

KAMS400002782023



IN THE COURT OF
SENIOR CIVIL JUDGE AND JMFC AT
KRISHNARAJANAGARA, MYSURU
Presided Over by Sujatha Madiwalappa
Sambrani

This the 15th day of June, 2023

O.S. No.12/2023

PLAINTIFF : Smt. Bharathi.

// Vs. //

DEFENDANTS : Sri. Basavaraju @ Lorry
Basavanna & Others.

: I.A.NO.1 :

APPLICANT : Smt. Bharathi,
W/o Ramegowda B.R.,
Aged about 57 years,
R/at: Door No.5420,
Vijayanagara Extension,
2nd Phase, 4th Stage,
Mysuru City.

.....Plaintiff

Vs.

- OPPONENTS** : 1. Sri. Basavaraju,
@ Lorry Basavanna,
S/o Malegowda,
Aged about 55 years.
2. Sri. Kantharaju,
S/o Malegowda,
Aged about 45 years.
3. Sri. Shanthakumara,
S/o Basavaraju,
@ Lorry Basavanna,
Aged about 25 years,

Opponent Nos.1 to 3 are
R/at: Ward No.2,
Hospital Block,
Vinayaka Badavane,
K.R.Nagar Town,
Mysuru District.

.....Defendants

ORDER ON I.A.No.1 :

The Plaintiff has filed the suit for the relief of declaration and injunction in respect of suit schedule property along with this application under Order 39 Rules 1 and 2 of CPC., seeking granting of temporary injunction against the defendants restraining them from not to alienate application schedule properties in any manner till disposal of the suit.

2. This application is objected by the defendants by filing objections.

3. Heard and perused the records.

4. The point that arise for my consideration are as follows:

1. Whether the applicant/plaintiff has made out a Prima-facie case?

2. Whether there is balance of convenience lies in favour of the applicant/plaintiff ?

3. Whether applicant/plaintiff proves that if temporary injunction is not granted he will be put to irreparable loss and injury?

4. What order?

5. My findings to the above point are as follows:

Point No.1 : In the Affirmative.

Point No.2 : In favour of plaintiff.

Point No.3 : In favour of plaintiff.

Point No.4 : As per final order,

for the following:

: REASONS:

POINT Nos.1 TO 3:-

6. These points are interred linked each other, hence, these issues are taken up together for discussion to avoid repetition of facts.

This is the suit of the Plaintiff against the defendants for the relief of declaration and permanent injunction in respect of plaint schedule properties restraining them from interfering with Plaintiff peaceful possession and enjoyment of the suit schedule property.

7. Along with the suit, the Plaintiff has filed this application under Order 39 Rules 1 and 2 of CPC seeking **restraining the defendants from alienating the plaint schedule properties till disposal of the suit.**

8. In support of this application, the Plaintiff has sworn to the affidavit and submitted that, she is the absolute owner with physical possession of site Nos.1 to 8 bearing K.R.Nagar Town Municipality

assessment and katha No.10417/1 measuring East to West 30 feet and South to North 40 feet, 10417/2 measuring East to West 30 feet and South to North 40 feet, 10417/3 measuring East to West 30 feet and South to North 40 feet, 10417/4 measuring East to West 30 feet and South to North 40 feet, 10417/5 measuring East to West 30 feet and South to North 40 feet, 10417/6 measuring East to West 30 feet and South to North 40 feet, 10417/7 measuring East to West 30 feet and South to North 62 feet, and 10417/8 measuring East to west 30 feet and South to North 62 feet situated at Kuvempunagar Extension, K.R.Nagar Town.

9. It is further submitted by the plaintiff that, she has purchased 7.08 guntas of land in Sy.No.118/4D of Manuganahalli, Kasaba Hobli, K.R.Nagar Taluk, Mysuru District from one Kalegowda and his minor children through the registered sale deed dated 05.08.2002 which was registered before the office of Sub-Registrar, K.R.Nagar which is bounded on by East; Channel by West; road by North; lands of Madegowda and by south; lands of Smt. Gayathamma.

10. It is further submitted by the plaintiff that, she has also purchased 3.08 guntas of lands in Sy.No.118/4D of Manuganahalli, Kasaba Hobli, K.R.Nagar Taluk, Mysuru district from Shankara S/o Narasegowda through registered sale deed dated 09.09.2002 which is bounded on by East; Channel by West; Road by North; lands of Gayathamma and by South; Government lands. As such, in between these lands purchased through registered sale deed dated 05.08.2002 and lands purchased under sale deed dated 09.09.2002, there remains 4 guntas lands of Smt. Gayathamma.

11. After the said purchase, she got obtained Mutation of khatha and RTCs stands in her favour from the office of Tahsildar, K.R.Nagar and started to enjoy the same as absolute owner by paying land revenue etc. Thereafter, she got converted the lands purchased under registered sale deed dated 05.08.2002 and 09.09.2002 for residential purposes from the office of Assistant Commissioner, Hunsur Sub-Division, Hunsur as per order No.ALN 90/2003-04 dated 17.10.2003.

12. The Plaintiff further submitted that, she has purchased site bearing Municipal Katha and Assessment No.9905 situated at Cheeranahalli Road, K.R.Nagar Town which measures East to West 145 feet and South to North 30 feet in all 4350 square feet from Smt.Gayathamma through registered sale deed dated 03.07.2020 which was registered before the office of Sub-Registrar, K.R.Nagar. It is further submitted by the Plaintiff that, the said Smt. Gayathamma had purchased 4 guntas of lands in Sy.No.118/4 of Manuganahalli, Kasaba Hobli, K.R.Nagar Taluk under registered sale deed dated 29.09.2001 and got converted the same for residential purpose from the office of Assistant Commissioner, Hunsur Sub-Division, Hunsur as per order No.ALN188/ 2001-02 dated 23.02.2002.

13. It is further submitted that she purchased 7.08 guntas of lands in Sy.No.118/4D of Manuganahalli under registered sale deed dated 05.08.2022, 3.08 guntas of lands in Sy.No.118/4D of Manuganahalli under registered sale deed dated 09.09.2002 and 4 guntas of converted land in Sy.No.118/D4 of Manuganahalli, Kasaba Hobli,

K.R.Nagar Taluk which is together bounded on by East; Channel by West; Road by North; property of Madegowda and by South; lands belong to government.

14. It is further submitted that after purchasing the site bearing number Municipal katha and assessment No.9905 from Smt. Gayathamma, the Plaintiff has filed necessary application before the office of TMC, K.R.Nagar to form layout in 15 guntas of lands in view of orders of conversion. That upon the application of filed by her, the office of TMC, K.R.Nagar permitted to her to form sites. As such she become absolute owner with physical possession so as to entire layout in the area of lands purchased under registered sale deeds dated 05.08.2002, 09.09.2002 and 03.07.2020. Moreover, she got fenced her layout by putting stone and iron Thanthi. Thereafter, the office of TMC, K.R.Nagar got approved the layout plain in her favour. As such Municipal Katha and Assessment has been got entered her name so as to sites No.10417/1 measuring East to West 30 feet and South to North 40 feet, 10417/2 measuring East to

West 30 feet and South to North 40 feet, 10417/3 measuring East to West 30 feet and South to North 40 feet, 10417/4 measuring East to West 30 feet and South to North 40 feet, 10417/5 measuring East to West 30 feet and South to North 40 feet, 10417/6 measuring East to West 30 feet and South to North 40 feet, 10417/7 measuring East to West 30 feet and South to North 62 feet, and 10417/8 measuring East to west 30 feet and South to North 62 feet situated at Kuvempunagar Extension, K.R.Nagar Town. The Plaintiff has produced the certified copies of Katha and Assessment register extracts of above said properties.

15. It is further submitted by the Plaintiff that the defendants No.1 and 2 have no manner of right, title interest much less possession in and over the plaint schedule layout and the sites formed therein as per site No.10417/1 to 10417/8. The defendants No.1 and 2 in order to knock off the plaint schedule property and the sites formed there, unlawfully and illegally intervened into the plaint on 31.01.2023 and tried to demolish the fence. When she asked the defendants No.1 and 2 with regard to their

illegal intervention, the defendants No.1 and 2 tried to manhandle her. But the timely intervention of the neighbours avoided the ugly situation. Thereafter, she reported the said matter to the police of K.R.Nagar. In this regard, the police has given an acknowledgment to her on 02.02.2023. Therefore, she has filed this suit against the defendants for the relief of declaration and injunction. Hence, she prayed to allow the application.

16. On the other hand, the learned counsel for the defendants No.1 to 3 filed a memo stating that the written statement filed by them may be considered as objections to this application. In the written statement defendants denied the plaint averment and initially submitted that, the plaint is liable to be rejected as the suit is undervalued and the required court fees has not paid by the Plaintiff. Hence, they prayed to reject the IA.

17. It is further contended by the defendants that site Nos.1 to 8 is not in existence and the said site No.1 to 8 mentioned in the plaint schedule are

not within the boundaries made mentioned in the plaint schedule property and the said plaint schedule boundaries along with site No.1 to 8 of different measurement mentioned in the plaint schedule are totally crated and concocted to grab their property. Therefore, the defendants have completely denied the existence of the plaint schedule property mentioned in the plaint.

18. The defendants further contended that as per the sale deed dated 05.08.2002 and sale deed dated 09.09.2002, the property purchased by the Plaintiff are having different boundaries and different extent. Therefore, the above said two sale deeds schedule boundaries clearly shows that the two properties i.e., 0.07.08 guntas and 0.03.08 guntas through different sale deeds clearly goes to show that they are not adjacent to each other. Under such circumstances, the Plaintiff filed an application to conversion of agriculture land into non-agriculture purpose through ALN No.90/2003-04 of dated 17.10.2003 got obtained through Assistant Commissioner, Hunsur is also created concocted by the Plaintiff and her husband.

19. The defendants further contended that, the boundaries made mentioned in the alienation order of ALN No.90/2003-04 of dated 11.10.2003 in respect of property bearing Sy.No.118/D4 situated at Manuganahalli village, Kasaba Hobli, K.R.Nagar Taluk, Mysuru District which is bounded by East; Nala, West; Road, North; remaining land in Sy.No.118 and South; lands of Gayathri.

20. The defendants further submitted that, the description and boundaries which are mentioned in the two sale deeds dated 05.08.2002 and 09.09.2002 of measuring 0.07.08 guntas and 0.03.08 guntas respectively along with the alienation order dated 17.10.2003 and ALN No.90/2003 is totally contrary to each other. Hence, the boundaries mentioned in two sale deeds and alienation orders are different from each other. Therefore, the property which is not consolidated to single RTC of 0.11 guntas in Sy.No.118/D4 without any specific entries in the RTC and orders passed by the Tahsildar, the alienation order is *void ab-initio* under law. The property obtained by the Plaintiff under two sale deeds and mentioned in the

alienation order are totally not in existence, but by virtue of the created documents, the Plaintiff is claiming right over the defendants property.

21. The defendants further contended that, the Plaintiff based on the registered sale deed dated 08.02.1963 got purchased by their father namely, Malegowda S/o Jogaiah and his brother namely, Marigowda S/o Jogaiah the lands in Sy.No.118/D4 measuring 1.18.04 acres of Manuganahalli village, Kasaba Hobli, K.R.Nagar Taluk from their vendor Sannakalegowda S/o Marigowda which has been duly registered before Sub-Registrar, K.R.Nagar and the said certified copy of the sale deed is produced. Based on the registered sale deed defendants No.1 and 2 who are the sons of Malegowda and filed a suit for declaration and permanent injunction against one Chikkannashetty before Hon'ble Prl. Civil Judge at K.R.Nagar in OS No.199/2017 only in respect of Sy.No.118/D4 and new Sy.No.118 measuring 0.28.04 guntas which is the legitimate share of Malegowda i.e., father of defendants No.1 and 2. The said suit has been decreed in favour of the defendants No.1 and 2 on 01.03.2018. Based

on the said judgment and decree, the defendant No.1 and 2 got mutated the katha in respect of Sy.No.118 measuring 0.28.04 guntas as per the MR No.H4/201819 of dated 10.09.2019.

22. The defendants further contended that, the 1st defendant had filed an application Durasthi and Phodi of Sy.No.118 measuring 0.28.04 guntas in view of the representation/application dated 25.06.2020 give by the 1st defendant before the Tahsildar, K.R.Nagar, ADLR, K.R.Nagar and DC, Mysuru. Based on the said representation the DC, Mysuru has issued an endorsement dated 13.07.2020. Based on the said endorsement issued by the DC, Mysuru, the 1st defendant had filed writ petition before the Hon'ble High Court of Karnataka in W.P. No.5624/2021 against DC, Mysuru, A.C., Hunsur, Tahsildar, K.R.Nagar and ADLR, K.R.Nagar Taluk claiming the writ of mandamus against said respondents mentioned in the writ petition orders. The Hon'ble High Court of Karnataka based on representation give before the Tahsildar, K.R.Nagar and the Hon'ble High Court of Karnataka has passed an order by directing the respondents No.3 and 4

i.e., A.C., Hunsur and the Tahsildar to rebuilt records within three months and conduct phodi, Durasti in respect of defendant's property within three months. Therefore, for these amongst other reasons defendants prayed to reject the application.

23. In support of their respective pleadings, the plaintiff has produced 8 demand register extracts pertaining to site Nos.1 to 8 issued by Town Municipality. She has also produced tax paid receipts for the year 2023. These documents prima-facie reveals that site Nos.1 to 8 are standing in the name of Plaintiff as the owner situated at Kuvempunagara Layout. The Plaintiff has produced two orders of conversion of land for non agricultural dated 22.02.2002 and 17.10.2003 wherein the lands measuring 4 guntas situated at Sy.No.118/4 and land situated in Manuganahalli village in Sy.No.118/D4 measuring 11 guntas has been converted into non-agricultural purpose by the Assistant Commissioner, Hunsur. Through this orders the land totally measuring 15 guntas situated at Sy.No.118/4 standing in the name of Smt.Gayathamma W/o Nagarajegowda and

standing in the name of Smt. Bharathi W/o Ramegowda converted that into non-agriculture purpose.

24. The Plaintiff has also produced the copy of the sale deed dated 05.08.2002 which prima facie reveals that, the Plaintiff has purchased lands in Sy.No.118/D4 measuring 3½ guntas from one Kalegowda and his minor children. This property is bounded by East; Nala, West; Road, North; lands of Smt. Gyathamma, South; government lands. The Plaintiff has also produced the copy of the sale deed dated 03.07.2020 which prima-facie reveals that the Plaintiff has purchased vacant sites measuring East to West 145 feet and North to South 30 feet situated in assessment No.9905 within the limits of Town Municipality at Cheeranahalli road which is bounded by East; Nala, West; Road, North and South; lands of Bharati (Plaintiff).

25. The Plaintiff has also produced the copy of sale deed dated 12.04.2001 which prima-facie reveals that Plaintiff has purchased lands in

Sy.No.118/4D measuring 7½ guntas from one Smt. Gowramma W/o Madegowda which is bounded by East; Nala, North; Road, South; lands of Madegowda, North; lands of K.C.Puttasiddashetty. Hand written RTC pertaining to Sy.No.118/D4 bears name of Chikkannashetty S/o Appannashetty wide MR No.16/1987-88, Gowramma W/o Late Madegowda to the extent of 7½ guntas wide MR No.8/2000-01 and also the name of Bharathi W/o B.R. Ramegowda measuring 7½ guntas through sale deed wide MR No.9/2000. Thereby prima-facie it appears that based on the sale deed dated 12.04.2001 katha has been mutated in the name of Plaintiff for an extent of 7½ guntas of land in Sy.No.118/D4.

26. The Plaintiff has also produced the notification dated 25.07.2001 pertaining to the lands in Sy.No.118/1D of Manuganahalli village issued by Assistant Commissioner, Hunsur in which the lands of Smt. Bharathi W/o B.R.Ramegowda has been permitted to converted for non-agricultural purpose. The copy of the sketch pertaining to land in Sy.No.118 measuring 7½ guntas produced by the

Plaintiff which reveals about formations of 5 sites in Sy.No.118 in the lands measuring 7½ guntas and the same is signed by the Chief officer of Town Municipality.

27. The assessment extract for the property No.9866 measuring 40x30 feet sites bears the name of Bharathi W/o B.R.Ramegowda. The plaintiff has also produced 4 demand register extracts pertaining to Sy.No.9866/1, 9866/2, 9866/3 and 9866/4 are reveals about extents for suit property measuring 30x40 feet in the name of Plaintiff. The Plaintiff has also produced copies of RTCs Sy.No.118/D4 which reveals that, the lands measuring 28.04 guntas standing in the name of Chikkannashetty S/o Appannashetty, 7.08 guntas of land standing in the name of Plaintiff Bharathi W/o Ramegowda, 15 guntas of land in the name of Madegowda S/o Marigowda, 4 guntas of land in the name of Smt.Gayathamma W/o Nagarajegowda and 3.08 guntas of land standing in the name of Shankara. According to the Plaintiff, she has purchased the lands measuring 4 guntas from Smt. Gayathamma wide sale deed dated 03.07.2020

and lands measuring 3.08 guntas from one Shankara S/o Narasegowda whose name is appearing in the RTC.

28. Thereby, prima-facie it appears from the documents of the Plaintiff that, she has purchased totally 15 guntas of land from Smt.Gowramma, Sri.Shankara and Smt. Gayathramma. The lands purchased from Smt.Gowramma and Sri.Shankara are converted for non-agriculture purpose and the lands already converted for non-agriculture purpose was purchased from Smt.Gayathramma and after the purchase got conversion of the land for non-agriculture purpose and formed the layout of vacant sites. Prmia fcie it also appears that, the plaintiff has formed 8 sites measuring 30x40 feet and 2 sites measuring 30x62 feet.

29. Further, it is alleged by the plaintiff that, defendants are interfering with Plaintiff peaceful possession and enjoyment of the suit schedule properties. In this regard, the plaintiff has produced the photographs which prima facie reveals that, the stone pillars fixed for the boundaries are removed

and broken. In this regard she has filed the complaint before the K.R.Nagar police alleging the interference by the defendants. These documents prima facie reveals that, defendants are interfering with Plaintiff possession and enjoyment of the suit schedule properties.

30. On the other hand in order to prove their defences, the defendants have produced the copy of the sale deed dated 08.02.1963 which prima-facie reveals that the father of defendants No.1 and 2 namely, Sri. Malegowda and his brother Marigowda jointly purchased the lands in Sy.No.118/D4 situated at Manuganahalli village, Kasaba Hobli, K.R.Nagar from one Sannakalegowda S/o Marigowda measuring half of 1 acre 18¼ guntas lands in Sy.No.118/D4 which is bounded by East; Mullegowda's share of property, West; the boundary of Madhuvanahalli village, South; the lands of Marigowda and North; the lands of Kamaiah. It is specifically mentioned in this sale deed that

“ಸ್ವಾಧೀನಾನುಭವದಲ್ಲಿರುವ ಖುಷ್ಕಿ ಜಮೀನಿಗೆ ಚೆಕ್ಕುಬಂಧಿ ಪೂರ್ವಕ್ಕೆ ಕಾಲುವೆ, ಪಶ್ಚಿಮಕ್ಕೆ ಮತ್ತು ದಕ್ಷಿಣಕ್ಕೆ ಮಧುವನಹಳ್ಳಿ ಗಡಿ, ಉತ್ತರಕ್ಕೆ ಮುಳ್ಳೇಗೌಡನ ಹಿಸೆ ಜಮೀನು, ಈ ಮಧ್ಯೆ ಇರುವ ಸ.ನಂ.118/ಡಿ4, 1 ಎಕರೆ 18 ¼ ಗುಂತೆ, 1 ರೂಪಾಯಿ ಹಂಗಾಮಿ

ಕಂದಾಯ ಉಳ್ಳದ್ದು. ಈ 1 ಎಕರೆ 18 ¼ ಗುಂಟೆ ಪೈಕಿ ನನ್ನ ಹಿಸ್ಸೆ ಬಾಬು ½ ಹಿಸ್ಸೆ ಜಮೀನು ಮತ್ತು ಇದೇ ಗ್ರಾಮಕ್ಕೆ ಸೇರಿದ ಮಿಷ್ಣಿ ಜಮೀನಿಗೆ ಚಿಕ್ಕಬಂಧಿ ಪೂರ್ವಕ್ಕೆ ಕಾಲುವೆ, ಪಶ್ಚಿಮಕ್ಕೆ ಮತ್ತು ದಕ್ಷಿಣಕ್ಕೆ ಮಧುವನಹಳ್ಳಿ ಗಡಿ, ಉತ್ತರಕ್ಕೆ ಮುಳ್ಳೇಗೌಡನ ಹಿಸ್ಸೆ ಜಮೀನು. ಈ ಮಧ್ಯೆ ಇರುವ ಸ.ನಂ.118/ಡಿ1 ರ 1 ಎಕರೆ 18 ¼ ಪೈಕಿ 6 ನೇ 1 ಹಿಸ್ಸೆಯ ಜಮೀನಿನಲ್ಲಿ 2 ಕಾರುಗಳು ಸಹಾ ಮೇಲ್ಕಂಡ ಶುದ್ಧ ಕ್ರಯಕ್ಕೆ ಒಳಪಟ್ಟಿರುತ್ತವೆ".

31. Thereby the father of defendants No.1 and 2 and his brother Sri.Madegowda purchased half of the share of the vendor Sri. Kalaiah which comes to 9.08 guntas in Sy.No.118/D4 along with lands to the extent of 1/6th share in Sy.No.118/D1 out of 1 acre 18¼ guntas. These facts are rightly argued by the Learned counsel for the plaintiff, Further, the defendants based on this sale deed filed OS No.199/2017 before the Civil Judge, Junior Division seeking the relief of declaration and permanent injunction against one Chikkannashetty S/o Appannashetty. The said suit ended in decree Exparte. In OS No.199/2017, the defendants got the decree for the property in old Sy.No.118/D4 and new Sy.No.118 measuring 0.28/14 guntas situated at Manuganahalli village, Kasaba Hobli, K.R.Nagar which is bounded by East; the lands of Marigowda, West; Madhuvanahalli Gadi, North; private sites and

South, the lands of Shivannegowda. This is the property for which the defendants got the decree. But in the written statement schedule, the defendants have described their property as lands measuring 25 guntas in Sy.No.147 situated at Manuganahalli village, Kasaba Hobli, K.R.Nagar which is bounded East; Channel, West; road, North; properties of Madegowda and Ravi and towards the South; property of Shivanna. Except towards the southern side, the plaintiff has mentioned the different boundaries with different extent and different survey number in the written statement schedule. Thereby it is can be held that, the property mentioned in the written statement and the property for which the decree is obtained are different properties.

32. It is also necessary to mention here that, though it is stated by the defendants that their father along with his brother purchased lands in Sy.No.118/D4 measuring 1.18.04 acres land in Manuganahalli village. But the document relied by the defendants differ in the extent as stated and relied by the defendants. Though it is contended by

the defendants that they have obtained decree in OS No.199/2017 for the lands in Sy.No.118/D4 with new No.118 measuring 0.18.04 guntas and mainly highlighted that based on the decree they have approached the revenue authorities for Durasti and Phod of Sy.No.118 and also approached the Hon'ble High Court of Karnataka by filing writ petition against the revenue authorities as already stated above but the properties mentioned in the written statement and the sale deed are not tallies with each other. The written statement schedule property and property obtained by the defendants as legal heirs are not prima facie appears to be one and the same. Therefore, it cannot be prima facie ascertained that, based on the sale deed and decree passed in OS No.199/2017 defendants have the right title and interest over the written statement schedule property and they are the owners in possession and enjoyment of the same.

33. Further the defendants have produced mutation register extract of Sy.No.118 in which the katha of Sy.No.118 was standing in the name of Chikkannashetty S/o Appannashetty measuring

0.28.024 guntas mutated in the name of defendants based on the application filed by the defendants. The RTC of Sy.No.118 produced by the defendants for the year 2000-21 appears that it is totally measuring 39.10 guntas wherein the names of Chowdanaika S/o Chowdanaika-20 guntas, Manchamma W/o Chowdanaika-22 guntas, Shidlanaika S/o Manchanaika-22 guntas, Thammaiah S/o Chowdanaika-6 guntas, G.Nagarathna W/o H.S.Gopal-1 guntas, G.Nagarathna W/o H.S.Gopal-8 guntas, Manjunatha Ganapathi Bhatta S/o Ganapathi Ganesha Bhatta-5 guntas, Venkataramana Bhatta S/o Ganapathi Ganesha Bhatta-5 guntas, Nagarathna W/o Gopal-12 guntas, S.L.Kumarigowda S/o Lakkegowda-5 guntas, M.L.Nagaraju S/o Ramaswamygowda-6.08 guntas, Doreswamy S/o Puttasiddashetty-4 acres and in the name of K.C.Puttannashetty S/o Chikkannashetty to an extent of 1 acre 18.04 guntas on the basis of statement.

34. It appears that as per the RTC in Sy.No.118 for the year 2020-21 the name of Puttannashetty S/o Chikkannashetty the lands

measuring 1.18.04 guntas is mentioned. But as per the mutation register extract the katha has been mutated in the name of defendants from Chikkannashetty S/o Appannashetty to the extent of 0.28.04 guntas which is all together double extent. Likewise, many other persons are having the lands in Sy.No.118. But there is no pleadings in the written statement why the katha has been mutated in the name of defendants from Chikkannasheety?

35. Further the defendants have produced the order passed by the Hon'ble High Court of Karnataka in W.P. No.5624/2021 (KLR-RES) seeking direction to the revenue authorities to conduct Durasti and Phod of property in Sy.No.118/D4. The defendants have also produced mutation register extract of Sy.No.147 which reveals the name of defendants to an extent of 25 guntas. The RTC Takthe of Sy.No.118 of Manuganahalli village reveals the name of defendants to the extent of 85 guntas jointly based on M.R. No.T6-2022-23 dated 05.01.2023.

36. It is stated by the plaintiff in the rejoinder that after the sale deed dated 08.02.1963, the brothers by names Marigowda and Malegowda transacted with the lands Sy.No.118/D4 through the registered sale deed dated 13.02.1973 through which the Malegowda sold his share in 9.08 guntas to his brother Marigowda. It is not in dispute the defendants. Thereby, it can be prima-facie ascertain that the father of defendants purchased 9.08 guntas of land from his brother and the same is succeeded by the defendants. But the defendants by not disclosing the true facts before the court obtained the exparte decree in OS No.199/2017. Thereby prima-facie it appears that the defendants have got no right, title over entire extent of 1.18.04 guntas of land Sy.No.118/D4. Thereby, defendants have got no right and title to the extent of 28.04 guntas as stated in OS No.199/2017.

37. The learned counsel for the plaintiff produced before the court the copy of the registered sale deed dated 13.02.1973 through which the father of the defendants Sri. Marigowda purchased

9½ guntas of land in OS Sy.No.118/D4. This document prima-facie reveals that the father of defendants acquired only 9½ guntas in Sy.No.118/D4 and not entire extent of 28.04 guntas in Sy.No.118/D4 as alleged by the defendants.

38. Further the learned Counsel for the plaintiff produced the copy of the registered partition deed executed in between defendants No.1 and 2 and his father Malegowda in which their father Malegowda got his share of Rs.5,000/-, the defendant No.1/Basavaraju got share of 5 guntas (2½+2½ guntas) in Sy.No.118/D1 and the defendant No.2/Kantharaju got his share of Rs.5,000/-. It is also mentioned in this document that "ನಮ್ಮ ಒಟ್ಟು ಕುಟುಂಬದಲ್ಲಿ ಯಾವುದೇ ಚಿರಾಸ್ತಿರ ಸ್ವತ್ತು ಉಳಿದಿಲ್ಲವೆಂದು ಬರೆಸಿ ಮಾಡಿಕೊಂಡ ವಿಭಾಗಪತ್ರ". The contents of the registered partition deed dated 01.01.2005 held in the family of defendants, prima-facie it appears that they have the lands in Sy.No.118/D1 totally measuring 5 guntas and except this property, their family was not having any other property. Therefore, it creates genuine doubt in the mind of court that, when the father of defendants acquired the property in Sy No.118/D4

and how the defendants acquired the land in Sy.No.147 as stated in the written statement.

39. It is also relevant to note here that the properties of the plaintiff and properties of the defendants are situated in different survey numbers with different extent and with different boundaries. Even, the plaintiff and defendants nowhere pleaded that, their properties are adjacent to each other, when such being the case, how there can be interference or encroachment? Under such circumstances, what is the necessity for the defendants to mention and to prove their title to the written statement schedule property ? Even, both the parties are not claiming the lands of each other. Under such circumstance, the question of grabbing the each others property does not arise.

40. It is also reveals in the Learned counsel for the defendants much concentrated on non-compliance of procedure while passing the alienation orders and conversion of agricultural land into formation of layout by the revenue authorities and Town Municipality authorities by colluding with

plaintiff, which are purely administrative matters. But at this pre-trial stage the validity of passing the administrative orders cannot be considered, as it touches the roots of the matter.

41. Moreover, the defendants have not sought for counter claim. Therefore, at this pre-trial stage there is no necessity to go into the matter in detail. Therefore, it appears that, the plaintiff has made out a prima-facie case which need to go for a trail and plaintiff is entitled fore grant of an order of injunction in her favour. Therefore, on evaluation of the documents produced by the both the parties and on careful perusal of the same, it appears that balance of convenience lies in favour of the plaintiff when compared to the defendants.

42. The plaintiff has sought for the relief of not to alienate the suit schedule property in any manners. The plaintiff is entitled for the equitable order of injunction as prayed, in order to protect right and preserve the property status-quo till the disposal of the suit. Accordingly, points No.1 to 3 are answered in the **Affirmative**.

POINT No.4:-

43. For the reasons stated above, I pass the following:

: ORDER :

*I.A.No.1 filed by the plaintiff under Order 39 Rules 1 and 2 is **allowed.***

The defendants are hereby restrained from alienating the plaint/application schedule property in any manner till disposal of the suit.

(Dictated to the stenographer, transcribed and typed by her, added some paragraph on computer, corrected and then pronounced by me in the open Court, on this the **15th June 2023**)

**(Sujatha M. Sambrani)
Senior Civil Judge & JMFC.,
K.R.Nagar.**