

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

**O.S.No.158/2019**

**Present: Sri.Hanumanth Satwik.,  
LL.M,  
Addl. Sr. Civil Judge & JMFC. Magadi.**

**DATED : THIS THE 17<sup>TH</sup> DAY OF JULY, 2021**

**PLAINTIFF:**

Smt. Narasamma,  
W/o. Late. Marihonnaiah,  
Aged about 80 years,  
R/O. Tigalarapalya Village,  
Thippasandra Hobli,  
Magadi Taluk,  
Ramanagara District.

**(By Sri. S.K.V., Advocate)**

**V/s**

**DEFENDANT:**

Smt. Kempamma,  
W/o. Late. Chikkahonnaiah,  
Aged about 70 years,  
R/at: Gangenahalli Village,  
Tavarekere Hobli,  
Bangalore South Taluk,  
Bangalore Rural District.  
Pin: 562 130.

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

**ORDER ON IA NO.I**

The present suit is for declaration of ownership and perpetual injunction.

2. The plaintiff filed the present application U/o.39 Rule 1 and 2 of C.P.C., praying this court to restrain the defendant from interfering in her possession over the suit schedule properties. It is the case of the plaintiff that her husband by name Marihonnaiah purchased land to an extent of 1 acre 24 guntas and 1 acre 23 guntas in the land bearing Sy.No.84, 85, 79, 81 and 82. Her husband further purchased land to an extent of 1 acre 33 guntas in land bearing old Sy.No.79. The above said properties were phoded and were allotted new survey numbers as Sy.No.142/3, 142/10, 143/3, 145/3, 146/6, 147/6. In view of registered sale deeds dated: 12.12.1961 and 16.03.1962 her husband became the absolute owner and possessor of the suit schedule properties. Her husband died on 30.05.2008. Subsequently, she and her sons continued to be in possession of the suit schedule properties. Subsequently, the khata of the suit schedule properties were suddenly got mutated in the name of defendant by virtue of order of Assistant Commissioner dated: 26.03.2018. The said order of Assistant Commission was challenged before Deputy Commissioner in R.P/330-2018 and she obtained an order of stay. In spite of obtaining the order of stay, the defendant managed to change khata illegally. On the basis of illegal revenue entries, the defendant is trying to

dispossess her and her family members from the suit schedule properties. In this regard, the plaintiff prays as above.

3. The defendant in her objections denied the application averments and contended that one Puttahonnaiah is the propositor of her family. The said Puttahonnaiah has seven children by name Honnaiah, Rangaiah, Revaiah, Kalahonnaiah, Marihonnaiah and Chikkahonnaiah. Her husband and the husband of the plaintiff are the sons of Puttahonnaiah. The suit schedule properties were purchased out of the joint family income in the name of Marihonnaiah. After the purchase of the suit schedule properties her husband was in possession of the suit schedule properties. Subsequently, partition was effected among the husband of plaintiff, Revaiah, Doddahonnaiah and herself. In the said partition the suit schedule properties were allotted to her share. The present suit is bad for non-joinder of necessary parties. The plaintiff and her family members are no way concerned to the suit schedule properties. In this regard, the defendant prays to reject the application.

4. Heard arguments of counsel.

5. Considering the contentions of the counsel, following points arise for my consideration.

1. Whether plaintiff has made out prima-facie case for grant of temporary injunction?

2. Whether balance of convenience is in favour of the plaintiff?

3. Whether plaintiff will incur irreparable injury if temporary injunction is not granted?

4. What order?

6. My findings for the above points are as follows.

Point No.1: In the negative,

Point No.2: Does not arise for consideration,

Point No.3: Does not arise for consideration,

Point No.4: As per final order.

For the following,

### **REASONS**

#### **POINT NO.1:-**

7. It is the case of the plaintiff that her husband purchased the suit schedule properties. She is the owner and possessor of the suit schedule properties. In this regard, I have perused the documents on record. Be it stated, the names appearing in the RTCs of the suit schedule properties which were issued on 28.11.2018 are prima-facie different from the names as reflected in the RTCs which were issued on 31.05.2019, though they all belong to the year 2018-19. Further, the RTCs of the suit schedule properties, for the year of institution of the suit, are the subject matter of challenge before revenue

authorities. This being the case, as the RTCs of the suit schedule properties have been the subject matter of challenge, I am of the view that, relying on the RTCs of the suit schedule properties the prima-facie possession of the plaintiff over the suit schedule properties as on the date of the institution of the suit cannot be determined.

8. Furthermore, the order of Assistant Commission in R.A.(S) 475/2017-18 prima-facie shows that the khata of the suit schedule properties was ordered to be effected in the name of the defendant. Be it noted, the said order has been stayed by the Deputy Commissioner till 21.01.2019. It is germane to note that the plaintiff has not produced any documents to show that the order of stay has been extended by the Deputy Commissioner from time to time. This being the case, no documents have been produced by the plaintiff to show that she is in possession of the suit schedule properties even after the expiry of the order of stay and till the date of filing of the suit. Thus, the plaintiff produced no documents to show that she continued to be in possession of the suit schedule properties during the above said interregnum period.

9. In the case at hand the RTCs of the suit schedule properties which have been produced by the plaintiff are disputed before revenue authorities. This being the case, the said RTCs are of no avail to the plaintiff to show her possession over the suit schedule properties as

on the date of the institution of the suit. Even otherwise, the plaintiff has not produced any documents to show that she was in possession of the suit schedule properties even after the expiry of the order of stay passed by the Deputy Commissioner and till the date of filing of the suit. In these circumstances, there are no documents on record to prima-facie ascertain the possession of the plaintiff over the suit schedule properties as on the date of the institution of the suit.

10. The present suit is one for declaration of ownership and permanent injunction. Be it stated, for the above said reasons it is clear that the documents on record are of no consequence to prima-facie determine the possession of the plaintiff over the suit schedule properties as on the date of the institution of the suit. This being the case, having regard to the questions that are required to be answered in the present suit and in the absence of necessary documents having been produced by the plaintiff to prima-facie show her possession over the suit schedule properties as on the date of the institution of the suit, I am of the view that the plaintiff failed to show her prima-facie possession over the suit schedule properties as on the date of the institution of the suit. In this view of the matter, considering the application, objections and the documents on record I am of the view that the plaintiff failed to show prima-facie. Consequently, I answer point no.1 in the negative.

**POINT No.2 AND 3:-**

11. For the sake of convenience and to avoid repetition of facts these points are taken together for common discussion. In the case at hand the plaintiff failed to show that there is a prima-facie case for trial. This being the case the questions as to balance of convenience and irreparable loss need not be considered. In this regard I am supported by the decision of Hon'ble High Court of Karnataka between Sri. Gowrishankara Swamigalu V/s. Siddaganga Mutt, cited in ILR 1989 KAR 1701, wherein Hon'ble court held as below;

**“If there was no prima-facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself. But if there was a prima-facie case then other considerations governing the grant of injunction would come into play and will also have to be evaluated before granting or refusing the injunction.”**

In view of the law laid down by the Hon'ble High court I am of the view that these two questions do not arise for consideration as the plaintiff failed to show prima-facie case.

**POINT NO.4:**

12. In view of reasons on point No.1 to 3, I proceed to pass the following,

**ORDER**

**IA No.I U/o.39 Rule 1 and 2 of CPC filed by plaintiff is hereby rejected on cost of Rs.100/-.**

(Dictated to the Stenographer, directly on the computer typed by her corrected by me and then pronounced in the open court on this the **17<sup>th</sup> day of July, 2021.**)

**(Hanumanth Satwik)**

**Addl. Sr. Civil Judge & JMFC.,  
Magadi.**