

KAMS600022752022



O.S./205/2022

**IN THE COURT OF THE SENIOR CIVIL JUDGE AT
PERIYAPATNA.**

Present
Sri.A.SAMIULLA
B.Sc., LL.B.,
Senior Civil Judge,
Periyapatna.

Dated: 15th Day of February 2023

OS.No.205 of 2022

Smt. Javaramma & Ors.

..... Plaintiffs

V/s

Sri.Krishna & Ors.

..... Defendants

IA.No.1

Sri.Lakkappa.

.... Applicant/P4

V/s

Sri.Krishna & Ors.

.... Opponents/Defendants

Order on IA-1; u/O 39 Rule 1 & 2 of CPC:

Plaintiffs moved this application seeking to issue

temporary injunction to restrain the defendants from obstructing their possession over suit 'B' schedule property in any manner till disposal of suit.

2. Defendants resisted the application by adopting the averments of written statement as objections.

3. Heard arguments from both side.

4. Following points arise for consideration:

- 1. Whether plaintiffs prove that they have got a prima facie case?*
- 2. In whose favour the balance of convenience lies?*
- 3. To whom the irreparable loss will be caused?*
- 4. What order?*

5. Findings to the above points are as under;

Point-1: Negative.

Point-2: Does not survive for consideration.

Point-3: Does not survive for consideration.

Point-4: As per below for the following;

REASONS

6. Point-1: At the outset; suit is filed for declaration to declare that; the plaintiffs are owners of suit 'A' schedule property and for perpetual injunction

to restrain the defendants from obstructing their possession over suit property, by asserting that; the suit property is ancestral property of Puttaiah, who is husband & father of plaintiffs-1 **&** 2 to 5 respectively. Lakkappa (grandfather and great grandfather of defendant-1 **and** defendants-2 & 3 respectively) is the brother of Puttaiah. Puttaiah was in possession of suit property for more than 40 years as owner thereof.

Land bearing Sy.No.165/1 (2As 3Gs) is the ancestral property of Puttaiah. During his (Puttaiah) lifetime the defendant-1 and his elder brother Raja and their father Potha @ Gunda and Ningaiah and Lingaraju s/o Ningaiah obstructed the possession of Puttaiah, due to this he (Puttaiah) filed OS.No.173/92 for perpetual injunction, which was dismissed. Thereafter, Puttaiah breathed his last. Taking advantage of this the father of defendant-1 i.e., Potha

@ Kunta and his brother Ningaiah have got mutated their names under MR.No.1/95-96 by falsely claiming that there is a Court decree in their favour. They got mutated the name of Puttaiah s/o Pothegowda to the extent of 28Gs and the name of Ningaiah s/o Kuntaiah to the extent of 28Gs and name of Kuntaiah s/o Lakkappa to the extent of 27Gs. On this basis the land is phoded as Sy.No.165/5 (28Gs) in the name of Ninagaiah s/o Kotaiah and Sy.No.165/1 (28Gs) in the name of plaintiffs and 27Gs in the name of defendant-1 and his brother Raja. Recently plaintiffs came to know about the change of revenue records. They conveyed panchayath wherein the defendants agreed to re-convey the property. On that basis Ningaiah has executed a registered sale deed in favour of plaintiffs without any consideration. They (plaintiffs) were under the impression that the revenue records will change in

their names on the basis of sale deed but revenue records continued in the name of Ningaiah s/o Kotaiah. The defendant-1 & his brother Raju though they agreed to execute registered document before the panchayath but failed to do so, as such their names continued in the revenue records. On the basis of revenue records they are obstructing plaintiff's possession denying title. Hence, suit is filed.

7. Defendants resisted the suit by filing written statement. Denying plaint averments they contended that; they are absolute owners in possession of land bearing Sy.No.165/6 (27Gs), which belongs to defendant-1 & his brother Raju. Said Raju has executed relinquishment deed dated: 27.03.17 in favour of defendant-1 in respect of land bearing Sy.No.165/6 (27Gs) and Sy.No.164/1 (32Gs); on the basis of relinquishment deed his (D1) name was

mutated in the revenue records under MR.No.H-33/16-17. Plaintiffs have given wrong boundary to the suit item-3. The correct boundaries of said land is on east: land of Ningaiah, west: Government Manti, north: land of Ningappa and south: land of Puttaiah. On 25.09.22 the plaintiffs obstructed their (defendants) possession over suit item-3, due to this they filed OS.No.341/22 against them and obtained injunction restraining them from conducting survey of said land. Among these grounds they prayed to dismiss the suit.

8. Along with plaint; plaintiffs filed the application at hand for the relief stated *supra* by stating facts set out in the plaint, which is objected by the defendant-1 by adopting written statement as objections, which are already stated *supra* and there is no need of repetition.

9. The settled position of law is that; to seek discretionary relief of temporary injunction plaintiffs

must satisfy the Court with respect to the existence of a *prima facie* case, irreparable injury likely to be suffered by them and balance of convenience lies in their favour.

10. Let us see whether plaintiffs have established a *prima facie* case or not. Plaintiffs produced documents viz., **i)** RTC extract of land bearing Sy.No.165/1 pertaining to the year 1982 to 1985 wherein the name of Puttaiah s/o Pothe Gowda is mentioned & the mode of acquisition is indicated as ancestral. **ii)** RTC extract of land bearing Sy.No.165/1 pertaining to the year 1989-90 wherein the name of Puttaiah s/o Pothe Gowda is mentioned & the mode of acquisition is indicated as ancestral. **iii)** RTC extract of land bearing Sy.No.165/1 pertaining to the year 1997-98 wherein the names of Puttaiah s/o Pothe Gowda (28Gs), Ningaiah s/o Kotaiah (28Gs) and Kuntaiah s/o Lakkappa (27Gs) are

mentioned as per MR.No.1/95-96. **iv)** MR.No.1/95-96 wherein the names of Puttaiah, Ningaiah and Kuntaiah are ordered to be mutated as per judgment passed in OS.No.173/92 dated 22.04.94. **v)** MR.No.51/97-98 wherein names of sons of Pothegowda i.e., Raja & Krishna were mutated. **vi)** Endorsement issued by the Deputy Thasildar, Ravanduru Hobli stating that; the index of lands in respect of land in Sy.No.165/1 is not available in the office. **viii)** MR.No.H33/16-17 wherein the name of Krishna was mutated in respect of lands bearing Sy.No.164/1 (32Gs) and 165/1 (27Gs). **ix)** MR.No.H29/21-22 wherein the names of Javaramma, Raju, Shivamma, Lakkappa, Ganesha are mutated to the land in Sy.No.165/1 (28Gs) and name of Krishna is mutated to the land in Sy.No.165/6 (27Gs). **x)** Certified copy of order sheet of OS.No.173/92. **xi)** Certified copy of plaint in OS.No.173/92 filed by Puttaiah against

Ningaiah, Potha @ Kunta, Ningaraju, Raja & Krishna in respect of land bearing Sy.No.165/1 (2As 3Gs). **xii)** RTC extracts of land in Sy.No.165/1 pertaining to the year 1989 to 1992 wherein name of Puttaiah s/o Pothe Gowda is forthcoming at column No.9 and 12(2). **xiii)** Patta Book, wherein the name of Puttaiah s/o Pothe Gowda is mentioned and he paid tax in the year 1991. **xiv)** Trip sheet issued by Department of Food and Civil Supplies. **xv)** Patta Book standing in the name of Puttaiah @ Pothe Gowda, wherein he paid taxes from the year 1973. **xvi)** Certified copy of judgment passed in OS.No.173/92. **xvii)** RTC extract of land in Sy.No.165/1 (28Gs) wherein the names of Javaramma, Raju, Shivamma, Lakkappa are jointly mutated. **xviii)** RTC extract of land in Sy.No.165/5 (28Gs) standing in the name of Ningaiah. **xix)** RTC extract of land in Sy.No.165/6 (27Gs) standing in the name of Krishna.

xx) Original Sale Deed executed by Ningaiah s/o Pothaiah in favour of Javaramma w/o Puttegowda in respect of land bearing Sy.No.165/1 (28Gs). **xxi)** Copy of registered Relinquishment Deed executed by Raja s/o Pothe Gowda in favour of Krishna s/o Pothe Gowda in respect of land in Sy.No.165/1 (27Gs). **xxii)** Legal Notice dated 07.07.22 issued by plaintiffs to ADLR. **xxiii)** Certified copy of order sheet of OS.No.341/22 filed by Krishna against Javaramma and others (plaintiffs herein).

11. Defendants produced documents i.e., **i)** Certified copy of order sheet and memorandum of appeal in RA.No.56/94 filed by Puttaiah. **ii)** Certified copy of judgment of OS.No.173/92.

12. Careful scrutiny of rival pleadings put forth by the parties to lis and the contents of documents

produced by them, one can see that; there is no dispute whatsoever with respect to the relationship of parties to lis.

13. As per pleadings the genealogy culled out reads thus; Pothe Gowda had three sons viz., **i)** Puttaiah (husband and father of plaintiffs-1 & 2 to 5 respectively), **ii)** Lakkappa (grandfather of defendant-1) and **iii)** Kotaiah (father of Ningaiah and grandfather of Lingaraj).

14. First round of litigation is started by Puttaiah **(husband & father of P1 & P2 to 5 herein respectively)** by filing OS.No.173/92 against Ningaiah s/o Kotatiah, Potha @ Kunta s/o Lakkegowda, Lingaraja s/o Ningaiah, Raja s/o Potha @ Kunta and Krishna s/o Potha @ Kunta **(defendant-1 herein)**.

15. Said suit was filed for perpetual injunction

stating that plaintiff therein is the absolute owner in possession of property i.e., land in Sy.No.165/1 (2As 3Gs) of Hittnehebbagilu, which is suit property herein.

Defendants therein contended that; propositus Pothe Gowda had three sons Kotaiah, Lakkappa @ Lakkegowda and Puttaiah. Kotaiah and Lakkappa are dead. Defendant-1 (Ningaiah) is son of Kotaiah. Defendant-2 (Potha @ Kunta) is son of Lakkappa @ Lakkegowda. Defendant-3 (Lingaraja) is son of Ningaiah. Defendants-4 & 5 (Raja & Krsihna) are sons of Potha @ Kunta. Pothe Gowda was the owner of 12 acres of land. After death of Pothe Gowda the properties left behind by him were jointly enjoyed by his sons Puttaiah, Kotaiah and Lakkappa @ Lakkegowda.

16. In said judgment at **page-5 & 6** it is stated that; it is further significant to refer to the portions of cross-examination of Pw.1 wherein he states that after the

death of his father he along with Kotaiah and Lakkappa were jointly cultivating the properties. Further he states in the cross-examination that the defendants are also jointly cultivating. The relevant portion of his evidence reads: “ನನ್ನ ತಂದೆ ಮೃತಪಟ್ಟ ನಂತರ ನಾನು, ಕೋಟಯ್ಯ ಮತ್ತು ಲಕ್ಕಪ್ಪ ಒಟ್ಟಿಗೆ ವ್ಯವಸಾಯ ಮಾಡಿಕೊಂಡಿದ್ದೇವೆ. ಪ್ರತಿವಾದಿಗಳು ಸಹ ಒಟ್ಟಿಗೆ ವ್ಯವಸಾಯ ಮಾಡಿಕೊಂಡಿದ್ದಾರೆ”.

At **para-10** it is observed that; Even during the course of cross-examination Dw.2 Sannakalaiah has deposed that the land bearing Sy.No.165/1 is jointly cultivated by the plaintiff and defendants-1 & 2. At another breath he states that the plaintiff and the defendants-1 & 2 are separately cultivating the same. But though there is a dual version this piece of evidence when taken into consideration along with the admission of the plaintiff as culled out herein above the exclusive possession of the plaintiff becomes

doubtful. At **page-9** it is observed that; therefore in view of the evidence of the plaintiff no credence can be attached to the entries found in Ex.P1 & 2. In other words presumption under Section 133 of the Karnataka Revenue Act cannot be extended to the plaintiff.

17. OS.No.173/92 was dismissed holding that Puttaiah is not in exclusive possession of land in Sy.No.165/1 measuring 2As 3Gs. Said judgment was impugned in RA.No.56/94 and same was dismissed for default on 13.06.2000.

18. Now plaintiffs filed the suit stating that the defendants, who represents the branch of Lakkappa @ Lakkegowda, and Ningaiah who represents the branch of Kotaiah have agreed before the Panchayat that by slip of facts their names were entered in the revenue records of suit property and they will give consent to

mutate the names of plaintiffs in the revenue records. Since the names were not changed without a registered document the Ningaiah has executed sale deed dated 23.05.06 without consideration but the defendants failed to execute the document as agreed upon, due to this revenue records continued in the names of defendants in respect of suit B schedule property. Said fact is categorically denied by the defendants.

19. It is pertinent to note that; at the moment plaintiffs have not produced any document to show that the defendants have agreed before the panchayat to re-convey the suit B schedule property admitting the possession of plaintiffs over the said property. Though they (plaintiffs) have produced the sale deed executed by Ningaiah in respect of land in Sy.No.165/1 (28Gs) but same is not binding on the defendants, who denied the fact asserted by the plaintiffs.

20. RTC extracts of land in Sy.No.165/1 (2As 3Gs) pertaining to the years 1982 to 85 and 1989-90 depict that the name of Puttaiah s/o Pothe Gowda finds a place at column No.9 & 12(2) and the mode of acquisition is shown as ancestral.

21. RTC extract of land in Sy.No.165/1 (2As 3Gs) for the year 1997-98 depicts that the names of Puttaiah s/o Pothe Gowda (28Gs), Ningaiah s/o Kotaiah (28Gs) and Kuntaiah s/o Lakkappa (27Gs) are mutated as per MR.No.1/95-96. Till this day the plaintiffs have not questioned this mutation.

22. At this stage in the background of relationship of parties to lis and their ancestors and the ancestral nature of property as shown in the revenue records and the observations made in the judgment passed in OS.No.173/92, which had reached finality coupled with the long standing revenue records in the names of

defendants and their ancestors and absence of document (except the self serving statement) which *prima facie* shows possession of plaintiffs over the suit B schedule property; it can be said without any hesitation that; at the moment plaintiffs failed to demonstrate the existence of a *prima facie* case in their favour in respect of suit B schedule property. Hence, above point is answered in negative.

23. Points-2 & 3: These points are taken together for common discussion to avoid repetition of facts.

24. Findings on above point shows that; at the moment plaintiffs failed to demonstrate the existence of a *prima facie* case in their favour in respect of B schedule property. Since no *prima facie* case is made out the question of consideration of balance of convenience and irreparable loss do not survive for consideration. Accordingly, these points are answered.

25. Point-4: By virtue of above findings, Court proceeds to pass the following;

ORDER

IA-1; under Order 39 Rule 1 & 2 r/w Section 151 CPC filed by the plaintiffs is rejected.

No order as to costs.

(Dictated to the Stenographer and transcribed by her, corrected and initialed by me and then pronounced in the open Court on 15.02.23).

sd/-

(A.Samiulla)
Senior Civil Judge,
Periyapatna.