

KAMS400017232022



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

Dated this 21st day of August, 2023

O.S.No.82/2022

PLAINTIFFS : Sri. Nataraju & others

-Vs-

DEFENDANT : Sri. B.S.Channabasappa

: I.A.NO.2 :

- APPLICANTS :**
1. Sri. B.S.Nataraju,
S/o Late Shivappa,
Aged about 60 years.
 2. Sri. Nanjundaswamy,
S/o Late Shivappa,
Aged about 50 years.
 3. Sri. Prasadh,
S/o Late Shivappa,
Aged about 57 years.
 4. Sri. Shadakshari,
S/o Late Shivappa,
Aged about 46 years.

5. Smt. Mahadevamma,
W/o Late D.Somanna,
Doddaiah,
Aged about 70 years.

All are R/at:
Basavarajapura village,
Kasaba Hobli,
K.R.Nagar Taluk,
Mysuru District.

.....Plaintiffs

Vs

OPPONENT : Sri.B.S.Channabasappa,
S/o Late Shivananjappa,
Aged about 55 years,
R/at: Basavarajapura villae,
Kasaba Hobli,
K.R.Nagar Taluk,
Mysuru District.

..... Defendant

ORDER ON I.A.No.2 :

The learned counsel for the plaintiffs filed this application under Order 39 Rule 1 and 2 of CPC seeking restraining the defendant from trespassing into the suit schedule property and performing agricultural activities in the suit schedule properties.

2. The learned counsel for the defendant filed adoption memo adopting written statement as objections to this application.

3. Heard and perused the records.

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

1. Whether the applicants/plaintiffs have made out a Prima-facie case?

2. Whether there is balance of convenience lies in favour of the applicants/plaintiffs?

3. Whether applicants/plaintiffs prove that if temporary injunction is not granted they 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 Negative.

Point No.2 : In the Negative.

Point No.3 : In the Negative.

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.

7. The plaintiff has filed this suit for declaration that, he is the absolute owner of the suit schedule property and permanent injunction restraining the defendant from interfering with peaceful possession and enjoyment of the suit schedule property. Along with the suit, the plaintiff has filed this application seeking temporary injunction restraining the defendant from trespassing into the suit schedule property and conducting agricultural activities.

8. In support of the application, the plaintiff has sworn to the affidavit and submitted that, he is the true owner of the suit schedule property in possession of the same. But, the defendant is disturbing his possession. The defendant is financially sound person and he is not law abiding citizen. In spite of panchayaths held in the village, he is not listening to the words of the panchayathdars. Without the order of the court it is very difficult for him to restrain the unlawful activities of the defendant. Hence, he has filed this

application seeking temporary injunction. If an order of injunction is not granted in his favour, he will be put to untold hardship. There is a prima facie case in his favour and also balance of convenience lies in his favour. Hence, prayed to allow the application. **This application does not disclose about the material facts of the case on hand.**

9. On the other hand, the defendant has filed adoption memo adopting written statement as objections to this application. The defendant denied the case of the plaintiffs and further submitted that, the lands in Sy.No.283 situated at Lalanahalli village, Kasaba Hobli, K.R.Nagar Taluk measuring 5 acres 33 guntas purchased by his father and himself through the registered sale deeds from the plaintiffs and his family members. On 20.06.1970 the father of the plaintiffs by name Shivanna @ Shivappa and plaintiff No.4 Siddappa, plaintiff No.5 Doddaiiah @ Somanna sold 9 guntas of land in the above survey number to the father of the defendant by name B.C.Shivananjappa through the registered sale deed. Since the date of purchase, he was in

possession and enjoyment of the said property. The revenue entries transferred in his name.

10. On 19.06.1997 through the registered sale deed 1 acre 3 guntas of land in Sy.No.283/1a was sold by Sri.Doddaiah S/o Sommanah i.e., husband of plaintiff No.5 in favour of the defendant. Since the defendant is in possession and enjoyment of the same and revenue entries stands in his name. On 05.10.1977 the father of defendant Shivananjappa purchased lands in Sy.No.283 measuring 1 acre 15 guntas from one Nanjappa @ Kariyappa and since then father of the defendant was in possession and enjoyment of the same. The katha transferred in his name. Thereafter, on 10.05.2002 the plaintiff No.4 and his father Sri.Siddappa sold 1 acre 5 guntas of lands in Sy.No.283/1a in favour of defendant and since then defendant is in possession and enjoyment of the same by transfer of katha.

11. Further on 30.05.1973 Shivamma W/o Shivappa who is the mother of plaintiff No.1 to 3 sold 1 acre 6 guntas in Sy.No.283 in favour of Thimmegowda. Subsequently, on 10.06.1974 Shivappa i.e., the father of plaintiff No.1 to 3,

Doddaiah @ Sommanna i.e., the husband of plaintiff No.5 and SIDDappa i.e., father of plaintiffs sold 20 guntas of land in Sy.No.283 in favour of Thimmegowda. The children of said Thimmegowda through the registered exchange deeds dated 16.01.2002 and 24.01.2002 transferred these properties to the defendant. Thereby, the defendant has acquired the same and he is in possession and enjoyment of the same. It is further submitted by the defendant that, defendant had acquired entire extent of land in Sy.No.283 and he is in possession and enjoyment of the same without any interference. The plaintiff filed this frivolous and vexatious suit against him. Hence, prayed to dismiss the same with exemplary cost.

12. The plaintiffs in order to prove the prima facie case in his favour have produced the copy of the Akarband, Pattabook of Lalanahalli village in which Sy.No.283 measuring 5 acres 24 guntas and 13 guntas of Karab land stands in the name of Doddiah S/o Channabasavaiah and to the extent of 9 guntas stands in the name of B.C.Shivananjappa S/o Channappa. As per index of lands, the lands in

Sy.No.283/1 measuring 5 acres 24 guntas and 13 guntas of Karab land stands in the name of Doddiah S/o Channabasavaiah and 283/2 measuring 9 guntas stands in the name of B.C. Shivananjappa S/o Channappa. The record of rights prima facie reveals that, the lands in Sy.No.283/1 measuring 5 acres 24 guntas stands in the name of Doddiah S/o Channabasavaiah. These revenue records prima facie reveals that, the grandfather of the plaintiffs by name Doddiah S/o Channabasavaiah's name reveals as Kathedhar to an extent of 5 acres 24 guntas and 13 guntas karab land.

13. The plaintiffs have further produced the copy of the sale deed dated 10.06.1974 in which the sons of Doddaiah by name Shivappa, Doddaiah and Siddappa sold 20 guntas of land in favour of Thimmegowda S/o Venkatagirigowda which is situated in Sy.No.283. Thereby it can be prima facie held that, the grandfather of the plaintiffs Doddiah S/o Channabasavaiah was having the lands to an extent of 5 acres 33 guntas in Sy.No.283, out of which he sold 20 guntas of land in favour of Thimmegowda has pleaded by the plaintiffs.

14. It is further pleaded by the plaintiffs that, in the year 1997 one B.S.Channabasappa (defendant) sold 1 acre 3 guntas of land in favour of Doddamma, Somanna, Nanjundaswamy and Thejeshwari. But how this B.S.Channabasappa is related to the family of plaintiffs is not stated by the plaintiffs. Even, in the genealogical tree issued by the revenue authorities nowhere reveals the name of Sri.B.S.Channabasappa. When this B.S.Channabasappa sold 1 acre 3 guntas of land in favour of third party how it can be said that, it is related to the suit schedule property? Further, it is pleaded by the plaintiffs that in the year 2002 in the same survey number 1 acre 5 guntas of land sold by the Siddappa Shadakshari in favour of defendant. How can the third party can sell the properties of the grandfather of the plaintiffs in favour of defendant? There is no proper pleadings in this regard.

15. According to plaintiffs out of total extent of 5 acres 33 guntas, 2 acres 28 guntas was sold and remaining 3 acres 5 guntas of land belongs to the plaintiffs. In this regard, the plaintiff himself has produced the encumbrance certificate pertaining to

Sy.No.283 which reveals about the sale transaction dated 10.07.1974 in which Shivappa, Doddaiiah and Siddappa sold 20 guntas of land in favour of Thimmegowda as pleaded by the plaintiffs. Further, 1 acre 3 guntas of land was sold by Doddamma, Somanna, Kempegowda, Thejeshwari in favour of B.S.Channabasappa(defendant). It is also reveals about sale transaction dated 05.09.2002 in Sy.No.283/1a measuring 33 guntas by Siddappa Shadakshari in favour of B.S.Channabasappa. But, how the said B.S.Channabasappa and Siddappa Shadakshari got right, title and interest over this Sy.No.283 is not shown by the plaintiffs.

16. Apart from that, the plaintiffs have produced the handwritten RTC of Sy.No.283 for the year 1981-82 which stands in the name of Doddiah S/o Channabasavaiah to an extent of 5 acres 33 guntas. Based on these documents at this stage it cannot be held that, plaintiffs are in possession and enjoyment of suit schedule property by way of succeeding the suit schedule property from his grandfather. Thereby the plaintiffs have not made out prima facie case in their favour.

17. On the other hand, the defendant has produced the copy of the sale deed dated 20.06.1970 in which father of the plaintiff No.1 to 3 Shivappa @ Shivappa and father of the plaintiff No.4 Siddappa and husband of plaintiff No.5 Doddaiah @ Somanna sold 9 guntas of land in favour of father of defendant by name B.C.Shivananjappa through the registered sale deed. Further, the defendant has produced copy of the sale deed dated 19.06.1997 in which the lands in Sy.No.283/1a measuring 1 acre 3 guntas was sold by Sri.Doddaiah @ Somanna (husband of plaintiff No.5) in favour of defendant.

18. The defendant has also produced copy of the sale deed dated 05.10.1977 in which 1 acre 15 guntas of land in Sy.No.283 was purchased by father of the defendant by name Shivananjappa from one Nanjappa @ Kariyappa. Further, the defendant has produced the copy of the sale deed dated 10.05.2002 in which 1 acre 5 guntas of land in Sy.No.283/1a was sold by plaintiff No.4 and his father Siddappa in favour of defendant. The defendant has also produced copy of the sale deed

dated 03.05.1973 in which the lands in Sy.No.283 measuring 1 acre 6 guntas of land was sold by mother of plaintiff No.1 to 3 Shivamma W/o Shivappa in favour of Thimmegowda. The sale deed dated 10.06.1974 produced by the defendant reveals that, Sri.Shivappa (father of plaintiff No.1 to 3), Doddaiah @ Somanna(husband of plaintiff No.5) and Siddappa (father of plaintiff No.4) sold 20 guntas of land in Sy.No.283 in favour of Thimmegowda. The similar document is also produced by the plaintiffs. These copies of the sale deeds prima facie reveals about the sale transactions held with respect to Sy.No.283.

19. The defendant has also produced the copy of the exchange deed dated 16.01.2002 through which children of Thimmegowda got exchange the above referred properties with the defendant through the exchange deeds dated 16.01.2002 and 24.01.2002. The defendant has also produced the copy of the encumbrance certificate which reveals about these sale transactions. The similar document is also produced by the plaintiffs. The copy of the RTC pertaining to Sy.No.283/1b measuring 1 acre 17 guntas stands in the name of

B.S.Channabasappa S/o Shivananjappa vide M.R.No.20/1998-99 as pouthi katha for the year 2022-23. Another RTC pertaining to Sy.No.283/1a1 measuring 33 gunas stands in the name of B.S.Channabasappa S/o B.C.Shivananjappa vide M.R.No.6/2001-02 dated 01.04.2002 for the year 2022-23. Another RTC in Sy.No.283/1a2 measuring 1 acre 6 guntas stands in the name of B.S.Channabasappa S/o Shivananjappa vide M.R.No.21/1997-98 for the year 2022-23. The defendant has also produced M.R. extract pertaining to the said Survey number.

20. On perusal of the documents produced by the plaintiffs and defendant prima facie it appears that, defendant through the sale deeds and exchange deeds is in possession and enjoyment of the suit schedule property and accordingly katha stands in his name. On the other hand, the documents produced by the plaintiffs are not sufficient to hold that, as on the date of filing the suit the plaintiffs got right , title and interest and they are in lawful possession and enjoyment of the suit schedule property. Therefore, based on the available documents on record, prima facie reveals

is not made out by the plaintiffs to grant the equitable and discretionary relief of injunction in his favour. The documents prima facie reveals about the possession of the defendant over the suit schedule property. Under such circumstances if an order of injunction granted in their favour, the defendant will be put to untold hardship and he will be put to more inconvenience. Hence, balance of convenience lies in favour of the defendant rather than the plaintiffs. Accordingly, **Point No.1 to 3 are answered in the Negative.**

POINT No.4:-

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

: ORDER :

I.A.No.2 filed by the plaintiffs under Order 39 Rules 1 and 2 R/w. Section 151 of CPC restraining the defendant from trespassing into the suit schedule property and performing agricultural activities in

the suit schedule properties till
disposal of the suit, is **dismissed.**

(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
21st August, 2023)

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