

KASM700018752021



**IN THE COURT OF ADDITIONAL CIVIL JUDGE & JMFC.,
SORABA**

Dated this the 18th day of October, 2021

PRESENT:
Sri. Manju.M, B.Sc., LL.B.,
Addl. Civil Judge & JMFC.,
Soraba.

O.S.No.96/2021

Plaintiffs : Smt.Gowramma W/o Chowdappa
and another

V/s

Defendants : Smt.Gowramma W/o Halappa
and others

Applicants : Smt.Gowramma W/o Chowdappa
and another

V/s

Opponents : Smt.Gowramma W/o Halappa
and others

Order on I.A.No.1 filed by the Plaintiffs under Order
39 Rule 1 and 2 of CPC

This is an application under Order 39 Rule 1 and 2 of CPC filed by the Plaintiffs praying for an order to restraining the Defendants from interfered to the suit schedule property and to cause inconvenience to the Plaintiffs agricultural operation in the suit schedule property in any manner till disposal of the suit.

2. This application is supported by an affidavits of the Plaintiffs. In the said affidavits the Applicants have sworn to the fact that the suit schedule property had been granted to husband of Plaintiff No.1 and father of Plaintiff No.2 from the Land Tribunal, Soraba and also issued a hakku pathra and thereafter the khata of the suit schedule property had been mutated into the name of husband of Plaintiff No.1 and father of Plaintiff No.2. Further, it is contended that, after the demise of husband of Plaintiff No.1 and father of Plaintiff No.2, the Plaintiffs became the only legal heirs are in possession and enjoyment of the suit schedule property. Further, it is

contended that, the Defendants having no manner of right, title or interest over the suit schedule property interfered to the possession of the Plaintiffs and caused inconvenience to the Plaintiffs agricultural operation and in this regard the Plaintiffs have given complaint to the police, but not helped them.

3. Further, the Applicants raises the usual plea of prima facie case and balance of convenience and irreparable loss and injury. Further, the Applicants also contends that if this application is allowed no prejudice would be caused to the Defendants. By contending so, the Applicants have prayed for allowing this application.

4. On the other hand it is only Defendant No.4 has filed the written statement and Defendant No.1 to 3 have adopted the written statement filed by the Defendant No.4. Further, the Defendants have filed memo and stated that written statement of Defendants may be considered as objection to I.A.No.1. In the written statement, the Defendants have denied the plaint averments and specifically and categorically contended

that, the Plaintiffs and Defendant No.1 to 6 belongs to same family. Defendant No.7 and 8 are the brothers of Defendant No.1 and they are not necessary parties to this suit and there is no relationship between the Defendant No.7 and 8 and suit schedule property. Further, it is contended that, the husband of Defendant No.1 namely Chowdappa being the elder son of propositus namely Guthyappa he had filed a application for grant of suit schedule property on behalf of the joint family. Further, it is contended that, the application filed by the husband of Plaintiff No.1 and on 15.08.1974 would reflects that due to age old, the husband of Plaintiff No.1 had given a declaration. Further, it is contended that, the husband of Plaintiff No.1 had also put his thumb impression. Further, it is contended that, on 11.06.1995 in the presence of villagers husband of Plaintiff No.1, husband of Defendant No.3 and Defendant No.5 have partitioned the property bearing survey No.8/2, 9/1, 9/2 and other bagar hukum lands. Further, the villagers were also put their signatures to the partition deed. Further, it is contended that, as

per partition the Plaintiffs and Defendants were in possession and enjoyment of property to an extent of 14 guntas each. Further, it is contended that, the husband of Defendant No.1 and Defendant No.3 were jointly paid the tax to the property and same was also recited in Patta Book. Further, it is contended that, the Plaintiffs with an intention to grab the suit schedule property as filed this application. Further, the suit of the Plaintiffs is not maintainable in law. Hence, prays to reject the application.

5. I have heard arguments addressed by the learned advocates for Plaintiffs and Defendants.

6. Following points arise for my consideration.

1. Whether the Plaintiffs have made out a prima facie case for grant of temporary injunction?
2. Whether the Plaintiffs will be put to irreparable loss and hardship, if the injunction is not granted?

3. Whether the balance of convenience lies in favour of the Plaintiffs?

4. What order?

7. My findings on the above points are as follows:-

Point No.1 : In the negative

Point No.2 : In the negative

Point No.3 : In the negative

Point No.4 : As per final order
for the following:-

REASONS

Point No.1 to 3:

8. Since these three points are interlinked to each other, they are taken up together for common discussion in order to avoid repetition of facts and circumstances.

9. The law relating to grant of temporary injunction is well settled. The Plaintiffs who approaches the court has to prove three basic principles namely existence of prima facie case, balance of convenience and irreparable loss and injury.

10. The court must be satisfied that there must be a prima facie case in favour of the Plaintiffs that there is balance of convenience in favour of the Plaintiffs and if the temporary injunction is refused the Plaintiffs would be put to irreparable loss and injury. Apart from this the conduct of the party approaching the court has also to be considered. Injunctive relief is a discretionary relief and an equitable relief. Thus being the case, the person who seeks equity must do equity.

11. In order to grant relief of temporary injunction the Plaintiffs have to establish that three vital aspects, i.e., prima facie case, balance of convenience lies in their favour and that they would be put to irreparable loss and injury in case injunction is not granted.

12. The learned counsel for Plaintiffs has vehemently argued that the suit schedule property had been granted to husband of Plaintiff No.1 and father of Plaintiff No.2 from the Land Tribunal, Soraba and also issued a hakku pathra and thereafter the khata of the suit schedule property had been mutated into the name of husband of

Plaintiff No.1 and father of Plaintiff No.2. Further, it is contended that, after the demise of husband of Plaintiff No.1 and father of Plaintiff No.2, the Plaintiffs became the only legal heirs are in possession and enjoyment of the suit schedule property. Further, it is contended that, the Defendants having no manner of right, title or interest over the suit schedule property interfered to the possession of the Plaintiffs and caused inconvenience to the Plaintiffs agricultural operation. Hence, prays to allows the application as prayed for.

13. On the other hand the learned counsel for Defendants has argued that the Plaintiffs and Defendant No.1 to 6 belongs to same family. Defendant No.7 and 8 are the brothers of Defendant No.1 and they are not necessary parties to this suit and there is no relationship between the Defendant No.7 and 8 and suit schedule property. Further, it is contended that, the husband of Defendant No.1 namely Chowdappa being the elder son of propositus namely Guthyappa he had filed a application for grant of suit schedule property on behalf of the joint

family. Further, it is contended that, the application filed by the husband of Plaintiff No.1 and on 15.08.1974 would reflect that due to age old, the husband of Plaintiff No.1 had given a declaration. Further, it is contended that, the husband of Plaintiff No.1 had also put his thumb impression. Further, it is contended that, on 11.06.1995 in the presence of villagers husband of Plaintiff No.1, husband of Defendant No.3 and Defendant No.5 have partitioned the property bearing survey No.8/2, 9/1, 9/2 and other bagar hukum lands. Further, the villagers were also put their signatures to the partition deed. Further, it is contended that, as per partition the Plaintiffs and Defendants were in possession and enjoyment of property to an extent of 14 guntas each. Further, it is contended that, the husband of Defendant No.1 and Defendant No.3 were jointly paid the tax to the property and same was also recited in Patta Book. Further, it is contended that, the Plaintiffs with an intention to grab the suit schedule property as filed this application. Further, the suit of the

Plaintiffs is not maintainable in law. Hence, prays to reject the application.

14. In order to substantiate their contention the Plaintiffs have produced the RTC extract with respect to suit schedule property. The RTC Extract discloses that the name of husband of Plaintiff No.1 and father of Plaintiff No.2 namely Chowdappa S/o Hunasemarada Guthyappa does find place in owners column and in cultivators column and mode of acquisition is shown as through MR 22/83-84 ಭೂ.ನ್ಯಾ.ವ .

15. Further, the Plaintiffs have produced the extract of mutation register, certified copy of order of Land Tribunal, original hakku pathra, death certificate, certificate of genealogical tree, Yield certificate/drilling report, tax paid receipts, receipts issued by MESCOM, electricity grant certificate issued by MESCOM, 6 photos and C.D.

16. The Defendants have produced the certified copy of survey atlas with respect to suit schedule property, certified copy of order of Land Tribunal,

certified copy of hakku pathra stands in the name of husband of Plaintiff No.1, certified copy of Form No.7 dated 15.08.1974 and it discloses that due to age old of the father of Chowdappa, husband of Plaintiff No.1 and father of Plaintiff No.2 had given a declaration and also put his thumb impression. According to Defendants, the suit schedule property was granted in favour of husband of Plaintiff No.1 and father of Plaintiff No.2 on behalf of the joint family. Further, the Defendants have produced the tax paid receipt and jubani palu patti.

17. On over all perusal of the materials available on record, it is relevant to note that the Plaintiffs are seeking temporary injunction against the Defendants to the property bearing Survey No.9/1 to an extent of 1 acre 15 guntas situated at Goggehalli village, Chandragutti hobli, Soraba Taluk. At this stage it is relevant to note that the Defendants have not disputed that the Land Tribunal has issued saguvali chit in favour of husband of Plaintiff No.1 and father of Plaintiff No.2 with respect to suit schedule property. But, the Defendants have disputed that suit

schedule property was granted to husband of Plaintiff No.1 and father of Plaintiff No.2 on behalf of the joint family. There is no doubt that the revenue records with respect to suit schedule property stands in the name of husband of Plaintiff No.1 and father of Plaintiff No.2. Further, the Defendants have contended that, the Plaintiffs and Defendant No.1 to 6 are the members of same family and as per jubani partition the Defendants are also cultivating in the suit schedule property. In order to consider the respective contention of the parties, full fledged trial is required. At this stage the Plaintiffs have not made out a prima facie case and balance of convenience also not lies in favour of the Plaintiffs. Considering all these facts, this court is of the opinion that, the Plaintiffs have failed to prove that the above said three mandatory component are in their favour at this stage.

18. The contention of the Plaintiffs in the affidavits annexed to the I.A.No.1 cannot be consider at this stage. Further, as there is a serious dispute with regard to acquisition of the suit schedule property. It is well settled

law that while deciding application under Order 39 rule 1 and 2 of CPC the court has look into three aspects. (1) Discover, whether the Plaintiff case is frivolous or vexatious or he has established prima facie case?, (2) In whose favour the balance of convenience lies and (3) If the equitable relief of injunction is not granted who will suffer? It is true that the terms prima facie case and prima facie title are entirely different. To avail relief of temporary injunction the Plaintiff has to prove his prima facie possession only. The prima facie case really means that there is a case, which required trial, and the case is not the one based on erroneous and vexatious ground. In present case, the Plaintiffs have not made out a prima facie. The Plaintiffs are yet to prove their case to the satisfaction of the court. Hence, at very inception the court is of opinion that, the Plaintiffs have not made out a prima facie case in their favour at this stage.

19. The Plaintiffs if they have avail preventive relief of temporary injunction, they have to establish existence of prima facie case and also they have established that

the intervention of court is necessary safe guard in respect of suit property. The Plaintiffs shall also establish that, they have got concluded right over suit schedule property and the intervention of the court is also very much essential. The Plaintiffs also proves that balance of convenience lies in their favour and if an order of temporary injunction is not granted they will be put to loss and hardship. However, in this case at this stage it appears that the Plaintiffs have not established their prima facie in their favour and the Plaintiffs have failed to establish alleged apprehension. Accordingly, I proceed to answer **point No.1 to 3 in the negative.**

Point No.4:

20. In view of my findings on point No.1 to 3, I proceed to pass the following:

ORDER

I.A.No.1 filed by the Plaintiffs under Order 39 Rule 1 and 2 of CPC is hereby rejected.

Exparte order passed on I.A.No.1
on 01.09.2021 is stands vacated.

Under the circumstances parties
shall bear their own cost.

For compliance under Section 89 of
CPC by 25.11.2021.

(Dictated to the Stenographer, transcribed and typed
by her, then corrected by me on the computer, signed and
then pronounced by me in the open Court on this the 18th
day of October, 2021)

Sd/-
(Sri. Manju.M)
Addl. Civil Judge & JMFC,
Soraba.