



**IN THE COURT OF THE PRL CIVIL JUDGE & JMFC,
HOSANAGARA
AT: HOSANAGARA**

Present: Sri. MARUTI R SHINDHE
B.A.LL.B
Prl. Civil Judge & J.M.F.C.,
Hosanagara.

Dated: This the 01st day of February 2025

O. S. No.89/2022

PLAINTIFFS: Smt.Gangamma W/o Dharmappa
and others.

(By Sri.BSV., Advocate)

Vs.

DEFENDANTS: : Sri.Basappa
S/o Late Manjanna
and another

(By Sri.DNH., Advocate)-

I.A.No. I/2022

APPLICANT: : 2. Sri.Shekharappa
S/o Late Gundanna,
and others.

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OS 89/2022

Vs.

OPPONENTS

: Sri.Basappa
S/o Late Manjanna
and another

The Provision under which : Order XXXIX Rule 1 and 2
application filed R/w sec.151 of CPC

Relief sought for : Temporary injunction restraining
the defendants from interfering in
the suit property

The date on which : 24.05.2022
application is filed

Number of application : 1

The date on which : 28.06.2022
objections are filed by
opponents

The date on which Orders : 01.02.2025
passed on the application

Order on IA No.I under Order XXXIX
Rule 1 & 2 R/w section 151 of CPC

This I.A.No.I filed by the applicants/plaintiffs U/o.
XXXIX Rule 1 and 2 R/w 151 of CPC for restraining the



defendants and their henchman, agents supporters, followers and successors restraining the defendants from interfering in the suit property till disposal of the suit.

2. In the accompanying affidavit the applicants/plaintiffs submitted that the suit property granted by the Government under AD.98/1956-57 and Sagara ಸಾ/ಡಿ bearing in NDR No.2,133 /1956-57 to the father of the plaintiffs namely Gundanna S/o Basanna on 20.03.1957. The plaintiffs and their father has been in possession and enjoyment of the suit property from the date of the grant.

3. The plaintiffs further submitted that after the grant the name of the plaintiffs' father came to be entered in the revenue record as per MR.No.15/1956-57 and record of right of the suit property registered in the name of plaintiffs' father. The family members of the plaintiff developed the suit property and grown the paddy in the suit property and they are in peaceful possession and enjoyment of the suit schedule property.

4. The plaintiffs further submitted that the suit property recently phoded as a survey no.71/1. The parents of the plaintiffs are no more and they have filed application to



transfer the kata of the suit schedule property in their name same is pending for the consideration. The defendants without having right, title and interest over the suit property in order to harass the plaintiffs on 22.05.2002 at morning 10.00 am., trying to forcibly interference in the suit property same was retaining by the plaintiffs. The plaintiffs further submitted that if the application is allowed no hardship would be caused to the defendants. If the application is not allowed the plaintiffs would be put into irreparable loss. The plaintiffs have made out prima facie case and balance of convenience. Hence, present application.

5. Perused the order sheet dated 28.06.2022. It indicates that the defendants have filed memo treating their written statement and as objection to the IA.No.I.

6. The defendants have filed their written statement by reputing the averment made in the plaint and contenting inter-alie that there is no cause of action arose to file this suit. The description of the suit property furnished by the plaintiffs is not correct. The plaintiffs are not properly valued the suit property for the purpose of jurisdiction and paid the court fee.



7. The defendants further contended that the propositors of the plaintiffs and the defendants Basanna died and he had sons namely Manjanna and Gundanna and one daughter. The daughter died before the marriage. The wife of elder son Manjanna namely Laxmamma died and they have children namely Basappa (first defendant) Smt. Channamma, Parvathi, Susheela, Nagappa (the defendant No.2) and Nagarathana and Ravathi. The plaintiffs are children of Gundanna. The second defendant called Shekarappa @ Nagappa.

8. The defendants further contended that the suit property has granted to the father of the plaintiffs by issuing the grant certificate on 20.03.1957 with condition that none alienation clause for period of 10 years. Thereafter, the Gundanna has alienated the granted suit property to the Devappa S/o Thimanna resident of Devarahonnekopa Taluka Hosanagara under the registered sale deed dated 02.02.1968 and delivered the possession of the suit property to the Devappa. 40 years ago the plaintiff lost their right over the suit property.



9. The defendants further contended that the father of the defendant namely Manjanna S/o Basanna has purchased the suit property from the Devappa S/o Thimmanna under registered sale deed dated 07.03.1969 and they are an absolute owner and in possession and enjoyment of the suit property. The parents of the defendants dead. Thereafter, the defendants are in peaceful possession and enjoyment of the suit property. But, the plaintiffs are troubling to transfer the kata in the name of the defendants. The defendant spends huge amount and developed the suit property they have converted into irrigation land and put the stone fence around the suit property. The plaintiffs have no right, title over the suit property. Among all these ground prays to dismiss the application.

10. Heard the learned counsel for the plaintiffs and learned counsel for the defendants on IA No I. In view of the materials placed before me and rival contention arise by the parties, the following points arisen for my consideration;

POINTS

1. Whether the plaintiffs have made out a prima facie case for grant of temporary injunction?



2. Whether the balance of convenience lies in favour of plaintiffs?

3. Whether the plaintiffs will be put into irreparable loss and injury in the event of refusal of temporary injunction sought?

4. What order?

11. My answers 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 final order
for the following

REASONS

12. **Point No.1 to 3:** These points are taken together for the common discussion and to avoid the repetition of the facts. The learned counsel for the plaintiff argued that, the suit property original belongs to the Government and same was granted to the father of the plaintiffs with the none alienation Claus. After the demises of their father the plaintiffs are in the peaceful possession and enjoyment of the suit property.



13. The learned counsel for plaintiffs further argued that, the defendants without having the right, title and interest over the suit property trying to interference in the suit property based upon bogus sale deed alleged to be executed by the family members of the plaintiffs. Neither defendants nor their father made attempt to transfer their names in the record of right of the suit property based upon the sale deed. The defendants keep quiet for long time. Therefore, the conduct of the defendants not fear.

14. The learned counsel for plaintiffs further argued that, the records of rights are standing in the name of the plaintiffs. The records of rights are got presumption under Land Revenue Act. The plaintiffs are paying the land revenue to the Government. The plaintiffs have made out prima facie case to go for trail and balance of convenience lieu in the favour of the plaintiffs. Among all these grounds prays to allowed the application. The learned counsel for plaintiffs further argued that, in support of his submissions relied upon the following citations of Hon'ble High Court reported

1. 2023(1) KCCR 167



2. 2022(5) KCCR 815
3. 2022(1) KCCR 463
4. 2022(5) KCCR (SN)326

15. Per contrary the learned counsel for the defendants argued that the suit of the plaintiffs for the relief of permanent injunction is not maintainable without seeking the relief of declaration. Therefore, the plaintiffs are entitled equitable relief.

16. The leaned counsel for the defendants further argued that the father of the plaintiffs had alienated his granted suit property to one Devappa S/o Thimmanna resident of Devarahonnekoppa under registered sale deed dated 02.02.1968 and delivered the possession of the suit property. The leaned counsel for the defendants further argued that the plaintiffs and their family were lost their rights and possession over the suit property 44 years back.

17. The leaned counsel for the defendants further argued that the said Devappa S/o Thimmanna has alienated the



suit property to the father of the defendants. The father of the defendants is in possession and enjoyment of the suit property during his lifetime. After the demises of the father of the defendants. The defendants are an absolute owner and in possession and enjoyment of the suit property. The records of right of the suit property are not transfer in the name of the defendant's father due to oversight. The record of right of the suit property standing in the name of the plaintiffs are not got presumption under law because after the demise their father they transfer their names in the record of right of the suit property. Therefore, the records of rights of the suit property are not having presumption under law.

18. The leaned counsel for the defendants further argued that even if the mutation is cancelled by the revenue authority. But, the possession continuously with the defendants. Among all these grounds prays to dismiss the case. In support his arguments the learned counsel for the defendants relied upon the judgment of our Hon'ble High Court reported in ILR 2023 Kr 2556 and 1976 (3) SCC 642.



19. Perused the records of the case, it reveals that plaintiffs have filed this suit for the relief of permanent injunction against the defendants in respect of the suit property. This court gone through the documents submitted by the plaintiffs. The plaintiffs have produced bundle of documents. This court considers the relevant documents. Perused the record of right of the suit property in the year 2022 to 2024. It clearly indicates that the suit property standing in the name of first plaintiff and other names as per the MR.No.H7/2022-23. Perused the record of right in the year 2018 to 2020 of the suit schedule property. It indicates that the suit property standing in the name of Gundanna S/o Basanna. Perused the MR.No.15/1956-57. It indicates that the Gundanna would not be alienated the suit property.

20. Perused the land revenue receipt. It indicates that the Gundanna have paid the land revenue to the Government in respect of the suit schedule property. Perused the death certificate of the Gundanna. It indicates that the Gundanna died on 15.10.1963 and Perused the death certificate of Kaveramma it indicates that the wife of Gundanna died on 05.07.1989.



21. Perused the record of right in the year 1984 to 2000 and in the year 2011 to 2013 and in the year 2017 to 2022. It indicates that from 1984 to 2022 the records of right of the suit property standing in the name of Gundanna S/o Basanna and perused the land revenue receipt. It indicates that the Gundanna had paid the land revenue in respect of the suit property.

22. Perused the death certificate of Gundanna. It indicates that he died on 15.10.1963 and perused the death certificate of Kaveramma died on 05.07.1989. Perused the MR.No.15/1956-57. It indicates that the suit property granted the Gundanna S/o Basanna with non-alienation Claus for 10 years. Perused the no due land revenue certificate issued by the village accountant Kerehalli Hobli. It indicates that there is no land revenue due as on 26.04.2019 in respect of the suit property.

23. The defendants have placed the number of documents in support of their case. Perused the certified copy of the sale deed dated 03.02.1968. It indicates that the Gundanna S/o Basanna and his minor son Nagappa were alienated the suit property in favour of Thimmanna S/o Manjanna



resident of Honnekoppa for consideration amount of Rs.2500/- with specific boundary.

24. Perused the sale deed dated 07.03.1969. It indicates that Devappa S/o Thimmanna alienated the property measuring 2 acres 14 guntas in property bearing survey no.72 to the father of the defendant for the valuable consideration of 2000 with specific boundaries. Perused the another document. It is order dated copy dated 12.04.2012 passed by the Thasildhar of Hosanagar in RTC 7.2011-12. It indicates that the Gundanna and the original second plaintiff had filed an application to the Tahasildhar for transfer their name in the record of right of the suit property on the ground that the Gundanna s/o basanna died on 15.10.1968 and his wife died on 05.07.1989 same was objected by the second defendant. Therefore, Thasildhar of Hosanagar rejected the mutation enter in record of right of the suit property of the plaintiff and directed to the plaintiff to approach the civil Court.

25. This court gone through the pleading of the both parties and the documents placed by the plaintiff and the



defendants. It is no doubt that the suit property was originally belongs to the plaintiff's family. The records of the right of the suit property standing in the name of the plaintiff. The sale deed dated 03.02.1968 it indicates that the Gundanna S/o Basanna and his minor son Nagappa were alienated the suit property in favour of Thimmanna S/o Manjanna resident of Honnekoppa for consideration amount of Rs.2500/- with specific boundary. The said sale deed is registered sale deed it got presumption under law unless contrary is proved.

26. The learned counsel for the plaintiff denied execution of sale deed by the plaintiff's family and argued the record of right of the suit property got presumption under section 133 of Karnataka land Revenue Act. It is well settled law that while considering the interim application mini trail cannot be hold. Whether the sale deed dated 03.02.1968 is bogus or genuine is required trail.

27. The order dated 12.04.2012 passed by the Thasildhar of Hosanagar in RTC no 7.2011-12. It indicates that Thasildhar of Hosanagar had rejected the mutation enter of the plaintiff in record of right of the suit property and



directed to the plaintiff to approach the civil Court. Therefore, the record of right of the suit property standing in the name of plaintiff is not got the presumption. The documents placed by both parties to suit clearly indicate that there is cloud of title over the suit property. Therefore, the suit for the relief of permanent injunction is not maintainable without seeking further relief. It is well settled the law that the maintainability of the suit includes the prima facie case.

28. This court gone through the citation cited by the learned counsel for the plaintiffs 1. 2023(1) KCCR 167 this gone through the facts cited case wherein the plaintiff possession of the suit prima Facie through revenue records. In case on the plaintiffs failed to prove possession of the suit property by prima Facie through revenue records. Hence with great respect not applicable to case on hand. This Court gone through the citation. 2022(5) KCCR 815, (ii) 2022(1) KCCR 463 (iv). 2022(5) KCCR (SN)326 in the facts of the case are different from case on hand and the above cited case are disposed off on the merits of the case and not interim application. In order to avoid repetition of facts not



discussed. The citations are not applicable to case on hand with great respect.

29. This court gone through the citation of Hon'ble our own High Court reported in ILR 2023 Kar 2556 the facts of case indicate that suit for the relief declaration and consequential relief of permanent injunction decreed by the trail court and confirmed by the first appellate court and allowed by the Hon'ble our own High Court on merits of the case. The facts of case and facts in case on hand are totally different. Hence, the citation is not applicable to case on hand with great respect.

30. Whether the plaintiff is in actual possession of the suit property or the defendants are in suit property is required full pledged trial. It is well settled the law that while considering the temporary injunction mini trail cannot be hold. In case on hand, the plaintiffs have produced the documents to show that they are in possession of the suit property. But, their name is coming to be entered in the record of rights of the suit property by the succession. But, already the suit property was alienated to the Thimmanna. Therefore, the plaintiffs are not made prima facie case to go



for trial. It is well settled law that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out prima facie case to go for trial, the balance of convenience is also in his favour and he will be suffer irreparable loss and injury if injunction is not granted. But, it is equally well settled law that when the party fails to prove prima facie case to go for trial, the question of considering balance of convenience and irreparable loss and injury to the party concerned would not be material at all that is to say if the party fails to prove prima facie case to go for trial, it is not open to the court to granted injunction is his favour even. If, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted. Therefore, in the light of above discussion the plaintiffs have fails proves all the ingredients of temporary injunction the plaintiffs are not entitled equitable relief. Hence, in the light of above discussion points No.1 to 3 are answered in the Negative.

31. **Point No.4:** For above said reasons of point No.1 to 3, following:



ORDER

The IA-I filed U/o XXXIX Rule 1 and
2 R/w section 151 of CPC is hereby
dismissed with cost.

(Dictated to the Stenographer directly on computer, typed by her,
revised by me and then pronounced in the open court, on this 1st
day of February 2025)

Prl. Civil Judge & JMFC,
Hosanagara.

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24.02.2025.