

KARC400024272019



Presented on : 09-12-2019

Registered on : 09-12-2019

Decided on : 22-09-2022

Duration : 03 years, 10 months, 07 days

IN THE COURT OF THE CIVIL JUDGE AND JMFC AT MANVI

PRESENT: Sri. ASHAPPA

B.com, LL.M.,

Civil Judge & JMFC Manvi .

O.S.No.108/2019

Dated this the 22nd day of September, 2022

Plaintiffs:

1. Yallappa S/o Durgappa and others

(By Sri.Lokesh Adv.)

// Versus //

Defendants:

1. Deputy Commissioner, Raichur and others

(By Sri.A.G.P Adv.)

-I.A.No.I-

Applicant/plaintiff:

1. Yallappa S/o Durgappa and others

-Versus-

Opponent/ Defendants:

1. Deputy Commissioner Raichur and others

ORDERS ON I.A.No.II

1. This is an I.A under Order 39 Rule 1 & 2 of C.P.C seeking for an ad-interim order of Temporary Injunction to restrain the defendants and any persons acting on their behalf from interfering with plaintiff's possession over suit schedule properties till pending disposal of the suit.

2. In the supporting affidavit, plaintiff No.1 stated that himself and other plaintiffs are the owners and possessors of land Sy.No. 682 measuring 11 acres 01 guntas out of which to the plaintiff No. 1 is owner and possessor to the extent of 2 acres 08 guntas, plaintiff No. 2 is owner and possessor to the extent of 00 acres 16 guntas, plaintiff No. 3 is owner and possessor to the extent of 6 acres 16 guntas, and plaintiff No. 4 is owner and possessor to the extent of 2 acres 01 guntas, all the lands adjacent to each other and having common boundaries East: Land Sy.No. 681, West: Kavithal to Anwari road, North: Land Sy.No.80 and South: Public road.

3. It is stated the plaintiffs acquired the said lands from their ancestors. The plaintiffs for their legal necessities have sold to the extent of 1 acres 28 guntas in the said land Sy.No.682 to one Bheemsencharya S/o Narasimhchary. After purchasing the said land ,

the said Bheemasenacharya converted into non agriculture purpose as per order of the deputy commissioner Raichur and layout has been approved. It is stated in the said NA land already the houses were constructed.

4. It is further stated that the plaintiffs have raised agriculture loans on the suit lands from the Banks. Hence the plaintiffs are absolute owners and possessors of suit lands respectively.

5. It is stated the defendants without any right or title over suit property have trespassed and installed stones contending that the suit land belongs to forest department. The plaintiffs requested the defendants and advised them that, the suit land is their land and acquired from their ancestral but the defendants not ready to heed the request of the plaintiffs. Hence, it resulted in filing of the suit and present application.

6. The defendants filed objections and denied entire claims and allegations of plaintiff. They denied that, the plaintiffs are owners and possessors of suit land. They further stated that there is no any such property is existence in the ownership and possession of plaintiffs. The suit property belongs to the forest department. The plaintiffs not made any prima facie case to grant temporary

injunction. Under such circumstances the suit of the plaintiffs itself is not maintainable in eye of law. On these and other grounds prayed for dismissal of application.

7. On the basis of the said pleadings, the following points arise for consideration:

P O I N T S

1. Whether the plaintiffs have made out prima facie case in their favour?
2. Whether the balance of convenience lies in favour of the plaintiffs?
3. Whether plaintiffs will be put to hardship and injury if order of Temporary injunction is not granted?
4. What Order?

8. Heard the arguments both side. Perused the entire materials placed on record.

9. My findings on the above points are as below:

Point No.1 :: In the Affirmative

Point No.2 :: In the Affirmative

Point No.3 :: In the Affirmative

Point No.4 :: As per final order,

for the following:

REASONS

10. **Point No.1:** This is a suit for Permanent and Mandatory Injunction seeking to restrain the defendants from interfering with plaintiff possession over suit schedule property and also to remove the stones put in the suit property. The rival contentions of both parties are already narrated above. They are not reiterated in order to avoid repetition.

11. Herein the case, the plaintiffs come up with present I.A. under discussion praying to grant temporary injunction against the defendants restraining them from interfering in the possession of plaintiffs over suit lands. The plaintiffs approached this court for the relief of temporary injunction under the present I.A, they have to make out three principles for granting the temporary injunction i.e., plaintiffs have to make out a prima-facie case to go in to trial, balance of convenience lies in their favour and they have establish that they are going to be irreparable loss or injury which cannot be compensated in terms of money if injunction is not granted in their favour.

12. As stated, the plaintiffs satisfy the court that the dispute raised by them in the present case is bonafide dispute which needs to be

investigation and decision on merits by this court. The plaintiffs must also establish that there is probability of being entitle the relief claimed by them in this suit. The burden is on the plaintiffs to prove and establish that there is a prima-facie case in their favour.

13. Keeping above principles in the mind I have perused the material on records produced by the plaintiffs in support of their claim. Plaintiffs in order to prima facie substantiate their possession have produced the Akarband, RTC's, NA order copy, layout approved copy, Encumbrance certificates, form No. 10, complaint given to Tahasildar and Panchanama conducted by the revenue authorities. The Akar band shows the land Sy.No.682 measuring 12 acres 39 guntas is patta land and not belongs to the Government. The records of rights of land Sy.No.682/A for the year 2000-2001 2012-2013 measuring 6 acres 20 guntas shows that the name of one Nagappa S/o Shivappa appearing as owner and possessor. Column No.10 said RTC's further reveals that, he was acquired the said land as per MR.No. 454/1984-85 as a patta land. Further the other records of rights of land Sy.No. 682/1 measuring 11 acres 11 guntas wherein they also very much clear that the names plaintiffs appearing owners and possessors as per their respective. Further, the

copy of NA order shows that the deputy commissioner verifying the records of land Sy.No. 682 has passed the order by converting the land Sy.No.682/2 measuring 1 acres 28 guntas for non agriculture purpose and accordingly layout has been approved by the concerned authorities. The contents of plaint averments are reveals that there is houses were constructed in the NA land. Encumbrances certificates are also reveals that the plaintiffs have obtained loans by mortgaging the suit lands in various banks. Further the copy of Panchanama also very much clear that on the application of plaintiffs the revenue authorities visited the spot and conducted Panchanama. The Panchanama produced herewith is reveals, the possession of plaintiffs over suit land as per their respective share. The documents produced by the plaintiffs prima facie show that plaintiffs are in peaceful possession enjoyment over the suit schedule property as per their respective portions shown in the plaint. To that extent the defendants denying the plaintiffs possession over the suit property cannot be appreciated at this stage. The defendants produced some documents in support of their defence. But the documents in respect of land Sy.No. 27 shows the land Sy.No. 27 of Kavithal village is notified forest land. It is not the defence of the defendants that the plaintiffs illegally encroached the forest land Sy.No. 27 and making

cultivation in forest land. The map filed by the defendants showing the boundary land Sy.No. 27 entirely different from the land Sy.No. 682. Hence, at this stage the documents on record prima facie clearly goes to show that the plaintiffs are in the possession of land Sy.No. 682 not in land Sy.No. 27.

14. The main allegation of the defendants is that the plaintiffs never in the possession of suit property and the boundaries shown in the plaint in respect of suit land and actual boundaries are entirely different. It is further their defence that, the land Sy.No. 682 also notified forest land. But no documents are produced in support of said contention. This contention can not looked into at this stage as it required trial. The defendants denied the ownership and possession of plaintiffs over suit property but the revenue documents shows the plaintiffs are in the possession of suit property. The revenue records are the best proof of possession of plaintiffs over suit property. Hence, on the basis of said documents, as of now, it cannot be held that the plaintiffs are not in the possession of suit property. Further, it is also not the case of defendants that the plaintiff encroached the forest land and created false documents in their favour. In absence of accurate documents evidencing that the plaintiffs created the

documents cannot be appreciated at this stage. Even the plaintiffs were illegal possession of suit land, the defendants have to vacate them by due process of law. They have to initiate action as per law. Of all a sudden without affording any opportunity to the plaintiffs, the defendants cannot deny the right of plaintiffs in the suit property and can not made interference in the possession of plaintiff over suit property. Therefore, as of now the plaintiffs have shown that they are in possession over the suit property as contended by them. Further, in view of denial of plaintiff's right, it appears that plaintiffs have got a good case to go in for trial. Thus, plaintiffs have been successfully in showing prima facie case in their favour. **Accordingly, Point No.1 is answered in the Affirmative.**

15. **Points No.2 & 3:** As these two points are interconnected, they are taken up for discussion together in order to avoid repetition of facts and circumstances of the case.

16. As held above, plaintiffs have shown the prima facie case in their favour. Hence, if any order of injunction is not granted, the defendants definitely vacated the plaintiffs from suit property taking law into their hand, then the plaintiffs will be put to great hardship

and injury. Further, more mischief will be caused to plaintiffs. No hardship or injury will be caused to defendants if the injunction order is granted. Thus, the plaintiff has shows even other two ingredients in their favour. **Accordingly, Point No.2 and 3 are answered in the Affirmative .**

17. **Point No.4:** In view of the above said discussions and reasoning, the following:-

ORDER

The I.A.No.II filed by the plaintiffs U/o. 39 rule 1 and 2 of C.P.C is here by allowed.

The defendants, their agents, servants or anybody acting on their behalf are temporarily restrained from interfering with the plaintiff's peaceful possession over suit schedule property.

Parties to bear their own cost.

(Dictated to the Stenographer, transcribed by him and after corrections, signed and pronounced by me in open Court on this the 22nd day of September, 2022.)

(Sri.ASHAPPA)
Civil Judge and JMFC
Manvi.