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

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

Dated: This 28th day of February 2025

O.S. No. 366/2022

Plaintiffs :

1. Smt. Rathnamma
W/o late. Dyavegowda
@ Devegowda,
Aged about 53 years,
2. Sri. Nandakumar.H.D
S/o late. Dyavegowda
@ Devegowda,
Aged about 33 years,

Both are R/at Hanumanahalli
village, Cheeluru Post,
Maralavadi Hobli,
Kanakapura Taluk,
Ramanagara District.

(By Sri. M.A., Adv.)

-V/S-

Defendant: : Smt. Dundamma
W/o Shivamadaiah,
Aged about 60 years,
R/at Hanumanahalli
village, Maralavadi Hobli,
Kanakapura Taluk,
Ramanagara District.

(By Sri. H.D.L., Advocate)

I.A No.I

Plaintiffs
Applicants : Smt. Rathnamma and another

//Vs.//

Opponent
Defendant : Smt. Dundamma

* * * * *

ORDER ON I.A. NO.I UNDER ORDER XXXIX RULE 1 & 2
R/w Sec. 151 OF CPC

The plaintiffs have filed the present application U/o XXXIX Rule 1 and 2 R/w Sec.151 of CPC seeking an order of temporary injunction to restrain the defendant, her agents, servants, assigns, representatives or anybody acting on her behalf from interfering with the plaintiffs peaceful possession and enjoyment of the suit schedule property pending disposal of this suit, in the interest of justice and equity.

2. In the affidavit accompanying the application the plaintiffs state that, they are the absolute owners in possession and enjoyment of the suit schedule property which is their ancestral property and the said property earlier belonged to one Dyavegowda who is the original propositior and he had four children namely Vishakantaiah, Dundamma i.e., defendant, Dyavegowda i.e., husband of the plaintiff No.1 and father of the plaintiff No.2 and Nanjundaiah, the katha of the suit schedule property allegedly was standing in the name of original propositus Dyavegowda and after his death his children got divided their ancestral joint family properties through panchayath partition deed dated 04.02.1992 and in such a partition the suit schedule property and other properties allotted to the share of husband of plaintiff No.1 and father of plaintiff No.2 namely Dyavegowda along with other properties and accordingly he and his brothers and sister got the katha mutated in their names vide M.R No.21/1991-92 and also got the pahani written in their separate names and after such a partition Dyavegowda i.e., husband of plaintiff No.1 and father of plaintiff No.2 continued to be in possession and enjoyment of suit schedule property which fell to his share and after his death plaintiffs being his legal heirs

continued to be joint possession and enjoyment of the suit schedule property by growing Ragi, Groundnut and other cereal crops over the same and also got the katha mutated in their joint names as per M.R No. T203/21-22 and also got the pahani in their names.

3. The plaintiffs also state that, defendant has no manner of right, title, interest or possession over the suit schedule property and she is a stranger to the suit schedule property but on 10.11.2022 at about 10.30 a.m., the defendant and her henchmen illegally trespassed over the suit schedule property and also tried to interfere with their peaceful possession and enjoyment of suit property and tried to dispossess them without any valid reason or cause. However, by the timely intervention of the well-wishers in the locality the defendant could not succeed in her illegal act and in that regard the plaintiffs made several requests to defendant not to act illegally but defendant did not care their requests and in that regard they filed complaint before jurisdictional police but unfortunately even the police did not take any action against the defendant and hence having no other option they have filed the present application for temporary injunction to restrain defendant from interfering with their peaceful possession and

enjoyment of suit property as they have a prima-facie case, balance of convenience in their favour. Hence, prays to allow the application.

4. On the other hand, the defendant has filed a memo to consider her written statement as objection to I.A. No.I and in her written statement, she admits the alleged relationship existing between plaintiffs and herself and also admits that suit schedule property originally belonged to propositus Dyavegowda. However, denying the rest of the contentions taken by the plaintiffs and she submits that, the suit schedule Sy.No.232/10 originally measured totally 30 guntas and stood in the name of original propositus late.Dyavegowda and after his death the said land was partitioned among his 4 children including the defendant who is also coparcener and in the said partition the defendant got 1/4th share in Sy. No.232/10 and out of 30 guntas, the 1st son Vishakantaiah got 1/4th share and the defendant and the 3rd son of Dyavegowada i.e., husband of the plaintiff No.1 and father of plaintiff No.2 also got 1/4th share and 4th son Nanjundaiah also got 1/4th share. Accordingly each one of them got 7.08 guntas. However, after partition late.Vishakantaiah and Nanjundaiah got the separate katha and phodi of their lands and also

constructed a house and started residing therein but the land which belongs to plaintiffs and defendant remained in the name of original propositus Dyavegowda and the plaintiffs taking advantage of the katha standing in the name of late.Dyavegowda approached the revenue officials and obtained the pouthi katha in M.R No.H29/2021-22 dated 15.02.2022 by misleading and misrepresenting the facts to revenue officials and without proper verification and spot mahazar land was phoded and mutated in their name as per M.R No.T203/2021-22 and as the katha was transferred in their name and the plaintiffs started claiming right in the entire suit schedule property including the property of the defendant and in that regard the defendant also conveyed a panchayath in the village and requested the plaintiff to give a consent for the katha of her share i.e., 7.8 guntas and elders, well-wishers and relatives also advised to the plaintiffs to give consent for the transfer of katha in the name of defendant and at that time plaintiffs agreed for the same and also got the 11E sketch by filing the application and the survey department visited the land, surveyed the possession of plaintiffs as well as the defendant then prepared the sketch and the same was signed by the plaintiffs and defendant and the survey

sketch was also issued but after getting the 11e sketch plaintiffs by giving one or the other reasons took time to handover the possession to the defendant meanwhile they filed the present suit against the defendant but the defendant is also residing in the house constructed in the suit schedule property and she is residing in the portion of the suit schedule property by taking electricity connection and also ration card, aadhar card and other documents of her are having same address and she is paying the house tax to the panchayath and therefore submits that the application filed by the plaintiffs is not maintainable and hence prays to reject the application.

5. Heard both sides and perused the materials placed on record.

6. The following points arise for my consideration;

- 1) Whether the plaintiffs have made out a prima-facie case in their favour?
- 2) Whether the plaintiffs prove that they will be put to irreparable loss and injury if temporary injunction is not granted as sought for?
- 3) Whether the plaintiffs prove that the balance of convenience lies in their favour?

4) What Order?

7. My findings on 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

8. **Point No.1:** The present I.A No.1 is filed by the plaintiffs seeking the relief of temporary injunction to restrain the defendant, her agents, servants, assigns, representatives or anybody acting on her behalf from interfering with the plaintiffs peaceful possession and enjoyment of suit schedule property i.e., agricultural land bearing Sy.No.232/17 old Sy.No.232/10 measuring 15 guntas.

9. It is the specific say of the plaintiffs that, they are the absolute owners in possession and enjoyment of the suit schedule property which is their ancestral property and earlier belonged to one Dyavegowda and after his death his four children namely Vishakantaiah, Dundamma i.e., defendant, Dyavegowda i.e., husband of the plaintiff No.1 and father of the plaintiff No.2 and Nanjundaiah allegedly got the suit schedule property survey number along with

other ancestral joint family properties divided among themselves through panchayath partition deed dated 04.02.1992 and based on the partition got the shares allotted to them mutated in their respective names as per M.R No.21/1991-92 and after such a partition the husband of plaintiff No.1 and father of plaintiff No.2 along with plaintiffs continued to be in possession and enjoyment of suit schedule property which fell to his share and after his death the plaintiffs being his legal heirs continued to be in possession and enjoyment of the suit schedule property by growing Ragi, Groundnut and other cereal crops over the same and also got the katha mutated in their joint names as per M.R No. T203/2021-22.

10. However, the defendant who has no manner of any right, title, interest nor possession who is a stranger to the suit schedule property started making interference with their peaceful possession and enjoyment of suit property and specifically on 10.11.2022 she along with her henchmen allegedly trespassed over the suit schedule property and tried to dispossess them. However, by the timely intervention of the well-wishers in the locality her illegal acts were stopped. However, the defendant has not cared the request of the plaintiffs to not to act illegally and

hence even the police complaint was filed by the plaintiffs but as the matter was civil in nature the police did not take any action and hence having no other option they have filed the present application.

11. In support of their contentions, the plaintiffs have produced several documents i.e., copy of the family tree affidavit and the copy of the RTC standing in the name of husband of the plaintiff No.1 and father of the plaintiff No.2 Dyavegowda S/o Dyavegowda with respect to suit schedule property in Sy.No.232/10 and also the RTC which after his death got mutated in the name of plaintiffs and also the M.R in which the suit property appears to have fallen to the share of husband of plaintiff No.1 and father of plaintiff No.2 and also the RTC's showing the suit property as it stood originally in the name of propositus Dyavegowda. Apart from that they have also produced the mutation register extract No.53/1993-94 in which it is mentioned that, the defendant has agreed to give her share to the husband of plaintiff No.1 and father of plaintiff No.2 Dyavegowda i.e., her share in Sy. No.232/10 measuring 7 and ½ guntas and have also produced the demand register extract and the certified copy of the demand register extract regarding the house property

constructed in Sy.No.232/10 which is standing in the name of Dyavegowda S/o Dyavegowda in katha No.38 and the original tax paid receipts, electricity bill, M.R.21/1991/1992 in which suit property is shown to have fallen to Dyavegowda i.e., plaintiff No.1's husband and plaintiff No.2's father.

12. On the other hand, the defendant in her written statement, has admitted the alleged relationship between the plaintiffs and herself and also admitted that suit schedule survey number originally stood in the name of propositus Dyavegowda. However, the only contention of the defendant is that, Sy.No.232/10 totally measured 30 guntas and stood in the name of kartha namely late.Dyavegowda and after his death his 4 children namely Vishakantaiah the defendant and husband of plaintiff No.1 and Nanjundaiah got the said property measuring 30 guntas got divided equally among them and got 1/4th share each and in such a share 7.08 guntas of land allotted to each one of them and after getting their share they got constructed house and residing therein. She further submits that, plaintiffs taking advantage of the fact that, the katha stood in the name of late.Dyavegowda approached the revenue officials and got the pouthi katha

as per M.R No. H29/2021-22 by misleading and misrepresenting the revenue officials and taking advantage of the katha in the name of Dyavegowda they started claiming right in the entire suit schedule property and in that regard she conveyed a panchayath in the village and requested the plaintiff to give consent for the transfer of katha of her share and the plaintiffs at that time agreed and gave a consent for the transfer of katha in her name and accordingly an application was filed for preparing 11e sketch and the survey department officials visited the spot and conducted the survey in the presence of plaintiffs and defendant, prepared the sketch and the said sketch and mahazar was signed by the plaintiffs and defendant and also got issued 11e sketch and the defendant received the same and requested the plaintiffs to execute the partition deed to the extent of 7.8 guntas in the said property as per 11e sketch and the plaintiffs by giving one or the other reasons postponed the same and filed the present suit . But the defendant is residing in the house constructed in the portion of the suit schedule property and she also allegedly taken electricity connection and aadhar card, ration card and other documents having the said address and she is also paying tax to the government and is

residing permanently therein in I.e property measuring 7.08 guntas in the suit schedule survey number and she got issued legal notice to them on 27.10.2022 and in support of her contention the defendant has produced the tax paid receipts standing in her name with respect to said house property in katha No.38 to the extent of half of the property and in the said tax paid receipts it is mentioned that half of the property standing in the name of Dyavegowda. Apart from tax paid receipts she has also produced the revenue sketch and the report submitted by the survey department officials in which , in the report given by the surveyor 7.8 guntas of land is shown to have been allotted to the defendant and 7.8 guntas shown to have been allotted to the plaintiff in Sy.No.232/17 which was earlier part of 232/10 and have also produced the 11e sketch signed by the plaintiffs and defendant and the legal notice issued by her to the plaintiffs.

13. When we go through the pleadings and documents and produced by both the parties it is clear that, there is no dispute between both the parties regarding the fact that, the suit schedule property belonged to their original propositus Dyavegowda and also there is no dispute between the parties that they belonged

to the same family and are related to each other. The only dispute between the parties is that, plaintiffs are claiming to have got 15 guntas of land in old Sy. No.232/10 new Sy. No.232/17 in a partition which took place to their share whereas the defendant is alleging that the suit property was equally divided and in such a partition even she got equal share of 7.08 guntas and both the parties have produced the documents. When we go through the documents produced by both the parties. The M.R No. 53/93-94 produced by plaintiffs themselves reflects that, defendant has 7 and $\frac{1}{2}$ guntas in Sy.No.232/10 and it is mentioned in the said M.R that she agreed to get it transferred in the name of husband of plaintiff No.1 and father of plaintiff NO.2 i.e., Dyavegowda and they have also produced one more MR which shows and reflects that suit schedule property fell to the share of husband of plaintiff No.1 and father of plaintiff No.2. However, the mother document based on which the said M.R entries are made is not produced. Under such a circumstances, it cannot be held that, the plaintiffs have made out a prima facie case and as they are claiming an order of temporary injunction against the defendant to restrain her from interfering in the suit schedule property who also is one of the co-

parcener in the family of plaintiffs, at this stage, the court is of the opinion that, the court cannot grant an order of temporary injunction against her when there is a serious dispute regarding the possession of the suit schedule property especially when it is a notable fact that nowhere in their pleadings plaintiffs have stated about the house which is constructed in the suit property but they have produced the demand register extract showing the construction of the house in the suit survey number and even the defendant has produced the tax paid receipt pertaining to the same katha No.38 in which her name is appearing to the extent of half of the house property along with half of the property standing in the name of Dyavegowda S/o Dyavegowda. Under such a circumstances, the court is of the opinion that, the plaintiffs have not made out a prima-facie case in their favour. Accordingly I answer the **Point No.1 in the "Negative"**.

14. **Point No.2 and 3:-** At this point of time, it is relevant to note that, defendant is contending that she has also got a 1/4th share in the suit schedule survey number to the extent of 7.08 guntas and allegedly constructed a residential house therein and is in possession and enjoyment of the said land. On the other hand, the

plaintiffs have nowhere in their pleadings have stated about the construction of residential house therein but have produced the katha extracts standing in the name of Dyavegowda and with respect to the same katha number even the defendant has produced the tax paid receipt standing in her name and as the said Dyavegowda and defendant are brother and sister and as the suit schedule property belonged to their father Dyavegowda, which after his death got divided among his four children. The court is of the considered opinion that, at this stage if an order of temporary injunction is granted against the defendant as to not to interfere then it is the defendant who will be put to irreparable loss and injury and not the plaintiffs as she is also a co-parcener and also the balance of convenience appears to be in her favour as she is claiming a right in the said property being a coparcener and being a person who allotted a share in the suit property as a coparcener. Further, as the defendant is not a stranger to the plaintiffs or to the suit property. Hence, at this stage if the order of temporary injunction is granted then it is the defendant who will be put to much hardship and injury. Accordingly I answer the **Point No.2 and 3 in the "Negative"**.

15. **Point No.4:** For the aforesaid reasons, I proceed to pass the following.

ORDER

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

No order as to costs.

(Dictated to the Stenographer directly on computer, then corrected and pronounced
by me in the Open Court on this **28th day of February 2025**)

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