

**IN THE COURT OF THE ADDL. CIVIL JUDGE &
JMFC., GUBBI**

Present: Sri. Ganesha N. M.A., LL.B.,
Addl. Civil Judge & JMFC.,
Gubbi.

Dated this the 23rd of February of 2018
O.S.No 304/2013

Plaintiffs:- Gowramma and otheres

Vs.

Defendants:- Pandurangaiah and
others

**ORDERS ON I.A. No. 1 FILED UNDER ORDER 39 RULE 1
and 2 OF CPC**

The applicant/plaintiff has filed this application under order 39 Rule 1 and 2 CPC seeking an order of temporary injunction restraining the defendants or their agents or servants or anybody acting on their behalf from laying any way interfere with the plaintiff's peaceful possession and enjoyment of the suit schedule property in any manner during the pendency of the suit.

2. In the affidavit accompanying to this application stated that the plaintiffs are the absolute owners in possession and enjoyment of the suit schedule property by

spending huge money and hard labour. It is further stated that after the death of her husband they filed an application before the Tahasildar, Gubbi for change of katha and pahani into their name on pavathi varasu and the said process is still pending. It is further stated that defendants are the utter strangers to the suit schedule property having no manner of right, title, interest, muchless possession over the suit schedule property are attempting to tress pass on the suit schedule property and further attempting to interfere with their peaceful possession and enjoyment of the suit schedule land basing on the concocted RTC extract by including the suit schedule property without any authority. The defendants have no authority to do any act on any portion of the suit schedule property. Hence this application.

3. Per contra the defendants have filed written statement. In the written statement it is stated that Sy.No. 3 totally measuring 7-36 guntas out of which 4-00 acres is originally a granted and of ancestors of defendant No.2. The said land has been granted to the Karethimma and Kadura

jointly. It is further submitted that the said Karethimma had got share of 4 acre and Kadura has got 3 acre 36 guntas. The revenue authorities have made out Haddubastu to the Sy.No.3 total extent of 7-36 guntas and sketch as 3/1 and 3/2. Sy.No. 3/1 fallen to the share of Karethimma S/o Karelakki who is the grand father of the defendant No.2. It is further submitted that after the death of Karethimma the grand father of defendant No.2, the father of the defendant No.2 has been in continuous possession and enjoyment of the said property after the death of father of defendant No.2 and the defendant No.2 is in lawful possession and enjoyment of the said property. It is further submitted that the defendant No.2 is having lawful right, title, interest muchless possession over the said property. It is further submitted that plaintiffs are utter strangers to the said property i.e. Sy.No.3 and they have not at all having any right and possession over the property. Hence prays to dismiss the application.

4. Heard counsel for plaintiffs and defendants and perused the pleadings, I.A. No.1, affidavit and other materials on record.

5. The points that arise for my consideration are;

- 1) Whether the plaintiffs made out a prima facie case?
- 2) Whether the balance of convenience lies in plaintiffs favour?
- 3) Whether irreparable loss will be caused to the plaintiffs if this application is not allowed?
- 4) What order ?

6. My answer to above points are as under;

Point No.1 to 3 – Affirmative

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

REASONS

7. **Point No.1 to 3** - Since these points are interconnected with each other, taken up together for consideration to avoid the repetition of facts and circumstances of the case. The plaintiff has filed this suit against the defendants for declaration and permanent injunction and other reliefs. The case of the plaintiff is

that the plaintiffs are the absolute owners in possession and enjoyment of the suit schedule property by spending huge money and hard labour. It is further stated that after the death of her husband they filed an application before the Tahasildar, Gubbi for change of katha and pahani into their name on pavathi varasu and the said process is still pending. It is further stated that defendants are the utter strangers to the suit schedule property having no manner of right, title, interest, muchless possession over the suit schedule property are attempting to tress pass on the suit schedule property and further attempting to interfere with their peaceful possession and enjoyment of the suit schedule land basing on the concocted RTC extract by including the suit schedule property without any authority. The defendants have no authority to do any act on any portion of the suit schedule property.

8. The plaintiffs have produced the copy of the sale deed dated 31-03-93 in support of their case and which

prima facie shows the case of the plaintiff. Though the defendants have taken contention that the suit schedule property was originally granted to their grandfather and they are in the possession under succession, but they have not produced any documents to show their prima facie contention. At this stage what has to be considered is the prima facie case. The plaintiffs by producing the original sale deed they have shown the prima facie case. Hence the balance of convenience is lies in favour of the plaintiff. Hence if the application is not allowed the loss would be to the plaintiffs. Hence this court is of the opinion that the defendants should be restrained from interfering with the plaintiffs peaceful possession and enjoyment over the suit schedule property during the pendency of the suit. Hence I answered point No.1 to 3 in the affirmative.

9. Point No. 4- In view of above discussion I proceed to pass the following;

ORDER

I.A.No.1 filed by plaintiff under Order 39 Rule 1 and 2 of CPC is hereby allowed.

Defendants are hereby restrained from interfering with the plaintiffs peaceful possession and enjoyment over the sit schedule property during the pendency of the suit.

(Dictated to Stenographer directly and typed by her, script corrected, signed and then pronounced by me in open court on 23rd February of 2018.)

(Ganesha N.)
Addl. Civil Judge & JMFC.,
Gubbi.