

**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 25th day of August, 2020

O.S. No.137/2020

Plaintiff : Kariputtashetty,
S/o late Madashetty @ Karishetty,
Aged about 75 years,
R/at Huskur Village,
Hullahalli Hobli,
Nanjangud Taluk.
[By Sri.K.T.R., Adv.]

Defendants : **V/s**

1. Venkataramashetty,
S/o Ankashetty,
Aged about 45 years,
2. Vasantha,
W/o Venkataramashetty,
Aged about 35 years,
3. Rangashetty,
S/o Venkataramashetty,
Aged about 19 years,
4. Puttamma,
W/o late Ankashetty,
Aged about 58 years,

All are R/at Huskur Village,
Hullahalli Hobli,
Nanjangud Taluk.

[By Sri.N.U - Adv.]

PARTIES TO IA NO.1

APPLICANT : Kariputtashetty – **Plaintiff**

V/S

OPPONENTS : Venkataramashetty and others -
Defendants

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

1. The Plaintiff has filed the present application to temporarily restrain the Defendants 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 plaintiff that the suit schedule properties originally belonged to his grandfather by name Madashetty S/o Siddashetty. The plaintiff's grandfather had one sister by name Ningamma @ Kenchamma @ Ningi @ Kempa W/o Javarashetty. There was division of properties between the brother and sister and that the suit schedule properties fell to the share of his grandfather. After his death, his only son by name Madashetty @ Karishetty S/o Madashetty who is the father of the plaintiff continued in possession of the suit property. The item No.1 and 3 suit properties are at present standing in the name of his father and item No.2 suit property in his name and the item No.4 suit property still continues in the name of his grandfather.

3. The plaintiff being the only son has inherited and is in possession of the suit properties. Such being the case, in 2013 the defendant No.1 had interfered by claiming that these suit properties belonged to defendants and when the plaintiff verified the revenue records he came to know that the defendant No.1 has falsely mutated the suit properties in his name. In this regard the plaintiff challenged the mutation order before the Assistant Commissioner, Mysuru and the said authority was pleased to set aside the mutation order claiming to be as illegal entry and by directing the Tahsildar to restore the name of the person, as seen in RTC of the year 1984-85. The defendants have once again interfered with the possession of the plaintiff in the suit properties and has harvested the banana crop illegally. The police citing the dispute as civil in nature has not taken any action against the defendants and therefore has filed this suit along with the present application.

4. Upon the service of summons, all the defendants have appeared and the defendant No.1 has filed written statement along with memo to treat the said written statement as objections to the said application. The defendant No.1 denies the plaintiff being in possession of the suit properties and also further denies of the plaintiff belonging to the family of Madashetty @ Karishetty S/o Siddashetty. It is the specific contention that the said Madashetty @ Karishetty S/o Siddashetty is his grandfather and he had a wife by name Ningamma and they had three children by name Chikkamma, Ankashetty and Rachamma. The defendant No.1 is the only son of Ankashetty and the

plaintiff has no claim over the suit properties. After the death of Madashetty @ Karishetty and death of his father, he is continuing in the possession of the suit properties along with other defendants. The khata of the suit property stood in his name and has been paying property tax in respect of the suit schedule properties. Such being the case, the plaintiff having no right, title or interest including possession has challenged his mutation order before the Assistant Commissioner, Mysuru, wherein his name was removed by setting aside the said khata and entered the name of his grandfather Madashetty @ Karishetty S/o Siddashetty vide M.R No.H2/2019-20 dt: 20.07.2019. The said defendant is pursuing his application to mutate his name before the Tahsildar in respect of the suit properties which is pending consideration. During such pendency, the plaintiff has interfered on 10.05.2020 and this defendant has filed a suit for permanent injunction bearing O.S.No.118/2020 before this Court against the plaintiff, when the jurisdictional police has not taken any action to restrain the plaintiff.

5. It is specific contention that the plaintiff taking advantage of the similar name Madashetty, has created the documents with the intention to knock of the suit properties and that the plaintiff's father's name is only Madashetty and not Madashetty @ Karishetty and therefore taking advantage of the name Madashetty @ Karishetty in the revenue records in respect of suit properties, the plaintiff even not being in possession has filed a suit for injunction and hence prays 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 his favour ?
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: Partly in the affirmative.

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. This is a suit for permanent injunction. The Plaintiff in support of his case has relied on the RTCs' in respect of suit properties of the year 2019-20 and has filed the order dated 24.11.2018 passed by the Assistant Commissioner, Mysuru and one modification order of the same authority.

9. From the perusal of the RTCs, as per the order of the

Assistant Commissioner dated 24.11.2018, the name of Madashetty @ Karishetty has been mutated in respect of items No.1 and 3 of suit property. From the perusal of other RTCs, the item No.2 is in the name of the plaintiff and the item No.4 is in the name of Madashetty S/o. Siddashetty, that is in the name of the grandfather of the plaintiff as claimed by him.

10. From the perusal of the order of the Assistant Commissioner dated 24.11.2018, it has only set aside the mutation order I.N.H. No.1/1981 which stood in the name of defendant No.1 saying that such mutation is an illegal entry and there is no reference of any mutation order passed by it to effect the name of defendant No.1 and has directed the Tahsildar to mutate the name of person as it stood in the year 1984-85. There is no finding given by the said authority in respect of who are in possession of the suit properties. The plaintiff has not filed the old RTCs to see as to whose name have been entered in the RTC of the suit properties in Column No.12 and RTC of the year 1984-85.

11. From the arguments of the plaintiff and defendants, it is observed that the plaintiff is claiming Madashetty @ Karishetty S/o. Madashetty as the father and whereas the defendant No.1 is claiming the person by same name Madashetty @ Karishetty but S/o. Siddashetty as his grandfather. After remand the Tahsildar has entered the names of Madashetty @ Karishetty, as per the entry as seen in RTC of the year 1984-85. But the actual dispute is whether this

Plaintiff or the Defendants belong to Madashetty S/o. Siddashetty family and that whether Madashetty @ Karishetty S/o Madashetty is father of plaintiff or whether Madashetty @ Karishetty S/o Siddashetty is grandfather of defendants. Further, it is observed that none of the parties are admitting that they are related to each other and belong to the same family. The plaintiff has to first prima-facie prove his relation with the Madashetty @ Karishetty as his father.

12. The suit is for bare permanent injunction and while deciding this application, the Court has to prima-facie see as to who is in actual possession of the said suit properties. There is no document produced to prima-facie firstly show that the Plaintiff's father Madashetty is also called by name Karishetty. In respect of item No.2 suit property and from its perusal there is entry of the plaintiff's name in Column No.9 and in Column No.12 but from the perusal of his father's name in the said RTC there is only reference of name of plaintiff's father as Madashetty and there is no reference of Madashetty @ Karishetty to believe the version of Plaintiff prima facie.

13. Further, from the perusal of the written statement, it is submitted by Defendant No.1 that he has filed a suit for permanent injunction against the Plaintiff in O.S.No.118/2020, this Court passing order on interim application under Order 39 Rule 1 and 2 of CPC of that suit along with this suit, has taken judicial notice of the suit properties in O.S.No.118/2020. The Defendant No.1 to this suit has

not included item No.2 property of this suit in O.S.No.118/2020. Having item No.2 standing in the name of Plaintiff and the fact that item No.2 is not subject matter before Assistant Commissioner, Mysore and the Defendant No.1 having not challenged mutation of name of Plaintiff in item No.2 suit property, the Plaintiff has placed document for prima facie possession irrespective of title to it as could be seen in column No.12 of RTC.

14. In respect of other suit properties ie., item No.1, 3 and 4, the Plaintiff has failed to place prima facie document to show that entry of name Madashetty @ Karishetty in RTCs' to be his father, for the reason as stated supra, the father's name of Plaintiff is shown in RTC of item No.2 suit property as that of Madashetty and therefore, claiming by the Plaintiff that the other properties also belong to his father, whose names are shown as Madashetty @ Karishetty and what is his father's name is not mentioned, that prima facie does not show that other properties belong to plaintiff. The proof of relationship is subject matter of trial. Further, there being any prima facie document of Plaintiff's possession in respect of item No.1, 3 and 4 suit properties, the Plaintiff is not entitled for interim relief as sought.

15. Therefore, lack of document to show physical possession of Plaintiff in item No.1, 3 and 4 suit properties and that the Defendant No.1 having not challenged the entry of Plaintiff's name in item no.2 suit property which is referred to having acquired by way of ancestral property and moreso when not claimed item No.2 suit

property by Defendants in O.S.No.118/2020 before this Court, the balance of convenience lies in favour of Plaintiff only in respect of item No.2 suit property and irreparable hardship would be caused to Plaintiff and would also lead to multiplicity of proceedings, if these Defendants interfere in respect of item No.2 suit property. The filing of permanent injunction suits by both of the parties, would entail interference by each other and hence, for the above findings, this Court answers Points No.1 to 3 partly in affirmative.

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

ORDER

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

The Defendants are restrained temporarily from interfering in item No.2 suit schedule property.

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

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