

KAMS410003242023



IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR

PRESENT

Sri. Chandan S, B.Com., LL.B

Prl. Civil Judge & JMFC, Krishnarajanagara.

DATED 01ST DAY OF MARCH 2025

O.S./115/2023

Plaintiffs : Sushilamma and others

-V/s-

Defendants : The Principle Secretary and others

I.A. No.2

Applicants : Sushilamma and others

--- Plaintiffs

-V/s-

Opponents : The Principle Secretary and others

--- Defendants

ORDER ON IA NO.2 FILED U/O 39 R-1 AND 2 OF C.P.C

The applicant/plaintiff presented this application seeking interim stay and injunction against the defendants to retrain them from causing any interference in respect of the plaint schedule property in any manner till the disposal of the suit.

2. Further the applicant filed his affidavit to buttress and to support his application and submitted that, the plaintiffs are the legal heirs of deceased Boraiah. The 1st plaintiff is the wife

and the other plaintiffs are the children of deceased Boraiah. The said deceased Boraiah was the owner of the plaint schedule property and he was enjoying and settled with the property without any interruptions or obstructions from anybody till his lifetime. After his demise, the plaintiffs being the legal heirs of the deceased Boraiah, they have succeeded the property of the deceased Boraiah and they have been in lawful possession and enjoyment over the said property. Further, the demand register has also been issued in favour of deceased Boraiah and the plaintiffs herein are incurring and bearing the expenses of the tax and they are paying revenue to the Government regularly.

3. Further it has been deployed and submitted in the affidavit that, the villagers of the Hosuru Kaggere Grama Panchayath, write upon the complaint against the plaintiffs herein. Therefore, the 4th defendant got issued notices seeking to produce the documents pertaining to the schedule property. The plaintiff has complied and furnished all the relevant documents which were asked for by the defendant No.4. However, the 4th defendant under the influence of the villagers, he has taken to issue notices continuously and he is distressing and causing interference in respect of the plaintiffs possession over the schedule property. The 4th defendant issued notices restricting the enjoyment of the plaintiffs over the schedule property. Therefore, the plaintiffs prays for allowing the application to restrict the defendants from

causing any interruption in respect of the possession of the plaintiffs over the schedule property.

4. As against and opposing the said application of the plaintiffs, the defendant No.2 to 4 filed their statement of objections, wherein the recitals and the entire pleadings and averments of the plaint and affidavits were denied and refuted by the defendants. Further, the defendants stated in their objections that, the schedule property being the property of the Village Panchayath and it is left for the benefit and usage of the entire netizens and public of the village of the Kallahalli. However, the plaintiffs herein have taken illegal possession of the schedule property and the villagers and the public of the said Kallahalli Village, registered petition to initiate action against the plaintiffs herein. Therefore, the notice is caused to be issued in favour of the plaintiffs seeking for the production of the original documents. However, the plaintiffs failed to furnish or to submit any original documents pertaining to the schedule property. The suit has been filed unlawfully by illegally trespassing into the property of the village panchayath. Hence, prays for dismissal of the application.

5. Heard the rival litigants and also counsel representing the parties regarding the application.

6. The following points arise for this court's consideration.

1) Whether the applicants/plaintiffs made out that, they have got a prima-facie case on hand?

2) Whether the applicant further made out that, the balance of convenience lies in their favour?

3) Whether the applicant further made out that, it will cause untold hardship and irreparable damages to them, if the present application is not allowed?

4) What order?

7. This court findings on the above points for consideration are as under:

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : In the Affirmative

Point No.4 : As per final order
for the following:

REASONS

8. POINT NO.1 TO 3:

For the facts and circumstance of the application are concern these three points are interlinked and to avoid the repetition of facts these points are taken up together for common discussion.

9. Upon appreciating the pleadings along with the materials placed before this court, while adjudicating and deciding the application which is filed U/o 39 R-1 and 2 of C.P.C., the

relevant factors to be considered by the court is regarding existence of prima-facie factors and case which involves finding of facts as to whether a case for trial is made out and also whether other factors requisite for grant of injunction exists. Further, the court has to consider the balance of convenience in respect of the parties and irreparable injuries or loss if any, that may be suffered by the plaintiff in the case of refusal to grant injunction.

10. Further, admittedly there is no evidence on record to consider the applications on the basis of the evidence. Further, the parties to the suit are yet to lead their evidence. Accordingly, in the absence of any evidence to discuss the applications, this court has to consider only the available materials which are presented before this court by the respective parties to the suit.

11. Upon verifying and gone through the pleadings contended in the plaint, affidavit and written statement, admittedly the plaintiff is in possession of the schedule property and demand register is issued towards one deceased Boraiah which is clearly implicit and apparent from the documents which is available before this court. Wherein the defendant No.4 acting and processing the complaint and the petition issued notice as against the plaintiffs is also true and correct which has been admitted and acknowledged by the defendants in their statement.

12. Wherein the constraints, differences, ambiguities, dispute and gloomy is in respect of the title pertaining to the schedule property, where the version and the stand of the plaintiffs is, they are the owners of the schedule property having succeeded the same from one deceased Boraiah who is the original owner of the property in whose favour the demand register was issued. Further, according to the applicants/plaintiffs they have been in occupation and using the said property as a cow shed and to tie the cattle's. However according to the defendants, the said property is belongs to the village panchayath. Due to the acts of the plaintiffs it has caused heavy implications and hindrance in respect of the villagers and public of the said village panchayath. Therefore, the defendant No.4 has initiated suitable process and action as against the plaintiffs herein. Since, the clouds, haziness and gloomy is covered pertaining to the title, the dispute which is involved between the parties, whether the plaintiffs are in lawful possession or the possession of the plaintiffs over the schedule property is unjustified, illegal and unlawful the same cannot be decided and adjudicated during deciding an interlocutory application and it can be decided during the course of trial.

13. Further, the defendants are at liberty to place relevant documents before this court in support of their pleadings of the written statement. On the other side, the plaintiffs have

also needs to prove and establish their title and the possession is lawful or not? The same is to be dealt and adjudicated during the course of trial. Since the possession of the plaintiffs has been candidly with precision accepted by the defendants, the legality and correctness of the said possession of the plaintiffs is not the subject matter of the application, rather it is the matter directly connecting and involving the final merit of the suit which is to be dealt asserted and decided only after the subsequent proceedings of the suit, where the parties could produce and submit the relevant and supportive documents during subsequent proceedings of the suit.

14. However, the possession of the plaintiffs till the disposal of the suit requires and needs to be protected and secured. Therefore, unless and until the right of the plaintiffs and the defendants pertaining to the schedule property is decided during the pending disposal of the suit, the plaintiffs cannot be dispossessed forcefully or without any due course and process of law. Therefore, the possession of the plaintiffs is temporarily needs to be protected and it shall not be disturbed till the disposal of the suit. Hence the **point No.1 to 3 are answered in the Affirmative.**

15. POINT NO.4:

In view of the above discussions and the reasons mentioned therein this court proceeds to pass the following:-

ORDER

I.A No.I filed under Order 39 Rule 1 and 2 of C.P.C is hereby allowed.

The defendants are hereby restrained and they were restricted from causing any interference in respect of the plaint schedule property in any manner till the disposal of the suit.

However it is made clear that, the view expressed by this court in adjudicating the application is only limited for the purpose of consideration of the application and it will not come in the way of adjudicating the suit on merit.

No orders as to cost.

[Dictated to the Steno, transcribed by her. Corrected and then pronounced by me in the Open Court on this the 01st day of March 2025]

(Chandan.S)
Prl. Civil Judge & JMFC.,
K.R.Nagar.

For compliance of 89 of C.P.C.

Call on: 28.04.2025.