



IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC.,
AT MAGADI.

:-Present:-

Sri. Shrinivasa K.R. B.A.L., LL.M.,
Prl. Civil Judge & JMFC.,
Magadi.

Dated this the 29th day of January, 2024

OS No.134/2021

PLAINTIFF : Sri. Ramaiah,
S/o Late Ujjanaiah.

:V/s:

DEFENDANTS : 1. Sri. Manjunath B.T.,
S/o Late Thimmaiah & Another

I.A. No. I & II

**APPLICANT/
PLAINTIFF** : Sri. Ramaiah,
S/o Late Ujjanaiah.,
Aged about 72 years,
R/at Belagumba Village,
Kasaba Hobli, Magadi Taluk,
Ramanagara District.

(By Sri. H.S.P., Advocate)

:Vs:

OPPONENTS/



- DEFENDANTS** :
1. Sri. Manjunatha B.T.,
S/o Late Thimmaiah,
Aged about 42 years,

 2. Sri. Srinivas B.T.,
S/o Late Thimmaiah,
Aged about 40 years,
Both are R/at Opp. Maramma
Temple, Belagumba Village,
Kasaba Hobli, Magadi Taluk,
Ramanagara District. .

(By Sri. R.S., Advocate)

**ORDER ON IA.NO.I & II FILED U/O 39 RULE 1 AND 2 OF
CPC**

The plaintiff has filed applications U/O 39 rule 1 & 2 CPC with a prayer to restrain the defendants, their agents, servants, family members, power of attorney holders are anybody claiming through them from interfering over the plaintiff peaceful possession and enjoyment and from not to create any third party encumbrance or documents over the suit schedule property. The application filed in respect of land bearing old Sy.No.108, new Sy.No.108/17 measuring an extent of 2 acres situated at Belagumba Village.



2. The application is supported with an affidavit sworn by the plaintiff stating that, the suit schedule property is originally the government land and the father of the plaintiff by name Ujjanaiah was cultivating the same as Bagar-Hukumdar and he moved the application before the Amaldar, Magadi Taluk for grant of the said property into his name. The Amaldar, Magadi Taluk was registered a case in KD.No.13/1954-55 and passed the order dated 02-10-1956 and granted the suit schedule property in favour of the father of the plaintiff Ujjanaiah, since from the date of grant and before the grant itself the father of the plaintiff by name Ujjanaiah was in possession and enjoyment over the same along with his family members. The father of the plaintiff by name Ujjanaiah was died on 15-05-1975 and after his death, the brother and sisters of the plaintiff were given consent to change the revenue records in favour of plaintiff, accordingly the revenue records in respect of the suit schedule property



were mutated in the name of plaintiff under MR.No.H22/2012-13. At present the plaintiff is in possession and enjoyment over the suit schedule property along with his family members. Further the plaintiff was also obtained the loan from corporation bank and enjoying the suit schedule property. The defendants are utter strangers to the suit schedule property and the defendants have not tolerated the improvements of the plaintiff, the defendants have no manner of right, title, interest or possession over the suit schedule property. Hence, prays to allow the application.

3. The defendant No.1 & 2 filed objection and contended that, it is false that the plaintiff is the absolute owner in possession and enjoyment of the property land bearing old Sy.No.108 new Sy.No.108/17 measuring to an extent of 2 acres situated at Belagumba Village, Kasaba Hobli, Magadi Taluk, Ramanagara District. It is false that, originally the suit schedule property is the government land and the



father of the plaintiff by name Ujjanaiah was cultivating the same as Bagar Hukumdar and he moved the application before the Amaldar, Magadi Taluk for grant of the said property into his name and the Amaldar. The suit land bearing Sy.No.108 totally measuring more than 900 acre which is belongs to the government Gomal land and in the said land numbers of persons belongs to the village of Belagumba Village, Harthi Village, Narayanapura Village and other neighbor village of Belagumba are cultivating the property since from more than 60-70 years as per their possession and till today no proper survey has been conducted but the defendants father by name B. Thimmaiah was in actual physical possession and enjoyment of the property land bearing Sy.No.108 measuring about 2 acre bounded East-Land in same Sy.No., is in possession of Bhandramma & Govindappa & Karab land, West-Land in same Sy.No., is in possession of Gangaramaiah, Narayanappa, North-Land in



same Sy.No., is in possession of Gangaramaiah & Ramaiah and South-Land in same Sy.No., is in possession of Chikkarangaiah, Ganganna & Muddahanumaiah.

4. The father of the defendant B. Thimmaiah was in actual physical possession and enjoyment of the said property during his lifetime along with his family members including the defendants and the father of the defendants B. Thimmaiah was died in the year 2014 and after the defendants jointly cultivating the possession and enjoyment of the said property along with their family members. The Belagumba Villagers including the father of the defendant made an application before the Thasildar, Magadi Taluk, seeking occupancy right in respect of Sy.No.108 of Belagumba Village long back and the father of the defendant requested the Thasildar, Magadi Taluk, to confirm the occupancy right to an extent of 2 acre in Sy.No.108 of Belagumba Village.



5. Further submitted that, the plaintiff never in physical possession and enjoyment within the boundary of suit schedule property and the defendants are in actual physical possession and enjoyment of the boundary in mentioned in the schedule. The plaintiff created some revenue records with the collusion of the revenue officials but the plaintiff not in physical possession and enjoyment of the suit schedule boundary property at any point of time. The defendants conducted survey through private survey and identified the physical possession of the defendants in Sy.No.108 of Belagumba Village, measuring 2 acres as per Bagar Hukum Saguvalidar as per possession. Hence, prays to reject the application.

5. Heard argument by plaintiff and defendants counsel.

6. Upon hearing arguments and materials placed on record, following points that arise for my consideration:



1. Whether plaintiff has made out a prima-facie case?
2. Whether balance of convenience lies in favour of plaintiff ?
3. Whether irreparable injury and hardship would cause to the plaintiff, if temporary injunction is not granted ?
4. What order?
7. My answer to the above points are as under.

Point No. 1 to 3 : In the ***Negative.***

Point No. 4 : As per order
for the following;

REASONS

8. **POINT No.1**: Law relating to grant or refusal to grant temporary injunction has been culled out by the Hon'ble Supreme Court of India in ***AIR 1999 SUPREME COURT 3105*** (Colgate Palmolive (India) Ltd., v. Hindustan Lever Ltd.,) it is held as under:



“Civil P.C. (5 of 1908), O. 39,R.1:

Certain specific considerations to be noted in the matter of grant of interlocutory injunction, the basic being non-expression of opinion as to the merits of the matter by the Court, since the issue of grant of injunction usually, is at the earliest possible stage so far as the time frame is concerned. The other considerations which ought to weigh with the court hearing the application or petition for the grant of injunctions are as below:- (i) Extent of damages being an adequate remedy; (ii) Protect the plaintiff’s interest for violation of his rights though, however, having regard to the injury that may be suffered by the defendants by reason therefor; (iii) The Court while dealing with the matter ought not to ignore the factum of strength of one party’s case being stronger than the others; (iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case-the relief being kept flexible; (v) The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss



and injury keeping in view the strength of the parties case; (vi) Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant; (vii) Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise.”

9. Keeping in mind the well settled legal principles regarding granting or refusal for granting Temporary Injunction enunciated in the above cited decision, let me advert to consider the case of the parties. The plaintiff has filed suit for the relief of permanent injunction.

10. The contention of the plaintiff counsel is that, originally the suit schedule property was granted in favour of father of plaintiff as per order dated 02.10.1956. Since, from the date of grant the father of plaintiff was in possession and after the death of father of plaintiff the plaintiff is in



possession and enjoyment of the suit schedule property. The defendants are strangers to the suit schedule property and they have no any right, title and interest over the suit schedule property but, causing interference of plaintiff's peaceful possession. The plaintiff as produced all relevant documents in support of his contention and plaintiff established prima-facie in his favour. Hence, prays to allow the application.

11. On the other hand, the defendants counsel submitted that, the plaintiff is not in possession over the suit schedule property. Originally the suit schedule property was Gomala Land and Sy.No.108 totally measuring more than 900 acres which is belongs to the government. The father of the defendants by name Thimmaiah was in physical possession and enjoyment of the property along with his family members. The villagers of Belagumba and including father of defendant filed an application before the Tahsildar, Magadi seeking occupancy right in respect of Sy.No.108. The plaintiff created



revenue records with the collusion of revenue officials. Hence, prays to reject the application.

12. The plaintiff in support of his contention has produced RTC extracts, Tax paid receipts & mutations and letter dated 22.07.2021 which is given by the plaintiff to Tahasildar, Magadi. I have carefully gone through the letter dated 22.07.2021, in the said letter it is stated that, "ರಾಮನಗರ ಜಿಲ್ಲೆ, ಮಾಗಡಿ ತಾಲೂಕು ಕನಬಾ ಹೋಬಳಿ ಹರ್ತಿ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ.108 ರಲ್ಲಿ 2 ಎಕರೆ ಜಮೀನನ್ನು ನಮಗೆ ಸಿಂಗ್ರಿಪಾಳ್ಯ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ.14 ರಲ್ಲಿ 9 ಎಕರೆ 0-09 ಗುಂಟೆ ಜಮೀನು ಕರೆಗೆ ಮುಳುಗಡೆಯಾಗಿದ್ದರಿಂದ ಪರ್ಯಾಯವಾಗಿ ಮೇಲ್ಕಂಡ ಸರ್ವೆ ನಂ.108ರ ಗೋಮಾಳದ ಜಮೀನಿನಲ್ಲಿ ನನಗೆ 2 ಎಕರೆ ಜಮೀನು, ರಾಮಯ್ಯ ಬಿನ್ ಲೇಟ್ ಮುನಯ್ಯ ಇವರಿಗೆ 2 ಎಕರೆ ಜಮೀನು , ಗಂಗರಾಮಯ್ಯ ಬಿನ್ ಲೇಟ್ ರಾಮಯ್ಯ ಇವರಿಗೆ 2 ಎಕರೆಯಂತೆ ಜಮೀನನ್ನು ಸರ್ಕಾರದಿಂದ ದಿ:15.10.1956 ರಂದೇ ನನ್ನ ಹೆಸರಿಗೆ ಮಂಜೂರು ಮಾಡಿರುತ್ತಾರೆ". But, in the plaint the plaintiff contended that, the suit schedule property was granted in favour of father of plaintiff. Therefore, on perusal of plaint averments and own documents of plaintiff it



creates doubt whether the suit schedule property was granted in favour of father of plaintiff or in favour of plaintiff. Moreover in the said letter the boundaries mentioned for 2 acres and the boundaries of suit schedule property are one and the same. It is well settled principle that one who approaches before the court for the relief of injunction he must come before the court with clean hands. On perusal of records the plaintiff has not established prima-facie case by placing prima-facie materials. The prima-facie case is totally different from prima-facie title. Defendants have challenged the prima-facie material placed by plaintiff. Under the circumstances, I am of the opinion that, plaintiff has not made out prima-facie case in his favour. Accordingly, I answer point No.1 “in the ***Negative***”.

13. **POINT No.2 and 3:-** These points are taken up together for discussion for the sake of convenience. The person who approaches the court for equitable remedy of temporary injunction, besides making out strong prima-facie and must



necessarily show that balance of convenience lies in favour and shall also satisfy that irreparable loss and hardship would be caused to him/her, which can not be compensated in terms of money. Therefore, it is incumbent upon the plaintiff to show that the balance of convenience lies in his favour.

14. In considering the question of balance of convenience the court has to consider to whom more hardship or inconvenience would be caused. Whether the defendants have caused interference or not has to be adjudicate. Therefore, if temporary injunction is granted the defendants would be put to loss and hardship. Has discussed supra plaintiff has not established prima-facie. Accordingly, I answer points 2 and 3 in the ***Negative***.

15. **POINT No. 4:** In view of my findings to points No.1 to 3, I am of the considered opinion that, plaintiff has not made out prima-facie case. Besides this the plaintiff has not established that balance of convenience lies in his favour and



irreparable injury would be caused to him, if an order of temporary injunction is denied. Therefore, the plaintiff is certainly not entitled for the relief of temporary injunction. Accordingly, I proceed to pass the following;

ORDER

I.A. No.I & II filed by the plaintiff
under Order XXXIX Rule 1 & 2 R/w
Section 151 of CPC, is hereby rejected.

No order as to cost.

(Directly dictated to Stenographer directly on the Computer, typed by her, then corrected and pronounced by me in the open Court on this the **29th day of January, 2024.**)

(SHRINIVASA K.R.)
Prl. Civil Judge & J.M.F.C.,
Magadi.