

IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC., GUBBI

**Present: Smt. Vinutha D.S., B.Sc.(seri)., LL.B.,
Prl. Civil Judge & JMFC.,
Gubbi.**

Dated on this 12th day of October 2022

O.S.No. 449/2019

Plaintiff : Prasannakumar.D.M
S/o D.M.Mahalingappa,
Aged about 60 years,
R/o Doddaguni,
Nittur Hobli, Gubbi Taluk.

(By Sri. D.M., Advocate)

V/s

Defendants: **1.** D.S.Nataraju S/o Shambhurudraiah,
Aged about 60 years,
2. Sulochana W/o Karibasavaiah,
Aged about 56 years,
Both are R/o Gubbi.
3. Jagadeesha S/o Shambhurudraiah,
Aged about 50 years,
4. Sudha D/o Shambhurudraiah,
Aged about 56 years,
5. Rajkumar S/o Shambhurudraiah,
Aged about 42 years,
D.3 to 5 R/o Doddaguni,
Nittur Hobli, Gubbi Taluk.

6. The Special Land Acquisition Officer,
Yettinahole Project,
Ghandi Nagar, Tumkur.

(D.1 to 5 by Sri.H.N.D., Advocate.,)

PARTIES TO IA No.1

APPLICANT : Prasannakumar.D.M– Plaintiff

V/S

OPPONENTS : D.S.Nataraju and others - Defendants

**ORDERS ON I.A No. 1 U/O.XXXIX RULE 1 AND 2 OF THE
CPC**

I.A .No.1 is filed by the plaintiff under order 39 Rule 1 and 2 of CPC praying for temporary injunction against the defendants restraining the defendant No.4 from interfering in peaceful possession of plaintiff over suit schedule property.

2. The suit schedule property is described as under:

Land bearing Sy.No.174/6 of Doddaguni Village, Nittur Hobli, Gubbi Taluk totally measuring 4 acres out of which 2 acres bounded by;

East : Land of D.M.Renukaradhya
West : Land of Jyothi prakash
North: Land of D.M.Bhadra Shetti
South: Voni

3. In the affidavit annexed to the application, it is stated that, one Chikkarudraiah and Marulappa were brothers. The said

Chikkarudraiah had two sons namely Shivanandappa and Shamburudraiah. Marulappa is the grand father of plaintiff. Plaintiff grand father and Chikkarudraiah partitioned their joint family property and in the said partition the suit schedule property had fallen to the share of his grand father. After his death, plaintiffs father succeeded the suit schedule property. The plaintiff father and plaintiff and his three brothers divided their joint family property under a registered partition deed dated:29.07.1972. In said partition, suit schedule property had fallen to the share of plaintiff and thus he remained as absolute owner in possession of suit schedule property. The remaining 2 acres was fallen to the share of his brother Jyothi prakash. Originally the land bearing Sy.No.174/6 situated at Doddaguni village measuring 4 acres was bounded on; East by: land bearing Sy.No.154/2, West by: Road and land bearing Sy.No.173 of Doddaguni, North by: land bearing Sy.No.174/5 and South by: Road and land bearing Sy.No.173 of Doddaguni.

Further, in said partition deed the eastern boundary Sy.No.154/2 was fallen to share of plaintiff brother D.M.Renukaradhya and the northern boundary land bearing Sy.No.174/5 belonged to his another brother D.M.Bhadrashetty. But in the said registered partition deed, instead of mentioning Sy.No.174/6 it is written as Sy.No.154/3 and said mistake is a bonafide one. Earlier the khata of Sy.No.174/6 stood in the name of grand father of defendants Chikkarudraiah and

subsequently it was made out in the name of Shivanandaiah S/o Chikkarudraiah and then in the name of defendants father Shamburudraiah. At no point of time the above said were in possession of propert bearing Sy.No.174/6. That a part the said Shivanandaiah has affixed his signature in the said registered partition deed dated:29.07.1972. Thus he was aware that Sy.No.174/6 was partitioned between plaintiff and his brother Jyothiprakash. On 28.08.2018, the Land Acquisition Officer has issued notice to acquire 1 acre 39 guntas in Sy.No.174/6 of Yethinahole project. The defendant No.4 is making efforts to draw the compensation and also defendants are interfering in his peaceful possession and enjoyment over suit schedule property. Hence, he has filed this suit seeking declaration of title and permanent against defendants.

In his application, he has stated that he is the absolute owner in possession of suit schedule property, since the date of partition and growing crops in it. Due to wrong mentioning of survey number in the partition deed, khata and pahani of suit schedule property is not made out in his name. Taking advantage of situation that revenue entries are in the name of father of defendant No.4, the defendant No.4 is attempting to interfere with possession of plaintiff over suit schedule property. If she is not restrained, then plaintiff would be put to irreparable loss and hardship. On the other hand, no prejudice will be caused to defendant No.4. Hence, he prays to allow his

application.

4. On the other hand, the defendants No.1 to 5 have filed objection to the application. It is contended that one Bhadrappa of Doddaguni village had two sons namely Marulappa and Chikkarudraiah. The said Marulappa had a son by name D.M.Mahalingappa and he had 4 sons. The plaintiff is the 4th son of said D.M.Mahalingappa. The 2nd Chikkarudraiah had got 3 sons namely first Karibasavaiah who died un married, the second Shivanandaiah and the third Shamburudraiah. The defendants No.1 to 5 are the children of Shamburudraiah.

It is stated that property bearing Sy.No.174 totally measuring 11 acres, situated at Doddaguni Village belonged to 6 persons. The grand father of defendants that is Chikkarudraiah had got 4 acres in said survey number and it is his self acquired property. After survey, it was given new phod number as 174/6 measuring 4 acres and the defendants grand father name appeared in index of land and record of rights. He was in possession of said 4 acres land till his life time. After his death, his 2 sons Shivarudraiah and Shamburudraiah that is father of defendants No.1 to 5 succeed the said property and were in joint possession of it. Later they both partitioned the said property in an oral partition and as such defendants father had got the above said property for his share. All the revenue documents were also mutated in his name in 1978 and continued till 2020. He

remained as absolute owner in possession till his death. Defendants father died on 16.07.2010 and their mother died about 3 years back leaving behind defendants as their legal heirs. The defendants succeed the said property and are in possession of it.

Due to difference in family, the defendant No.2 and 4 had filed suit against defendants No.1, 3 and 5 as per OS.NO.20/2019 before Addl.Senior Civil Judge and JMFC, Gubbi seeking partition in the property Sy.No.174/6 measuring 4 acre and other joint family properties. The said suit ended in a compromise and final decree is also drawn as per the compromise petition. As per said compromise 2 acres each in Sy.No.174/6 had fallen to share of defendant No.2 and defendant No.4. Final decree is also drawn and the revenue documents are also mutated in their names vide MR.No.T16/2020-21. Recently, the government has acquired 1 acre 39 guntas in Sy.No.174/6 for yethinahole project, compensation is also awarded. Plaintiff in order to grab the compensation amount, has filed this false suit against defendants. At no point of time, plaintiff is the absolute owner in possession of suit schedule property. Plaintiff has no title over suit schedule property. The suit schedule property is not the ancestral property of plaintiff and defendants. Plaintiff has no prima-facie case in his favour and he has not approached court with clean hands. Hence, the application deserves to be rejected.

5. Heard both sides. Perused materials on record and heard written arguments filed by the plaintiff.

6. After going through the pleadings and other materials available on record, the following points arise for my consideration.

- 1.** Whether the plaintiff has made out prima facie case ?
- 2.** Whether the plaintiff has balance of convenience in her favour?
- 3.** Whether irreparable loss or injury would be caused to plaintiff if temporary injunction is not granted?
- 4.** What Order?

7. for the above points my answer as under:-

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:

REASONS

8. Points No.1 to 3:- Prima-facie case means an arguable case made out from the allegation and averments made in the pleadings in support of the documents produced by the party concerned. Among the trios as a guiding factor

'balance of convenience and irreparable loss to the plaintiff also plays a vital role. Grant of injunction is in the discretion of the court and if such discretion has to be exercised in favour of the applicant/plaintiff, it is to be proved to the satisfaction of the court that there is prima facie case on their side, balance of convenience leans on their side and unless the opponents/defendants are restrained by an order of injunction, an irreparable loss or damage would be caused to plaintiff during pendency of the suit. Let us examine the case on hand keeping these trio factors into consideration.

9. After verifying the pleadings of both parties, it is observed that there is serious dispute with respect to ownership of suit schedule property and also with respect to possession. Plaintiff claims himself as absolute owner of suit schedule property, having acquired same through a registered partition deed dated:29.07.1972 and since then he is in possession and enjoyment of suit schedule property. But defendants case is that the suit Sy.No.174/6 measuring 4 guntas originally belonged to their grand father and in a family partition, the said property was fallen to share of their father Shamburudraiah. Further, the defendant No.3 and 4 had filed a partition suit against defendants No.1, 3 and 5 in OS.NO.20/2019 before Addl.Senior Civil Judge and JMFC, Gubbi and compromise petition held in that suit, the suit schedule property had fallen to the share of defendant No.4. Thus by virtue of compromise

decree, the defendant No.4 has become the absolute owner of suit schedule property and she is in possession of it and revenue documents also mutated in her name. The plaintiff claims that in the registered partition deed dated:29.07.1972, mistakenly the suit survey number is mentioned as Sy.No.154/3 instead as 174/6 and hence khata is not made out in his name. As such the RTC of suit schedule property is standing in the name of defendants father and taking advantage of it defendant No.4 is interfering in his possession.

10. During course of arguments, plaintiff counsel relied and produced documents like RTCs of suit schedule property RRT proceeding NO.38/88-89; 147/87-88; 15/98-99; copy of judgment in OS.20/2019 objection filed by plaintiff in RRT 189/2019-20 copy of amendment dated:04.01.2021 to registered partition deed dated:21.07.1972, copy of partition deed dated:21.07.1972.

The defendant has produced Genealogical tree, index of land of Sy.No.174/6, record of right of Sy.No.174/6, Tippani, RTCs, orders sheet of OS.20/2019, plaint copy of OS.20/19, compromise petition copy and final decree copy.

11. I have carefully perused the above said documents. The documents produced by the plaintiff that is RTC of suit schedule property for the year 1968-69 show 4 acres standing in the name of defendants, uncle Shivanandaiah S/o

Chikkarudraiah. Further, the RTCs of the year 1978-79 to 1994-95 show Sy.No.174/6 standing in the name of defendants father. The compromise petition filed in OS.No.20/2019 dated:27.05.2019 reflect in Sy.No.174/6 towards northern side, 2 acres that has fallen to share of defendant No.2 and another 2 acres in Sy.No.174/6 towards southern side has fallen share of defendant No.4. The RTC of year 2020-21 show that suit Sy.No.174/6 4 acres in name of defendants father. I have also perused the copy of compromise decree date:01.07.2019. The document produced by plaintiff that is letter dated:04.10.2019 addressed to Tahasildhar, Gubbi and letter or requisition given by plaintiff and his brothers, wherein they have stated that they have orally partitioned the Sy.No.174/6 4 acres but due to inadvertence the RTC is standing in the name of their uncle Shivanandaiah and thereafter in the name of defendants father and now in the name of defendant No.4. The defendant No.4 by creating court compromise decree has applied for change of khata in her name. So they have requested Tahasildhar not to make khata in name of defendant No.4. I have also perused the copy of registered partition deed dated:21.07.1972 and also the document styled as “ಸ್ವಯಂ ಘೋಷಿತ ತಿದ್ದುಪಡಿ ಪತ್ರ” dated:04.01.2021.

12. The defendants documents that is index of land, records or rights depict the Sy.No.174/6 4 acres in name of defendants uncle Shivanandaiah, Tippani shows 174/6 in name of grand father of defendants. Even the RTCs produced by

defendants reveal suit schedule property in their father name. The recent M.R.No.T16 dated:22.01.2021 relied by defendants shows that Sy.No.174/6 4 acres standing in name of defendants father to extent 2 acres is mutated in name of defendant No.4 and another 2 acres is mutated in name of defendant No.2 as per Court decree in OS.No.20/2019 and also at column meant to mention person in possession, defendant No.2 and defendant No.4 names appear. So gathered together, from the documents produced by both parties, symbolically the documents show that defendant No.4 is in possession of suit schedule property. It is not possible for Court at this stage to form an opinion as to who is actually in physical possession of suit schedule property. Based on the documents on record, the Court has to see whether plaintiff has made out prima-facie case in his favour to grant temporary injunction. The case of plaintiff that in the registered partition deed dated:21.07.1972 the survey number has been wrongly mentioned as Sy.No.154/3 instead as 174/6 all these needs full fledged trial. As could be seen and for reasons stated above at this point, the documents produced supports case of defendants. Plaintiff has failed to show prima-facie case in his favour. If at all such mistake had occurred in registered partition deed, why did plaintiff not taken necessary steps to rectify the same at early point, plaintiff appears to have been slept over for all these years. Always equity aids the vigilant and not ones who sleep over their rights. Therefore, weighing the materials available on record with facts and circumstances of the case, this

Court feels there is no prima-facie in favour of plaintiff to grant temporary injunction as prayed by him. Even the balance of convenience does not lean to his side. Therefore, this Court feels no loss or injury would be caused to plaintiff if, temporary injunction is not granted in his favour. So, for above reasons points No.1 to 3 are answered in the **Negative**.

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

ORDER

**The I.A.1 filed by the plaintiff U/O 39
Rule 1 and 2 of CPC is hereby rejected with
cost of Rs.500/-.**

*(Dictated to the stenographer directly on computer,
computerized by him, corrected and then pronounced by
me in the open court on this the 12th day of October 2022).*

(VINUTHA. D.S.)
Prl. Civil Judge and JMFC.,
GUBBI.

(Order pronounced in the open
Court vide separate order)

ORDER

**The I.A.1 filed by the
plaintiff U/O 39 Rule 1 and 2 of
CPC is hereby rejected with
costs of Rs.500/-.**

**For compliance U/Sec.89 of
CPC.**

Call on

**Prl. Civil Judge and JMFC.,
GUBBI.**