

KARN320018172019



**IN THE COURT OF THE I ADDL.CIVIL JUDGE & J.M.F.C.,**  
**AT KANAKAPURA.**

Present: Smt. Savita Rudragouda  
Chikkanagoudar., *B.A., LL.B.*,  
I Addl. Civil Judge & JMFC.,  
Kanakapura.

**Dated: This 09<sup>th</sup> day of October 2023**

**O.S. No. 301/2019**

**Plaintiff/s**

- : 1. Smt. Chikkolamma  
W/o late Munimadegowda  
Aged about 74 years,
2. Sri. Shivamarigowda  
S/o late Munimadegowda  
Aged about 49 years,
3. Sri. Nandish  
S/o late Munimadegowda  
Aged about 47 years,

All are R/at:

Thagadegowdana Doddi Village,  
Uyyamballi Hobli,  
Kanakapura Taluk,  
Ramanagara District.

**(By Sri. Mahendra.N, Adv.)**

-V/S-

**Defendant/s:** : 1. Smt. Sannamma  
W/o late Muthegowda  
Aged about 65 years,  
  
2. Sri. Sannegowda  
S/o late Muthegowda  
Aged about 50 years,

Both are R/at:  
Thagadegowdana Doddi Village,  
Uyyamballi Hobli,  
Kanakapura Taluk,  
Ramanagara District.

(By Sri.K.V.Mahadevaiah, Adv.)

**I.A.No.I**

**Applicant/s** : Smt. Chikkolamma and Others  
**Plaintiff/s**  
  
//Vs.//

**Opponent/s:** Smt. Sannamma and Another  
**Defendant/s**

**ORDER ON I.A. No.I UNDER ORDER XXXIX RULE**  
**1 & 2 R/W Sec. 151 OF CPC**

The plaintiffs have filed I.A. No.I U/o XXXIX Rule 1 and 2 R/w 151 of CPC seeking temporary injunction against the defendants restraining the defendants their agents,

representatives, labourers, legal heirs etc., from interfering or obstructing the possession of the plaintiffs over the schedule property pending disposal of the suit in the interest of justice and equity.

2. In the affidavit accompanying the application sworn by plaintiff No.3, it is stated that, they are the absolute owners in possession and enjoyment of the property bearing Khaneshmari No.41/1 and 41/2 (old No.48), measuring East to West 105 feet and North to South 26 feet (30 x 7.5 yard), situated at Thagadegowdana Doddi Village, Kanakapura Taluk. According to plaintiffs, the said property was purchased by their father Sri. Munimadegowda son of Sri.Chikkegowda from one Sri.Thagadegowda through registered sale deed dated 25.05.1982 and from the date of purchase Sri. Munimadegowda and his family members are in possession and enjoyment of said property. Having got the katha transferred in his name. However, on 10.09.1996 the Sri.Munimadegowda died, by leaving behind his wife and children who are the plaintiffs in this case. Thereafter, his elder son namely Sri.Shivamarigowda is paying the tax to the concerned Grama Panchayath with respect to suit schedule property and as on the date of the suit the katha of the schedule property is standing in the name of the Sri. Munimadegowda and is in possession of

plaintiffs. After the purchase of the suit schedule property plaintiffs have constructed the house, the said house and also got the electricity connection.

3. The plaintiffs also state that, defendants without having any right, title possession by creating concocted story are making efforts to interfere in the possession of the plaintiffs and on 29.07.2019 at about 04.00 P.M. they entered the suit property and quarreled, regarding which the plaintiffs went to file the complaint to the jurisdictional Police and on their advise the plaintiff filed present suit. They also contend that if temporary injunction is granted no prejudice will be caused to defendants, on the other hand if refused plaintiffs will be put to irreparable injury. Hence, prays to allow the application

4. On the other hand, in their written statement to be treated as objection to I.A. No.I, defendants contend that, they are the absolute owners in lawful possession and enjoyment of the suit property, having katha of the said property in their name jointly. According to defendants, the suit property bearing Khaneshumari No.238/41/1, 41/2 situated at Thagadegowdana Doddi Village, I-Gollahalli Grama Panchayath is their ancestral property and earlier belonged to grandfather of the second defendant namely Sri.Daggalligowda and during his

lifetime he was in possession of the said property and after his death his only son Sri.Muthegowda i.e. husband and father of the defendants with his family succeeded the suit schedule property and got katha transferred into name of Sri.Muthegowda. After the death of said Sri.Muthegowda defendants being a wife and son of said Sri.Muthegowda have succeeded the suit property and are in possession and enjoyment of the said property without any interference. But the husband and father of the plaintiffs namely Sri.Munimadegowda by colluding with Grama Panchayath authorities, without having any right, title, interest nor possession over the suit schedule property had managed to enter the name of the unknown person namely Sri.Thagadegowda in the demand register on the name of the husband and father of the defendants.

5. The defendants further contend that, the said Sri.Thagadegowda is totally a stranger to the suit schedule property and even the name of father of said Sri.Thagadegowda is not written in the demand register and subsequently the husband and father of the plaintiffs namely Sri.Munimadegowda taking advantage of illegal and impugned entry name in the said Sri.Thagadegowda by colluding with concerned authorities managed to enter his name in the demand register of the suit schedule property by producing the alleged sale deed of

Khaneshmari No.48. Even said the alleged sale deed executed in the name of said Sri.Munimadegowda does not belong to Khaneshmari No.41/1 and 41/2. On the other hand, the said sale deed registered in the name of Sri.Munimadegowda belongs to Khaneshmari No.48 of I-Gollahalli Village and said property originally belonged to one Sri.Honnashetty son of Sri. Muddashetty and the katha of the same stood in his name at the time of execution of alleged sale deed dated 25.05.1982. Even the alleged vendor of the said Sri.Munimadegowda i.e. Sri. Thagadegowda had no right, title, interest, possession over the said property bearing Khaneshmari No.48 to executed the said sale deed in favour of Sri.Munimadegowda.

6. The defendants also contend that, on the basis of alleged sale deed of Khaneshmari No.48 the husband and father of the plaintiffs by colluding with concerned authorities got his name entered in the demand register and on the basis of said impugned entry standing in his name, the plaintiffs are claiming right over the suit schedule property. However, immediately after the defendants came to know about the said illegal entry in the name of the plaintiffs father, they filed an appeal before Executive Officer of Taluk Panchayath of Kanakapura in the case of T.P.No.09/2016-17 and in the said appeal after verifying the documents produced by the both parties and also verifying spot

mahazar the concerned P.D.O. submitted the mahazar regarding the possession of suit schedule property and accordingly the Executive Officer of Kanakapura Taluk, set aside interim order made in the name of Sri.Munimadegowda in the demand register of the suit schedule property and ordered to transfer the katha of the suit schedule property in the name of defendants vide order dated 25.06.2019. Hence, prays to dismiss the application.

7. Heard and perused the materials placed on record.

8. The following points arise for my consideration on I.A.No. I:

*1) Whether the plaintiffs have made out a prima-facie case in their favour ?*

*2) Whether the plaintiffs prove that the balance of convenience lies in their favour?*

*3) Whether the plaintiffs prove that they will be put to irreparable loss and injury if temporary injunction is not granted as sought for?*

*4) What Order?*

9. My findings on the above Points are as under;

**Point No.1 : In the Negative**

**Point No.2 : In the Negative**

**Point No.3 : In the Negative**

**Point No.4 : As per final order**

**for the following:-**

### **REASONS**

10. **Point No.1:** In order to get the relief of temporary injunction the plaintiff first and foremost has to show that he has a prima-facie case in his favour. As already discussed above, the plaintiffs allege that they are the absolute owners in possession and enjoyment of the property bearing Khaneshmari No.41/1 and 41/2 (Old No.48) measuring East to West 105 feet and North to Sought 26 feet (30 x 7.5 yard) situated at Thagadegowdana Doddi Village, and the said propriety was allegedly purchased by the father of the plaintiffs Sri.Munimadegowda son of Sri.Chikkegowda from one Sri.Thagadegowda, through registered sale deed dated 25.05.1982 and from the date of purchase said Sri.Munimadegowda is in possession of said property with his family i.e. plaintiffs, having got katha transferred in his name and by paying kandayam. The plaintiffs further contended that,

after the purchase of the suit schedule property they have constructed house and also got electricity connection but the defendants without having any right, title or possession by creating concocted story are making attempts to interfere in the possession of plaintiffs and specifically, on 29.07.2019 defendants at about 4.00 PM interfered in the plaintiffs possession in the suit property and made a galata, with respect to which plaintiffs went to lodge police complaint but as the dispute was Civil in nature police referred them to approach Civil Court.

11. To establish alleged contention, the plaintiffs have produced the alleged sale deed dated 25.05.1982 executed in favour of Sri.Munimadegowda i.e. husband and father of plaintiffs by one Sri.Thagadegowda son of Sri.Ankegowda with respect to Khaneshmari No.48 and the Encumbrance Certificate of Khaneshmari No.48 as per entries made in it said property has been transferred to Sri.Munimadegowda from one Sri.Thagadegowda as per sale deed. They have also produced the demand register wherein as per the order of Sub-registrar dated 25.05.1982 name of the plaintiff's father is entered in the place of name of Sri.Muthegowda S/o Sri.Daggalligowda i.e. defendant's father in Khanesumari number 41/1, 41/2 and as

per the demand register the name of plaintiffs father is appearing with respect to property in Khanesumari No.41/1 and even the tax paid receipts of property in Khaneshmari No.41/1 and 41/2 are produced by the plaintiffs and also produced copy of complaint given to S.P. by plaintiff No.3 against the defendants. On perusal of said documents prima-facie it appears that encumbrance certificate and alleged sale deed are with respect to Khaneshmari No.48 in the name of plaintiffs father and demand register extracts are with respect to Khaneshmari No.41/1 and 41/2 are in the name of plaintiffs father. But the main contention of the defendants itself is that Khaneshmari No.48, 41/1 and 41/2 are different properties and not one and the same. According to defendants property in Khaneshmari No.48 and 41/1, 41/2 are different properties and sale deed which is allegedly executed in favour of father of plaintiffs by one Sri. Thagadegowda is with respect to property in Khaneshmari No.48, which belonged to one Sri. Honnashetty earlier and not even to vendor of plaintiffs father, as such even vendor of plaintiffs father had no right to execute sale deed. Further it is contended that merely based on entries made in the name of Sri. Thagadegowda, Khatas of properties in Khaneshmari number 41/1 and 41/2 are changed into the name of plaintiffs father without any bases and when same was challenged before executive officer Kanakapura, he directed to

correct the same and got joint names of defendants entered vide order dated 25-06-2019 after verifying the documents and mahazar submitted by PDO. To establish the same, the defendants have produced the order of the Executive Officer, Kanakapura in T.P.No.09/2016-17 on perusal of which it appears that as per the said order property in Khaneshmari No.41/1, 41/2 is directed to be entered in the name of defendants and accordingly as per the order in the demand register extracts of the year 2018-19 with respect of Khaneshamri No.41/1 and 41/2 name of defendants is entered and even as per the spot mahazar made by the P.D.O. defendants are in possession of said property and as per the report given by P.D.O. property in Sy.No.41/1 and 41/2 does not belong to Sri.Thagadegowda who is the vendor of plaintiffs father. Whether the said properties are one and the same or they are different properties cannot be decided at this. The documents produced by the plaintiffs show the name of husband and father of the plaintiffs with respect to property in Khaneshmari No.48 and 41/1, 41/2 but no where they prima-facie disclose they are the same properties as alleged by plaintiffs. Hence, I am of considered opinion that the plaintiffs have not made out prima-facie case in their favour. Hence, I answer the **Point No.1 in the Negative.**

12. **Point No.2 and 3 :-** Plaintiff even though could not prima-facie establish his case, it is also necessary to discuss other two essential ingredients to grant temporary injunction. As already discussed above defendants have produced documents as per which khata of property in Khaneshmari No.41/1 and 41/2 are again changed in the name of defendants as per the order of Executive Officer Kanakapura. Hence, under such a circumstance unless and until plaintiff proves that said entries made in the name of defendants are not correct, granting of temporary injunction would definitely cause irreparable loss and injury to defendants and the documents produced by defendants liens the balance of convenience in their favour. Hence, I am of the considered opinion that when there is a serious dispute as to property in Khameshmari No.48 and 41/1 and 41/2 being one and same, when plaintiff has not shown prima-facie case that they are same properties, granting of injunction would definitely cause irreparable loss and injury to defendants. Hence, I answer the **Point No.2 and 3 in the Negative.**

13 **Point No.4:** For the reasons discussed above I proceed to pass following:

**ORDER**

I.A. No.I under Order XXXIX Rule 1  
and 2 R/w 151 of CPC filed by the  
plaintiffs is hereby dismissed.

(Dictated to the Stenographer, transcribed and computerized by her, then corrected and pronounced by me in the Open Court on this **09<sup>th</sup> day of October, 2023**)

**Sd/-**

**I Addl. Civil Judge & JMFC.,  
Kanakapura.**