

**IN THE COURT OF THE CIVIL JUDGE AND JMFC AT  
KORATAGERE**

Dated this the **13<sup>th</sup>** day of **June 2017**

P R E S E N T

**SRI. PRAKASH V**, *BA.L., LL.B.*,  
Civil Judge and JMFC,

**O.S.No. 251 of 2014**

**Plaintiff** : B. Shivanna S/o Basanna,  
aged about 60 years,  
R/o Hulikunte, Kasaba Hobli,  
Koratagere Taluk.

**Versus**

**Defendants** : 1. Veerabadraiah S/o Veeranna,  
aged about 70 years,  
Retired Constable,  
R/o Hulikunte, Kasaba Hobli,  
Koratagere Taluk.  
  
2. The Secretary,  
Hulikunte Gram Panchayathi,  
Hulikunte, Kasaba Hobli,  
Koratagere Taluk.

\* \* \* \* \*

**PARTIES TO IA. No.III**

**Applicant** : Veerabhadraiah .... 1<sup>st</sup> Defendant

**Versus**

**Opponent** : B. Shivanna ... Plaintiff

**ORDERS ON I.A. NO.III**

The 1<sup>st</sup> defendant has filed I.A.No.III, under Order 39 Rule 1 and 2 of CPC with a prayer to pass an order of temporary Injunction restraining the plaintiff, his agents or servants or anybody acting under him from putting up any sort of building/permanent structure in the plaint suit schedule property, pending disposal of the suit for the reasons sworn in the annexed affidavit.

2. The first defendant has sworn the affidavit annexed to the application and contended that, the averments of the written statement may be read as part and parcel of this affidavit. Issues already framed and set out for a hearing on preliminary issues. The plaintiff has instituted this suit with an invented story and documents in order to get wrongful gain on the suit schedule property. The 1<sup>st</sup> defendant has instituted suit against Gramapanchayath for permanent injunction in respect of suit schedule property in O.S.No.192/13. The plaint averments of that suit also may be read as part and parcel of this affidavit. The present plaintiff field an application under Or.1 Rule 10 of CPC to implead him as a defendant in O.S.No.192/13 and it was dismissed after contest. Thereafter, the plaintiff has filed

present suit making wrongful gain over the suit schedule property.

3. It is further contended that the revenue records are wrongly mutated by narrating the name of panchayaths pertaining to the suit schedule property. The 1<sup>st</sup> defendant is the absolute owner in possession and enjoyment of the suit schedule property. The suit schedule property was devolved on his father under oral partition effected among sharers. Since that date, his father Veeranna was in possession as an absolute owner. After his death, the first defendant succeeded the same through inheritance along with his mother. The revenue records transferred in the name of his mother. She is also no more and after her death, the revenue records are yet to be transferred in the name of 1<sup>st</sup> defendant. The proceedings are pending before the competent authority. After her death, he has been continued and possession and enjoyment of the suit schedule property as a owner and sole successors are his parents namely Veeranna and Parvathamma.

4. It is further contended that he was invested huge money on the suit schedule property to upgrade from 'c' grade to 'A' grade. The entry of Gramapanchayath in the RTC extract of suit schedule property is wrong. The Grama

panchayath also admitted that, there is no building in the suit schedule property belongs to them. The plaintiff in the suit has no manner of right, title, possession over the suit schedule property. In spite of that, he is attempting to put up permanent structure nor building in the suit schedule property where there is a standing crops. The suit schedule property is remained as an agricultural land and it was not converted for non-agricultural purpose. The local politicians and Grama panchayath have colluded with plaintiff and to facilitating to do wrongful act. It is unable to resist the illegal act of the plaintiff without aid of this Court and made out prima facie case and balance of convenience lies in his favour. If the application is allowed, no harm, damage or injury will be caused to the other side. If the application is not allowed, the 1<sup>st</sup> defendant will be put to hardship and injury, which cannot be compensated by any means and prays to allow the application.

5. The plaintiff filed objections to the application denying the entire averments of affidavit and contended that the application is not maintainable either in law or on facts and there are no valid grounds. The defendant has no loco-standi to file the application seeking the relief against the plaintiff in this case. Because, he was already filed a suit in O.S.No.192/13 in respect of very same schedule property

against the Tahsildar without adding the present plaintiff in that suit. The cause of action for that suit and this suit are all different. The molafide intention and attitude, the 1<sup>st</sup> defendant has filed the present application. The plaint averments may be read as part and parcel of this objections.

6. It is further contended that the suit Sy.No.146/1 totally measuring 1 acre 15 gntas, which was the ancestral property of plaintiff and first defendant acquired through common ancestors. Out of entire extent 0-30 gunta was given to the share of 1<sup>st</sup> defendant's father and remaining 0-15 gunta was given to the share of plaintiff's father. Accordingly, since then the parties are in actual possession and enjoyment of the same, but the entries have been wrongly written due to mistake of revenue officials. But the possession remains same irrespective of wrong entries. The land measuring 0-15 gunta is in possession of plaintiff and his father. The land measuring 0-30 guntas given to the share of 1<sup>st</sup> defendant and his father was in their possession. The said lands are situated to adjacent to the Gramatana. The 1<sup>st</sup> defendant has constructed a RCC building in the land measuring 0-30 gunta which bears Panchayath Khatha No.334. The 1<sup>st</sup> defendant sold the site in favour of present plaintiff under a sale deed dated 07.12.1998 by the side of his house. Thereafter, the plaintiff had also constructed a tile roofed house by obtaining

the government benefit under 'Ashraya Yojana Scheme' by executing the mortgage deed dated 04.03.2003, and in the Khatha No.333 he is living therein and he has also taken electricity service to his house, which bears R.R.No.KKJL 2748. The plaintiff is a poor person. Hence, electricity was supplied under Bhagya jyothi scheme free supply. The 1<sup>st</sup> defendant leased his house to one Lakshamma. All these things have within the knowledge of 1<sup>st</sup> defendant. In spite of that he has sworn the false affidavit. He has no manner of right, title or possession over the suit schedule property. By suppressing all facts deliberately got filed this application to deviate the proceedings from main track and to drag on the matter and to harass the plaintiff. There is no bonafide to the 1<sup>st</sup> defendant and he has not come to the Court with clean hands and he is not entitled to equitable relief of injunction and no injunction against true owner, and prays to dismiss the application with costs.

7. Heard arguments on both sides.

8. The 1<sup>st</sup> defendant also filed additional affidavit to the application, and also filed written arguments on both sides to the application. The following points that arise for my consideration ;

**P O I N T S**

1. Whether 1<sup>st</sup> defendant made-out prima facie case ?
2. Whether balance of convenience lies in favour of 1<sup>st</sup> defendant ?
3. If an order is not granted whether 1<sup>st</sup> defendant will be put to irreparable loss and injury which cannot be compensated by any means?
4. What order ?
9. The findings of the above points are

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 :

**R E A S O N S**

10. **Points No.1 to 3** : These three points are connected with each, hence they are taken-up together for common discussion in order to avoid repetition of facts.

The plaintiff has filed this suit against defendants for the relief of declaration declaring that the plaintiff is the owner of the suit schedule property holding that the entries in the RTC

are wrong and for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property and for costs and such other reliefs in respect of suit schedule property Sy.No.146/1 , total extent of 1 acre 05 guntas, out of which, 0-15 gunta of land on the Northern side with the boundaries mentioned in the schedule.

11. The plaintiff averred in the plaint that the plaintiff's grand father Doddaiah had 4 sons, by names (1)Veeranna, the father of the defendant, (2) Basanna, the father of the plaintiff,(3) D.Puttaiah and (4) D.Rudraiah. During the life time of Doddaiah, the first son Veeranna got himself divided and living separately by taking his share of properties. Remaining 3 brothers were continued in the joint family and later divided their joint family properties by a Palupatti dated 23.05.1964. Since then, all of them living separately and enjoying their respective shares separately.

12. The plaintiff further averred that in Sy.No.146/1 to an extent of 1 acre 05 gunta of Hulikunte village is their ancestral property, out of the said land 0-30 gunta was given to the share of Veeranna, the 1<sup>st</sup> son of Doddaiah. The remaining 0-15 gunta of Northern side was given to the share of 2<sup>nd</sup> son Basanna, the father of the plaintiff. Since the date

of division, the parties were enjoying respective shares. After the death of Veeranna, the defendant is enjoying 0-30 gunta of land as his Legal heir. Likewise after the death of Basanna, the plaintiff is in possession and enjoyment of 0-15 gunta of land as his legal heir. The said 0-15 gunta of land is the suit schedule property.

13. It is further averred that the plaintiff and his father are not so educated and coming from agricultural family having no legal knowledge. The RTC extracts continued in the name of his grand father Doddaiiah in Column No.9 RTC, so far as Column No.12(2) of RTC is concerned Village Accountant written wrongly in the name of plaintiff and first defendant and also entered as a Panchayath hall in Column NO.9 and 12(2) to an extent of 0-12 gunta. So also Parvathamma W/o Doddaiiah was also inserted in the RTC under IHR.10/87-88, which is wrong. Recently due to awareness it was created and altered the RTC entries, which was wrong. Thereafter, he given application to the Tahsildar for change of Khatha and pahani and as to rectified the mistake. The 1<sup>st</sup> defendant was also given application in that regard. The concerned revenue officers visited the spot and found mistake to an account of the dispute raised by the 1<sup>st</sup> defendant, an endorsement was issued directing to approach the Civil Court to trace their grievance. The 1<sup>st</sup> defendant

playing fraud adopting tricky method filed simple suit for bare injunction in respect of entire extent of 1 acre 05 gunta in suit Sy.No.146/1 against the Tahsildar, Koratagere, Deputy Commissioner, Tumakuru in O.S.No.192/13.

14. It is further averred that the plaintiff has filed an application to implead him as one of the additional defendant in the said suit, since his right involved in the subject matter of the suit. This Court rejected the said application stating that it was only a permanent injunction and he was not a necessary party. Subsequent to the rejection of the application of plaintiff, the 1<sup>st</sup> defendant proclaiming in the village and he had succeeded in that case and he became the owner of the entire property and also trying to interfere with the plaintiff's peaceful possession and enjoyment of the suit schedule property by denying the title of the plaintiff. Therefore, the present suit is filed for the relief. The 2<sup>nd</sup> defendant has constructed a panchayat building in the land in Sy.No.146/2, but in the RTC pertaining to the suit survey wrongly mentioned in the name of Panchayath hall. The name of Parvathamma W/o Doddaiiah mentioned in the RTC are also wrong. The Tahsildar, Koratagere have issued endorsement stating that the Panchayath hall existing in Sy.No.146/2B and they have issued another endorsement stating that the entry in the name of Parvathamma W/o

Doddaiah as per IHR.10/87-88 is not available in the office and it is fake entry. Because of wrong entry made in the RTC as Panchayath hall. Hence, the 2<sup>nd</sup> defendant is added as formal party in this case to avoid controversy and for just decision in the case. On these grounds, the plaintiff claiming declaration and permanent injunction.

15. In pursuance of the suit summons, the defendants No.1 and 2 appeared through their counsel. The 1<sup>st</sup> defendant filed his written statement. The 2<sup>nd</sup> defendant panchayath not filed its written statement. The 1<sup>st</sup> defendant in his written statement denying entire plaint averments and contended that the 1<sup>st</sup> defendant is the absolute owner in possession and enjoyment of the suit schedule survey number including the suit schedule property. Originally the said suit schedule survey number to the whole extent belongs to his father, same was devolved on him under a oral partition. Since the date of partition, the father of 1<sup>st</sup> defendant was in possession and enjoyment of the suit schedule survey number as owner thereon. After his demise, the 1<sup>st</sup> defendant along with his mother succeeded the suit schedule survey number by inheritance. All the revenue records were mutated in the name of his mother and laterally she was died on 18.06.2004. So, the 1<sup>st</sup> defendant succeeded the same and became absolute owner and exclusive

possession and enjoyment of the suit schedule survey number.

16. It is further contended that the revenue entries were stands in the name of Veeranna, the father of 1<sup>st</sup> defendant to an extent of 1 acre 05 gunta. After his death, the revenue entries made in the name of 1<sup>st</sup> defendant's mother Parvathamma. After some years without acquiring any portion in the suit schedule survey number by the competent authority, the Tahsildar, Koratagere, mutated the revenue entries by inserting wrong entries showing Panchayath hall in suit schedule survey number. The 1<sup>st</sup> defendant requisition was made to the Tahsildar to rectify the same. The Tahsildar directed to survey authority to conduct survey and it is confirmed that the Panchayath hall is not comes within the suit survey number. But the revenue authority was not removed the wrong entry and made as illegal act interfering with the possession and enjoyment of the 1<sup>st</sup> defendant. Hence, the 1<sup>st</sup> defendant instituted a suit against the Tahsildar and others in O.S.No.192/13 on the file of this Court. The present plaintiff adopted a tricky process lodging the false objection and also caveat petition though he is no way concerned to the suit schedule survey number. The plaintiff has no manner of right, title, interest or possession

over the suit schedule property at any point of time and filed false suit to knock of the property of 1<sup>st</sup> defendant.

17. It is further contended that in the year 1965, the plaintiff's father along with plaintiff have executed two sale deeds in favour of one Murthappa and another by name Nanjappa mentioning the suit survey number and executed deeds. The father of the defendant No.1 suitably warned to the alleged purchasers stating that 'yours vendor have no right over the property along with possession'. So, the above said two persons Kept mum knowing that their vendors have no right. The plaintiff is estopped by documents and plaintiff well known to the said facts and filed this false suit. The suit is bad for non-joinder of necessary parties and there is no cause of action for the suit and the suit is vexatious and false frivolous one, and prays to dismiss the suit with exemplary costs.

18. After completion of pleadings issues were framed. One issue No.4 whether the suit is barred by law, was framed and it was treated as preliminary issue, and the case was taken up for hear on preliminary issue and at this stage, the defendant has filed present application. As per the entire pleadings of plaintiff and defendants, the plaintiff claiming right and title in respect of suit survey No.146/1 to an extent

of 0-15 gunta. The 1<sup>st</sup> defendant claiming entire 1 acre 05 gunta in Sy.No.146/1. There is a rival dispute between the plaintiff and defendants in respect of right, title and possession. Undisputedly, the suit schedule property originally belongs to the entries of plaintiff and first defendant. The plaintiff claiming that under the partition deed dated 23.05.1964, 0-30 gunta was fallen to the share of 1<sup>st</sup> defendant's father Veeranna and remaining 0-15 gunta was fallen to the share of plaintiff's father Basanna. But, the 1<sup>st</sup> defendant contending that under oral partition, the entire suit schedule survey number fallen to the share of his father and after his death, the 1<sup>st</sup> defendant was succeeded the entire suit survey number. In order to resolve these dispute a complete adjudication is required.

19. Now, RTC extracts in respect of suit schedule property Sy.No.146/1 for the year 2014-15 discloses that 0-33 gunta stands in the name of Parvathamma W/o Doddaiiah through inheritance vide IHR.10/87-88, remaining 0-12 gunta stands in the name of Panchayath hall. Prior to that RTC produced by the plaintiff for the year 1966 to 76 are stands in the name of Doddaiiah S/o Muddaiiah through entries in Column No.9. In Column No.12(2) of RTC extract, the name of Veeranna and Shivappa are mentioned. The endorsement issued by the Tahsildar dated 02.11.2012 shows

that there was no documents are filed available in respect of IHR.10/87-88. The copy of partition deed dated 23.05.1964 produced by the plaintiff shows the partition was effected between Basanna, Puttanna and Rudrappa, sons of Doddaiiah. In the said partition, 1/3<sup>rd</sup> of the land towards Northern side in Sy.No.146/1 and other properties allotted to Basanna. Remaining 2/3<sup>rd</sup> allotted to Veeranna.

20. Admittedly, the 1<sup>st</sup> defendant was filed suit in O.S.No.192/13 against the Tahsildar and others in respect of same suit schedule Sy.No.146/1 to an entire extent of 1 acre 05 gunta. Admittedly, the present plaintiff is not the partying O.S.No.192/13, and admittedly, the present plaintiff was made application under Or.1 Rule 10 of CPC in O.S.No.192/13, and it was dismissed. The 1<sup>st</sup> defendant contended that the plaintiff has no manner of right, title and no way connected to the suit schedule property. Undisputedly, the 1<sup>st</sup> defendant was filed suit in O.S.No.192/13 without made the present plaintiff as a party in O.S.No.192/13. There is a rival dispute between the plaintiff and defendants in respect of suit schedule property. Though there was a dispute between both the parties, the 1<sup>st</sup> plaintiff was not made the present plaintiff in O.S.No.192/13. When there is a property dispute in between the parties in

order to resolve the dispute, the suit has to be filed against such person, who denying the title or claiming the property.

21. In the present application, the 1<sup>st</sup> defendant claiming Temporary injunction against the plaintiff restraining the plaintiff from putting up any structure or building in the suit schedule property pending disposal of the suit. The plaintiff produced tax demand register extract of Hulikunte village in respect of property No.333, which stands in the name of plaintiff. The plaintiff further produced mortgage deed in respect of granting loan under Ashraya Scheme for construction of house vide bearing No.278/96-97, it shows the plaintiff was constructed the house in the said property No.333. The plaintiff further produced another unregistered sale deed executed by Veerabhadraiah S/o Veeranna in respect of Assessment No.359 to an extent of East-West : 20" and North-South : 30" of Hulikunte village in favour of plaintiff.

22. The 1<sup>st</sup> defendant furnished two copies of registered sale deed dated 22.07.1965 executed by Basanna S/o Doddaiiah in favour of Murthappa S/o Hanumantha Gowda to an extent of 0-05 gunta in Sy.No.146/1 and also in favour of one Nanjappa S/o Nagappa to an extent of 0-05 gunta. The survey number is not specifically visible in the document.

The 1<sup>st</sup> defendant also relied on the decision reported in **AIR 2006 SC 3275**, in between M.Gurudas and Ors. Vs/- Rasaranjan & Ors, **AIR 1983 SC 742** in between Gangubai Bablya Chaudhary and others Vs/- Sitaram Bhalchandra Sukhtankar and others etc., **AIR 2005 SC 1999** in between Dhariwal Industries Ltd., and another Vs/- M/s. M.S.S. Food Products, **ILR 2007 KAR 433** in between Balaji Produce Company Vs/- V.Selvaraj and Others.

23. The 1<sup>st</sup> defendant claiming entire suit Sy.No.146/1 to an extent of 1 acre 05 gunta including the suit schedule property and contending that he has been in possession and enjoyment of the suit property since from his father and after the death of his father and mother, he succeeded the same through inheritance. In the present case, the plaintiff claiming right, title to an extent of 0-15 gunta, i.e., suit schedule property. The defendant filing present application restraining the plaintiff from putting up any construction over the suit schedule property. But, the plaintiff not produced any documents to show that the plaintiff is going to constructing the building in the suit schedule property. The documents produced by the plaintiff in respect of house property bearing No.333 of Hulikunte village, it was constructed in the year 1999 itself. Under Order 39 Rule 1 and 2 of CPC, the plaintiff can claim injunction against the

defendant where the suit property is in danger in the hands of defendant. However, under Or.39 Rule 1(a) of CPC any party can be claimed injunction where the property is in danger or wasted, damaged or alienated by any party to the suit or wrongfully sold execution. The 1<sup>st</sup> defendant contended in the application that the plaintiff attempting to put up construction over the suit schedule property by causing damage and being wasted the suit schedule property. But, no documents are produced and defendant not claiming counter claim in his written statement. Admittedly, the 1<sup>st</sup> defendant is already filed suit in O.S.192/13 in respect of Sy.No.146/1 to an extent of 1 acre 05 gunta, he can get relief in that suit. The cause of action for the defendant in the suit and the plaintiff are entirely different one. Under these circumstances, the 1<sup>st</sup> defendant not made out prima facie case and balance of convenience in his favour. When these two points are not in favour of defendant No.1, the question of irreparable loss and injury does not arise at all. Hence, the 1<sup>st</sup> defendant is not entitled any relief in this application. Hence, I answer these points No.1 to 3 in the Negative.

24. **Point No.4** : In view of discussion made above and under the facts and circumstances of the case, I proceed to pass the following :

**ORDER**

I.A.No.III, under Order 39 Rule 1  
and 2 of CPC filed by the 1<sup>st</sup> defendant is  
hereby dismissed.

No order as to costs.

(Dictated to the Stenographer, transcribed and computerized by  
him, printout taken, corrected, signed and then pronounced by me in  
the open court on the **13<sup>th</sup> day of June 2017**)

**(Prakash V)**  
Civil Judge & JMFC,  
Koratagere

13.06.2017

Plaintiff : GBH,  
Defendant-1 : EH,  
Defendant-2 : HKM,  
For Orders,

(vide separate order is passed and pronounced in the open court)

**ORDER**

I.A.No.III, under Order 39 Rule 1  
and 2 of CPC filed by the 1<sup>st</sup> defendant is  
hereby dismissed.

No order as to costs.

**(Prakash V)**  
Civil Judge & JMFC,  
Koratagere