



**IN THE COURT OF THE SENIOR CIVIL JUDGE
AND JMFC., AT GUBBI.**

Dated this the 05th Day of July 2024

**Present: Smt.ANUPAMA D.
B.COM.LL.B.,
Senior Civil Judge.**

O.S.27/2024

Plaintiff : N.Shivanna

V/s

Defendants: Chief Secretary & Others

Parties in I.A.No.II

Applicant: N.Shivanna ... Plaintiff

V/s

Opponents: Chief Secretary & Others ... Defendants

Application filed	U/O.39 Rule 1 & 2 of CPC
Relief sought for	Ad-interim order of Temporary injunction
The date on which the application is filed	25-01-2024
I.A. No.	II
Date on which objection filed by the defendant	12.06.2024
Date on which orders passed	05.07.2024



ORDERS ON I.A.NO.II FILED BY THE PLAINTIFF U/O.39
RULE 1 & 2 OF CPC

This application is filed by the plaintiff against the defendants 1 to 6 by praying to grant an ad-interim order of temporary injunction restraining the defendant 1 to 6 and their agents, servants or anybody acting on their behalf from interfering with the peaceful (the word “possession” has been left out in this application) and enjoyment in respect of the suit schedule property.

2. According to the details of I.A., the suit schedule property is the part and parcel of the land bearing Sy.No.84, totally measuring 12 acres 20 guntas, out of which 11 acres 39 guntas, excluding 0-20 guntas of kharab situated at Malamachanakunte Village, Chelur Hobli, Gubbi Taluk.

3. The brief facts of the plaintiff's case:

3(a) It is stated in the accompanying affidavit that the plaintiff has filed this suit against the defendants for the relief



of declaration and such other reliefs. One Sheshgowda, resident of Chelurhatti Village, Chelur Hobli, Gubbi Taluk is great grandfather of the plaintiff and he married one Chikkamma. Out of the said wedlock, the said Sheshgowda had three sons Singegowda, Nagegowda and Dasappa. The said Sheshgowda had inherited the properties to his credit at Malamachanakunte Village, Chelur Hobli, Gubbi Taluk. He and his wife died intestate leaving behind 3 sons. After the death of Sheshgowda, his 3 sons have succeeded / inherited the estate of deceased and they have divided the family properties through oral partition in the year 1955. Accordingly, the property measuring 2 acres 24 guntas in Sy.No.56/1, 2 acres 28 guntas, in Sy.No.82, 2 acres 02 guntas in Sy.No.83, 11 acres 39 guntas in Sy.No.84, 2 acres 11 guntas in Sy.No.86 have been allotted to the share of Singegowda.



3(b) 2 acres 24 guntas in Sy.No.56/1, 2 acres 20 guntas in Sy.No.82, 2-00 acres in Sy.No.83, 2 acres 11 guntas in Sy.No.86, 2 acres 34 guntas in Sy.No.87 have been allotted to the share of Nagegowda.

3(c) 2 acres 22 guntas in Sy.No.82, 1 acre 20 guntas in Sy.No.83, 2 acres 11 guntas in Sy.No.86 have been allotted to the share of Dasappa.

3(d) After effecting the partition, the respective shares were put in physical possession of above said 3 sons of Sheshgowda. Ever since the date of division of properties, all 3 sons have got mutated their names in their respective shares and their names also reflected in RTC at Column No.9 and 12(2). Singegowda died about 45 years back and his wife also died subsequently. Singegowda had 3 daughters and a son namely Channamma, Sheshamma, Sheshgowda and Sakamma. During life time, the marriages of his daughters were taken place. Ultimately, Sheshgowda being the only son



of Singegowda had inherited the estate of his father. The 2nd son of Sheshegowda had married Halamma and got 8 children from her namely, Guruchikkanna, Narayanappa, Subbarayappa, Rangaswamaiah, Govindaiah, Mariyamma, Ugraiah and Kalingaiah. Among them, Rangaswamaiah was taken as foster son by Dasappa and Malamma. All the children of Nagegowda have got divided the properties of Nagegowda after his death under oral partition in the year 1984. After the death of Dasappa, his wife Malamma and son Late Sheshegowda by executing the registered Gift deed dated:21-03-1960 and gifted all the properties in favour of her daughter Channamma.

3(e) It is further contended that, Singegowda got into possession of a portion of land measuring 11 acres 39 guntas a fellow land out of total extent of 12 acres 20 guntas in Sy.No.84 of Malamachanakunte, Chelur Hobli, Gubbi Taluk immediately after family partition and brought that land for



cultivation with hard efforts i.e. suit schedule property of this case. Holding of title and physical possession of plaintiff over the suit schedule property has not been disputed by anybody and nobody have claims of any right, title, interest or possession over the suit schedule property. No efforts were made by anyone including the defendants to take over physical possession of the suit schedule property from him in any manner. Accordingly, he continued to be in physical possession and enjoyment of the suit schedule property during his lifetime. The said holdings confirm title and physical possession confirms with affirmation on recording his name in the revenue record as Khathedar and Cultivator. Mutation also accepted in his name in the year 1963-64. Singegowda had an occasion to borrow loan from VSSN Bank, Nallur by hypothecating a portion of the land measuring 5 acres 29 guntas out of 11 acres 39 guntas excluding 0-21 guntas of kharab. He died leaving his only son



Sheshgowda. Sheshgowda discharged the loan borrowed by his father. The revenue entries have been changed in the name of Sheshgowda S/o Singegowda. He inherits the property by inheritance and become absolute owner of the suit schedule property. He continued to be in lawful possession and enjoyment of the suit schedule property during his lifetime. The said Sheshgowda married with Shivamma and they had no issues. Sheshgowda and Shivamma have developed great love and affection with plaintiff. Out of the said love and affection they have started to bring up plaintiff since his childhood. He started to live with Sheshgowda and Shivamma from his childhood. They allowed him to be their foster son in all respect. Out of the said love and affection, Sheshgowda executed a registered Will dated:09-06-1997 and thereby bequeathed the suit schedule property in his favour and got registered the said document on 16.11.1984. He bequeathed the land bearing Sy.No.82 measuring 2 acres 28



guntas, Sy.No.83 measuring 2 acres 02 guntas in his favour. Sheshgowda died on 09-10-1999 at Chelur-Gollarahatti Village. Shivamma W/o Sheshgowda is alive and she is living with the plaintiff till today. Shivamma had executed a registered document i.e. Consent deed on 18-07-2023 and thereby ratified the act of her husband Sheshgowda in executing the Will in favour of the plaintiff and also confirmed physical possession of plaintiff over the suit schedule property.

3(f) It is further contended that one Basavaraju S/o Govindaiah and Paramesh S/o Govindaiah have filed original suit in O.S.No.557/2023 against one Shivanna and others. He has been arrayed as defendant No.6 in that suit. The suit came to be filed for the relief of partition. Even after knowing the execution of registered Will in favour of plaintiff, the said Govindaiah and Paramesh have filed the said suit for partition. As such, it amounts to denial of title of plaintiff over the suit schedule property. The said persons colluding with some



Villagers who are inimically deposing towards the plaintiff, provoked all of them to approach the defendants No.1 to 8 and by using political influence made attempt to influence them to take possession of the suit schedule property from the plaintiff and to form residential sites and allot sites to the Villagers. The claim of plaintiff for change of mutation and revenue entries in his name was opposed by the said Basavaraju and Paramesha. Hence, he has reasonable threat of denial of his title over the suit schedule property at the hands of defendants and also there is a threat of dispossession. Hence he has filed the suit before the court against the defendants.

4. Per Contra, the learned A.G.P. representing the defendants 1 to 6. Defendant No.4 has filed his written statement and filed memo to adopt the same as objections to I.A.No.II.

5. I have gone through the written statement filed by the defendant No.4.



6. **The brief facts of defendant No.4 are as under:-**

6(a) He denied all the averments of paragraphs 2 to 19 of the plaint and further contended that number of people of Malamachagunte Village has got constructed houses in the suit schedule property i.e. in 8-34 Acres very long back and they are living there. There are many houses in this 8-34 Acres. People are residing in houses. On representation made by the people of new village, the Tahsildar, Gubbi reported the matter to the Deputy Commissioner. Thereafter, the Deputy Commissioner as per Section 38-A of Karnataka Land Reforms Act, 1961 named the unrecorded habitation as Chelur Hatti Village. The said proposal was sent to Government and same was notified. The suit schedule property Sy.No.84 is totally measuring 11 Acres 39 Guntas excluding 0-20 guntas of kharab. Out of this property, 11-39 acres, the Government has declared the land measuring 8-34 Acres as New Revenue Village and named it as Chelur Hatti as per Gazette



Notification dated: 16-02-2024. The people residing in the suit schedule property measuring 8-34 Acres by constructing houses have been paying taxes to the concerned Grama Panchayath. The Grama Panchayath has also provided all amenities such as water, drainage, road, electricity supply etc., There lies school building and also Aralikatte etc., in the said property. The said people in the revenue village are residing and enjoying since 30-40 years. Nobody has questioned their possession till today.

6(b) The suit is barred by limitation and bad for necessary parties. On these grounds, he prays to dismiss the application.

7. I have carefully gone through the case papers and copies of documents produced by both plaintiff and learned A.G.P.

8. **Arguments of learned counsel for plaintiff:**

The learned counsel for plaintiff has vehemently argued that, the suit schedule property has not been acquired by the



Government of Karnataka and compensation has also not been fixed for the measurement of land which has been identified as Chelur Hatti by notification of Deputy Commissioner, Tumakuru. Without being following due procedure, the learned Deputy Commissioner has passed a Notification for entering the name of Government in RTC with regard to Sy.No.84 measuring 8-34 Acres. All the documents pertaining to Sy.No.84 are standing in the name of Sheshegowda S/o Singegowda. Such being the case, the Government itself cannot take any action with regard to dispossession of plaintiff from the suit schedule property and declared the said property as Government property and allotted to the said Villagers. Notification issued by the learned Deputy Commissioner of Tumakuru has been stayed by the Hon'ble High Court of Karnataka in Writ Petition No.12890/2024(LR). Now, the Government officials, on the basis of notification is causing interference in the possession



of the plaintiff over the suit schedule property and tried to dispossess him. Having no other way, the plaintiff has filed this suit before the court.

9. Arguments of learned counsel for defendants:

On the other hand, the learned A.G.P. has argued that, as per Section 38-A of Karnataka Land Reforms Act, 1961, the learned Deputy Commissioner has passed notification and declared the said village as Chelur Hatti Village. Since from 40-50 years, the villagers are residing in the said place. There are building of schools, panchayath and some other facility have also provided by panchayath such as water, road, electricity supply, thereby it is clear that since from numbers of years, the villagers are residing in the said place by constructing houses. Now after declaration of village as Chelur Hatti Village as per notification, the plaintiff has come up with this application only to harass the villagers in the Chelur Hatti. The plaintiff is not in possession of the suit



schedule property. Hence suppression of interference into his possession over the suit schedule property does not arise. On these grounds he prays to dismiss the application.

10. In support of their arguments, the learned counsel for plaintiff has produced copy of documents such as index of lands, registered gift deed, registered Will, registered Consent deed, registered relinquishment deed, death certificate of Sheshgowda and RTC pertaining to Sy.No.84.

10(a) He also furnished copies of Writ Petition Order passed by the Hon'ble High Court of Karnataka in W.P.No.12890/2024, photographs of suit schedule property, notification of learned Deputy Commissioner, Tumakuru.

11. On the other hand, the learned A.G.P. has produced Gazette Notification dated: 16-02-2024, Order of Asst.Commissioner dated:21-02-2014, RTC pertaining to suit Sy.No., photographs with C.D., Circulars dated: 8-11-2022



and 15-10-2019, letter written by Asst.Commissioner to Dy.Commissioner, Tumakuru District dated:09-02-2024, joint spot mahazar conducted by ADLR and Tahsildar on 17-01-2024, report of Village Accountant, copy of letter written by villagers to Tahsildar, Gubbi Taluk and Village Map.

11(a) I have meticulously verified the documents furnished by both the parties.

12. The following points that would arise for my consideration are;

- 1) Whether the applicant/plaintiff has made out prima-facie case to grant an order of Temporary injunction in his favor?
- 2) Whether the balance of convenience lies in favor of applicant/plaintiff?
- 3) Whether the hardship and injury will cause to the applicant/plaintiff, if an order of temporary injunction is refused?
- 4) What order?

13. My answers to the above points are as follows:

Points No.1 to 3 : In the Negative



Point No.4 : As per final Order,
for the following

:-REASONS:-

14. **POINTS No.1 To 3:** All these points are taken up together for common discussion to avoid repetition of facts and evidence, as they are based on same set of facts and law.

14(a). On careful perusal of the documents available on record, it is come to know that, a notification has been issued by the learned Deputy Commissioner of Tumakuru District by declaring property bearing Sy.No.84 measuring 9.15 guntas including 21 guntas Kharab belongs to Government and the same has been called in the name of New Chelur Hatti and in the very same Sy.No. 3.05 guntas has been still standing in the name of Sheshgowda S/o Singegowda. The plaintiff has explained that how he has acquired the suit schedule property from his fore fathers. According to him, he has acquired the suit schedule property by way of registered Will executed by



Sheshappa and his wife Shivamma. In order to consider that the plaintiff is in possession and enjoyment of the suit schedule property as on the date of suit, no documents are forthcoming in the record. All the documents which have been produced by both the parties are showing the name of Sheshegowda S/o Singegowda with regard to Sy.No.84 is concerned. The name of the plaintiff of this suit is N.Shivanna and no documents are available on record to consider that he is in possession of the suit schedule property and having katha of the same entered into his name. He has produced the copies of registered Consent Deed and registered Will. According to these documents, he is claiming that the suit schedule property belongs to him and he is in peaceful possession and enjoyment over the same. In order to get the relief of temporary injunction against the defendants, the plaintiff has to prove prima facie case before the court. The defendants have produced relevant documents before the



court to show that circulars have been issued by Chief Secretary, Revenue Department, letters have been exchanged between Tahsildar, Asst.Commissioner and Dy.Commissioner with respect to declaration of name of the Village as Chelur Hatti in Sy.No.84. Notification has also been issued by the learned Deputy Commissioner with regard to declaration of the said village. The photographs produced by the learned A.G.P. also showing that there are certain buildings constructed since long back such as water, drainage, school building, houses, milk dairy, Aralikkatte, Samudhaya Bhavan etc., These buildings cannot be constructed over night. The villagers are living in houses constructed by them in the said village since long time. The Government itself has declared that the said property belongs to private person. But as per Section 38-A of Karnataka Land Revenue Act 1961, the said place has been recently named as Chelur Hatti Village. The plaintiff even though seeking the relief of temporary injunction against the



defendants No.1 to 6, he has failed to produce the relevant documents before the court to show that, as on the date of filing of suit, the suit schedule property is standing in his name. No single piece of document available on record is disclosing that he is having katha of the suit schedule property in his name.

14(b). The learned counsel for plaintiff has vehemently argued that, notification issued by the learned Deputy Commissioner, Tumakuru District has been stayed by the Hon'ble High Court of Karnataka in the above said Writ Petition, since the Deputy Commissioner has not followed proper procedure of availing the land by the plaintiff. But in order to consider the present application, prima faice documents have to be produced before the court which is showing his name with regard to the suit schedule property. At the time of trial only, this Court can come to the conclusion that the Sheshgowda S/o Singegowda whose name has been



entered in the RTC and other documents is grandfather of the plaintiff. The document Will is always to be looked in suspicious circumstances. According to the plaintiff, he has acquired the suit schedule property by way of registered Will. But by virtue of the document, he has not got obtained the khatha of the suit schedule property into his name. He has also not been explained the reasons for not obtaining the khatha of the suit schedule property into his name by virtue of registered Will dated:09-06-1997. The pleadings of the plaintiff is very much silent about these facts. According to my considered view, the documents available on record are not sufficient to come to the conclusion that the plaintiff has proved his prima facie case before the court to get obtain an order of injunction from the hands of this court as prayed in I.A.No.II. Hence, by considering the available documents on record, if the order of temporary injunction is granted, much hardship would be caused to the Villagers who are residing in



the suit schedule property, not either to the plaintiff or defendants. The balance of convenience lies in favour of defendants 1 to 6 who have produced all the relevant documents before the Court. Hence, I answer Point No.1 to 3 in the Negative.

15. **POINT No.4:** For the foregoing reasons, I proceed to pass the following:-

ORDER

I.A.No.II filed by the plaintiff under Order
XXXIX Rules 1 and 2 of CPC., is hereby
DISMISSED.

(On my dictation transcribed and typed by the Stenographer, print out taken by her, corrected and then pronounced by me in the Open Court on this the 05th Day of July 2024.)

Sd/-
(Smt.ANUPAMA D.)
Senior Civil Judge & JMFC.,
Gubbi.

