

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

-.PRESENT:-

Sri. Lakshmi Narasimha R.V. B.A.L., LL.B.,
Addl. Civil Judge & JMFC.,

Dated this the 17th day of September, 2021.

O.S. NO. 08/2021

PLAINTIFF

: Sri. B. Chandraiah,

(Rep. By Sri. Y.R.H. Adv.,)

V/s.

DEFENDANTS

: Smt. Ningamma @
Dundamma and others,

(Rep. By Sri. M.G. Adv.,)

I.A. No. I

Plaintiff/Applicant

: B. Chandraiah

V/s.

Defendants/Opponents

: Ningamma @ Dundamma
and others

ORDERS ON APPLICATION FILED BY THE PLAINTIFF
UNDER ORDER XXXIX RULE 1 AND 2 OF C.P.C

The plaintiff has filed this application under order XXXIX Rule 1 and 2 of CPC praying this court to pass an order of an ad-interim temporary injunction restraining the defendants, their agents, henchmen or anybody claiming on their behalf from interfering with the peaceful possession and enjoyment over the suit schedule property till the disposal of the suit.

2. In the affidavit annexed along with the application, the plaintiff has averred that he has filed the present suit for the relief of declaration and permanent injunction in respect of suit schedule property by way of adverse possession. The land bearing Sy.No.355 and 386 are the Charitable Inam lands attached to Deity Marammadevi of Bandihalli village. One Kalegowda was the priest of the said temple. He was cultivating the properties in the capacity of the priest. After

Mysore Religious and Charitable Inam Abolition Act 1955, the father of plaintiff approached the competent authority for confirmation of the occupancy right. Thereafter the land tribunal vide its order has granted the properties in favour of Bojanna @ Madaiah. Further, as per the terms of case No.150/1958-59, the occupancy right has been granted in favour of Kalegowda in respect of land bearing Sy.No.355 measuring 36 guntas and Sy.No.386 measuring 1 acre 01 guntas.

3. The plaintiff has further contended that the said Kalegowda during his life time has effected the partition in respect of the said properties and the eastern portion of land to an extent of 18 gunta in Sy.No.355 has been allotted to one Ganelingegowda, the natural son of Kalegowda and western portion of land to an extent of 18 guntas has been allotted to the said Bojanna @ Madaiah, the foster son of said Kalegowda.

In Sy.No.386 also the land to an extent of 21 guntas has been allotted to the said Ganelingegowda and to an extent of 20 guntas has been allotted to Bojanna. Since the date of partition, they are in their respective possession of the same. Thereafter, the names of said Ganilingegowda and Bojanna were came to be entered in the revenue records of the said properties. Thereafter, the said Ganilingegowda has challenged the said entry before the Asst. Commissioner vide RRT Dispute (K) No.165/2001-02. The said appeal was came to be allowed. Aggrieved by the said order the plaintiff had preferred a revision petition before the Deputy Commissioner in R.P. No.129/2006-07. The said revision petition was also came to be dismissed. Thereafter the plaintiff had also preferred an appeal before the Hon'ble High Court of Karnataka in W.P.No.45473/2018. The said writ petition came to be disposed of on 15/12/2020.

4. The plaintiff has further contended that his father died on 13/03/2016 leaving behind his wife and children. The plaintiff is the eldest son of said Bojanna @ Madaiah. The suit schedule properties are undivided joint Hindu family properties. The plaintiff and his family members are in possession and enjoyment of the suit schedule property, since 1960 without any dispute. Thus, they have perfected the title by way of adverse possession also. Now the defendants at the instigation of others are trying to dispossess the plaintiff from the suit schedule properties and trying to remove the trees and other crops from the suit schedule properties. As such they have filed the present application.

5. Upon the service of summons, the defendants have appeared before the court through their counsel and filed written statement and also objections to IA.No.I.

6. It is the contentions of the defendants that they are the legal heirs of deceased Ganilingegowda S/o. Kalegowda. Neither the plaintiff nor his father are concerned with the family of said Kalegowda. As such, claiming the rights in the properties of Ganilingegowda does not arise at all. The properties bearing Sy.No.355 and 386 are belonging to Marammadevi deity. The said Kalegowda and others were performing the pooja of said Marammadevi deity. As such the suit schedule properties were came to be granted in favour of said Kalegowda. After his demise, his son Ganilingegowda was in possession and enjoyment of the suit schedule properties. The said Bojanna has got created the documents in respect of the suit schedule properties. Hence, the said Ganilingegowda has challenged the M.R.No.28/2000-01 before Asst. Commissioner. The said petition was came to be allowed and the M.R.No.28/2000-01 was came to be canceled. Thereafter the plaintiff had preferred revision petition before

the Deputy Commissioner, which came to be dismissed. Further, the Writ Petition filed by the plaintiff was also came to be withdrawn by the plaintiff. Now after all the proceedings, he has come up with the present suit for the relief of declaration by way of adverse possession.

7. They have further contended that the plaintiff has not produced any documents to show the specific boundaries and measurement of the suit schedule properties. Further, the plaintiff has contended that the said Bojanna was the foster son of the said Kalegowda. Hence, the foster son is not entitled to any rights in the properties as per law. The competent authority has set aside all the revenue records in respect of the suit schedule properties. The said Bojanna @ Madaiah and the plaintiff had filed a suit against the said Ganilingegowda vide O.S.77/1985 in respect of property bearing Sy.No.180/2 for the relief of declaration and

injunction. Thereafter the said suit was came to be dismissed. In the said suit the issue of whether the said Bojanna was the son of Kalegowda was decided and answered in the negative. As such, the plaintiff is nowhere related to the family of the defendants.

8. They have further contended that defendant No.1, 5 and 6 had filed a suit against the father of plaintiff vide O.S.188/1984 for the relief of redemption of mortgage. The said suit was also came to be dismissed. As such the plaintiff has challenged the said judgment and decree before Hon'ble Senior Civil Judge vide R.A.No.9/2002. The said appeal was also came to be dismissed. Thereafter he has also preferred regular second appeal before Hon'ble High Court of Karnataka vide RSA No.1134/2007. The said RSA was also came to be dismissed on 25/11/2016. After the judgment and decree passed in O.S.188/1984, the defendant No.1, 5 and 6 had filed

a petition for final decree vide FDP No.1/2003 and he has taken the possession of property in Sy.No.180/2. Now after all the litigations, the plaintiff has filed the present suit without any basis and possession. Hence, prayed to dismiss the application.

9. On basis of the application, plaint, written statement and documents on record, the following points that arise for the determination of this court.

- 1.** Whether the plaintiff has made out prima- facie case in his favour?
- 2.** Whether the balance of convenience lies in favour of the plaintiff?
- 3.** Whether the plaintiff will be put to great hardship and irreparable loss if, order of temporary injunction is not granted?
- 4.** What order?

10. Heard arguments. Perused the application, affidavit, objections and records placed before this court.

11. My finding on above points are as follows:-

Point No.1 : In the *Affirmative*

Point No.2 : In the *Negative*

Point No.3 : In the *Negative*

Point No.4 : As per the final order for the following

:: REASONS ::

12. **Point No.1:-** The plaintiff has filed the present suit for the relief of declaration and injunction in respect of the suit schedule property by way of adverse possession. It is to note here that as per the documents placed by both the parties, the plaintiff and his father by name Bojanna @ Madaiah have been in continuous struggle by filing various suits since 1985. It is to note here that the plaintiff and his father has filed a suit vide O.S.77/1985 against the husband of

defendant No.1 in respect of property bearing Sy.No.180/2 contending that they were the absolute owners in possession of the said property. Wherein in the said judgment, the Hon'ble Court has answered issue No.1 in the said suit as the father of plaintiff i.e., Bojanna @ Madaiah was not the real son of Kalegowda and Neelamma. Thus, the said suit was came to be dismissed. They have also preferred an appeal against the said judgment vide R.A.No.10/2002. The said appeal was also came to be allowed by confirming the trial court judgment.

13. Further it can be seen that the defendant No.1 herein had filed a suit vide O.S.188/1984 against one B.V. Puttaramegowda for the relief of redemption of mortgage and delivery of possession of the property bearing Sy.No.180/2. Wherein the father of plaintiff was also arrayed as defendant No.2. Aggrieved by the said judgment and decree, the said Bojanna had preferred an appeal vide R.A.No.9/2002, which

was came to be dismissed and the judgment of O.S.188/1984 was confirmed. Further, he has also preferred the second appeal before the Hon'ble High Court of Karnataka vide RSA No.1134/2007. The said RSA was also came to be dismissed.

14. Further it is pertinent to note that one Ganilingegowda i.e., husband of defendant No.1 has filed a petition before Asst. Commissioner for change of khata in respect of the suit schedule properties i.e., Sy.No.355 and 386. Wherein the father of plaintiff herein was also made as respondent No.1. After the adjudication, the said appeal was came to be allowed in favour of the said Ganilingegowda and the MR No.27/2000-01 in respect of Sy.No.355 and 386 was came to be approved. Aggrieved by the said order the plaintiff herein had preferred an appeal before Deputy Commissioner vide R.P.No.129/2006-07. The said appeal was came to be dismissed by upholding the order passed by the Asst.

Commissioner in RRT(A)(K)–165/2001-02. Thereafter he has also preferred an appeal before the Hon'ble High Court of Karnataka vide W.P.No.45473/2018, which was came to be withdrawn by the plaintiff. Thus, by urging all remedies, he has come up before this court by filing the present suit for the relief of declaration and injunction by way of adverse possession.

15. It is pertinent to note here that as per RTC extract in respect of the suit schedule properties for the year 2020-21, the name of father of plaintiff and the said Ganilingegowda appears to be in the joint possession of the same. Whereas as per the order passed by the Asst. Commissioner in RRT No.165/2001-02, the said mutation register No.28/2001-02 was came to canceled and the same was confirmed by the Deputy Commissioner also.

16. It is not disputed that originally the suit schedule properties were granted in the name of one Kalegowda. The only contention that the father of the plaintiff was the foster son of said Kalegowda along with said Ganilingegowda. At the time of arguments, the learned counsel for the plaintiff has mainly relied upon the deposition of the said Ganilingegowda, who had adduced the evidence in O.S.77/1985, wherein he had deposed that during the life time of his father the properties were divided amongst himself and the said Bojanna. From the judgment passed in O.S.77/1985, it can be seen that the plaintiff and his father had filed the said suit for the relief of declaration in respect of only the property bearing Sy.No.180/2.

17. Further, even assuming for the sake of arguments that this said Kalegowda has partitioned the properties amongst himself and said Ganilingegowda, nothing has been

traversed with respect to the suit schedule properties. He has only contended that the said Sy.No.180/2 has been given to the share of said Bojanna. Thus, mere deposing that properties have been divided amongst the said Bojanna and the said Ganilingegowda, at this stage, it cannot be held that the suit schedule properties were also allotted in favour of the said Bojanna. Thus, at this stage, on prima-facie the averments and the plaintiff for the purpose of temporary injunction cannot be considered.

18. It is to say further that even assuming for the sake of argument, though the name of father of plaintiff appears in the joint name of father of defendant No.1 and said Ganilingegowda, it is not mentioned anything as to which portion the said plaintiff is in possession of the same. In the absence of materials, at this stage, temporary injunction cannot be granted. Hence, at this stage, the M.R.No.28/2000-

01 is nowhere in existence. The plaintiff has filed the present suit after observation made by the Hon'ble High Court of Karnataka in W.P.No.45473/2018.

19. It is to note here that this is a suit for declaration and injunction by way of adverse possession. The plaintiff in his plaint as well as in the application has contended that the defendants are the owners of the suit schedule property and also the suit schedule properties are joint family properties of plaintiffs. The main ingredients of adverse possession is to admit the ownership of the defendant. In the present case on hand, the plaintiff has blown both hot and cold by contending that the suit schedule properties are joint family properties of the plaintiff as well as ownership of the defendants. Hence, the same cannot be considered on prima-facie.

20. Hence, by perusing all the documents this is of opinion that, the plaintiff though has succeeded to put-forth

his prima-facie case, he has failed to show the balance of convenience and also irreparable loss and injury at this stage. Thus, this court is of the opinion of that a full fledged trial is required to prove the contentions of the plaintiff in respect of perfection of his title by way of adverse possession. However, if the plaintiff succeeds in the suit, his rights are not certainly vanished. In the absence of the materials, it is not possible to allow the application at this stage. Hence, the plaintiff has failed to show the balance of convenience and the irreparable loss and injury if this application is not allowed. Hence, the plaintiff has failed to prove the ingredients, which are necessary for order of temporary injunction. In view of the above said reasons point No.1 is answered in the ***Affirmative*** and point Nos.2 and 3 are answered in the ***Negative***.

21. Point No.4:: For the above discussed reasons, this court proceeds to pass the following:

::ORDER::

IA No.I filed by the plaintiff under
order XXXIX Rule 1 and 2 of C.P.C. is
hereby dismissed.

No costs.

[Dictated to the stenographer directly on computer and then corrected by me and
thereafter pronounced in the open court on this the 17th day of September, 2021]

Sd/-

[Lakshmi Narasimha R.V,]
Addl Civil Judge and JMFC,
Kunigal.