

**IN THE COURT OF CIVIL JUDGE DEVADURGA.  
AT: DEVADURGA**

**Present:**  
**Shri. Balasaheb Wadavade**  
**B.Com. L.L.B.,(Spl)**  
**Civil Judge, Devadurga.**

**OS No. 72/2023**

**Order dated the 24<sup>th</sup> day of January 2024**

**Adanagouda S/o Late. Yankuba,**

.....Plaintiff,

Versus

**Basanagouda S/o Hanumanthraya and others.**

.....Defendants,

**I.A.No.I**

**(APPLICANT)**

**Original Plaintiff : Adanagouda S/o Late. Yankuba,**

And

**(OPPONENTS)**

**Original Defendants : Basanagouda S/o Hanumanthraya and  
others.**

**ORDER ON IA No.I**

This is an interim application filed by the plaintiff under order XXXIX Rule 1 & 2 of C.P.C seeking prayer to order ex-parte interim/ad-interim injunction to restrain the defendants, their

men, servants, heirs, successors, agents, or whoever claiming through them from illegally interfering in the peace possession and enjoyment of the plaintiff over the suit property till the disposal of the suit in the interest of justice.

2. In the sworn affidavit of the interim application, the plaintiff has stated that, this is a suit filed by him against defendants for permanent injunction and rectification of ROR's.

3. He further stated that his father was died about 14 years ago, after his death, the partition had been taken place between him and defendants and mutation was taken place by way of Poti Khata. As per partition, they are enjoyment their respective possession in the agricultural land bearing Sy.No.77/\* Hissa-1 totally measuring 06 acres 25 guntas out of 2 acres 8 guntas of land situated towards Eastern side from North to South in this portion of land, he is the owner and possessor. They have cultivated their respective peaceful possession since 15 years.

4. He further stated that he has got the said land bearing Sy.No.77/\* Hissa-1 measuring 02 acres 08 guntas in his name as per mutation No. MR H30/2014-15 dated 26-03-2015.

5. He further stated that he is growing the Toor (Togari) and Cotton crops every year with the help of Bore well and Electricity Transformer (T.C). The said 2 Bore wells and 1 Electricity Transformer installed by him in his land. 2 Bore wells and 1 Electricity Transformer are in the land Sy.No. 77/\* Hissa-1.

6. He further stated that while doing an agriculture work in his possession land. At that time, the defendants are illegally interfering in his peace full possession and enjoyment of the suit property without having any right, title or interest over the suit property. The defendants are doing an agriculture towards beside his land and intended to see that he should not doing an agriculture work in his suit property. Accordingly, they are making illegal efforts to obstruct his agricultural work.

7. He further stated that the defendants are rich and politically influential persons. They are also supported by bad elements in the said locality. He has already invested huge amount for the said proposed an agricultural work. The defendants are came to know about the said crop and directed him to stop using Bore wells and Electricity Transformer by immediately in the last week of October 2023 and on 01-11-2023, they have illegally came in the suit property and made an attempt to stop an agricultural work.

8. He further stated that he is in position to prevent an illegal acts of the defendants. He has also personally requested them. But, they are not in position to heed his request, hence he has without any other way except to file this suit.

9. He further stated that the cause of action arose on 01-11-2023, when the defendants without having any right, over the suit property made an illegal efforts to interfere in his suit property.

10. He further stated that under these circumstances, if this Hon'ble Court not pleased to grant Ex-party injunction order as prayed in the petition. He would be put under great hardship and injury and it cannot be compensated in terms of money and also it would become a cause for multiplicity of proceedings. He has made out a prima facie case and balance of convenience is also lies in his favour. In the event of granting an injunction order till disposal of the above case, no harm or in justice would be cause to other side. Therefore it is just and proper to grant the relief as prayed by him to meet the ends of justice.

11. Per contra, the defendants have appeared and defendant No.6 has filed objection to the interim application No.1 through defendant No.4 and 5, wherein he has stated that the contents of the plaint and interim application No.1 are all false and which are not maintainable. The plaintiff is not an absolute owner and possessor of the suit property. The suit property fallen on the share of defendant No.4. The suit property khata changed in the name of defendant No.6. The defendant No.4 to 6 are the absolute owners and possessors. After partition between the plaintiff and defendants family, the defendant No.6 had filed an application under the scheme of STP before the Krishna Bhagya Jal Nigam for getting water facility to his land. Accordingly, on 22-12-2015, the Krishna Bhagya Jal Nigam had sanction bore well in the name of defendant No.6 and same was installed by the defendant No.6. On 04-07-2018, electricity connection to bore well was taken from the GESCOM Department. The plaintiff has filed suit

by claiming it is belongs to him without any documents. The plaintiff has also filed a false interim application No.1 by seeking restrain the defendants not to interfere in the suit property and not to object to bore well.

12. It is further stated by the defendant No.6 that which year partition took place and which properties are come to them is not specifically shown in the para No.2 of the sworn affidavit. The father of the plaintiff by name Venkoba and his brothers by name Basanagouda who is the defendant No.1 and plaintiff No.4 by name Hanumagouda are own brothers, out of them, the father of the plaintiff by name Venkoba was passed away. After the death of father of the plaintiff, there was a partition took place in the ancestral properties between plaintiff and his brother and defendants. In the partition, the suit property was fallen to the share of defendant No.4 and the said land was mutated in the name of defendant No.6. In the sworn affidavit, it is falsely mentioned that the father of the plaintiff by name Venkoba was passed away about 14 years ago and after of the death of father of the plaintiff, the partition took place between plaintiff and defendants and they are separately cultivating the suit lands since 15 years. The plaintiff is not an absolute owner and possessor. The defendant No.6 is an absolute owner and possessor of the suit property.

13. It is further stated by the defendant No.6 that in the sworn affidavit para No.3, the facts are not clearly shown by the plaintiff.

The suit property bearing RS No.77/\* /1 measuring 6 acres 25 guntas of land situated Jutmaradi village Tq: Devadurga, there is a north to south directions 3 patti in this land. Out of 3 patti, the eastern patti comes to the share of defendant No.4 to 6, the 2 acres 7 guntas of land is standing in the name of defendant No.6 and middle portion patti 2 acres 7 guntas of land is come to the share of defendant No.3 and western patti 2 acres 8 guntas of land come to the share of plaintiff. Accordingly, khata changed in their name as per MR No.H30/2014-15 dated 26-03-2015. The land of the defendant No.6 is bounded as towards east-land of Mareyya, towards west-land of defendant No.3, towards north-land of Hanumappa S/o Mudegouda and towards south-land of Ganappa. The plaintiff is claiming the land of the defendant No.6 as his land by filing false suit. 2 acres 8 guntas of land of the plaintiff is bounded as towards east-land of defendant No.6, towards west-land of Rangappa Dalapati, towards north-land of Hanumappa S/o Mudegouda and towards south-land of Ganappa. The share of the defendant No.3 land is bounded as towards east-land of defendant No.6, towards west-land of plaintiff, towards north-land of Hanumappa S/o Madegouda and towards south-land of Ganappa. The Narayapur Baladande Kaluve was passed on the lands of the plaintiff, defendant No.3 and defendant No.6 and received compensation by them equally but mentioned in the RTC extract that 37 guntas of land acquired by the KBJNL and remained 1 acre 10 guntas of land. Hence, there is necessary for deduction of acquired lands, in the lands of the plaintiff and defendant No.3. The plaintiff has suppressed all

the true facts and got mutated.

14. It is further stated by the defendant No.6 that the plaintiff has falsely shown the facts in the sworn affidavit para No.4 and same are denied by the defendant No.6. The plaintiff is not absolute owner and possessor and no bore well and electricity connection in his name. Hence, the plaintiff has falsely contented the land of the defendant No.6 and bore well and electricity transform belongs to his. The KBJNL office had sanction the bore well in the name defendant No.6 and it was installed on 22-12-2015. The electricity connection also taken to the bore well from the GESCOM department on 04-07-2018. The bore well of the defendant No.6 bears R.R. No.JMIP-54.

15. It is further stated by the defendant No.6 that the plaintiff has shown false contents in the affidavit para No.5 to 8. These are denied by the defendant No.6. The defendants are not objected towards the western side of plaintiff's possession land. The plaintiff has falsely shown that on 01-11-2023, the defendants are objected but the plaintiff is filed false suit by falsely claiming land of the defendant No.6 as his land. So, he prays to reject the IA.

16. The following points have arisen for my consideration

Point No. 1) Does the plaintiff has made out prima facie case ?

Point No. 2) Does the balance of convenience lies in favour of plaintiff?

Point No. 3) Does the irreparable loss and injury would be caused to the plaintiff if T.I order is not granted ?

Point No. 4) What order ?

17. My answers to the above points are as under,

Point No. 1 to 3: In the negative.

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

### **REASONS**

18. **Point No.1 to 3 :** Since these points are interlinked to each other, hence these points are taken together for common discussion to avoid the repetition of facts of the case.

Perused the case papers it reveals that this is a suit filed by the plaintiff for permanent injunction. In this suit, the plaintiff has filed interim application No.1. Perused the sworn affidavit of the interim application No.1, wherein the plaintiff has stated that his father was died about 14 years ago, after his death, the partition had been taken place between him and defendants and mutation was taken place by way of Poti Khata. As per partition, they are enjoyment their respective possession in the agricultural land bearing Sy.No.77/\* Hissa-1 totally measuring 06 acres 25 guntas out of 2 acres 8 guntas of land situated towards Eastern side from North to South in this portion of land, he is the owner and possessor. They have cultivated their respective peaceful possession since 15 years.

He further stated that he has got the said land bearing Sy.No.77/\* Hissa-1 measuring 02 acres 08 guntas in his name as

per mutation No. MR H30/2014-15 dated 26-03-2015.

He further stated that he is growing the Toor (Togari) and Cotton crops every year with the help of Bore well and Electricity Transformer (T.C). The said 2 Bore wells and 1 Electricity Transformer installed by him in his land. 2 Bore wells and 1 Electricity Transformer are in the land Sy.No. 77/\* Hissa-1.

He further stated that while doing an agriculture work in his possession land. At that time, the defendants are illegally interfering in his peace full possession and enjoyment of the suit property without having any right, title or interest over the suit property. The defendants are doing an agriculture towards beside his land and intended to see that he should not doing an agriculture work in his suit property. Accordingly, they are making illegal efforts to obstruct his agricultural work.

He further stated that the defendants are rich and politically influential persons. They are also supported by bad elements in the said locality. He has already invested huge amount for the said proposed an agricultural work. All defendants are came to know about the said crop and directed him to stop using Bore wells and Electricity Transformer by immediately on last week of October 2023 and on 01-11-2023, they have illegally came in the suit property and made an attempt to stop an agricultural work.

He further stated that he is in position to prevent an illegal acts of the defendants. He has also personally requested them. But, they are not in position to heed his request, hence he has without any other way except to file this suit.

He further stated that the cause of action arose on 01-11-

2023, when the defendants without having any right, over the suit property made an illegal efforts to interfere in his suit property.

He further stated that under these circumstances, if this Hon'ble Court not pleased to grant Ex-party injunction order as prayed in the petition. He would be put under great hardship and injury and it cannot be compensated in terms of money and also it would become a cause for multiplicity of proceedings. He has made out a prima facie case and balance of convenience is also lies in his favour. In the event of granting an injunction order till disposal of the above case, no harm or in justice would be cause to other side.

19. The plaintiff has produced the following documents,

1. The hand written RTC extract bearing RS No.77/1, measuring 6 acres 25 guntas of land stood in the name of Budayya. It is for the year of 1963 to 1968.
2. The hand written RTC extract bearing RS No.77, measuring 6 acres 25 guntas of land standing in the name of Hanumantraya S/o Hanumappa. It is for the year of 1968 to 1972.
3. The hand written RTC extract bearing RS No.77, measuring 6 acres 25 guntas PK-1 gunta remaining 6 acres 24 guntas of land standing in the name of Hanumantraya S/o Hanumappa. It is for the year of 1973 to 1978.
4. The hand written RTC extract bearing RS No.77/1, measuring 6 acres 25 guntas PK-1 gunta remaining 6 acres 24 guntas of land standing in the name of Hanumantraya S/o Hanumappa. It

is for the year of 1978 to 1983.

5. The hand written RTC extract bearing RS No.77/1, measuring 6 acres 25 guntas PK-1 gunta remaining 6 acres 24 guntas of land standing in the name of Yankoba S/o Hanumantraya, originally it stood in the name of Hanumantraya S/o Hanumappa and his name was rounded. It is for the year of 1983 to 1988.

6. The hand written RTC extract bearing RS No.77/1, measuring 6 acres 25 guntas PK-1 gunta remaining 6 acres 24 guntas of land standing in the name of Yankoba S/o Hanumantraya. It is for the year of 1988 to 1993.

7. The hand written RTC extract bearing RS No.77/1, measuring 6 acres 25 guntas PK-1 gunta remaining 6 acres 24 guntas of land standing in the name of Yankoba S/o Hanumantraya. It is for the year of 1993 to 1998.

8. The hand written RTC extract bearing RS No.77/1, measuring 6 acres 25 guntas PK-1 gunta remaining 6 acres 24 guntas of land standing in the name of Yankoba S/o Hanumantraya. It is for the year of 1998 to 2000.

9. MR No.H-30 dated 26-03-2015, perused the same it reveals that 2 acres 8 guntas of land transferred in the name of plaintiff in the RS No.77/\*/1, 2 acres 7 guntas of land transferred in the name of defendant No.2 in the RS No.77/\*/1 and 2 acres 7 guntas of land transferred in the name of defendant No.6 in the RS No.77/\*/1, originally 5 acres 11 guntas and 1 acre 11 guntas of land stood in the name of Venkoba S/o Hanumantraya respectively.

10. Computerized RTC extract bearing RS No.77/\*/1, measuring

6 acres 25 PKB-3 guntas remaining 6 acres 22 guntas of land out of it 2 acres 8 guntas of land standing in the name of plaintiff, 2 acres 7 guntas of land standing in the name of defendant No.2, 1 acre 10 guntas of land standing in the name of defendant No.6 and 37 guntas of land standing in the name of KBJNL Bengaluru. It is for year 2020-21.

11. Computerized RTC extract bearing RS No.77/\*/1, measuring 6 acres 25 PKB-3 guntas remaining 6 acres 22 guntas of land out of it 2 acres 8 guntas of land standing in the name of plaintiff, 2 acres 7 guntas of land standing in the name of defendant No.2, 1 acre 10 guntas of land standing in the name of defendant No.6 and 37 guntas of land standing in the name of KBJNL Bengaluru. It is for the year 2021-2022.

12. Computerized RTC extract bearing RS No.77/\*/1, measuring 6 acres 25 PKB-3 guntas remaining 6 acres 22 guntas of land out of it 2 acres 8 guntas of land standing in the name of plaintiff, 2 acres 7 guntas of land standing in the name of defendant No.2, 1 acre 10 guntas of land standing in the name of defendant No.6 and 37 guntas of land standing in the name of KBJNL Bengaluru. It is for the year 2022-23.

13. Computerized RTC extract bearing RS No.77/\*/1, measuring 6 acres 25 PKB-3 guntas remaining 6 acres 22 guntas of land out of it 2 acres 8 guntas of land standing in the name of plaintiff, 2 acres 7 guntas of land standing in the name of defendant No.2, 1 acre 10 guntas of land standing in the name of defendant No.6 and 37 guntas of land standing in the name of KBJNL Bengaluru. It is for the year 2023-24.

20. On the other hand defendants have denied the case of the plaintiff. Further, The defendant No.6 has contended that the suit property belongs to him and the plaintiff is claiming suit property belongs to him. Further the defendant No.6 has contended that the KBJNL had sanctioned the borewell in his name on 22-12-2015 and same was installed in the suit property and taken the electricity connection from GESCOM.

21. The defendant No.4 to 6 have produced the following documents;

1) Technical sanction certificate issued by the Superintending Engineer KBJNL circle No.2 on 22-12-2015 in the name of defendant No.6 in respect of Sy. No.72/77 and same is attested by the Executive Engineer KBJNL Divn. 4 Chikkahonnakuni camp.

2) Service certificate issued by the Asst. Executive Engineer GESCOM Devadurga on 02-12-2023 by stating that RR No.JMIP-54 Sy. No.77/1, 7.50 hp, electricity connection given to the plant on 04-07-2018 and it is in the name of defendant No. 6 and company has fixed Rs.100/- rate, receipt bearing No.202300007612 dated 01-12-2023. No dues.

3) Computerized RTC extract bearing RS No.77/\*/1, measuring 6 acres 25 PKB-3 guntas remaining 6 acres 22 guntas of land out of it 2 acres 8 guntas of land standing in the name of plaintiff, 2 acres 7 guntas of land standing in the name of defendant No.2, 1 acre 10 guntas of land standing in the name of defendant No.6 and 37 guntas of land standing in the name of KBJNL Bengaluru.

It is for the year 2023-24.

4) MR No.H-30 dated 26-03-2015, perused the same it reveals that 2 acres 8 guntas of land transferred in the name of plaintiff in the RS No.77/\*/1, 2 acres 7 guntas of land transferred in the name of defendant No.2 in the RS No.77/\*/1 and 2 acres 7 guntas of land transferred in the name of defendant No.6 in the RS No.77/\*/1, originally 5 acres 11 guntas and 1 acre 11 guntas of land stood in the name of Venkoba S/o Hanumantraya respectively.

22. The learned counsel for the plaintiff has submitted the decision along with a memo. It is the **Regular second appeal No. 2293/2006 (INJ) between Siriyala and others v B.N Ramesh**. Perused the decision, wherein the plaintiff had purchased the suit property and Khata changed in his name as per sale deed. But in this suit, the plaintiff is not purchased the suit property and it is contended that it is partition property but other side denied the partition and suit property. Thus this court gives respect to the decision of our Honble High court, the facts of this case and facts of decision are different, hence the said decision is not help to the plaintiff's case.

23. I would like to refer the decision of Hon'ble Supreme Court of India reported in **AIR 1993 SC 276 between DAPLAT KUMAR AND ANOTHER V/S PRAHLAD SINGH AND OTHERS**, the Hon'ble Supreme Court of India has held at para No.6 that

The phrases "prima facie case"; "balance of

convenience" and "irreparable loss" are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by man's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice. The facts are eloquent and speak for themselves.

24. I would like to refer order 39 Rule 1 of CPC, order 39 Rule 1 reads thus.

**1. Cases in which temporary injunction may be granted.**—Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to [defrauding] his creditors,

(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of

the property [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.

Perused the sworn affidavit of the interim application wherein the plaintiff is contending that suit property is belongs to him, perusal of the objection of the defendant No.4 to 6, wherein they are contended that suit property is belonging to them and installed bore well in the suit property and taken electricity connection. The RTC extracts are suffice that 2 acres 8 guntas of land standing in the name plaintiff, 2 acres 7 guntas of land standing in the name of defendant No.3 and 1 acre 10 guntas of land standing in the name of defendant No.6 but the defendants have claiming the suit property belongs to them. Therefore, there is revival contention of the parties. Hence, the considering the sworn affidavit, documents and objection and provision of law, this court has come conclusion that the plaintiff is not made out prima facie case, no balance of convenience lies in his favour. Thus it cannot be hold in the mini trial that defendants are causing interference in the plaintiff's peaceful possession and enjoyment of the suit property. Therefore, it requires full fledged trial. If TI order is granted till disposal of the suit it cause more loss and harm to the defendants and not to the plaintiff. Therefore on the above said reasons and to meet the ends of justice this court answers the points No.1 to 3 in the negative.

25. **Point No 4:** Aforesaid reasons this court proceeds to pass the following

**ORDER**

I.A.No.I filed by the plaintiff U/o XXXIX  
Rule 1 & 2 r/w section 151 of CPC is hereby  
rejected.

No order as to cost.

(Dictated to the stenographer on the computer, corrected, signed and then pronounced by me in the open court on this the 24<sup>th</sup> day of January 2024)

Sd/-

**Civil Judge, Devadurga.**