herein filed a suit against the plaintiff, one Nanjegowda and Chikkegowda for the relief of permanent injunction. The subject matter of the

said suit is land bearing Sy.No.42/14 measuring 2.00 acres situated at Udduru village bounded on the East: Land of Late Ramaiah, West: Land of Doddathammegowda and Chikkegowda, North: Land of Ramachandraiah and South: Land of Ningegowda. In this suit the plaintiff has shown the boundaries as East: Land of Kenchanakere, West: Land of Chikkegowda and Doddathammegowda, North: Land of C.D.Ramachandraiah and his family and South: Land of Prabhavathi and Shivanna. As per the plaintiff, the 1st defendant is the adjacent owner of the suit schedule property on the Southern side and as per the 1st defendant the plaintiff is the adjacent owner of her property on the Eastern side. In OS No.155/2015 the 1st defendant herein has produced the revenue sketch for the purpose of proving the boundaries. In the present suit the plaintiff has not produced any such document to prove his boundaries of the suit schedule property. As per the RTC produced by the plaintiff it is very much clear that Sy.No.42 is having vast lands and the phode of the suit schedule property has not been done yet. The suit of the 1st defendant on the basis of her boundaries came to be decreed and the appeal is pending. The boundaries of the suit schedule property itself is in dispute and such being the case in the absence of any prima-facie document about the boundaries of the suit schedule property it is not proper for this court to grant the equitable relief of injunction. The plaintiff has failed to show prima-facie case and the balance of convenience does not lie upon the plaintiff. If an order to injunction is not granted no hardship is going to be caused to the plaintiff which cannot be compensated in terms of money and on the other-hand if the order of injunction is granted definitely the

1st defendant will be deprived about the decree granted in her favour in OS No.155/2015. On the basis of the above discussions this court comes to the conclusion that the plaintiff is not entitled for the equitable relief of temporary injunction. Hence, on the basis of the above discussions Point No.1 to 3 are answered in the Negative.

12. **Point No.4:** In view of the reasons discussed above, this court proceeds to pass the following:-

ORDER

IA No.I filed by the plaintiff under Order 39
Rule 1 and 2 R/w Section 15 of CPC is hereby
dismissed with costs of Rs.300/-.

(Typed by me directly on the Laptop, same is then corrected and
pronounced by me in the open court on this the 01st day of April, 2025.)

(Anitha)
Addl. Senior Civil Judge and JMFC.,
Hunsur.