

KAMS510000772022



**IN THE COURT OF THE I ADDL. CIVIL JUDGE & JMFC,
NANJANAGUD**

Present : **Sri. Shrinath A. B.A.L., LL.B.**
I Addl. Civil Judge & JMFC., Nanjangud

Dated 14th day of January, 2022

O. S. No.20/2022

Plaintiff : Beeregowda.B,
S/o late Beeregowda,
Aged about 50 years,
R/at Hediyaala Village,
Hullahalli Hobli,
Nanjangud Taluk.

[By Sri.H.P.S - Adv.]

Defendants : **V/s**

1. Ningamma,
D/o late H.K.Chikkamarigowda,
Aged about 65 years,
2. H.C.Nagaraju,
S/o late H.K.Chikkamarigowda,
Aged about 63 years,
3. H.C.Shivalingegowda,
S/o late H.K.Chikkamarigowda,
Aged about 61 years,

4. H.C.Shivamurthy,
S/o late H.K.Chikkamarigowda,
Aged about 59 years,
5. H.C.Mahadevegowda,
S/o late H.K.Chikkamarigowda,
Aged about 57 years,
6. H.C.Jayamma,
D/o late H.K.Chikkamarigowda,
Aged about 55 years,
7. H.C.Papanna,
S/o late H.K.Chikkamarigowda,
Aged about 53 years,
8. H.C.Susheelamma,
D/o late H.K.Chikkamarigowda,
Aged about 51 years,

The Defendants No.1 to 8 are residents of Hediyaala Village, Hullahalli Hobli, Nanjangud Taluk.

9. The Panchayat Development Officer,
Hediyaala Grama Panchayat,
Hediyaala, Hullahalli Hobli,
Nanjangud Taluk.

[D.2 & D.7 by Sri.K.S.S.R. - Adv.]

PARTIES TO IA No.1

APPLICANT

: Beeregowda - **Plaintiff**

V/S

OPPONENT

: Ningamma and others - **Defendants**

ORDERS ON APPLICATION UNDER ORDER 39
RULE 1 AND 2 OF C.P.C

1. The plaintiff has filed this present application to restrain the defendant No.7 from putting up construction over the suit property till the disposal of the suit.

2. In the affidavit to the accompanying application, it is submitted that the plaintiff is the absolute owner of the suit property and that the suit property is a portion of property bearing Sy.No.117 that totally measured to an extent of 03 acres 36 guntas. It was purchased by the grandfather of the plaintiff in the year 1932 and that 35 guntas in said survey number was acquired on the northern side by the Government and 03 acres 01 guntas of land is retained. The survey number 117 after phod is renumbered as Sy.No.117/1A. Upon inheritance the father of the plaintiff acquired. During his lifetime 16 ½ guntas was sold to third parties and retained 02 acres 24 ½ guntas. Under oral partition the property has fallen to the share of the plaintiff and the suit property being the portion of the said land, Plaintiff is the absolute owner. It is alleged that the suit property was omitted in the revenue records because of the mistake on the part of the Revenue

Department. The suit property is situated in the north eastern portion in the Sy.No.117/1A.

3. The allegation against the defendants is that on 20.12.2021, the defendant No.7 had come near the suit property and had tried to measure which was restrained by the acts of the plaintiff and in this regard police was approached and defendant No.7 has given a document of registered Will in respect of the property which the plaintiff is claiming to be as their property. It is submitted that the defendant No.7 and the other defendants being influential and the Chikkamarigowda, the father of the defendant No.7 had no ownership over the suit property and therefore the execution of the registered Will is not binding and that the defendant No.7 is trying to put up construction in the suit property and hence has filed the present application.

4. The advocate for defendants No.2 and 7 has filed written statement and objections to the said I.A and it is the contentions of the defendants No.2 and 7 that the suit property which the plaintiff is claiming as revenue land is false and that there is no revenue

document produced in respect of the suit property by the plaintiff and that even though the other defendants being also the beneficiary under the Will executed in favour of few of the defendants, intentionally is targeting the defendant No.7, by claiming of Will not binding only of the one allotted to Defendant No.7, even though the remaining property of Defendants allotted in respect of Sy.No.117 under the Will is claimed by the Plaintiff as owner. It is submitted that the Chikkamarigowda being the absolute owner has executed registered Will in favour of the defendant No.2 and defendant No.7 and that the total measurement of the property being 68 feet X 61 feet having assessment No.217 is totally different from the suit property and that the defendant No.7 possesses 15 feet X 35 feet.

5. It is further submitted that the Will is registered in the year 2012 and prior to that the property of the defendant No.7 is a gramatana property. And therefore as contended by the plaintiff, it is not the revenue property and it falls within the gramatana of the Hediya Grama Panchayat. The defendant No.7 has obtained the Form No.11B wherein his property is shown as assessment No.271/2 and he has got and obtained in the year 2019 and further in this regard

has obtained the licence to put up construction in the said property and has also paid property tax. Further, the Hediyaala Grama Panchayat has issued a confirmation certificate with regard to the boundaries of the defendant No.7 property. In the written statement the defendant No.7 has specifically put out schedule of his property, claiming to be as different from that of the suit property. It is further submitted that on the eastern side of the defendants property, the property of H. C. Nagaraju situates and in the plaint schedule towards east the property of Madanlal and Vishnu Prakash house is situated, hence they are different, hence has prayed to dismiss the application.

6. Heard, Advocates for Plaintiff and Defendants. The following points arise for consideration.

1. Whether the Plaintiff has made out prima facie case, for grant of temporary injunction ?
2. Whether the balance of convenience lies in favour of plaintiff ?
3. Whether the Plaintiff will be put to irreparable hardship, if temporary injunction is not granted ?
4. What order?

7. This Court answers the above Points as follows:

Points No.1 to 3: In the Negative

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

REASONS

8. **POINTS No.1 to 3**: As these points are inter-related with each other, they are taken up together for common discussion. The advocate for plaintiff submits that this is a suit for declaration to declare that he is the owner of the suit property and to declare the Will dated : 09.07.2012 in respect of suit property allotted to Defendant No.7, is not binding and has sought for permanent injunction to restrain the defendants from putting up construction in the suit property with such other reliefs.

9. In support of his contention plaintiff has produced the sale deed purchased by his grandfather in the year 1932 and has produced records of rights, earlier RTCs reflecting in the name of his father and grandfather pertaining to the property bearing Sy.No.117/1A. In the plaint pleadings it is prima-facie admitted that there is no entry of the suit property in the name of the plaintiff because of mistake of the

Revenue Department and therefore there is no document of RTC. Similarly so is the case of the defendants No.2 and 7, wherein it is said that their property was the self-acquired property of their father, no such document is produced.

10. In an interim application, it is the prima-facie case that has to be shown. Relying on the documents furnished by the defendant No.2 and 7, it can clearly be ascertained that the property which the parties are claiming as to their property is a gramatana property. Though there is difference of boundaries referred to each of the property that they are claiming, both have produced photographs, which property claimed are one and the same. From the perusal of photographs it can be prima-facie seen that the property claimed by the plaintiff and the defendants are one and the same and that it is situated next to the main road where there are complex buildings seen. Therefore, as contended by the plaintiff it is not the revenue property but is the gramatana property. Prima-facie the defendants No.2 and 7 have produced a document with the identification of their property with property I.D as assessment No.217/1 and that from 1964 the defendants property has fallen within the jurisdiction of gramatana.

Even from perusal of e-katha, it can be ascertained prima-facie that the suit property is not a revenue property.

11. It is pertinent to note that the photographs both the parties are claiming that it is their property, however prima-facie possession has to be looked into and therefore it can be seen that there is digging activity undertaken in the said property and as contended by the plaintiff, the defendants are trying to put up construction. It is prima-facie seen that the property has been fenced with tin sheets and therefore the prima-facie possession of the defendants over the suit property is seen. It is not the case of the plaintiff that the defendants have encroached the suit property, as there is no mandatory relief. Prima-facie possession being with the defendants and there being the documents of title substantiated by the defendants with regard to the e-katha and that of the licence taken to put up construction establishes their possession over the plaintiff. Even though there is no title document furnished by Defendants, it is matter of trial. The plaintiff has not sought for relief of mandatory injunction against the defendants despite the defendants showing their prima-facie possession over the property.

12. Coming to the boundaries of both the properties of that of the suit property and that of the separate property claimed by the defendants, the argument of the plaintiff that they are two different properties and that no hardship would be caused to the defendants No.2 and 7, however from perusal of photographs they are claiming the same property as their property. In the light of there being no relief of mandatory injunction to dispossess the defendants on the prima-facie photographs, the plaintiff has not shown the prima-facie case of interim order to restrain defendants No.7 in putting up construction.

13. Moreover, from the perusal of the prayer the relief of declaration of the Will dated : 09.07.2012 of not binding is only in respect of the suit property, however as argued by the advocate for defendants No.2 and 7 the extent of their property is 68 feet X 61 feet, which is fallen to the other Defendants and that the other property is also claimed by the Plaintiff to be as his property under his ownership.

14. The balance of convenience does not lie in favour of plaintiff and that more hardship would be caused to the defendant No.7, as now he is trying to put up construction after obtaining the

licence and that the licence period is only for a limited for number of years and therefore within that period it has be constructed. Even if the plaintiff succeeds in the suit, the plaintiff would be entitled for mandatory injunction if proper relief is sought. In the light of there being no proper main prayer over the mandatory injunction, when the defendant No.7 is shown possession over the suit property, no interim order can be granted in the absence of main relief for possession. Hence for all above reasons this Court answers Points No.1 to 3 in the Negative.

15. **POINT No.4**: As the Points No.1 to 3 are held Negative, this Court proceeds to pass the following:

ORDER

The application under Order 39
Rule 1 and 2 of C.P.C filed by the plaintiff
under I.A No.1 is hereby dismissed.

(Dictated to the Stenographer, transcribed by him, revised, and then pronounced by me in the open court on this the 14th day of January 2022).

(Shrinath A.)
I Addl. Civil Judge & JMFC.,
Nanjanagud.