

IN THE COURT OF THE PRL. CIVIL JUDGE
CHANNAPATNA.

Present: Miss. B.T.Annapoorneshwari,
B.A.LL.B.,
Prl. Civil Judge and JMFC.,
Channapatna.

Dated this the 13th day of March, 2018.

O.S.No.153/17

Plaintiff/s:

1. Puttegowda
Aged about 48 years,
S/o Lingegowda @ Peechegowda,
R/o Mangadalli village,
V.Pura village,
Channapatna Taluk,
Ramanagara District.
2. Manohara
Aged about 32 years,
S/o Mangadahalli village,
R/o V.Pura Hobali,
Channapatna Taluk,
Ramanagara District.

(By Sri.M.Mallikarjuna, Adv.)

V/s.

Defendant/s :

Smt.Prema
Aged about 40 years,
W/o Basavaraju,
R/o Mangadahalli village,
Channapatna Taluk,
Ramanagara District.

(By Sri.K.T.Thimmegowda, Adv.)

PARTIES TO I.A.NO.I

Applicants: : Puttegowda & Anr.

V/S

Respondent : Smt.Prema

ORDERS ON I.A.NO.I

The plaintiffs have filed this application u/O.39 R.1 & 2 r/w.Sec.151 of CPC seeking temporary injunction against the defendant, her agents, etc., restraining them from interfering with the schedule property in any manner till disposal of this suit.

2. In support of the application the first plaintiff has filed affidavit stating that himself and the second plaintiff are the grandsons of late Hombegowda and Motegowda respectively. The said Hombegowda @ Karigowda and Motegowda are the brothers. The schedule properties are the self acquired property of his grandfather Hombegowda, who purchased them through an auction purchase in the year 1958. The Assistant Commissioner pursuant to auction issued an order in order No:182/1959-60 dated 12.8.1959. Subsequently the Deputy Commissioner

issued grant certificate No:Dis.LND 450/1958-59 vide order LND 193/1958-59 dated 10.10.1959. The Tahasildhar of Channapatna Taluk issued grant certificate i.e. Form No.E on 5.9.1960. The grantee i.e. the grandfather of the plaintiff had a brother namely Motegowda and the sons of these two brothers got divided the suit property in the year 1970-71. Out of total 4.00 acres son of Hombegowda got 2.00 acres and Motegowda got 2.00 acres each made in the name of Hombegowda @ Karigowda and Motegowda from the year 1971-1985. The Hombegowda @ Karigowda and his brother Motegowda died in the year 1956 and 1979 respectively. After their death the plaintiffs being their legal representatives have continued in possession and enjoyment over the suit property i.e. the first plaintiff continued in possession of 'A' schedule and second plaintiff in 'B' schedule property. The defendant without having any manner of interest, title or possession over the suit property is trying to meddle and interfere with their peaceful possession and enjoyment over the suit properties and is hurriedly trying to dispossess them from the suit property.

Hence they have prayed for allowing this application.

3. The defendant has filed her written statement and adopted the same as objections to the application. The defendant has denied the averments of the plaint as false and submitted that one Karigowda S/o Kabbalegowda and Dollegowda S/o Kabbalegowda, Shambugowda are the grantees in Sy.No:234 of Mangadahalli village. Documents of the above persons are not in clear, after sale in favour of Eregowda S/o Maregowda of Maregowdanadoddi village on 2.6.1974. After sale the katha effected and now the RTC stands in the name of Hombalamma W/o Eregowda. Plaintiffs are intending to grab this property. The said property is in possession of Hombalamma and her children and its boundary is East: by gomala cultivated by Shambugowda father-in-law of defendant, West: by Halla, North by Oni and Katte and south by Halla. The land in possession of defendant i.e. Shambugowda bounded by East: Gudde/Betta, West:Hombalamma W/o Eregowda, North by Siddaramu & South by Oni. The above persons are in possession and enjoyment of

properties measuring 3 acres and 1 acre. The plaintiffs have mentioned the wrong boundaries with intent to dispossess the above persons. The plaintiffs have intentionally not filed this suit against the above persons with proper boundary intending to obtain decree against third person and invoke the decree against the persons who are in possession of the property. Hence, she has prayed for dismissal of the suit.

4. Heard and perused the materials on record.
5. The following points arise for my determination;
 1. Whether the plaint is fit to be rejected u/O.7 R.11(d) of CPC?
 2. Whether the plaintiffs have made out a prima-facie case in their favour?
 3. Whether the balance of convenience lies in favour of the plaintiffs?
 4. Whether the irreparable loss or injury will be caused to the plaintiffs if temporary injunction is not granted?
 5. What order?

6. My findings on the above points are as under;

- 1) In the affirmative,
- 2) In the negative,
- 3) In the negative,
- 4) In the negative,
- 5) As per final order, for the following;

REASONS

7. **Point 1:-** The case of the plaintiffs is that the grandfather of the first plaintiff namely Hombegowda is the original grantee of 4 acres in Sy.No:234 and he had a brother namely Motegowda and their sons have divided the said property and after their death the plaintiffs are in possession and enjoyment of the suit schedule 'A' and 'B' properties respectively. The defendant has denied the case of the plaintiffs and contended that the plaintiffs have shown the false boundary and have filed this suit against the wrong person to obtain decree and to enforce the same against the persons who are in possession of the properties.

8. The plaintiff has produced the true copy of the grant certified issued by the Tahasildhar, copy of the sketch, true copies of RTC of the suit lands from the year 1975-85, copy of the application, true copy of the mahazar and report of the Village Accountant, true copy of report and mahazar issued by Revenue Inspector and true copy of report of surveyor.
9. The defendant has produced Xerox copy of Sale deed dated 23.5.1974, endorsements issued by the Tahasildhar, RTCs pertaining to Sy.Nos.234/P1, 234, 339, 256/1, 252, 234/p2, 234/p3, 324/2, 339, copy of M.R., copy of village map of Mangadalli, certified copy of death certificate of Hombegowda @ Karigowda and certified copy of Judgement passed in O.S.No:150/12.
10. I have gone through the documents. The plaintiffs have not produced any document i.e. suit documents. One true copy of Grant certificate dated 5.9.1960 is produced which is in the name of Hombegowda @ Karigowda but no documents are produced to show that after his death the said property is devolved on his heirs and if so then on what basis whether by

way of partition gift or what and if at all so then no documents are produced to show the present documents standing in the names of the plaintiffs. To show possession of the plaintiffs also no single document is produced. The RTCs which are produced are pertaining to one Hombegowda S/o Ningegowda which are pertaining to way back in the year 1976 to 1980-81 but no recent documents are produced either to show the possession of the plaintiffs or to show the title of the plaintiffs. When the suit document itself is not produced, then the suit itself is not maintainable under law. Without the suit document the plaintiffs have filed this suit which is barred under law.

11. When the situation being this, now it is proper to go through the law in this regard. Section 132 of Karnataka Land Revenue Act, 1964, reads as under;

“132. Certified copies of records to be annexed to plaint or application: (1) The plaintiff or applicant in every suit or application, as hereinafter defined relating to land situated in any area to which this Chapter applies, shall annex to the plaint or application, a certified copy of any entry in the Record of Rights or Register of Mutations relevant to such land. (2) If the

plaintiff or applicant fails so to do for any cause which the court deems sufficient, he shall produce such certified copy within a reasonable time to be fixed by the court and if such certified copy is not so annexed or produced, the plaint or application shall be rejected, but the rejection thereof shall not of its own force preclude the presentation of a fresh plaint in respect of the same cause of action or of a fresh application in respect of the same subject matter with a certified copy annexed.”

12. The above said provision of law clearly states that any person filing the suit at least should annex a certified copy of any entry in the ROR or Register of Mutations relevant to such land i.e. suit property standing in his name. In this case the plaintiffs have not produced a single document to show his title or possession over the suit property and hence the plaint is barred under law.
13. If at all the plaintiffs have any documents with regard to entire suit property then they might have produced it before the court and hence looking to the facts and circumstances of the case and upon perusal of the documents this court is of the view that the plaintiffs have no such document at their hands and hence they

have not produced the same before this court.

14. The O.VII R.11(d) is the proviso states that where the suit appears from the statement in the plaint to be barred by any law, then the plaint is fit to be rejected. As per the discussion made above, the plaintiffs have not produced any document to show their title or possession over the claimed suit property and has not complied Section 132 of Karnataka Land Revenue Act, hence the plaint is fit to be rejected u/O.VII R.11(d) of CPC. Accordingly, I answer this point in the affirmative.
15. **Point Nos.2 to 4:-** The suit itself is not maintainable as the plaintiffs have not produced the suit document and hence the plaintiffs have not made out prima-facie case, balance of convenience in their favour and if T.I. is not granted there no loss or hardship will be caused to the plaintiffs when compared to that of defendant. Accordingly, I answer these points in the negative.
16. **Point No.5:-** As per discussion made above, I proceed to pass the following;

ORDER

The plaint is rejected under Order VII Rule 11(d) of CPC.

Consequently, I.A.No.I filed under Order 39 R.1 & 2 r/w.Sec.151 of CPC is dismissed.

No order as to cost.

Draw decree accordingly.

(Typed by me directly on the laptop, later computerized by the Stenographer, corrected, signed and pronounced by me on this the **13th** day of **March 2018**.)

Prl. Civil Judge & JMFC,
Channapatna.

(Order pronounced vide separate
order in the open court)

ORDER

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