

KAMS310014942024



IN THE COURT OF THE PRL. CIVIL JUDGE AND J.M.F.C.
AT HUNSUR

Dated: This the 07th day of January, 2025

Present:

**Smt. Pooja Belakeri, B.A., LL.B., LL.M.,
C/c Prl.Civil Judge & J.M.F.C.,
Hunsur.**

O.S./326/2024

<u>PLAINTIFFS :</u>		
	1)	Sri. Manjunath B.N. S/o Late Narayanappa, Aged about 47 years, R/at Blikere village & Hobli, Hunsur Taluk, Mysore Dist.
	2)	Sri. Madappa S/o Late Mahadevaiah, Aged about 54 years, R/at Blikere village & Hobli, Hunsur Taluk, Mysore Dist.
	3)	Sri. Gangadara S/o Siddanaika, Aged about 54 years, R/at Blikere village & Hobli, Hunsur Taluk, Mysore Dist.
	4)	Sri. Mahadevu .G.S. S/o Siddaraju,

		Aged about 46 years, R/at Gohalli village, Bilikere Hobli, Hunsur Taluk, Mysore Dist. Now R/at Blikere village & Hobli, Hunsur Taluk, Mysore Dist.
	5)	Sri. Premkumar S/o Kalanaika, Aged about 40 years, R/at Blikere village & Hobli, Hunsur Taluk, Mysore Dist.
	6)	Smt. Suseelamma W/o Late Kantharaju, Aged about 46 years, R/at Blikere village & Hobli, Hunsur Taluk, Mysore Dist.

// Vs //

<u>DEFENDANTS:</u>	1)	The Chief Secretary, Government of Karnataka, Vidhanasoudha, Bangalore.
	2)	The Deputy Commissioner, Mysuru District, Mysuru.
	3)	The Chief executive officer, Mysuru Zilla Panchayath, Mysuru.
	4)	The Executive Officer, Hunsur Taluk Panchayath, Mysuru District.
	5)	The Panchayath Development Officer, Bilikere Grama Panchayath, Bilikere, Hunsur Taluk, Mysuru District.

PARTIES TO I.A. NO.II

APPLICANT / DEFENDANT-1	:	Sri. Manjunath B.N. S/o Late Narayanappa & Others (By Sri B.S.Y. , Adv.)
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V/s

OPPONENTS/ DEFENDANTS	:	The Chief Secretary & Others (By learned AGP , for D1 to 3 Sri. KA , Adv. for D4 & 5)
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ORDERS ON I.A. NO.II

The present application is filed by Plaintiffs under order 39 rule 1 and 2 with respect to application schedule properties. With a prayer to grant injunction against the defendants from interfering with the plaintiff's peaceful possession and enjoyment over schedule properties till disposal of the suit.

NOTE: The present application is filed at the time of filing the present suit. Exparte temporary injunction against Defendants on this application was not passed.

2. On behalf of other plaintiffs, plaintiff No.1 has sworn into an affidavit stating that, they have filed the present suit for the relief of declaration and permanent injunction. Defendants 3 to 5 are the owners of the suit schedule properties, which are

commercial shops described as Shop No.1 to 6. Defendant No.5 has passed the resolution, through such resolution the rent and advance has been fixed and plaintiffs are tenants with respect to suit schedule properties and in the past 8 years the 5th defendant has fixed rent for Rs.3,000/- and Rs.2,250/- initially 5th defendant has issued the payment of rent receipts in favour of plaintiffs. Further it is stated that, the plaintiffs are the prompt rent payers by carrying stationary and book stalls & general store etc., in the suit schedule premises. Further it is stated that, under this background the 5th defendant without any due cause through their pleader has issued legal notice in favour of plaintiffs on 17-11-2023 and also passed illegal resolution dated 22-11-2023 stating that the suit premises has to be auctioned for roaster system. Further it is stated that, the plaintiff's possession has to be protected and submits prima-facie case, balance of convenience, hardship lies in their favour hence, prays to permit them to file the present suit by dispensing the statutory notice.

3. On the other hand, AGP has appeared on behalf of Defendant No.1 to 3 and Defendant No.4 and 5 have also appeared through their counsel. Defendant No.4 and 5 have filed their written statement with a prayer to adopt the same as objection to present application. Defendant No.1 to 3 have adopted written statement of Defendant No.5.

4. Defendants have denied all the averments of the plaint. The specific plea is, court fee paid is not proper, there is no cause of action, all plaintiffs are separate individuals they cannot seek

prayer in one single suit the plaintiffs have sub leased the property. With these prays to dismiss the suit.

5. On going through the pleadings, documents, IA and written statement the following points would arise for my consideration:-

POINTS

- 1. Whether the plaintiffs have made out a prima-facie case for grant of temporary injunction?**
- 2. Whether the balance of convenience lies in favour of the plaintiffs?**
- 3. Whether the plaintiffs will be put to irreparable injury, if an order of Temporary Injunction is not granted?**
- 4. What order?**

6. Heard the advocates appearing for the plaintiffs and defendants and perused the documentary evidence produced before this court. My findings on 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 the final order
for the following:**

:REASONS:

7. **POINT No.1:-** The present suit is filed for the relief of declaration and permanent injunction. The suit schedule properties

are the commercial shops. Defendant No.5 is the custodian of suit properties. The plaintiffs are the tenants. Since which year the plaintiffs have entered the suit premises as tenant is not pleaded nor any relevant document of resolution passed by Defendant No.5 is produced. They have entered the suit properties as tenant about all these, which are material fact to the case has not been disclosed by plaintiffs. Even though it is pleaded that the plaintiffs are the prompt rent payers with such aspect there is no prima-facie document. Further, it is there in pleadings that the they are carrying chicken and mutton shops. With such respect also there is no relevant documents. Defendant No.5 has denied all the plaint averments and submitted that the plaintiffs have sub leased the suit properties, in support of the same there are no documents are produced at this stage.

8. The plaintiffs have brought the present suit for the relief of declaration and permanent injunction. What has to be declared is not stated specifically in prayer column. The xerox copy of notice is produced which is not even secondary evidence. Even perusal of xerox copy of notice issued by Defendant No.5 through his counsel it discloses that the plaintiffs have not paid the rent since 2023. For payment of such rent, it further discloses that, the Defendant No.5 through his counsel has issued notice to plaintiffs for payment of rent which is due to the Defendant No.5 authority.

9. The plaintiff are relying for injunction till disposal of suit against Defendants based on notice issued in favour of each plaintiffs dated 17-11-2023 but they have failed to produce either primary or secondary document moreover for default of payment of

rent by plaintiffs before evicting them the Defendant No.5 has issued pre notice this shows there is no prima facie case in favour of plaintiffs. Hence, I answer **Point No.1** in the **NEGATIVE**.

10. **POINT NO. 2 and 3:-** These 2 points are inter-related with each other, hence they are taken up for common discussion in order to avoid the repetition of facts.

It is the case of the plaintiffs that they are the tenants in the suit schedule properties carrying out the chicken and mutton stall business at this stage no relevant documents are produced by plaintiffs further the xerox notice issued by Defendant No.5 in favour of plaintiffs also discloses that, the plaintiffs have not taken permission to carry the business. Apart from reply notice there are 3 receipts in the name of Plaintiff No.4, Plaintiff No.6, discloses that payment of rent for commercial shops by Plaintiff No.4 for they year 2022 -2023 and plaintiff No.6 payment of rent 2022-23 but the cause of action relied by plaintiffs on 17-11-2023. But the notice issued by defendant-5 states that plaintiffs are due of rent for the year 2023. Pleadings of the plaintiffs states that, they are front rent payers then why the plaintiffs have not filed receipt of payment of rent for the year 2023, this itself shows by following due process of law that the defendant-5 authority has sent legal notice to plaintiffs by following its resolution if the plaintiffs have any objection to the resolution of defendant-5 they have to first exhaust whole remedy available to them in law including the public premises (Eviction of Unauthorised Occupants Act, 1971). For all the stated reasons, I do not find there is cause espoused in the

present application. Further, there is beyond imagination, yet true the plaintiffs without having prima-facie case filed the present suit.

11. Further, the Learned counsel for Plaintiffs has filed paper publication at the time of hearing, of the present application. I have perused the same which states there is no injunction from the court hence, the authorities are going to evict the plaintiffs unlawfully, I have perused the order sheet there is no injunction pending in the present suit and to protect the possession of plaintiffs considering the prima facie case, I do not find neither balance of convenience nor hardship lies in favour of Plaintiffs. For all these reasons I answer **Point No.2 and 3** in the **NEGATIVE**.

12. **POINT No.4:** In view of my above discussion and conclusion arrived at point No.1 to 3, the application filed by the plaintiffs is liable to be dismissed. **Accordingly, I proceed to pass the following;**

ORDER

**The IA No.II filed by the plaintiffs
U/o 39 Rule 1 & 2 of CPC is hereby
dismissed.**

(Dictated to the Stenographer, transcript computerised by him revised, corrected and then pronounced by me in the open Court on this the **07th day of January, 2025**)

(Pooja Belakeri)
C/c Prl. Civil Judge & J.M.F.C.,
Hunsur.