

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE AND
J.M.F.C., AT SORABA**

Present: Sri.Abdul Saleem, B.A. (Law) L.L.B.,
Prl. Civil Judge & JMFC.,
Soraba.

Dated this the 12th day of April 2023

O.S.No. 09/2023

Plaintiffs .. Sri. Suresh Babu and Anr.
V/s.

Defendants .. Sri. Pradeep Gowda & Otrs.

I.A.No.I

Applicant/Plaintiff .. Sri. Suresh Babu
s/o Devendrappa Akkasali,
aged about 67 years,
r/o Alahalli village,
Jade Hobli, Soraba Taluk.
Shivamogga District.

(By Sri. Nagaraj K - Adv.)

V/s.

Opponents/Defendants .. 1. Sri. Pradeep Gowda
s/o Sangappa Gowda,
Aged about 40 years,
2. Sri. Santosh s/o Basavanagowda,
Aged about 35 years,
3. Sri. Shivakumar Gowda
s/o Basappa Gowda,
Aged about 40 years,
4. Sri. Manjunatha
Revanasiddappa, 32 years,
5. Sri. Channabasappa s/o Sangappa
Aged about 79 years,
6. Sri. Puttarajagowda

s/o Nagarajagowda, 35 years,
7. Sri. Indudharagowda
s/o Danappagowda, 40 years,

D1 to 7 are agriculturist, r/o
Alahalli village, Jade Hobli,
Soraba Taluk , Shivamogga District.

(By Sri. Mahendra V Desai - Adv.)

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**ORDER ON I.A.I FILED BY PLAINTIFFS UNDER ORDER XXXIX
RULE 1 AND 2 R/W 151 OF CPC**

The plaintiffs have filed above I.A. praying for temporary injunction restraining the defendants, their agents or any person claiming under the defendants from interfering with the peaceful possession and enjoyment of the suit schedule property by the plaintiff till the disposal of the suit.

2. Along with the I.A, the plaintiff No.1 sworn to and affidavit and submitted that the plaintiff No. 1 and husband of defendant No. 2 are the brothers and children of Sri. Devendrappa Akkasali. That, suit schedule property is the ancestral property of the plaintiffs. That, after the death of Sri. Devendrappa Akkasali, the plaintiff No. 1 and 2 have made provisional partition of their family properties and they have been in possession of the suit schedule property. That after the demise of Sri. Devendrappa Akkasali, katha pertaining to the suit schedule property has been mutated in the name of plaintiff No.1. That the suit schedule property consist a tiled roofed house measuring 50 x 40 feet and vacant space. The plaintiff No.2 is residing at Shivamogga and the plaintiff No. 1 is residing in house situated in the suit schedule property. When that being so, the defendants without having any right, title, interest over the suit schedule

property, in the last week of December 2022, interfered with the possession of the plaintiffs over the suit schedule property. Though the plaintiffs have restrained illegal act of the defendants but the defendants being financial sound and backed by political power, the plaintiff could not restrict their high hands act. Hence, the plaintiffs came up with the suit along with above I.A.

3. After institution of the suit, suit summons has been issued to the defendants. The defendants have appeared before the Court through their counsel. Defendant No.1 filed written statement. Other defendants have adopted written statement filed by the defendant No.1. The defendants have also filed memo to adopt written statement as objection to I.A. No.1.

4. The defendants have denied the case of the plaintiffs. It is contended by the defendants that Khaneshumari number 22 stands in the name of the plaintiffs and it comprises an area measuring 50X40 feet and said area is entirely covered by the house of the plaintiffs. It is further contended by the defendants that, there is no vacant space left in the property belong to the plaintiff in Khaneshumari number 22. That, towards southern side of Khaneshumari No. 22, vacant land belong to Veerabadhra Temple in Khaneshumari number 33 is situated. That, concerned Grama Panchayath has issued form No. 9 and 11(a) in respect of Khaneshumari number 33 in the name Veerabadhra Temple. That, Khaneshumari No. 33 measures East-west: 38.76 feet, North-south: 38.46 feet in total it measures 1490.70 Square feet and in which an area of 179.18 Square meter is covered by the Temple. That, when the members of Veerabadra temple committee cleaning said property

with a view to put up fence, the plaintiff filed present suit without any cause of action.

5. It is further contended by the defendants that, the plaintiff have filled up blank space left in the 'Patta Book' and made to appear that suit schedule property measures East to West, 120 feet, North-south 80 feet. It is further contended that in each and every 'Patta Book' issued by the Grama Panchayath, to the deferent Kahthedar, place meant to describe measurements and boundaries left blank. That, the plaintiff No.1 is residing at Shivamogga and the defendant No.2 has not been residing in the suit property for last 20 years. That, house situated in the suit property is partial collapsed and no repair work carried out since two years. Since there is no cause of action to file the suit. Hence, they sought for rejection of the above I.A.

6. Heard the arguments from the both side. After going through the material on record and the argument the points that arises for the consideration of the court are as follows :-

POINTS

1. Whether the Plaintiffs have made out a prima-facie case ?
2. Whether balance of convenience lies in favour of the Plaintiffs ?
3. Whether the Plaintiffs will be put to irreparable loss and injury if temporary injunction is not granted, which cannot be compensated in terms of money ?
4. What order ?

7. The findings on the above points are as hereunder:

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

8. **Point No1 to 3:** As these points are interconnected with each other, it is proper to take up for discussion together in order to avoid repetition of the facts.

9. According to the plaintiffs, the plaintiff No. 1 and 2 have been in possession of the suit schedule property as the suit schedule property is their ancestral property and after demise of the father of the plaintiff No. 1 and father-in-law of plaintiff No. 2 Sri. Devendrappa Akkasali, the plaintiffs have made provisional partition in respect of their family properties. That, Plaintiff No.2 is residing in Shivamogga town whereas the plaintiff No. 1 has been residing in the suit schedule property and the katha pertaining to the suit schedule property has been made over in the name of the plaintiff No. 1 after the death of Devendrappa Akkasali. It is further case of the plaintiff that the suit schedule property ie., khashumari No. 22 measures East-West: 120 feet and North-south: 80 feet, in which tiled roof house is situated in an extent of 50x40 feet and remaining portion is kept vacant but the defendants have tried to interfere with the possession of the plaintiffs in respect said vacant space which compelled the plaintiffs to file the present suit.

10. The Defendants have not denied as to the khashumari No. 22

stands in the name of the plaintiffs but it is the strong contest of the defendants that the plaintiffs have got an extent of 50x40 feet only in Khanesumari and entire extent of 50X40 feet is cover by the house and there is no vacant space left in the Khaneshumari No.22. It is further contention of the defendants that towards the southern side of the suit schedule property, land, belong to Veerabadra temple bearing khaneshumari No. 33 is situated and it comprises East-west: 38.76 feet, North-south: 38.46 feet in which temple is covered in an area measuring 179.18 sq.mtr. Thus, it is the contention of the defendants that the plaintiffs have got only extent of 50 x 40 feet and said entire area is covered by the house of the plaintiffs.

11. In order to support the pleading of the plaintiffs as to plaintiffs have been in possession of the suit schedule property ie., property in khaneshumari No. 22 measuring East-west: 120 feet North-south 80 feet bounded by the boundaries such as on East: Nagaraja gowda house, West: Government road, North: Veerabadra Temple and South: Back yard of Prakash Gowda, the plaintiffs have produced the documents such as ' Patta Book' issued by the Gram Panchayath, Thalagadde, Form No. 12 and 11 issued by Gram Panchayath, Thalagadde, receipt for being paid taxes by the plaintiffs in respect of property No. 152400600400400244.

12. It is argued by the learned counsel for the plaintiff that form No. 11 and 12 placed by the plaintiffs go to show that khaneshumari No. 22 stood in the name of Sri.Devendrappa Akkasali, father and father-in-law of plaintiff No. 1 and 2 since 1998-99. Thereafter, on demise of Sri.Devendrappa Akkasali, katha in respect of the suit schedule property has been made over in the name of the plaintiff No. 1. Even

the defendants have not denied that the kaneshumari No.22 belong to the plaintiffs. In the back drop of said admission of the defendants, if Patta Book issued by the Gram Panchayath is looked into, it is very clear that the suit schedule property lays within the boundaries as shown in plaint/Patta Book and it encompasses measurements as shown in the plaint/ Patta Book. It is further argued by the learned counsel for the plaintiffs that the defendants claims to be the members of Veerabadra temple committee but they have not produced any documents to that effect. It is further argued the learned counsel for the plaintiffs that documents relied by the defendants ie., form No. 9 and 11(a) though shows that the kaneshumari No. 33 stands in the name of President of the Temple committee, Alahalli, but in said document, there is no description as to the boundaries to show that the suit schedule property is contiguous to kaneshumari No. 33. that, in spite of same the defendants stake claim over the suit property , hence it spouses that the defendants tried to interfere with the peaceful possession and enjoyment of the suit schedule property by the plaintiff. Hence he urged for temporary injunction.

13. On the other hand, learned counsel for the defendants argued that the plaintiff has solely relied on 'Patta Book' to show the measurements and boundaries of the suit schedule property. But in the 'Patta Book' it is very much clear that writings in describe boundaries and the measurements and writings in the other part of the 'Patta Book' are deferents writings and in each and every 'Patta Book' issued by the Grama Pancahyath place meant to describe boundaries and measurements are left blank. It is further argued by relying the patta book issued in the name of defendant No. 3 and 7 in

respect of their respective properties, Gram panchayath left blank the place meant for narrating boundaries and the extent. That itself makes it clear that the plaintiffs manipulated/ created said patta book and produced the same before the Court to obtain favorable order. It is further argued by the learned counsel for defendants that the plaintiffs have not produced any authenticated document to show the exact measurements and boundaries of the suit schedule property. Therefore, the plaintiffs have failed to prove prima-facie case in his favour, consequently the plaintiffs are not entitled injunction.

14. On going through rival contentions of the parties, it is clear that the plaintiffs claim suit schedule property i.e bearing khameshumari No. 22 measures East-west 120 feet, North-south 80 feet, in which house is situated in an extent of 50 x 40 feet and remaining portion is left vacant. Whereas the defendants contended that the plaintiffs has got an extent 50 x40 feet area in khameshumari No. 22 and said area is fully covered by the house of the plaintiffs.

15. It is to be noted that to avail the relief of temporary injunction, the plaintiffs have to establish that they have got prima-facie in their favour. Prima-facie connotes there is a serious disputed question to be tried in the suit and that on the facts before the Court there is probability of plaintiff being entitled to relief asked for by the plaintiff. Thus, it is clear that first and foremost the plaintiffs have to show before the Court that there is existence of right in them in respect of the suit schedule property with the correspondence obligation on the part of opposite party and infringement or threat to such right. Clause (a) Section 2 of Specific Relief Act 1963 defines

‘Obligation’ includes every duty enforceable by law. Therefore, in order to obtain injunction there must be a invasion or threat to plaintiffs right to or enjoyment of the suit schedule property.

16. To show that the plaintiffs have got right to or enjoyment of the suit schedule property, the plaintiffs pleaded as to how they have acquired the suit schedule property. As noted above, there is no dispute as to the how the plaintiffs have acquired khameshumari No.22 but the dispute is in respect of measurements and boundaries. The plaintiffs claim that the suit schedule property measures East to West:120 feet, North-south:80 feet and encompasses the boundaries on the East : Nagaraj house, West: Government Road, North: Veerabadra temple and South: back yard of Prakash gouda s/o Sannigowdara Gadigappa Gowda.

17. To show before the Court that the suit schedule property consist above extent and encompasses boundaries as stated above, the sole document relied by the plaintiffs is ‘Patta Book’ issued by Gram Panchayath, Talagadde. It is pointed out by the learned counsel for the defendants that in ‘Patta Book’ relied by the plaintiff, there are two different writings. the writings in the place where measurement and boundaries are described is different than that of other writings which describes the payment of taxes by the plaintiff to the Gram Panchayath. The defendants have also produced ‘Patta Book’ issued by the Talagadde Gram Panchayath in favour of defendant No. 3 and 7 in respect of their properties. wherein place meant to describe boundaries and measurements are left blank.

18. It is to be noted that defendants have specifically contended that plaintiffs have manipulated/ created ‘ Patta Book’ so as to

appear that the suit property comprises measurement and boundaries as mentioned in the plaint. And even as observed above, the 'Patta book relied by the plaintiffs to show the boundaries and measurements of suit schedule property appears to be manipulated/ created to appear that suit schedule property encompasses boundaries and measurements as shown in the plaint, under such circumstance it is bounden duty of the plaintiffs to place before the court materials to show that suit schedule property encompasses measurements and boundaries as shown in the plaint. But the plaintiffs have not made any effort to produce any authenticated document to show that the suit schedule property comprises in the boundaries as mentioned in the patta book and it consist measurements as stated in the patta book. Therefore, the plaintiffs have not approached the Court with relevant material document to support their pleadings. As such, the case of the plaintiffs is not clear to grant equitable relief of injunction.

19. It is necessary to mentioned the decision reported in **1965 SCC On line Kar** in the case of **Lakshminarasimhiah And Ors. vs Yalakki Gowda** wherein it has been held in para No. 8 and 9 as follows:

(7) The granting or refusing of injunctions is a matter resting in the sound discretion with the trial court and consequently no injunction will be granted whenever it will operate oppressively, or inequitably, or contrary to the real justice of the case. In exercising the discretionary power, the courts should be guided by the following guiding principles.

8) There is no power which is more delicate, which requires greater caution, deliberation, and sound discretion, or is more dangerous in a doubtful case, than the issuing an injunction. It is the strong arm of equity, that never ought to be extended unless to cases of great injury, where courts of law cannot afford an

adequate or commensurate remedy in damages. The right must be clear, the injury impending or threatened, so as to be averted only by the protecting preventive process of injunction. But that will not be awarded in doubtful cases, or new ones not coming within well-established principles; for if it issues erroneously, an irreparable injury is inflicted for which there can be no redress, it being the act of a court, not of the party who prays for it. It will be refused till the courts are satisfied that the case before them is of a right about to be destroyed, irreparably injured or great and lasting injury about to be done by an illegal act. In such a case the court owes it to its suitors and its own principles to administer the only remedy which the law allows to prevent the commission of such act. The discretionary power must be exercised with extreme caution and applied only in very clear cases; otherwise, instead of becoming an instrument to promote the public as well as private welfare, it may become a means of an extensive and perhaps an irreparable injustice."

20. From the above decision it is clear that the party who seeks injunction must approach court with clear case and the relief of injunction will be refused till the Court are satisfied the case before court is a right about to be destroyed, irreparably injured or great and lasting injury about to be done by an illegal act.

21. By applying above principles in the present case, as stated above, the plaintiffs have not approached court with clear case as they failed to show before the Court that they have got a right in respect of suit schedule property I.e land measuring East to West:120 feet, North-south:80 feet and encompasses the boundaries on the East: Nagaraj house, West: Government Road, North: Veerabadra temple and South: back yard of Prakash gouda s/o Sannigowdara Gadigappa Gowda. Therefore, the plaintiff failed establish prima-facie in their favour.

22. As far as other ingredients as to balance of convenience,

irreparable loss is concerned, it is well settled position of law that that when the plaintiffs failed to establish prima-facie, the other two ingredients as to grant of injunction need not be looked into. In view of the same, point No.1 to 3 are answered in the **negative**.

23. **Point No.4**: In view of the discussion, the court proceeds to pass the following:

ORDER

I.A.No.I filed by the plaintiffs U/O XXXIX Rule 1 and
2 of Code of Civil Procedure is hereby rejected.

(Dictated to the Stenographer, transcribed and computerized by him, transcript corrected and pronounced by me in the open court on this the 12th day of April 2023.)

(Abdul Saleem),
Prl. Civil Judge and JMFC.,
SORABA.

*Order pronounced in the open court,
(vide detailed separate order).*

ORDER

I.A.No.I filed by the plaintiffs U/O XXXIX
Rule 1 and 2 of Code of Civil Procedure is
hereby rejected.

Prl. Civil Judge and JMFC.,
SORABA.

For enquiry under section 89 of
C.P.Code by 17/06/2023.

Prl. Civil Judge and JMFC.,
SORABA.