



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL
JUDGE AND J.M.F.C., AT MAGADI.**

Present: Sri. Shivakumar R., B.A.L., LL.B.,
Additional Senior Civil Judge & JMFC, Magadi.

Dated: 19th Day of December 2024

ORIGINAL SUIT NO. 14/2024

Plaintiff :- Sri. Ramegowda K. S.,
S/o. Late. Sasalaiah,
Aged about 51 years,
R/at: Kodipalya Village,
Kasaba Hobli, Magadi Taluk,
Ramanagara District.

(By **Sri. P.M.S.** Advocate)

--V/s--

Defendant :- Sri. Krishnappa N.,
S/o. Late. Nanjappa,
Aged about 65 years,
R/at: Kodipalya Village,
Kasaba Hobli, Magadi Taluk,
Ramanagara District.
And also R/at: 80 feet,
Gandhi Park, Near Ganesha Temple,
Bharath Nagara, Tenginathota,
Byadarahalli, Bangalore - 91.

(By **Sri. M.N.** Advocate)



PARTIES TO I.A.NO.2

Applicant : Sri. Ramegowda K. S.,

Vs.

Opponent : Sri. Krishnappa N.,

ORDER ON I.A.NO.2

The applicant/plaintiff has filed this interlocutory application under Order XXXIX Rule 1 and 2 r/w Section 151 of CPC for the relief of temporary injunction restraining the defendant or his agents, henchmen or anybody acting on his behalf from interfering with the peaceful possession and enjoyment of the suit schedule property by way of encroachment in any manner till disposal of this suit.

2. The I.A., supported with the accompanying affidavit of the plaintiff. It is stated in the affidavit that, he has filed the above suit against the defendant for the relief of declaration and permanent injunction and other reliefs with respect to suit schedule property. The plaintiff absolute owner and in possession and enjoyment of the suit schedule



property. Originally the suit schedule property was acquired by the father of the plaintiff namely Sasalaiah through the registered sale deed dated 02.01.1976. In the said sale deed there is no karab mentioned in the suit schedule property. In pursuance of the said sale deed, the father of the plaintiff namely Sasalaiah has put in possession over the suit schedule property. Accordingly, the khata of the suit schedule property was mutated in the name of Sasalaiah as per M.R.No.33/1988-89. After demise of said Sasalaiah, the plaintiff is only his legal heir. Hence, he succeeded and inherited the estate of Late. Sasalaiah and he is in possession of the same, but the khata of the suit schedule property was not changed in the name of plaintiff.

3. It is further stated that, the defendant has owned the land towards the northern side of the suit schedule property and the defendant has not tolerated the improvements of the plaintiff over the suit schedule property. The defendant has



no manner of right, title over the suit schedule property. The defendant has come near the suit schedule property on 20.12.2023 and tried to interfere with the possession of the plaintiff over the suit schedule property and he has tried to encroach the portion of the schedule property. The plaintiff has resisted the said act of the defendant. Then, the defendant has created the revenue records in respect of the portion of the suit schedule property by colluding with the revenue officials. On the basis of the said alleged documents, the defendant again came near the suit schedule property along with huge supporters and forcibly ousted the from his lawful possession over the suit schedule property and denied the title of the plaintiff over the suit schedule property.

4. It is further stated that, after came to know the said facts, the plaintiff has immediately rushed to the concerned revenue office and got obtained the documents. On the verification of the same, it is noticed that, the defendant



colluded with the revenue officials without valid survey and spot inspection and got created revenue records to an extent of 20 guntas of the suit schedule property. But defendant never in possession of the same at any point of time. In this regard, the panchayath was also conveyed on 28.12.2023. But, the defendant refused the demands of the plaintiff. It is further stated that, the plaintiff learned that, on the basis of the created revenue records, the defendant is trying to create further encumbrance over the suit schedule property. If the defendant may succeed in his attempts, then there would be a multiplicity of proceedings. Hence, this I.A.

5. After service of suit summons, the defendant has appeared through his counsel and filed the detailed written statement and resisted the suit of the plaintiff. The defendant has filed the memo adopting the written statement averments as objection to this I.A. The defendant in his written statement he has totally denied the plaintiff's case and



interalia contended that, he is the owner of the land bearing Sy.No.39/6 and further contended that, the plaintiff has filed the suit by suppressing the true facts just in order to cause harassment to this Defendant. In fact, the father of the Plaintiff was having four sons and a daughter which facts were not disclosed by the Plaintiff and he has stated as if he was the only legal heir. Under these circumstances, the Plaintiff is put to strict proof of his ownership over the schedule property. Further, the Plaintiff has made the false statement in the plaint in order to create the cause of action, as if this Defendant made the attempt to interfere with his alleged possession on 20.12.2023 and the Panchayath was convened on 28.12.2023 and based on the said alleged cause of action this suit is filed. But it is a fact that the elder son of this Defendant is settled in U.S.A (United States of America) and as such this Defendant along with his family members had left India on 19.9.2023 and returned on 11.1.2024 and in between that period he stayed at USA (United States of



America). As such the entire averments of the plaint with regard to the allegations made against this Defendant are utter false. It is further contended that, plaintiff who was looking after the schedule survey number had made an encroachment about the portion of this Defendant's property bearing Sy No.39/6 to the extent of about 0.4 guntas on its southern side which is towards the northern side of the suit survey number and another person by name Naganna, who is the owner of the property on the western side had encroached 0.01 gunta of land on the northwestern corner and as such this Defendant had authorized his brother's son Rudresh to get the property surveyed by giving power of attorney to him and accordingly the survey was conducted and it was proved that the Plaintiff has encroached 0.4 guntas of land and Naganna had encroached 0.01 gunta of land and after returning from abroad this Defendant questioned the same and Naganna had accepted and delivered back the encroached 0.01 gunta of land. But, the Plaintiff instead of



delivering back the possession of the encroached portion has approached this Court on the flimsy grounds. The perusal of the Plaint schedule, it is very clear that, the Plaintiff is claiming the title and possession through his father over old Sy.No.39/2, new Sy.No.39/2A measuring 1 acre and clearly described in the schedule boundary that the northern boundary is the property of this Defendant. As such he has nothing to do with the Sy.No.39/6, which is situated on the northern side of the 39/2A and the Plaintiff is bound to deliver back the encroached portion for which this Defendant is reserving his right to take necessary steps. Under these circumstances, as it is the Plaintiff who has committed the illegal acts and not approached this Court with clean hands, has no right to seek the discretionary relief at the hands of this Court. Under these circumstances, if the suit is dismissed, no prejudice or hardship would be caused to the Plaintiff as he has filed the frivolous suit and on the other hand if the suit is not dismissed, the Defendant will be put to



great hardship and an irreparable loss and injury would be caused to him. Hence, the defendant prays to dismiss the above I.A.

6. Upon hearing arguments and on perusal of materials placed on record, the following points that would arise for my consideration are as under:

- 1) Whether the plaintiff has made out a prima-facie case?
- 2) Whether the balance of convenience lies in favour of the plaintiff?
- 3) Whether the plaintiff will be put to irreparable loss and injury, if the temporary injunction is not granted as prayed in the I.A.?
- 4) What order?

7. My answer to 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 the Order,

for the following:



REASONS

8. **POINT NO.1 TO 3:** As these points are interconnected and interlinked with each other, these points are taken up together for common discussion to avoid repetition of facts. The plaintiff has filed this suit against the defendant for the relief of declaration and injunction in respect of suit schedule property. I have already narrated in brief what is the case of the plaintiff is and what is the case of the defendant is. In the instant I.A., the plaintiff has sought for the relief of temporary injunction to restrain the defendant from interfering with the peaceful possession and enjoyment of the suit schedule property by way of encroachment in any manner till disposal of this suit.

9. In order to substantiate the case of the plaintiff he has produced the xerox copy of the Death Certificate of the father of the plaintiff, xerox copy of the registered sale deed dated: 02.01.1976, xerox copy of the EC, certified copy of the



Mutation Extract, RTC extracts, the copy of Akarbund, Photos and C.D. On the other hand, at this stage the defendant has not produced any iota of documents to substantiate his contention.

10. At this stage, without going through the merits of the case and conducting mini trial, the court is considering the aspect of prima-facie. At this stage, this court makes very clear that this court is looking towards prima-facie case and not for the prima-facie title. In the instant suit, the plaintiff claiming possession over the suit schedule property as on the date of suit. In order to show the prima-facie case, the plaintiff has produced the xerox copy of the sale deed dated: 02.01.1976. On perusal of the same, at this stage it appears that, the father of the plaintiff namely Sasalaiah has purchased to an extent of 1 acre in land bearing Sy.No.39/2 of Kalari Village through the registered sale deed dated: 02.01.1976. The plaintiff has produced the xerox copy of the



EC. On perusal of the same it disclose that, the father of the plaintiff has purchase to an extent of 1 acre in land bearing Sy.No.39/2 for a valuable consideration of Rs.1,000/- from his vendor namely Chikkeraiah. The plaintiff has produced the certified copy of the mutation register extract, it discloses that, the khata of the suit schedule property was mutated in the name of plaintiff father as per M.R.No.33/88-89. On perusal of the RTC Extracts, accordingly the father of the plaintiff name was entered in the relevant columns of RTC Extracts. It is very pertinent to note that, on perusal of the RTC Extracts produced by the plaintiff for the year 2023-24 at this stage it appears that, the khata to an extent of 20 guntas in land bearing Sy.No.39/2A of Kalari Village, Kasaba Hobli, Magadi Taluk is stands in the name of father of the plaintiff. On perusal of the plaint schedule and schedule mentioned in the I.A., it disclose that, the extent of the suit schedule property is mentioned as 1 acre. The defendant in his written statement he has totally denied the title and



possession of the plaintiff over the suit schedule property of the plaintiff. But he is not claiming possession over the suit schedule property in his written statement. It is very significant to note that, the plaintiff has not produced any iota of document to show that, the suit schedule property neither stands in his name nor in his father's name as on the date of suit. At this stage, the rights of the parties cannot be adjudicated, it needs full fledged trial.

11. Looking into the pleadings and documents adduced by both the parties, at this stage it appears that, the plaintiff has not made out the prima-facie case and balance of convenience is also not lies in favour of the plaintiff. If this I.A., is not allowed, the plaintiffs will not be put to great hardship and injury. For considering all these reasons the Point No.1 to 3 in the Negative.

12. **POINT NO.4** : In the light of the above discussion on Point No.1 to 3, I proceed the following :

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O.S.No.14/2024(Or.)

ORDER

I.A.No.2 filed by the plaintiffs/applicants
under Order XXXIX Rule 1 and 2 r/w Section
151 of CPC is hereby rejected.

No order as to cost.

(Dictated to the Typist directly on computer, typed by her,
corrected by me and then pronounced in the open Court, on
this the day of **19th day of December 2024.**)

**(SHIVAKUMAR R.,)
ADDITIONAL SENIOR CIVIL JUDGE &
J.M.F.C., MAGADI.**