

KAMS410010472021



**IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC., AT  
K.R.NAGARA**

Dated this the 30<sup>th</sup> day of November 2021

**PRESENT :- SMT. PAVITHRA R, B.A., L.L.B.,**  
Prl. Civil Judge and JMFC,  
K.R.Nagara.

**O.S./197/2021**

Plaintiffs :

1. Smt. K.N. Shashikala,  
W/o. Late Puttaswamegowda,  
Aged about 40 years,  
R/at Hosuru Kallahalli Village,  
Kasaba Hobli, K.R.Nagar Taluk,  
Mysuru District.
2. H.S.Girish,  
S/o Late H.B.Siddaramgowda,  
Since dead by his LRs.
- 2(a). Smt. Shilpa M,  
W/o Late H.S.Girish,  
Aged about 38 years,
- 2(b). Druthi Gowda G

D/o Late. H.S.Girish,  
Aged about 13 years,

Since minor represented by her  
natural guardian mother  
Smt. Shilpa.M.

Both are R/at Majjigepura Village,  
Belagola Hobli, Srirangapatna Taluk,  
Mandya District.

3. H.B.Jayaramgowda,  
S/o. Late Basavegowda,  
Aged about 68 years,  
R/at Hosuru Kallahalli Village,  
Kasaba Hobli, K.R.Nagar Taluk,  
Mysuru District.

4. H.B. Jagadeesha,  
S/o. Late Basavegowda,  
Aged about 66 years,  
R/at Hosuru Kallahalli Village,  
Kasaba Hobli, K.R.Nagar Taluk,  
Mysuru District.

5. Smt. Vasantha,  
W/o. Late Balasundara,  
Aged about 50 years,  
R/at Hosuru Kallahalli Village,  
Kasaba Hobli, K.R.Nagar Taluk,  
Mysuru District.

6. H.B. Shashikumar,  
S/o. Late Basavegowda,  
Aged about 58 years,  
R/at Door No. 126, 6<sup>th</sup> Cross,

'A' and 'B' Block, Navilu Road,  
Kuvempunagar, Mysuru.

7. Smt. Prema,  
D/o. Late Basavegowda,  
Aged about 54 years,  
R/at Hariharapura Village,  
Bookanakere Hobli, K.R.Pete Taluk,  
Mandya District.
8. Smt. Suguna,  
D/o. Late Basavegowda,  
Aged about 48 years,  
R/at Door No.335, 3<sup>rd</sup> Phase,  
11<sup>th</sup> Cross, 'A' Block, 2<sup>nd</sup> Stage,  
Vijayanagar, Mysuru.
9. H.B. Mani,,  
D/o. Late Basavegowda,  
Aged about 46 years,  
R/at Door No.142, Mudalahouse,  
4<sup>th</sup> Main road, 'N' block,  
Kuvempunagar, Mysuru.
10. H.B.Latha,  
D/o. Late Basavegowda,  
Aged about 44 years,  
R/at Door No.142, 2<sup>nd</sup> Road,  
'N' Block, Kuvempunagar,  
Mysuru.  
**(Rep. By Sri. S.N. Advocate)**

V/s

Defendant: Smt. K.N. Yashodamma,  
W/o Nanjundaswamy,  
R/at Door No.10/264, 1<sup>st</sup> main,  
1<sup>st</sup> Cross, Jakkuru Main Road,  
Surabhi Layout, Yalahanka,  
Bengaluru-560064.

**(Rep. By Sri. C.L.M., Advocate)**

**PARTIES TO IA-I**

Applicant : H.B.Shivakumar

V/s

Opponent : Yashodamma

**ORDER ON IA-I U/O 39 RULE 1 AND 2 OF CPC**

The counsel for the plaintiffs has filed this application on behalf of 6<sup>th</sup> plaintiff with a prayer to grant temporary injunction restraining the defendant and anybody on her behalf from putting up any illegal construction by digging the foundation in the suit schedule property which belongs to the plaintiffs, pending disposal of the suit.

**2.** In the accompanying affidavit the 6<sup>th</sup> plaintiff has stated that the plaintiffs have filed this suit for the relief of permanent injunction. The landed property bearing Sy.No. 90/4 measuring to an extent 12 guntas originally belongs to one Basavegowda who is none other than the father-in-law of plaintiff No.1 and 5 and grand-father of plaintiff No.2 and father of plaintiff No.3, 6 and 7 to 10. The said property was purchased by Basavegowda from his vendor Venkatasubbaiah S/o T.Shamanna under registered sale deed dated 18.04.1971. Since then Basavegowda was in peaceful possession and enjoyment over the said property followed by khatha and other revenue documents in the name of Basavegowda. Basavegowda by making an application before the Asst. Commissioner, Mysuru Sub-division, Mysuru obtained the alienation order in respect of Sy. No.90/4A measuring to an extent 12 guntas on 020.04.1972 and vacant site bearing E-Khatha No. 21-129-134, Janger No. 2334/2171, measuring East to West

19.812040 meters and North to South 19.812040 meters total to an extent 392.515175 square meters which is the subject matter of the suit schedule property and the same comes under the property bearing Sy.No.90/4 to an extent 12 guntas situated at Meenakshipuram, Kantenahalli Extension, K.R.Nagar Taluk, Mysuru District.

**3.** Basavegowda died on 13.06.1996 leaving behind the plaintiffs as his legal heirs and thus plaintiffs have succeeded to suit schedule property and are in joint possession and enjoyment without any interruption as joint owners. Subsequently, the khatha of the suit schedule property jointly registered in the names of plaintiffs and all other relevant documents are standing in the name of plaintiffs. That the plaintiffs have got good right, title and interest over the suit schedule property. But, the defendant having no manner of right, title and interest, being a stranger is illegally trespassing the suit

schedule property and attempted to put up construction by digging the foundation and caused interference to the plaintiffs' possession and enjoyment over the suit schedule property. Panchayath was held between the parties on 10.04.2021. But, the same failed and the defendant continued to put up illegal construction. The plaintiffs approached the jurisdictional police station on 11.04.2021. But, the police given an acknowledgment on 11.04.2021 directing the plaintiffs to approach the Civil court for remedy. That the plaintiffs have made out prima-facie case and balance of convenience also lies in their favour. If this application is not allowed the plaintiffs will be put to great hardship and inconvenience which cannot be compensated by any manner. On the other hand if this application is allowed no hardship or inconvenience will be caused to the defendant. Hence, this application.

4. The defendant has filed objection statement to the application denying entire averments of the application and it's affidavit and contended that one K.N. Siddappa and his brother have got divided the properties under the registered deed of partition dated 12.03.1968. As per the same 'B' schedule of the partition deed has fallen to the share of K.N.Siddappa. Thereafter, K.N. Siddappa sold half portion of the said property which was allotted to him in favour of Papanna. Thereafter, Laxmi Narasimhaiah @ T.S. Narasimhaiah has purchased the aforesaid property from the said Papanna under the registered sale deed dated 29.05.1973 and the same was sold to Hotel Mallanna under the registered sale deed dated 25.06.1982. Subsequently, all the revenue documents stood in the name of Hotel Mallanna. The said Hotel Mallanna sold the above said property in favour of K.P. Yashodamma (defendant) under the registered deed of sale dated 04.11.1982 which is here in referred to as written

statement schedule property. Subsequently, defendant got changed khatha into her name and she is paying regularly tax to the authority concerned. Since the date of purchase of the written statement schedule property the defendant is in peaceful possession and enjoyment over the same as an absolute owner. The plaintiffs are utter strangers to the written statement schedule property. When the defendant and her family members came near the schedule property on 30.04.2016 at about 11.00 a.m., plaintiff's family members along with anti social elements of the locality came near the written statement schedule property and tried to trespass into the same and thus defendant initiated legal proceedings on the file of Prl. Civil Judge and JMFC, K.R.Nagar and the same came to be decreed on 01.12.2016 and the defendants therein have not preferred any appeal against the said judgment. In spite of the same the 2<sup>nd</sup> plaintiffs and others are frequently interfering with the defendants written statement schedule property. Thus,

the defendant has also maintained an execution petition in Ex.No.46/2019 before this court and the same is pending for adjudication.

**5.** Such being the case the defendant with an intention of having residential house in the written statement schedule property as she has no other property she has obtained sanction plan and license from Municipality, K.R.Nagar and started to put up construction therein by raising basement. All the building material like sand, stone, cement etc., have been stored to put up the construction and such being the circumstance the plaintiffs have no locus-standi to maintain the suit. The plaintiffs have suppressed all material and true facts and has come up with this kind of false and frivolous suit by giving imaginary boundaries only to knock off the defendant's property. The judgment in OS No.261/2016

operates as Res-judicata and the suit is barred on the said grounds. Thus, prays to dismiss the application with cost.

**6.** I have heard the counsels for the parties and perused the documents available on record.

**7.** The points that would arise for consideration of the Court are:

1. Whether the plaintiffs have made out a prima-facie case?
2. Whether the balance of convenience lies in favour of the plaintiffs?
3. Whether the plaintiffs will suffer irreparable injury if the prayer for interim injunction is disallowed?
4. What Order?

**8.** Findings to 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

**9. Point No.1 to 3:** As these points are interlinked with each other, they are taken together for common discussion to avoid repetition of facts and reasons.

**10.** This is a suit filed by the plaintiffs against the defendant for the relief of permanent injunction. In support of the plaintiffs' application they have produced following documents:

(A) Certified copy of the registered sale deed dated 18.04.1971 executed by Y.S Venkatasubbaiah s/o T. Shamanna in favour of Basavegowda in respect of Sy. No. 94, (ತೊಂಭತ್ತನೇ ನಾಲ್ಕು)

i) to an extent 6 guntas, situated at Kantenahalli Village, Kasaba Hobli, Krishnarajanagara bounded on:

East by : Remaining land belonging to us

West by : Meenugarike office Thimajaiah's land

North by : Mysuru Nanjundaswamy

Sheety's land

South by : Conservancy passage left by us

(ii) 2<sup>nd</sup> thaku (ತಾಕು) to an extent 6 guntas bounded on:

East by : Remaining land belonging to us

West by : Meenugarike office Thimajaiah's land  
North by : Road left by us  
South by : Conservancy passage

(B) Certified copy of the alienation order passed by Assistant Commissioner, Mysore Sub Division vide Order No. ALN 208/71-72 dated 20.04.1972 upon application of Basavegowda. It reveals that alienation has been in respect of Sy. No. 90/4 to an extent 12 gunats situated at Kantenahalli Village, Kasaba Hobli, Krishnarajanagara for construction of building.

(C) Photocopy of the death certificate of Basavegowda who is deceased on 13.06.1993.

(D) Tax demand register standing in the name of plaintiffs for Assessment No. 2334/2171 to an extent 65 X 65 feet issued by Town Municipality dated 18.08.2019.

(E) Sketch and certificate issued by Town Municipality dated 27.08.2015 in respect of Assessment No. 2334/2171 to an extent EW 65 X NS 65 feet bounded on:

East by : Doreswamy's house  
West by : Lakshmana Shetty's house  
North by : Road  
South by : Siddarama gowda's space

(F) E-katha standing in the name of plaintiffs in respect of Assessment No. 2334/2171 to an extent EW 19.812040 X NS 19.812040 Meters total 392.515175 square meters bounded on:

East by : R Doreswamy's house

West by : Lakshmana Shetty's house

North by : Road

South by : Galli (Passage)

(G) Tax paid receipt and SAS form for vacant site in respect of Assessment No. 2334/2171.

(H) Acknowledgment issued by K.R.Nagar police station when complaint was filed by plaintiff No.6 against defendant.

(I) Photographs and CD of the suit schedule property.

(J) Acknowledgment dated 13.09.2021 issued by Chief Officer, Town Municipality, K.R.Nagar stating that

(K) Acknowledgment dated 25.03.2021 issued by Chief Officer, Town Municipality, K.R.Nagar stating that the khatha in respect of Assessment No. 2334/2171 from the period 1971-72 is continued in the name of Basavegowda s/o Siddegowda.

**11.** The defendant in order to prove her defense filed following documents.....

(A) Photo copy of plaint, judgment and decree in OS No.261/2016 wherein a suit was filed by defendant against plaintiff No.2 and his two brothers by name Avinash and Harish for the relief of permanent injunction in respect of Assessment No. 783/77/(Old No. 249/845 and 351/254) situated at Meenakshipuram Block, K.R.Nagar Town, measuring EW 20 feet and NS 100 feet bounded on:

East by : Remaining property of vendor  
West by : Site belongs to R. Govinda Rao  
North by : Road  
South by : Galli

(B) Photo copy of registered sale deed dated 04.11.1982 executed by Hotel Mallanna in favour of defendant in respect of written statement schedule property bearing Assessment No. 249/845 and 351/254 measuring East to West 20 feet and North to South 100 feet situated at bounded on:

East by : Remaining property of the vendor,  
West by : Site belongs to R. Govinda Rao  
North by : Road  
South by : Galli

(C) Photo copy of registered sale deed dated 25.06.1982 executed by Lakshminarasimaiah Alias T.S Narasimaiah in favour of Hotel Mallanna in respect of written statement schedule property bearing Assessment No. 249/845 measuring East to West 20 feet and North to South 100 feet bounded on:

East by : K. N Siddappa's site  
West by : R. Govinda Roa's site  
North by : Road  
South by : Galli

(D) Photo copy of registered sale deed dated 29.05.1973 executed by Papanna in favour of Lakshminarasimaiah Alias T.S Narasimaiah in respect of written statement schedule property bearing Assessment No. 249/845 measuring East to West 20 feet and North to South 100 feet bounded on:

East by : K. N Siddappa's site  
West by : R. Govinda Roa's vacant site  
North by : Road  
South by : Galli

(E) Photo copy of registered sale deed dated 16.04.1970 executed by K.N Siddappa in favour of Papanna in respect of written statement schedule property bearing Assessment No. 249/845 measuring East to West 20 feet and North to South 100 feet bounded on:

East by : K. N Siddappa's site

West by : R. Govinda Roa's vacant site  
North by : Road  
South by : Galli

(F) Photo copy of registered partition deed dated 13.03.1968 executed between K.N Siddappa and his brother Lakshmi narasimaiah Alias T.S Narasimaiah. K.N Siddappa was allotted 'B' schedule, situated at Meenkakshipuram Block, bearing Assessment No. 249/845 measuring East to West 40 feet and North to South 100 feet bounded on:

East by : Venkategowda's vacant site  
West by : R. Govinda Roa's vacant site  
North by : Meenakshipuram Road  
South by : Conservancy Galli

(G) Photocopy of the Khatha Extract dated 17.12.2015 standing in the name of defendant for site No. 783/771 to an extent EW 20 feet and NS 100 feet.

(H) Photocopy of the Tax demand Extract dated 20.11.2014 standing in the name of defendant for site No. 783/771 to an extent EW 20 feet and NS 100 feet.

(I) Photocopy of the encumbrance certificate showing the alienation of written statement schedule property through aabove four sale deeds as stated in sub paras A, B, C, D.

(J) Photocopy of the online Khatha Form No. 3 standing in the name of defendant for Site/Assessment No. 783/771, measuring EW 6.096012 meters X NS 30.480061 meters in total 185.8060 square meters bounded on:

East by : Remaining property of the  
defendant

West by : R. Govinda Rao's site

North by : Road

South by : Galli

**12.** On perusal of above documents the brief litigation of both parties can be culled out in this way, that the plaintiff claims that the plaint schedule property vacant site bearing No. 2334/2171 to an extent 392.515 is purchased in the form of Sy No. 90/4 to an extent 12 guntas as per registered sale deed dated 18.04.1971 by one Basavegowda that is ancestor of the plaintiffs. Thereafter, alienation order was obtained for the above extent for construction of house and plaintiffs are in possession over the suit schedule property by paying tax to the authority concerned. But the defendant has started

to put up construction over the plaint schedule property illegally. On the other hand defendant claims that she has started to put up construction over the written statement schedule property bearing site/Assessment No. 783/771 to an extent 185.8060 as she has purchased the same through registered sale deed dated 04.11.1982 executed by Hotel Mallanna in favour of the defendant. From the documents produced by both the parties it brings up before the court that their assertions are true to their case in their way as they have asserted their source of title as per documents which are mentioned in detail in above sub paragraphs.

**13.** On careful perusal of certified copy of the sale deed of Basavegowda dated 18.04.1971, it reveals that Basavegowda had purchased total 12 guntas of land in Sy. No. 94 (ತೊಂಭತ್ತನೇ ನಾಲ್ಕು) (which according to plaintiffs in Sy. No. 90/4) with two different boundaries. But the plaint

averments and suit schedule reveals that the suit is filed for Sy. No. 90/4. It is apparent on record that there is confusion in respect of the matter that whether the plaintiff is claiming relief for Sy. No. 90/4 as per plaint or for Sy. No. 94 as per above sale deed. The alienation order made and all the plaintiffs records are in respect of Sy. No. 90/4. But the plaintiffs have not produced primary document that is original sale deed and at this juncture it is very relevant to look into the said document to come out of this confusion. On this ground itself the court is not satisfied to hold that plaintiffs have prima facie cases.

**14.** Further it is an admitted fact that construction has already been put over the property claimed by the plaintiffs. In this regard the plaintiffs have also admitted to the fact that construction has been taken place and basement has been put up which is evident by photographs produced by the defendant. It is not in

dispute that presently the defendant has started construction over the property which is written statement property according to the defendant and plaint schedule property according to the plaintiffs. Such being the case it is apparent from records that there is serious dispute with respect to title of the plaintiff over the plaint schedule property.

**15.** It is pertinent to note that the plaintiff is seeking relief of permanent injunction only. In the present case on hand the defendant has seriously disputed the fact that the plaint schedule property which is asserted by the plaintiff is actually defendant's written statement schedule property that is in terms of topography and when it comes to physical possession. Thus, it is case where title of the plaintiff over the plaint schedule property and very existence of the property itself is questioned. It is a settled position of law that "when there is a cloud on title of the

property the plaintiff has to seek relief of declaration and possession". The defendant has already started to put up construction and showcases that she is in possession over the same by legally or legally which has to be decided on merits. But now the remedy available for the plaintiff is to seek relief of declaration and possession. Thus, for all these above discussed reasons the court holds that the plaintiffs have not established that they have prima-facie case and balance of convenience lies in their favour.

**16.** Another important aspect which crops up is, site number of plaintiffs property in khatha Form No.3 is mentioned as 21-129-134 and of the defendant's is mentioned as 21-129-134A which reveals that the Town Municipality has given these adjacent numbers and litigation has cropped up when construction was started by the defendant as per the said document. In this regard it is clear that there is dispute with respect to

identification of the property also. That apart, as per the decree in OS 261/2016 plaintiff No. 2 herein and his brothers were restrained from interfering with the peaceful possession and enjoyment of the written statement Assessment No. 783/77/(Old No. 249/845 and 351/254) situated at Meenakshipuram Block, K.R.Nagar Town, measuring EW 20 feet and NS 100 feet, suit schedule property by way of permanent injunction. The question involved in here is whether the plaint schedule property and written statement schedule property are one and the same in respect of topography which has to be adjudicated. But at this juncture as discussed supra the plaintiffs have failed to prove prima facie case and balance of convenience does not lie in their favour and thus no hardship or irreparable injury will be caused if this application is not allowed. On the defendant will be put into irreparable loss and injury if this application is allowed as they have put in men and materials for the

construction after obtaining. With these observations, the court answers the Point No.1 to 3 in the negative.

**17. Point No.4:-** It is made clear that this order in any manner will not affect the final adjudication of the matter. The plaintiffs are advised to look into the observations made in respect to relief ought to have been claimed by them. For the foregoing reasons assigned in the above points, the court proceeds to pass the following:

**O R D E R**

I.A.No.1 filed by the plaintiffs under order 39 rule 1 and 2 of CPC is hereby dismissed.

For compliance of Sec.89 CPC by  
18.12.2021.

(Dictated to the Stenographer directly on computer, typed by her, revised, corrected, and then pronounced in the open Court on this the 30<sup>th</sup> day of November 2021)

Sd/-

**(PAVITHRA R)**

Prl. Civil Judge and JMFC,  
K.R.Nagara.