

**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 25<sup>th</sup> day of August, 2020

**O.S. No.118/2020**

**Plaintiffs** : 1. Chikkamma,  
D/o late Madashetty @ Karishetty,  
Aged about 71 years,  
2. Rachamma,  
D/o late Madashetty @ Karishetty,  
Aged about 64 years,  
3. Puttamma,  
W/o late Ankashetty,  
Aged about 61 years,  
4. Chennajamma,  
D/o late Ankashetty,  
Aged about 44 years,  
5. Venkataramashetty,  
S/o late Ankashetty,  
Aged about 42 years,

All are residing at Huskur Village,  
Hullahalli Hobli, Nanjangud Taluk.

**[By Sri.N.U., Adv.]**

**Defendant** : **V/s**  
Kariputtashetty,  
S/o late Madashetty,  
Aged about 72 years,  
R/at Last Street, Huskur Village,  
Hullahalli Hobli,  
Nanjangud Taluk.

**[By Sri.K.T.R., Adv.]**

**PARTIES TO IA NO.1**

**APPLICANT** : Chikkamma – 1<sup>st</sup> Plaintiff

V/S

**OPPONENT** : Kariputtashetty - Defendant

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

1. The Plaintiffs have filed the present application to temporarily restrain the Defendant from interfering in the suit schedule properties.

2. In the affidavit to the accompanying application and from the plaint averments, it is the case of the plaintiffs that the suit schedule properties originally belong to Plaintiffs No.1 and 2 father, Plaintiff No.3 father in-law and Plaintiffs No.4 and 5 grandfather by name Madashetty @ Karishetty S/o. Siddashetty. After his death, his only son by name Ankashetty ie., father of Plaintiffs No.4 and 5 was in possession and after Ankashetty death, Plaintiffs are in possession mutating the name of Plaintiff No.5's name in revenue records. He has paid tax on suit properties. The Defendant without any right, title and interest over suit properties has tried to interfere by filing an Appeal bearing RRT (A) No.385/2013-14 before Assistant Commissioner, challenging the mutation entry bearing IHR No.1/1990-91 that stood in the name of Plaintiff No.5. The Appellate Authority set aside the mutation order and remanded to Tahsildar for fresh disposal and

directed Tahsildar to mutate the name of person by name Madashetty @ Karishetty as it stood in the year 1984-85, ie., in the name of father of Plaintiffs No.1 and 2 and grandfather of Plaintiffs No.4 and 5. Accordingly vide M.R.No.H2/2019-20 dated 20.07.2019, the name of Madashetty @ Karishetty is mutated. Further, these Plaintiffs have also given application to change Khata in their names after enquiry. Such being the case, the Defendant has once again interfered by trying to dispossess the Plaintiffs from suit properties. Hence, this application.

3. The Defendant upon service of summons, has appeared through his Advocate and has filed written statement and documents along with memo to treat the said written statement as objections to the said application. He denies of Plaintiffs being in possession of suit properties and submits that Madashetty @ Karishetty S/o. Madashetty is his father and his grandfather name is Madashetty S/o. Siddashetty, therefore, the person Madashetty @ Karishetty who is claimed as son of Siddashetty by Plaintiffs as father and grandfather is not true and the plaintiffs are not related to him. Admits the proceedings before Assistant Commissioner, Mysore and entry of suit properties back in the name of Madashetty @ Karishetty.

4. According to Defendant, these suit properties are ancestral which fell to his grandfather under partition of other properties with his sister Ningamma. The Plaintiff No.5 had got mutated the suit properties in his name illegally without basis of any mutation order

and hence, had preferred an appeal before Assistant Commissioner, Mysore as mentioned supra and as per the order mutated the name of his father Madashetty @ Karishetty and grandfather Madashetty S/o. Siddashetty in respect of item No.1 and 2 properties respectively. It is further alleged that it is the Plaintiff who has interfered in his peaceful possession of suit properties by harvesting banana crop and hence has filed a suit bearing O.S.No.137/2020 for permanent injunction against these Plaintiffs. Hence, with these objections has prayed to dismiss the application.

5. 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 his favour ?
3. Whether the Plaintiff will be put to irreparable hardship, if temporary injunction is not granted ?
4. What order?
6. This Court answers the above Points as follows:

Points No.1 to 3: In the affirmative

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

### REASONS

7. **POINTS No.1 to 3**: As these points are inter-related with each other, they are taken up together for common discussion. This is a suit for permanent injunction. Before ascertaining prima facie possession of each of parties in suit properties, the relationship of parties to this suit with Madashetty @ Karishetty having been denied by both the parties against each other has to be ascertained first.

8. In this regard prima facie, the Plaintiffs produce an endorsement issued by Special Deputy Commissioner, Mysore Division, Office of Inam Abolition has granted the suit properties including Sy.No.115 of Huskur Village in the name of Mada @ Karishetty on 15.11.1965. There is no mention of his father's name, but Plaintiff No.5 claim that he is his grandfather. To substantiate this Plaintiff No.5 produces certified copy of sale deed wherein Madashetty @ Karishetty S/o. Siddashetty, his son Ankashetty and Ankashetty's minor son Sidda have sold the Sy.No.115 property which is one of the property under grant in the year 1975-76. Prima facie to be observed is that the grant is in the year 1965 and the name in endorsement is shown as Mada @ Karishetty and further in the sale deed he is shown as Madashetty S/o. Siddashetty which can be reliably presumed that the Madashetty @ Karishetty is the son of Siddashetty and that his only son is Ankashetty as per sale deed and that he has no another son by name Madashetty @ Karishetty S/o. Madashetty as claimed by Defendant. Therefore, prima facie relation as claimed by Plaintiffs is placed before Court and Defendant has not

produced any document in support of his stand on relation with Madashetty @ Karishetty, who is claiming as father.

9. Further, having sold one grant property Sy.No.115 the Plaintiff No.5 being the son of Ankashetty and grandfather of Madashetty @ Karishetty S/o Siddashetty tilts the title of suit properties in favour of Plaintiffs as per endorsement. The suit properties are agricultural properties, therefore, actual possession is to be ascertained based on RTC entries, tax paid receipts and other documents that shows possession of parties to suit. In this regard from perusal of order of Assistant Commissioner, Mysore in RRT No.385/2013, it is seen that it has remanded back to Tahsildar for effecting mutation after enquiry with parties and has set aside the mutation in the name of Plaintiff No.5, saying that such an entry was without any mutation order.

10. Having set aside mutation, in order to ascertain the possession of suit properties, the Defendant has himself furnished certified copy of one sketch in Pakka Book of Village in respect of Sy.No.156/1 and 156/3 which shows that Madashetty @ Karishetty ie., grandfather of Plaintiff No.5 was in possession. The Defendant having failed to place any material with regard to his case of relation with Madashetty @ Karishetty, it can be reliably presumed that the Plaintiffs are in possession of Sy.No.156/1 and 156/3 suit properties. From the perusal of endorsement under Inam Abolition and pakka book and further from relation of Plaintiffs with Madashetty @

Karishetty S/o. Siddashetty, the title of Plaintiffs over suit property is placed before the Court and this suit being for permanent injunction and the suit properties being agricultural and in the absence of documents of actual possession, it can be clearly presumed with well settled principle that title follows possession. As these Plaintiffs have shown their relationship with Madashetty @ Karishetty and of having sold one property bearing Sy.No.115 along with Plaintiff No.5 father Ankashetty, the Plaintiffs have shown a triable case.

11. Further, with regard to possession of suit properties, the Defendant has himself produced one encumbrance to show that the Plaintiff No.5 has mortgaged these suit properties in 2006, 2007 and in 2009 for consideration by way of registered mortgage in order to obtain loan. This document prima facie places material of Plaintiffs possession over suit properties. It is not the case of defendant that recently or after 2009 he has come into possession.

12. Further, the Plaintiffs have also produced death certificates of Madashetty @ Karishetty S/o. Siddashetty of having died on 29.05.1986, which prima-facie shows that he belong to Plaintiffs family and also has produced death certificate of Ankashetty ie., father of Plaintiff No.5. Hence from the perusal of sale deed and these documents clearly ascertains relation of plaintiffs as per the family tree relied by them in suit.

13. Further, the Plaintiffs have produced tax paid receipts of

1989, 2006, 2007 and 2018 in respect of suit properties, which further prima-facie determine of their previous possession.

14. Even though the Assistant Commissioner, Mysore has set aside the mutation entry of Plaintiff No.5 over suit properties, there is no finding with regard to possession and ownership and even if it has held the said authority lacks jurisdiction. The Tahsildar after remand has not ascertained possession and title of erstwhile owner in order to effect mutation afresh and mere setting aside of name of Plaintiff No.5 has no effect in permanent injunction suit, as it is possession over properties which has to be ascertained.

15. The one argument canvassed by learned Advocate for Defendant is that the Plaintiffs have not pleaded about endorsement issued by office of Inam Abolition either in Plaint or in their objections before Assistant Commissioner. To that argument, it is held that this suit is not a suit for declaration, irrespective of title in a permanent injunction suit, it is possession that weighs the case, the Plaintiffs having said so that they are in possession and that the Defendant has interfered, prima facie documents of possession as mentioned supra would suffice to decide of this interim application. Further, such an endorsement is supported by sale deed wherein the Madashetty @ Karishetty along with his son has sold Sy.No.115 of Huskur Village, which is one property granted under endorsement.

16. Further, it is contended by learned Advocate for

Defendant that the sisters of Ankashetty are not signatories to sale deed of Sy.No.115. If at all such an objection is raised, it is the sisters who could raise and not the Defendant. Further it is argued that said Madashetty in sale deed is shown to be resident of Chamalapura and that this sale deed does not belong to Plaintiffs. It is a matter of trial and is not a subject matter in issue, when it comes into question of residence.

17. Further, it is contended by learned Advocate for Defendant that the Ankashetty son being party to sale deed of Sy.No.115, is not shown in the family tree of Plaintiff and that there is no averment that the said Sida is only Plaintiff No.5 herein. The said Sida was a minor at that point of time and according to Plaintiffs Ankashetty has only one son and therefore, it can be construed the said Sida represented as minor in Sale Deed that he is only Plaintiff No.5.

18. The last argument canvassed by learned Advocate for Defendant is that the Plaintiff No.5 had got khata directly and not mutated the name of his father Ankashetty before his father could have died. As the said mutation which was in the name of Plaintiff No.5 has been set aside by Assistant Commissioner, Mysore, there is no point in discussing such an argument. Therefore, the Plaintiffs have placed prima facie material with regard to possession over suit properties. Both the parties have filed suits for permanent injunction and hence the alleged interference can be apprehended upon and in

order to avoid multiplicity of proceedings and because of such interference the plaintiffs are caused irreparable hardship and for the above reasons, this Court answers Points No.1 to 3 in Affirmative.

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

**ORDER**

The application filed by the Plaintiffs under Order 39 Rule 1 and 2 of C.P.C., is allowed.

The Defendant is restrained temporarily from interfering in the suit schedule properties.

(Dictated to the Stenographer directly on the computer, typed by him, corrected and then pronounced by me in the Open Court on this 25<sup>th</sup> day of August, 2020).

(Shrinath.A)  
I Addl. Civil Judge & J.M.F.C.,  
Nanjangud