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**IN THE COURT OF PRL CIVIL JUDGE AND JMFC,
KANAKAPURA**

Present:

Sri. Suresh Annappa Savadi, B.A., LLB., (Spl.)

Prl. Civil Judge & JMFC, Kanakapura

O.S.No.222/2014

Dated this the 18th day of July 2023

PLAINTIFF:

Smt. Kempamma

-Versus-

DEFENDANTS:

Sri. Kunnappa @ Kunnegowda

PARTIES ON I.A.VI

APPLICANT:Plaintiff

Smt. Kempamma

-Versus-

OPPONENT:Defendant

Sri. Kunnappa @ Kunnegowda

ORDER ON I.A.No.VI

The plaintiff filed this application under Order XXXIX Rule 1 and 2 R/w Sec.151 of CPC to restrain the

defendant from interfering the peaceful possession and enjoyment of the suit schedule property.

2. The plaintiff in the affidavit contended that, the applicant is the GPA Holder of the plaintiff. The plaintiff is the absolute owner and in peaceful possession and enjoyment of the suit schedule property. The suit schedule property was ancestral property of plaintiff's father he was in peaceful possession and enjoyment of the same by getting Katha into his name. After his death plaintiff has inherited the suit schedule property, accordingly katha has been changed into her name vide mutation. Such being the case the defendants without their being any right, title or interest nor possession over any portion of the suit schedule property. The defendant since one week trying to interfering with plaintiff peaceful possession and enjoyment of the suit schedule property by dispossessing the plaintiff from the same. He is coming near the suit schedule property along with his henchmen and he has been making very serious and hectic attempts to dispossess the plaintiff from her lawful possession. Plaintiff has been resisting the defendant, and also approached the police. But the police advised the plaintiff that matter is civil in nature and she may approach the competent court. The defendant is a very

powerful and influential person both politically and financially. Plaintiff is a helpless person and cannot resist or restrain the defendant. If the defendant succeeds in dispossessing the plaintiff from the suit property then plaintiff would suffer irreparable injury. It is therefore just and necessary to restrain the defendant from interfering the possession of the property of the plaintiff. Hence, prays to allow the application.

3. On the other hand, the defendants appeared through counsel and filed the written statement and also filed memo to consider the written statement as objection to I.A.No.VI. In the written statement the defendant contended that one Sri.Balegowda, Bhadragirigowda and Veerabhadregowd sons of Doddakunnegowda have jointly purchased land bearing Sy.No.25 measuring 0.18 guntas and Sy.No.72/3 measuring 0.29 guntas under a registered sale deed dated 08.07.1962 from its previous vendors Sri.Choodalingegowda @ Shivanna and his minor children by name Sri.Rama, Sri.Choodaiah, Sri.Shivanna and Sri.Ramachandra for valuable sale consideration. After such purchase the aforesaid three brothers were jointly cultivated and enjoying both the lands. This defendant submits that in the year 1965 the three sons of Doddakunnegowda were partitioned orally in such oral

partition the land bearing Sy.No.65 measuring 18 guntas fallen to the share of the other two brothers Balegowda Bhadragirigowda since it is a valuable wetland and similarly the land bearing Sy. No.72/3 measuring 29 guntas allotted to the share of father of this defendant. Since it is a dry land growing crops depending on rain. The sons of Doddakunnegowda are illiterate, innocents and ignorants they could not get the katha transferred in their names. The father of this defendant expired in the year 1981 and after his death this defendant and his brothers succeeded the suit schedule property through inheritance and they are in physical and enjoyment over the schedule property without anybodies interference or hindrance taking advantage of non-transfer of katha and other revenue documents in the name of father of this defendant nor his uncle the plaintiff intentionally with dishonest intention to knock of the property created false mutation by colluding with revenue officials and she is not at all in possession in any portion of the schedule property only to harass the defendant filed this application. Hence, with these set of contentions prays to reject the application.

4. Heard the both sides.

5. The following points arises for my consideration;

1. Whether the plaintiff has made out the prima-facie case ?
2. Whether the plaintiff shows that the balance of convenience lies in her favour?
3. Whether the plaintiff show that, if the application is not allowed irreparable injury will caused to the plaintiff ?
4. What order ?

6. My answered to the aforesaid points are as under;

1. Point No.1 to 3 : In the Negative
2. Point No.4 : As per final order for the following

REASONS

7. **POINT NO.1 to 3** : The plaintiff filed this suit for injunction against the defendant. Further the plaintiff contended that, the schedule property was the ancestral property of the plaintiff's father-in-law Kada and he was in possession enjoyment of the same. After his death the plaintiff has inherited the schedule property and the katha changed into her name as per mutation. Further

contented that the defendant without there being any right, title over the schedule property trying to interfering the possession of the plaintiff. The defendant taken several contentions. At the time of hearing the plaintiff counsel submitted that the defendant is illegally entering into the suit property and trying to remove the trees and also he has removed the trees and to that extent the plaintiff furnished two photo copies. As per the records though the plaintiff filed I.A.No.II under order 39 Rule 1 and 2 along with suit but the said application was pending till this day after lapse of 9 years filed I.A.No.V to permit to hear on I.A.No.I and in the said affidavit contended that the defendant trying to cut and remove the standing trees but the said reasons but the same has not been mentioned in the I.A.No.VI. Hence, considering the entire material this court is of the opinion that plaintiff has not approached this court with clean hands and more ever the plaintiff failed to show the prima-facie case in respect of this application and the balance of convenience does not lie in favour of plaintiff. Hence, this court answered the **Point No.1 to 3 in the Negative.**

8. **POINT NO.4:** For the reasons stated in the Point No.1 to 3, this court proceed to pass the following;

ORDER

The I.A.No.VI filed by the
plaintiff U/O XXXIX Rule 1 & 2 r/w
Sec. 151 of CPC is hereby rejected.

(Dictated to the Steno, transcribed by her, corrected and then pronounced by me in
the open Court on this the **18th day of July 2023**)

Sd/-

(SURESH ANNAPPA SAVADI)

Prl. Civil Judge & JMFC.,
Kanakapura.