

**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 12th of January of 2018
O.S.No 208/2017

Plaintiff:- Puttananjamma

Vs.

Defendants:- Rathnamma and others

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

The applicant/plaintiff has filed this application under order 39 Rule 1 and 2 of CPC, seeking temporary injunction against the defendants restraining them from interfering with her peaceful possession and enjoyment over the suit schedule property during the pendency of the suit.

2. In the affidavit it is stated that the plaintiff's husband was in peaceful and continuous possession and enjoyment over the suit schedule property since 1978-79 till his death. It is further stated that after the death of her husband, the plaintiff is in peaceful possession and

enjoyment of suit schedule property. It is further stated that originally the suit schedule property was the Government land and her husband had acquired the same through Darkast and she has been paying the revenue regularly. It is further stated that the defendants have got no manner of right, title, interest much less possession and enjoyment over the suit schedule property. It is further stated that the name of the father of the defendants was inserted in the RTCs by the revenue authorities mistakenly and on the basis and on the basis of that wrong entry in the RTC's defendants are attempting to interfere with the plaintiff's peaceful possession and enjoyment over the suit schedule property. It is further stated that now it is the time for harvesting the land but the defendant are not allowing the plaintiff to enter into the suit schedule property to carryout the agricultural work. It is further stated that the plaintiff had given a complaint to the concerned police to stop the illegal activity of the defendants, but the police have failed to stop. Hence plaintiff prays to allow the application.

3. Per contra the defendants have filed a memo to treat the written statement as objections to this application and same was permitted. In the written statement it is stated that one Late Siddaramaiah got 3 sons through his wife late Rudhramma, i.e. 1. Siddagangamma 2.Eramma and 3. Mahadevamma. Defendants are the children of 1st daughter Siddagangamma. It is further stated that property bearing Sy.No.28/1 measuring 5 acres situated at Bogasandra village, Nittur hobli, Gubbi taluk, Nittur was granted to the grand father of the defendants in the year 1958-59 as per GR No.970/1958-59 and defendants family have been cultivating the land and accordingly the grand father of defendants was in possession and after his death his family members are in possession of the above said property. It is further stated that the plaintiff's husband Shivanna S/o Huchaveeraiah was granted with the property bearing Sy.No. 28/2 measuring 6 acres as per G.R. No.971/1958-59 and he has been in possession of that property. It is further stated that when the husband of the plaintiff tried to encroach upon the defendants property,

the grand father of the defendants had given a complaint before the Chelur police station. It is further stated that the mother of the defendants had filed an application before Assistant Commissioner, Tumkur in RRT(A)122/1998-99 challenging the entry of the name of the plaintiff's husband in column No.12 of RTC of Sy.No.28/1 of Bhogasandra village. The Assistant commissioner of Tumkur had disposed off the appeal by giving direction to the Tahasildar Gubbi to take necessary action after conducting spot inspection. It is further stated that the husband of the plaintiff had filed O.S No.93/2000 for declaration, but the said suit was dismissed after exparte proceedings. It is further stated that the appeal preferred by the plaintiff's husband was also dismissed. It is further stated that upon the direction of the Assistant Commissioner, Tumkur, the Tahasildhar, Gubbi, has register case in RRT.DS.CR.25/2005-06 and after conducting spot inspection and taking report from the surveyor, the Tahasildhar has passed an order on 15.062017 to delete the name of Shivanna in column No.12(2) of RTC of Sy.No.

28/1P1 and directed to enter the name of Siddagangamma who is the legal heir of Siddaramaiah in that column. It is further stated that after the application has been allowed before the Tahasildar, Gubbi, the plaintiff has filed this frivolous suit against the defendants by creating the wrong cause of action. Hence defendants pray to dismiss the application.

4. Heard both counsel for plaintiff and defendants and perused the plaint, written statement, I.A. No.1, affidavit and other materials on record.

5. The points that arise for my consideration are;

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

6. My answer to above points are as under;

Point No.1 to 3 – Negative

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 applicant has filed this suit for permanent injunction against the defendants. In the affidavit it is stated that the plaintiff's husband was in peaceful and continuous possession and enjoyment of the suit schedule property since 1978-79 till his death. It is further stated that after the death of her husband, the plaintiff is in peaceful possession and enjoyment of suit schedule property. It is further stated that originally the suit schedule property was the Government land and her husband had acquired the same through Darkast and she has been paying the revenue regularly. It is further stated that the defendants have got no manner of right, title, interest much less possession and enjoyment over the suit schedule property. It is further stated that the name of the father of the defendants was inserted in the RTC by the revenue authorities mistakenly and on the basis of that

wrong entry in the RTC's defendants are attempting to interfere with the plaintiff's peaceful possession and enjoyment over the suit schedule property. It is further stated that now it is the time for harvesting the land but the defendant are not allowing the plaintiff to enter into the suit schedule property to carryout the agricultural work. It is further stated that the plaintiff had given a complaint to the concerned police to stop the illegal activity of the defendants, but the police have failed to stop .

8. The plaintiff has produced 4 certified copies of the RTC's for the year 1978-79 to 1998-99 of Sy.No.28/1 of Bogasandra village, Nittur hobli, Gubbi Taluk. The plaintiff has produced 14 RTC's for the year 2001-02 to 2016-17 of Sy.No.28/1P1 of Bogasandra village, Nittur hobli, Gubbi Taluk. Plaintiff has produced 9 photo copies of tax paid receipts and 2 original tax paid receipts. The above said 4 certified copies of the RTC's and 14 RTC's prima facie show that in coloum No.12(2) one Shivanna's name has been screening. 9 photo copies of tax paid receipts and 2 original

tax paid receipts prima facie shows that one Shivanna has been paying tax to the concerned authorities. But the plaintiff has produced the tax paid receipts till the year 2007. The plaintiff has produced certified copy of the order sheet and an application filed U/o 22 Rule 3 of CPC in RRT(DIS)CR 25/05-06 of court of Tahasildar Gubbi.

9. Per contra the defendants have produced Genealogical tree, photo copy of demand register extract for the year 1959-60, photo copy of RTC for the year 1967-72, photo copy of Saguvali Cheeti register extract, photo copy of the order passed by the AC Tumkur in RRT(A) 122/98-99, photo copy of the FIR, photo copy of the judgment and decree in O.S. No.93/2000, photo copy of the order passed by the AC in LRFCR No. 111/2004-05, the photo copy of the acknowledgment issued by the PSI, Chelur, 5 photographs, photo copy of the order passed by the Tahasildar dated 15-06-2017 in RRT(DS)CR 25/2005-06 and RTC for the year 2017-18.

10. At this stage what has to be considered is the prima facie possession of the plaintiff over the suit schedule property. She has produced as many as 20 documents but those are not evidence in the prima facie present possession over the suit schedule property. RTC's produced by the plaintiffs, which shows the name of the husband of the plaintiff in column No.12, but that entry is concerned, as alleged by the defendants, the Tahasildhar has passed an order dated 15-06-17 in RRT (DS) CR 25/2005-06 directing to delete the name of one shivanna, the husband of the plaintiff and to enter the name of the defendant. The plaintiff has produced certified copies of the order sheet and application filed U/o 22 Rule 3 of CPC in RRT(DIS) CR No. 25/05, which prima facie shows that the plaintiff and her counsel was present before the court of Tahasildhar, gubbi. However the plaintiff has not stated any thing about this fact in the plaint. It is prima facie fact that the plaintiff has instituted his suit after being had present before the Tahasildhar Court. The defendant has produced another documents i.e., copy of the judgment passed by the Hon'ble

Prl. Senior Civil Judge in O.S. No.93/2000, wherein the suit filed by one Shivanna the husband of the plaintiff herein, for declaration and possession of property bearing Sy. No.28/1 measuring 5 acres, which is also the subject matter of the present suit, was dismissed. The counsel for plaintiff in support of his arguments, he has referred to following judgments:

a) The judgment of the Hon'ble Supreme Court in M.Kallappa shetty V/s M.V. Lakshmi Narayana Rao, held that :

“ Now coming to relief No.1 the plaintiff cannot obtain that relief unless he satisfies the court that he has good title to the suit property. The High Court has come to the conclusion and with that conclusion we agree that on the material on record. It is not possible to come to the conclusion that the plaintiff has satisfactorily established his title to the suit property. Hence he is not entitled to relief No.1 ordinarily under these circumstances we would have remanded the case for deciding the question of title afresh. But this litigation has gone on for a long time and the property in dispute was purchased for Rs.100. Under these circumstances. It is in the interest of the parties to keep open the question of title to be agitated by the parties if they so desire in a fresh proceeding and respect of relief No.2 and set aside its decree in respect of relief No.1. As we specifically keep open the question of title it will not be open to the question of title, it will not be open to the plaintiff or his representatives or successors to resist any suit the defendant or his representatives or successors may bring in future for possession of the suit property on the basis of their title either on the ground of resjudicata or O.11 Rule 2. ”

The fact of the above was that the plaintiff claims to have purchased the suit property from one Banavarada Abdulla Saheb for a sum of Rs.100/-. On January 11, 1947

and ever since the purchaser he was in possession of the suit property and before the sale in his favour, his vendor was in possession of the suit property. The property sold to the plaintiff is described in the sale deed both the Survey No. as well as by boundaried. The survey No. of the property as shown in the sale deed in favour of the plaintiff was 1722 whereas it is now established that its correct survey No.1 is 1719. It is not disputed that according to the boundaries shown in the sale deed in favour of the plaintiff, it is a suit site that had been sold to him.

Hence the above verdict does not applicable to the present application.

b) The judgment of the Hon'ble Supreme Court in DR Adhinarayan swami V/s Girraju Papamma and another is pertaining to adverse possession. The plaintiff's claim in the present suit is entirely different. Hence the above verdict of the Hon'ble Supreme Court does not applicable to the present application.

(c) The judgment of the Hon'ble High Court of Karnataka in Muneer Ahmed V/s the State of Karnataka.

The fact of the above case was the petitioner was claiming the regularization of unauthorized accupation. The Hon'ble High Court of Karnataka has directed the concerned authority to provide the petitioner an opportunity to come on record as legal heir and thereafter to dispose of the matter.

The fact of the present suit does not applicable to the above judgment, because the plaintiff has not stated any thing in the plaint about the RRT proceedings which was pending before the Tahasildhar.

d) In Shivanna V/s The special Tahasildhar Bangalore, North Taluk and others, the Hon'ble High Court Karnataka held that :

“ It is not the function of the Tahasildar for the determination of the rights of parties like a civil court with regard to the interest the fourth respondent could still claim under the sale deed of the year 1924 and it is a matter essentially for the Civil Court and not for the Tahasildar. Likewise the change of the nae in the revenue records if at all was made in favour of the petitioner in the year 1965 and as contended by the fourth respondent, it is by playing fraud etc., or with the concocted documents or otherwise, even such allegations of fraud etc., is a matter that should be made good before the Revenue Authorities. Authorities like Tahasildar totally lack jurisdiction to render finding or make a determination either in respect of an act of fraud or for declaring the rights in favour of any parties under a sale deed etc., It is the be borne in mind that the Revenue authorities act for change of entries ect., only based on an earlier acquisition of right which has taken place already and the revenue entries in only a reflection of such change of right. Revenue entries do not create or extinguish rights, but is only a reflection of a right already possesses. ”

But in the present case, as alleged by the defendant that the husband of plaintiff had already been approached the Civil Court in O.S. No.93/2000 wherein the suit for declaration and permanent injunction was dismissed.

Hence above judgments do not support the present application of the plaintiff.

11. Under these prima facie facts and circumstances that the plaintiff claiming the protection from interference from the defendant, as the plaintiff's husband got acquired the suit schedule property in Darkast since 1978-79 and revenue records are also showing the name of the husband of the plaintiff in column No.12(2) of the RTC's as cultivator and the defendant claiming that in the RTC's it has been wrongly inserted the name of the husband of the plaintiff, moreover the husband of the plaintiff had filed a suit in O.s. No.93/2000 which was dismissed. The defendant had filed RRT(DIS) CR 25/2005 which is came to be allowed and which remains unchallenged. Hence plaintiff shows no prima facie case. Since prima facie case remains

undisclosed and with due respect to the judgments of the Hon'ble Supreme Court and Hon'ble High Court of Karnataka stated supra, no balance of convenience lies in favour of plaintiff and no irreparable loss and injury to the plaintiff if the application is not allowed. Hence I answered point No.1 to 3 in negative.

12. Point No. 4- In view of above discussion made on point No.1 to 3, I proceed to pass the following;

ORDER

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

(Dictated to Stenographer directly and typed by her, script corrected, signed and then pronounced by me in open court on 12th January of 2018.)

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