

**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 23rd day of May- 2023

O.S.No.681/2022

Plaintiff : Basamma W/o late Jayanna,
Aged about 80 years,
R/o Seegehalli Village,
Nittur Hobli, Gubbi Taluk.

(By Sri.P.M.P., Advocate)

V/s

Defendants: 1. Sarvamangala W/o late
Sambashivaiah, aged about 47 years,

2. S.Spoorthi D/o late Sambashivaiah,
Aged about 25 years,

Both are R/o Doddaguni Village,
Nittur Hobli, Gubbi Taluk.

(By Sri.N.H.S.M, Advocate.,)

PARTIES TO IA No.1

APPLICANT : Basamma – Plaintiff

V/S

OPPONENTS : Sarvamangala and another-
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 defendants from putting up any stone pillars and barbed wire fence in the suit schedule property by trespassing in it till disposal of the suit.

2. The suit schedule property is described as under:

Land bearing Sy.No.9 measuring 2-00 acres
situated at Bagur Village, Nittur Hobli, Gubbi Taluk
bounded by;

East: Thaggihalli Road
West: land of Siddalingaiah
North: land of Umashankar
South: land of Gangamma W/o Devaraiah

3. In the affidavit annexed to the application, plaintiff stated that, she is the absolute owner in peaceful possession and enjoyment of the suit schedule property having lawful right and title on it. Originally 4 acres of land in suit schedule Sy.No.9 was granted to her husband from the Government in LNDSR 541/1960-61 with specific boundary on the condition that the property should not be alienated for about 15 years. The revenue documents were also made out in the name of her late husband. Since from the date of grant, her husband was in



peaceful and continuous possession and enjoyment of above said property along with his family. After the death of her husband, plaintiff has continued in possession and enjoyment of the suit schedule property.

The defendants are the utter strangers to the suit schedule property. The husband of defendant No.1 and his brother without having any manner of right, title, interest muchless possession and enjoyment over the suit schedule property attempted to dispossess plaintiff from the suit schedule property with the help of the rowdy elements. Then plaintiff had filed suit OS.No.542/2022 for permanent injunction against the husband of the defendant No.1 and his brother Siddalingappa with respect to the suit schedule property and also filed an interim application seeking interim order restraining them from dispossessing plaintiff from the suit schedule property filed before Addl.Civil Judge and JMFC, Gubbi. But the husband of the defendant No.1 died on 31.08.2022. By taking undue advantage of the death of the husband of defendant No.1 who had filed the undertaking memo the defendants with the help of the brother of the defendant No.1 are attempting to put up stone pillars and barbed wire fence by trespassing on the suit schedule property. The defendants have created revenue records by colluding with the revenue officials, they are attempting to create their right over the suit schedule



property. Therefore, she prays to allow her application and to grant temporary injunction against the defendants.

4. On service of suit summons and emergent notice, defendants appeared through their counsel and have filed written statement. They filed memo to treat their written statement as objection to IA.No.1.

In the written statement the defendants contended that suit of the plaintiff is not maintainable and they have denied the plaint averments.

At para 14 of their written statement, they have taken specific defense that, the agricultural land bearing its old Sy.No.9 is totally measuring 25 acres and the said survey number land was phoded into several phods. Out of the said phods, in the Sy.No.9/10 measuring 4 acres of land belonged to husband of defendant No.1 and father of defendant No.2 that is Sambashivaiah. Through the unregistered partition deed dated:12.01.1991 effected between the said Sambashivaiah and his brother Siddalingaiah, the said Sy.No.9/10 measuring 4 acres was equally, divided where they got an extent of 2 acres each in the said survey number. Later, the said Siddalingaiah, the brother of the Sambashivaiah has executed the registered Release deed/gift deed in favour of the Sambashivaiah for an extent of 2 acres of land in the said survey number allotted for his share. Thus, in total the husband of defendant No.1



Sambashivaiah acquired 4 acres in Sy.No.9/10. He got the revenue entries mutated in his name. He was paying tax regularly. Thus he was in possession and enjoyment the said 4 acres of land till his death without any interference. After the death of the said Sambashivaiah, defendants have moved an application before revenue authorities for change of katha and pahani into their names under pavathi varasu and same is pending for consideration. Further, plaintiff's property and defendants' property are different. When such is the case, the alleged interference is all false. On these grounds the defendants prays to dismiss the suit and to reject the application.

5. Heard both sides. Perused materials on record.

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 their 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. Plaintiff counsel argued that, totally 4 acres in Sy.No.9 was granted to plaintiff's husband and in the survey sketch which is shown that 'D' block is allotted to



the plaintiff's husband Jayanna. He has disposed 2 acres and in the remaining 2 acres of land the plaintiff is in possession and enjoyment. The defendants in their written statement have not explained as to how he has acquired 4 acres of land in Sy.No.9/10. In the Akarband produced by the defendants it shows only 3 phodes done in Sy.No.9. The property of defendants is unidentifiable. The photographs produced by the plaintiff clearly shows that, defendants are trying to put stone slabs in the suit schedule property and therefore, she prays to grant temporary injunction in favour of plaintiff as prayed.

10. In the contrary, the defendants counsel argued that, the plaintiff has not produced the grant certificate. The revenue entries are also not supporting version of the plaintiff. The photographs produced by the plaintiff are not of the date of suit. In OS.No.542/2022 which is filed before Addl.Civil Judge and JMFC, Gubbi the subject matter involved in the said suit and the suit property herein are one and the same and in that said case temporary injunction is already granted. The documents produced by the plaintiff is not supporting the plaint averments. Plaintiff has not approached the Court with clean hand and therefore, application deserves to be rejected.



11. The documents produced by plaintiff are as below;

- a) RTC extract of Sy.No.9 for the year 1984-85.
- b) RTC extract of Sy.No.9/P for the year 1990-91 to 1994-95
- c) RTC extract of Sy.No.9/P for the year 1995-96 to 1999-2000.
- d) RTC extract of Sy.No.9/3P for the year 2002-2006.
- e) RTC extract of Sy.No.9 for the year 2022-2023.
- f) Copy of orders passed in LND 541/1960-61
- g) Copy of revenue sketch.
- h) Affidavit of boundary of Sy.No.9.
- I) Certified copy of Aakar band
- j) Endorsement given by the Tahasildar.
- k) Patta book
- l) Tax paid receipt
- m) Certified copy of memo filed by the husband of defendant No.1 in OS.No.542/2022.
- n)) Photographs

12. On the other hand, defendants have produced following documents;

- a) RTC extracts of Sy.No.9/10 for the year 2022-23.
- b) Copy of atlas
- c) Copy of survey sketch and durasth



d) copy of MR.

13. It is settled principles of law that the Court while dealing with an application U/O.39 Rule 1 and 2 cannot touch into or go into merits of case. But it has to look whether there is prima-facie case made out to grant temporary injunction. The check of balance of convenience and irreparable loss and injury to be done.

14. The plaintiff line of case is that Government had granted 4 acres of land to her late husband Jayanna in Sy.No.9 of Bagur Village under grant certificate No.LNDSR.541/1960-61. Further, she claims that her husband was in possession of said land since date of grant. After his death, the plaintiff and her family members are in possession and enjoyment of above said land.

No doubt plaintiff at this stage has not produced the said grant certificate. The certified copy of RTC of year 1984-85 shows Sy.No.9/ಹಿಪ್ಪಾಡ್ಲೆ totally measuring situated at Seegehalli Village and at column 9 it shows as Jayanna S/o Rachaiah, column 10 entry mentioned as LND CR.541/6061. The other RTC produced by plaintiff are with respect to Sy.No.9/P for the year 1990-91 to 1994-95 depict total extent as 2 acres. At column 9 and 12 it is mentioned as



Jayanna. Column 10 entry mentioned as 541/6061. Copy of RTC of Sy.No.9/P of Doddaguni Village show total extent 2 acres and it is standing in name of Jayanna.

The RTC of year 2005-06 with respect to Sy.No.9/P3 of Segehalli Village produced by plaintiff depict that total 2 acres land standing in name of Jayanna. Column 10 entry shown as LNDSR 541/60-61.

RTC of suit year with respect of Sy.No.9 of Segealli Village shows total extent of said survey number land as 25 acres. This document shows at column No.9, 2 acres of land standing in name of plaintiff and corresponding mutation entry mentioned as MR.HH7/2021-22, 06.04.2022 ಪೌತಿ. At column 12 plaintiff name do not appear.

The endorsement dated:21.09.2022 issued by survey department shows that Sy.No.9/10 of Sheegehalli Village is not phoded.

15. The defendants have produced RTC of Sy.No.9/10 of Sheegehalli Village which shows total extent 4 acres standing in name of defendant No.1, corresponding column 10 entry shown as MR.T7/2022-23 ಪೌತಿ. The survey sketch of Sy.No.9 of Sheegehalli Village shown it is phoded as 1, 2,



3 phods each of 4 acres as per grant certificate No.LND.541/60-61 dated:09.12.2021. Block-I- 4 acres granted to one Rudrappa S/o Mudlappa, another 4 acres that is Block II to Kenchaiah S/o Bettaiah. Defendants have not stated as to how Samashiriah owned 4 acres of land in Sy.No.9/10. Further, defendants have not produced unregistered partition deed dated:12.01.1991 nor produced release deed/gift deed stated in their written statement.

16. Plaintiff who seeks temporary injunction, must approach Court with clean hands. In this case, it is very pertinent to note that the plaintiff in her plaint schedule has described the suit schedule property as land bearing Sy.No.9 measuring 2-00 acres situated at Bagur Village, Nittur Hobli, Gubbi Taluk bounded by; East: Thaggihalli Road, West: land of Siddalingaiah, North: land of Umashankar and South: land of Gangamma W/o Devaraiah. The documents relied and produced by her and also by defendants are of property bearing Sy.No.9 of Seegehalli Village. The plaint and application averments and the documents produced by her are not relevant to each other. Plaintiff has not produced any piece of material with respect to suit described schedule property. At first sight, no prima-facie case is made out by plaintiff. Temporary injunction can be granted only if there exist prima-face case, if no, then the the balance of convenience, irreparable loss and injury need not be considered. Hence, the points No.1 to 3 are



answered in the **Negative.**

17. 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 rejected with
cost of Rs.300/-.**

(Dictated to the stenographer directly on computer, computerized by him, corrected and then pronounced by me in the open court on this the 23rd day of May 2023).

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

