

**IN THE COURT OF THE CIVIL JUDGE AND JMFC., AT
PERIYAPATNA**

Present: **Sri.V.Hanumanthappa, M.A, L.L.B.,**

Civil Judge & JMFC

Dated: this the 26th day of August 2016

O.S. No.316/2014

Plaintiffs : Ramanayaka & another

V/s

Defendants : Siddalinganayaka & another

I.A.No.I

**Applicant/
Plaintiff** : Ramanayaka & another

[By.Sri.I.R.Srinivas, Adv.,]

V/s

**Opponents/
Defendants** : Siddalinganayaka & another

[By.Sri.B.V.Javaregowda, Adv.,]

ORDERS ON I.A.NO.I

This application filed by the applicant/plaintiff U/o XXXIX rule 1 & 2 R/w Sec.151 of CPC with a prayer to pass an order of temporary injunction, restraining the defendants or anybody claiming under them from interfering with the possession and enjoyment of the plaintiffs over the suit schedule property till disposal of this suit.

2. This application supported with an affidavit duly sworn by the applicant/plaintiff contending that, he has filed the suit against

the defendants for permanent injunction. Item No.1 of the suit schedule property is self acquired property of the plaintiffs and item No.2 of the suit schedule property is ancestral property. Item No.1 of the suit schedule property granted by the government under Durkasth dated 7.12.1996. On the basis of the grant, katha of the item No.1 of the schedule property is mutated in the name of the plaintiff vide M.R.No.48/1996-97 and item No.2 of the schedule property fallen to the share of the plaintiffs under oral partition effected between the brothers of the 1st plaintiff. The plaintiff is paying tax to the suit schedule property. At the time of grant of item No.1 of schedule property, the survey number was 30, thereafter, it has been phoded and now the RTC Extract of item No.1 of schedule property mentioned as Sy.No.30/p91. All the revenue documents of the suit schedule properties is standing in the name of the plaintiff. The defendants are strangers to the suit schedule property. On 25.09.2014 the defendants attempt to remove the barbed fence erected around the suit schedule property and the defendants also trying to cut and destroy the Maize crop raised by the plaintiffs in item No.1 of the schedule property and the plaintiffs are unable to restrain the illegal acts of the defendants. In spite of conveying panchayath in the village and lodged the complaint to the concerned police, but, the defendants have not heed the words of the panchayathdars and the police have not taken any action against the defendants. Therefore, the plaintiffs have filed the suit, so also this application. Accordingly, he prays for allowing the application.

3. The defendants have filed their written statement and a memo to treat the contents of the written statement as objection to the I.A.No.I. In the written statement the defendants have denied all the averments made in the plaint as false and untenable. They

have taken specific defence that, the defendants never interfered with the possession of the plaintiffs over their property, but the plaintiffs themselves have interfered with the possession and enjoyment of the 2nd defendant in Sy.No.30/322 measuring 2 acres 13 guntas and property belongs to the 1st defendant in Sy.No.30/321 and the plaintiffs have attempts to removed the barbed fence erected around the property of the defendants. Therefore, the 2nd defendant has filed the suit in O.S.No.30/2015 which is pending for consideration. The 2nd defendant has been granted the property under L.N.D.No.1/1/T/13/1975-76 dated 10.11.1975, the Assistant Commissioner, Hunsur has also issued a grant certificate and katha was also changed in the name of 2nd defendant. As such, the defendant has been in possession and enjoyment of the said property. Likewise, the 1st defendant was also granted with the above said land by the Assistant Commissioner, Hunsur under L.N.D.No.1/T/13/1975-76, but, the plaintiff has given false boundary to the suit schedule property and filed the suit to harass the defendants. Therefore, he prays for dismissal of the application with cost.

4. On the basis of aforesaid facts, the following points would arose for my consideration:

1. Whether the Applicant/plaintiff has made out prima facie case?
2. Whether the Applicant/plaintiff proves the balance of convenience lies in his favour?
3. To whom irreparable loss will be caused, if this application is not allowed?
4. What order?
5. My answers to the above points are here under:

Point No.1 in "**Affirmative**"

Point No.2 in "**Affirmative**"

Point No.3 in "**in favour of the plaintiffs**"

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

REASONS

6. Point No.1 to 3: These points are interconnected with one another. Hence, I have taken up these points together for common discussion to avoid repetition of facts and appreciation of evidence.

7. This is suit filed by the plaintiffs Ramanayaka and his wife Chikkamma jointly against the defendants, according to the plaintiffs the suit schedule property granted to them by the government and they have been in possession and enjoyment of the suit schedule property. In support of their contention they have produced documents under list dated 9.10.2014.

8. The first document is the true copy of the Grant Certificate, on careful scrutiny of this document, there is an endorsement by bank Manager that, the original document is pledged in State Bank of Mysuru for obtaining loan by the plaintiffs, this document discloses, the plaintiffs jointly granted with the suit schedule property for upset price of Rs.1,443/-, the description of the property mentioned in page No.3 i.e., Sy.No.30 measuring 1 acre 35 guntas of Channakallukaval village, bounded on East by land of Krishnegowda and Katte, West by land of Siddalingappa, North by Sarkari Halla, South by land of Ramanayaka. So, at the time of granting this property the revenue authorities have specifically mentioned the boundary of 1 acre 35 guntas in respect of Sy.No.30.

9. The 2nd document is the Mutation Register Extract in M.R.No.48/96-97, it appears on the basis of the Grant Certificate vide L.N.D (2) 197/91-92, dated 2.12.1996 as per Grant Certificate

the name of the plaintiffs have been entered in the revenue documents and even the boundary of the property is also mentioned in this document and this document issued by the Village Accountant of Channakallukval Circle, Periyapatna Taluk.

10. Next document is the RTC Extract for the year 1996-97 in respect of Sy.No.30 measuring 1 acre 35 guntas, wherein the names of the plaintiffs entered in column No.9. It is also mentioned this property granted to the plaintiffs under Durkasth vide LND(2)197/91-92, and M.R.No.48/96-97, the name of the plaintiffs entered in column No.9 as well as column No.12. Another document is the RTC Extract for the year 2014-15 in respect of Sy.No.30/P91 measuring 1 acre 35 guntas standing in the name of the plaintiffs jointly, in this document also M.R.No.48/96-97 Durkasth is mentioned, the names of the plaintiffs entered in column No.9 as well as column No.12. Another document is Mutation Register Extract, standing in the name of 1st plaintiff. Another document is also Mutation Register Extract for the year 2011-12 to 2014-15 in respect of Sy.No.129 of Muthinamulasoge, maintained by Doddakamaravally Grama Panchayath. Another document is tax paid receipt and he has also produced 6 colour photographs, it shows growing of Raagi and Maize crops and also location of Mangalore tiled house.

11. Though the defendants have filed their written statement by denying all the averments made in the plaint as false, but, he has not produced relevant documents. But, he has produced Xerox copy of the village map and the same was certified that, there is no irrigation well within 300 feet in Sy.No.30/322 relating to Sri.M.K.Shivalingaiah of Channakalkavalu village.

12. The documents produced by the plaintiffs clearly goes to show that, the plaintiffs have been granted with the suit schedule property and their names have been mutated in the revenue documents and the names of the plaintiffs appears in the RTC Extracts and they are paying tax to the suit schedule property. Therefore, prima facie the documents established that, the plaintiff is in possession and enjoyment of the suit schedule property. Therefore, the plaintiff has made out prima facie case.

13. As per as irreparable loss and balance of convenience is concerned. The plaintiff has contended that, the defendants have interfered with the possession and enjoyment of the plaintiffs over the suit schedule property. Except taking bald defence by the defendants, they have not produced any documents to show contrary to the case of the plaintiffs. If, the defendants interfered with the possession of the plaintiffs over the suit schedule property, much hardship would be caused to the plaintiffs rather than the defendants. Therefore, balance of convenience lies in favour of the plaintiffs and irreparable loss would be caused to the plaintiffs, which cannot be compensated in terms of money. Therefore, I answer to points No.1 to 3 in "**Affirmative**"

14. Point No.4: In view of the above discussion, I proceed to pass the following:

ORDER

The I.A.No.I filed by the Applicant/Plaintiff U/o XXXIX Rule 1 & 2 R/w 151 of CPC is hereby allowed.

No order as to cost.

The defendants are hereby temporarily restrained from interfering with the possession

and enjoyment of the plaintiff's over the suit
schedule property till disposal of the suit.

(Dictated to the Stenographer, transcript, revised, corrected and then pronounced
by me in the open court, this the 26th day of August, 2016)

(V. HANUMANTHAPPA)
Civil Judge and JMFC
Periyapatna