

ORDER ON APPLICATION FILED U/O 26 RULE 9 OF CPC

This application filed by the applicant/defendant on 07.12.2024 for appointing the court commissioner to make local investigation of the property and mahazar of the said schedule and defendant property to solve the dispute between the parties in the interest of justice and equity.

2. In support of the applications, the defendant has filed his sworn affidavit and averred that the plaintiff has filed this suit against the defendant for permanent Injunction and such other relief in respect of Sy No.119, 159, 121 and 122 of Hosakote Village, Harohalli Hobli, Kanakapura Taluk, Ramanagara District, the content of the plaint, the schedule properties and defendants properties originally belonged to government land which is called gomala land in Sy No. 34, defendants have not interfered with the possession of the plaintiff, the plaintiff intends to obtain an ex-parte stay order, the plaintiff trying to obstruct government office duty, as per the Hon'ble High Court in WP no. 16068/2022, the plaintiff has filed present suit by suppressing true

facts. The defendants are permanent residents of Kebedoddi Village, Hoskote Village Dakale, Harohalli Hobli, old Kanakapura Taluk now Harohalli Taluk, their profession being an agricultural family, the defendant's family engaged in agricultural activities in the village, the family of the defendants are economically poor and they have no landed property their own, in this background they made an application before the revenue authorities and sought for grant of land available in the village of Hosakote under land grant rules, the competent authority vis Tahasildar recommended for grant of agricultural land bearing Sy No. 34.

The defendant further submit that, the revenue authorities granted the land bearing old Sy No. 34/6A and 34/8A total measuring 3 acres 10 guntas (New Sy No. 137 measuring 1 acre 25 guntas, New Sy No. 139 measuring 1 acre 20 guntas), situated at Hosakote Village, Harohalli Hobli, Kanakapura Taluk, infavour of the first defendant vide order in LMDSR(3)HA(HO-4)1998-99 dated 20.04.2002 the sketch was also prepared at the time issuance of the saguvali chit on dated 20.04.2002 the saguvali chit was issued on 11.06.2002, even before

grant also the defendant No.1 and 3 is in peaceful possession and cultivating the land, after the said grant katha in respect of land bearing Sy No. 137 stand in the name of the Shivaraju only.

The defendant further submit that, thereafter mutation was entered infavour of defendant No.1 vide MR No. 21/2005-06 and RTC also was entered in the name of defendant No.1. The revenue authority conducted Durasth and after such Duarasth land bearing Sy No. 34/6A was assigned and number as Sy No. 137 measuring 1 acre 25 guntas and Sy No. 34/8A measuring 1 acre 20 guntas as Sy No. 139 and katha was also effected in the name of the defendant No.1. When conducted durasha and phodi contrary to the rules provided and in the process of duarasth and phodi the revenue authority changed the location and topography of defendants land, the revenue authority indicating that the land of defendant No.1 is located in the outer border of land bearing No. 137 the defendant No.1 immediately after coming to know the mistake the defendants filed detailed statement of objection and brought notice of revenue authority that the very process of durasth and phodi conducted by the revenue authority is

arbitrary and with the malafided to hip other persons who are influential and having political connectivity with the local representative of people.

Further defendant submits that, defendant No.1 and his family members have developed the land and dug an open well, Trench bund and Krushi Honda with the Government Welfare Schedule, NMREGA, further he has grown coconut trees, ragi paddy and other crops along with development activities and also borrowed agricultural loan in the VSSN Society. The defendant No.1 is the absolute owner and in possession of the agricultural property bearing Old Sy No.34 New Sy No.137, measuring 1 acre 25 guntas patta land and 5 guntas A Karab land situated at Hoskote Village, Harohalli Hobli, Kanakapura Taluk. Thereafter mutation was entered in favour of Basavaraju as per MR No.21/2005-06 and RTC also was entered in the name of Basavaraju. The revenue authority has conducted durasth and after such Durasth land bearing sy NO. 34/7A was assigned and number Sy No. 138 measuring 1 acre 20 guntas and katha was also effected in the name of Basavaraju. Only after the death of

Basavaraju did, his wife namely Shivamma get to transfer the katha in her name as per MR H7/2013-14.

Further defendant submit that, the defendant No.2 made the representation before the authority, dated 23.10.2020, 24.10.2020 and 11.04.2020. Aggrieved by the inaction on the part of the revenue authority, for not considering an application of the defendant No.2, he has filed writ petition before the Hon'ble High court in WP No. 117139/2022 (KLR RES), after considering the petition fact and ground, on 30.09.2022 the Hon'ble court has direct the revenue authority to cause a fresh survey settlement that have taken place immediately after the grans were made infavour of the parties and pass necessary order, within period of 3 months from date of receipt of said order. The defendants submit that, when the defendants are cultivating their land, the plaintiff's are trying to disturb the defendant's possession hance they filed the suit in OS No. 211/2021 and O.S No. 212/2021 against this plaintiff before the Civil Judge and JMFC Kanakapura, the said suit also pending consideration, such being the fact, once the court get property report from the revenue authority, it is very easy to

dispose the suit, the plaintiff and defendants property are adjust property as admitted by the plaintiff in his pleading and schedule. Hence the local investigation of the property and mahazar of the said investigation is very much required dissolve the issues in the above case and for giving justice to the parties, since defendants also filed suit against the plaintiff. Hence this application. He submit that, if local investigation of the schedule property along with Sy NO.137 and 138 of defendants property conducted. If this application is allowed no prejudices would be caused to the plaintiff, as otherwise irreparable injury would be caused to him and other defendants and very use to disposes the above suit. On all these grounds applicant prays to allow the application.

3. On the other hand, the plaintiff have filed objections and contended that, the plaintiff has filed the false suit against the defendant for declaration of title and consequential relief of permanent injunction and other reliefs pertaining to the suit schedule property. The plaintiff further contended that, the defendants by hook or crook wants to ensure that the

plaintiff's lawful share in the suit schedule property is deprived and to prolong the above proceedings. The defendants also tried to obtain a restraint by the means of filing an injunction suit against the plaintiff in O.S NO. 211/2021 and O.S NO. 212/2022 which also was a futile effort by them and went in vain. The Hon'ble Court was pleased to not allow the I.A. filed by the defendants and grant an order of ad interim exparte temporary injunction against the plaintiff.

Plaintiff further submit that, the defendants have filed a writ petition before the Honb'le High Court of Karnataka being aggrieved with the revenue authorities order pertaining to the schedule property. The defendants have not at all made the plaintiff a party to the said writ petition and have obtained favourable order as to conduct a fresh survey with respect to the schedule property. The defendants have spressed the fact that a favourable order was obtained by playing fraud on the Hon'ble High Court without making plaintiff a pary although she was a necessary party to the writ petition for a fair adjudication. It is submitted that this act of the defendants is unlawful and against the principles of natural justice.

The plaintiff further submits that, being aggrieved by the afore mentioned order, one Mr. M.G. Rajkumar, the owner of adjoining property and friend of the plaintiff has filed a writ petition before the Hon'ble Court of Karnataka in W.P. No. 24713/2023 challenging the fresh survey notice issued by the relevant authorities following the order of the Hon'ble court which was fraudulently obtained by the defendants. It is pertinent to note that the survey conducted during the phodi in the year 2004-05 was duly intimated to the defendants. The defendants have also attested their signatures on the said notice back in the year 2005. However, in order to unlawfully enrich themselves, they concocted a false narrative before the Honb'le High Court and obtained favourable order without even making the plaintiff a party, let alone allowing to contest the matter. It is submitted that since all the preposterous efforts of the defendants have been hopelessly unsuccessful, they have approached this Hon'ble court by the way of above application to succeed in their endeavour for a survey to be conducted by any means whatsoever, which should be curtailed by this Hon'ble court.

The plaintiff further submits that, the plaintiff and defendants are before this Hon'ble Court through different suits seeking for the same relief of "permanent injunction" in respect of different survey numbers. However, the defendants have absolutely no consistency in their claims since boundaries of their survey numbers 137 and 138 have never interjected with boundaries of suit schedule properties, be it during the grant before 2005, or in 2005 when phodi and durasth or in 2021 when the alleged dispute arose for the defendants. The only aspect which has remained intact is, the boundaries of suit schedule property in all government records for decades together. Hence, on the above said ground plaintiff reject the application filed by the defendant.

4. Heard both counsels and perused the records.

5. On perusal of the records it is forthcoming that, the plaintiff has instituted this suit seeking for the relief of permanent injunction. In the present application the defendant seeks to appointment of Court Commissioner to determine and to investigated, measure and give report with regard to the possession of the property mentioned in the

plaintiff schedule and defendant property Sy No. 137 and 138. In the application the defendant submits schedule properties and defendant property original belongs government land which is cultivating gomala land in Sy No.34. The defendant not interfere with the possession of the plaintiff. The defendant family engaged agricultural activities in the village. The revenue authority granted land bearing old Sy No. 34/6A and 34/8A to the defendant which is reported as Sy No. 137 and Sy No.139. The defendant No.1 to 3 are in peaceful possession and cultivating the land in the Sy No.137 later on Sy No.139 katha was also affected in the name of defendant No.1.

The main contention the defendant No.1 is that, the revenue authority changed location and topography of the defendant land. The revenue authority indicate that the land of defendant No.1 is located outer border of land bearing No. 137. The defendant filed necessary application before revenue authority to rectify the same but revenue authority not consider the application. Hence the defendant approached Hon'ble High Court of Karnataka grant the order and directed the revenue authority to cause fresh survey in

terms of the grant orders. The revenue authority given report and changed the location topography of the defendant land revenue authority indicating that the defendant No.1 and 2 is located in the outer border of land bearing Sy No. 138. The defendant immediately filed application to the said report and brought notice of the revenue authority.

The defendant further submit the documents available in the record are insufficient to clarify the relief sought by the plaintiff. Hence, he prays before the court to local investigation of the properties of the both the parties is required. Hence filed present application the plaintiff vehemently argued and submits that, the application filed by the plaintiff is not maintainable. The document No. 11 it clearly shows that at the time of conducting survey in the suit schedule premises Shivaraju S/o Maregowda and Basavaraju S/o Madegowda both are present and endorsed their presence in the mahazar report. The document 11 clearly discloses the same. The plaintiff submits that, as per the order passed in Hon'ble High Court of Karnataka under W.P No. 16068/2022, the survey department

conduct the survey of the suit schedule property and submit the report according to due process of law. So on perusal of the documents produced by the both the parties it clearly discloses that the survey department conducted the survey of the suit schedule property on a two times. On the second time they followed the guidelines issued by the Hon'ble High Court of Karnataka and submitted the report. On perusal of the report and the application filed by the defendant this court thinks that there is no necessity to issue direction to the survey authority to conduct the survey of the suit schedule property once again. Hence this court proceed to pass the following;

ORDER

**The application filed by the defendant U/o
26 Rule 9 of CPC, is hereby dismissed.**

**Sd/-
II Addl. Civil Judge & JMFC.,
Kanakapura.**

(Order pronounced in open court
vide separate order)

ORDER

The application filed by the defendant U/o 26
Rule 9 of CPC, is hereby dismissed.

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

For issues:
Call on: 20.01.2026

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

