

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

**Present :                Sri. Krishna J. B.A. LLB.,  
                                 Prl. Civil Judge & JMFC,  
                                 Kunigal.**

**Dated this the 05<sup>th</sup> day of April 2021**

**O.S. No. 31/2020**

**Plaintiff**                : Bhagyamma W/o Koterayashetty,  
                                 Aged about 57 years,  
                                 R/o Andanaiah layout, Kunigal town,  
                                 Tumkur district.

**(Represented by Pleader Sri. DS)**

**V/s**

**Defendants**            : 1. Nanjappa S/o late Kempaboraiah @ Kullaiah,  
                                 Aged about 70 years,  
                                 2. Hanumanthaiah @ Chote,  
                                 S/o Kempaboraiah @ Kullaiah,  
                                 Aged about 65 years,  
                                 3. Prakash S/o Nanjappa,  
                                 Aged about 45 years,  
                                 All are R/o Mallaghatta, Kasaba hobli,  
                                 Kunigal taluk, Tumkur district.

**(Represented by Pleader Sri. GN )**

**I.A. No. I**

Plaintiff/Applicant                :        Bhagyamma

V/s

Defendants/Opponent                :        Nanjappa and others

**ORDERS ON IA NO. 1**

The plaintiff has filed the application under Order 39 Rule 1 and 2 of CPC to restrain the defendants, their agents, servants or anybody acting on their behalf from entering the the suit schedule property illegally till disposal of the suit.

2. In support of the application plaintiff has filed affidavit prays to read the plaint as part and parcel of the affidavit. On perusal of plaint and affidavit brief case of the plaintiff is as here under;

Property bearing municipal assessment No.2087/68 site No.68 measuring East to West 30 feet, North to South 40 feet situated at Mallagatta extension, ward No.2 Kunigal town, more fully described in the schedule of the plaint, hereafter referred to as suit schedule property, is purchased by the plaintiff under registered sale deed dated:12.11.2008 for Rs.20,000/- from its previous owner. From the date of purchase she is in possession and enjoyment as absolute owner. She got mutated her name in the assessment register before the town municipality, Kunigal. The defendants have

no manner of right, title or interest over suit schedule property. However on 06.12.2019 they attempted to interfere with plaintiff's peaceful possession and enjoyment over suit schedule property, hence, the suit and this application. It is submitted the plaintiff is having prima facie case, balance of convenience in her favor, if application is rejected she will be put more hardship and injury than defendants. Hence prays to allow the application.

3. The defendants No.2 and 3 have filed written statement and prayed to treat the averments of written statement as objections to IA No.1. It is submitted land bearing Sy.No.23/9A totally measuring 2 acres 20 gunta including 21 gunta karab, situated at Mallagatta, Kunigal and is belonged to Chikkaboraiah, the propositus of defendants. The propositus Chikkaboraiah had two children namely, Boraiah and Kempaboraiah. The children of propositus had partition on 08.06.1954 of all the joint family properties including above said Sy.No.23/9A measuring 2 acre 20 gunta. In the partition 20 gunta allotted to 1<sup>st</sup> son Boraiah and

remaining 1 acre 29 gunta and karab allotted to Kempaboraiah. Boraiah and his only son Nanjegowda sold 20 gunta allotted to him in the above said partition in favour of Kempaboraiah S/o Chikkaboraiah under registered sale deed dated: 26.11.1955. Accordingly, entire 2 acres 20 gunta including 21 gunta karab in Sy.No.23/9A vested in Kempaboraiah and he was in possession and enjoyment till his death.

4. Kempaboraiah S/o. Chikkaboraiah had 3 children namely, 1. Boraiah 2.Kempaboraiah @ Kullaiah and 3.Bajaiah @ Nanjaiah. They had a partition of their joint family properties including Sy.No.23/9A on 20.08.1975. In the partition Kempaboraiah @ Kullaiah allotted with 39 gunta and 21 gunta karab, remaining 1 acre allotted to Bajaiah @ Nanjaiah.

5. The children of Kempaboraiah @ Kullaiah had parititon on 01.01.1982, in the partition 19 gunta allotted Hanumaiah @ Chote the defendant No.2 herein and 20 gunta allotted to Nanjappa the defendant No.1 herein. On the basis

of above said partition mutation is accepted under M.R.No.3/96-97. The defendant No.2 has constructed a house in a portion allotted to him and residing there in, till today.

6. Form 1960 to 1991 the revenue records of Sy.No.23/9A was in the name of Kempaboraiah S/o Chikkaboraiah. one Hanumanthaiah S/o. Doddamma and Nanjappa taking the undue advantage of his name, is similar that of defendant No.2 and in collusion with revenue authority got mutated his name to the extent of 26 gunta out of 2 acres 20 gunta in Sy.No.23/9A. Then he sold the same to one Subramanya S/o. Nanjundashetty on 16.08.1991, he in turn sold in favour of Karnataka State Road Transport Corporation Employees House Building Co-operative Society on 16.03.2001. When K.S.R.T.C Employees House Building Co-operative Society, in the year 2007-08 came near the Sy.No.23/9A claiming total 2 acres 20 gunta in that survey number belongs to them. The defendants verified the records and astonished, immediately, filed RRT appeal in RRT(A)409/2007-08 challenging the MR.6/91-92 and

MR.9/91-92 before the assistant Commissioner Tumkur sub-division. After verification of records the A.C. Tumkur set-aside the above said mutation entries and remanded to Thasildar for fresh disposal.

7. Hanumanthaiah S/o. Doddamma and Nanjegowda, is none other than one of the grand children of Boraiah, who is the 1<sup>st</sup> son of propositus. Boraiah had only son by Nanjappa @ Nanjegowda. Nanjappa alias Nanjegowda had 2 wives namely one Huchamma and second Doddamma. Through 1<sup>st</sup> wife Huchamma he had a son by name Chikkahanumanthaiah. Through 2<sup>nd</sup> wife Doddamma he had 5 children namely, Hanumanthaiah (who got 26 gunta into his name in Sy.No.23/9A). 2. Gangadharaiah 3. Bettaswamy 4.Boregowda 5.Shivanna @ Nanjappa. To avoid future disputes among the above said 6 grand children of Boraiah S/o Chikkaboraiiah, he executed a registered Will dated: 06.11.1962 bequeathed all the family properties. In the Will Sy.No.23/8A measuring 28 gunta, Sy.No.32/8 measuring 21 gunta, Sy.No.33 measuring 1 acre 12 gunta and Sy.No.34/3A

measuring 13 gunta allotted to Hanumanthaiah S/o Doddamma and Nanjappa. No property in SY.No. 23/9A is allotted; however, he has created the revenue record into his name by suppressing the real facts. The plaintiff, her vendor or her vendor's vendor will not get any right in suit schedule property. Therefore, plaintiff is having no right, title, interest much less possession over suit schedule property. Accordingly prays to dismiss the application.

8. Heard the advocate for plaintiff and defendants, perused the application and records. Upon hearing of advocates and on perusal of records the court has framed the following points for consideration:

**POINTS**

1. Whether there exists prima facie case in favour of the plaintiff?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff would suffer irreparable injury if the prayer for interim injunction is disallowed?
4. What order?

9. My answer to the above points are as under:-

Point No. 1 : In the Affirmative

Point No. 2 : In the Affirmative

Point No. 3 : In the Affirmative

Point No. 4 : As per final order

for the following:

### **REASONS**

10. **Points No.1 to 3:** These three points are interrelated involves common question of fact and law hence taken together for common discussion to avoid repetition.

It is the specific case of the plaintiff that she has purchased the suit schedule property under registered sale deed dated: 12.11.2008, on the basis of sale deed she got mutated her name in the assessment register before the town municipality, Kunigal and she is in possession. To evidence these facts the plaintiff produced original sale deed dated: 12.11.2008 discloses plaintiff has purchased the suit schedule property from its previous owner Sri. Gopala Krishna S/o Puttaiah for Rs.20,000/-. Further the sale deed discloses



vendor of plaintiff had purchase the suit schedule property form KSRTC Employees House Building Co-operative society on 23.11.2007 under registered sale deed. The KSRTC Employees House Building Co-operative society had acquired Sy. No.33, 32/8, 23/8 and 23/9A of Mallagatta Village, got converted into residential purpose and formed residential sites and sold one of the sites i.e. suit schedule property to the vendor of plaintiff.

11. The plaintiff to evidence she got mutated her name in the assessment register before Municipality, Kunigal produced assessment register extract of the year 2015-16 and 2019-20. They disclose originally assessment register was in the name of Gopala Krishna, the vendor of plaintiff subsequently name of plaintiff is substituted on the basis of above said sale deed. Further plaintiff to show she has been paying tax produced tax payment receipts from 2015 to 2021.

12. The above said documents reveal the KSRTC Employees House Building Co-operative society formed residential sites in Sy. No. 33, 32/8, 23/8 and 23/9A of

Mallagatta village and suit schedule property is one among the sites formed by the KSRTC Employees House Building Co-operative society. They sold in favour of Gopala Krishna, subsequently he sold in favor of plaintiff and plaintiff got mutated her name.

13. It is the case of the defendants that Sy.No.23/9A of Mallagatta village i.e. one of the survey numbers in which the KSRTC Employees' House Building Co-operative society formed residential sites, is originally belonged to Chikkaboraiah the propositus of defendants. It was totally measuring 2 acres 20 gunta including 21 gunta karab. Propositus Chikkaboraiah had 2 children namely, Boraiah and Kempaboraiah. The children of propositus had a partition on 08.06.1954 of all the family properties including the above survey No.23/9A measuring 2 acres 20 gunta. In the partition 20 gunta allotted to Boraiah and 1 acre 29 gunta and karab allotted to Kempaboraiah. Later Boraiah and his only son Nanjegowda sold 20 gunta allotted to him, in the above said partition, in favor of Kempaboraiah who is his own brother

under the registered sale deed dated:26.11.1955. To evidence Sy.No.23/9A totally measuring 2 acres 20 gunta including 21 gunta karab belonged to Chikkaboraiah no document is placed before the court. With respect to alleged sale by Boraiah and his only son Nanjegowda in favor of Kempaboraiah, a certified copy of sale deed dated 26-11-1955 is placed before the court discloses Boraiah and his son sold 20 gunta in Sy.No.23/9A in favor of Kempaboraiah. It is relevant to note in the sale deed it is mentioned Boraiah had acquired the said 20 gunta in a partition. With the help of said sale deed at this stage court can infer Boraiah S/o Chikkaboraiah had 20 gunta in Sy.No.23/9A to the date of above said sale deed subsequently it is transferred in favor of Kempaboraiah. To evidence Kempoboraiah had acquired 1 acre 29 gunta and 21 gunta karab in the alleged partition dated 08-06-1954 no document is placed before the court.

14. It is the case of the defendants Kempaboraiah s/o Chikkaboraiah had 3 children namely Boraiah, Kempaboraiah @ Kullaiah and Bhajjaiah @ Nanjaiah. They had partition of

their joint family property including Sy.No.23/9A on 20-08-1975. In the said partition 39 gunta and 21 gunta karab allotted to Kempaboraiah @ Kullaiah and 1 acre allotted to Bhajjaiah @ Nanjaiah. To evidence this partition no document is placed before the court.

15. It is the case of the defendants the children of Kempaboraiah @ Kullaiah had partition on 01-01-1982 in the partition 19 gunta allotted to the defendant No.2 herein and 20 gunta allotted to Nanjappa, defendant No.1 herein. Accordingly mutation is accepted under MR No.3/1996-97. The defendant No.2 has constructed a house in the portion of property allotted to him and residing there in till today. To evidence partition among children of Kempaboraiah @ Kullaiah and it is accepted in mutation under MR No.3/1996-97 no document is placed before the court. Further the house alleged to have constructed by defendant No.2 in the portion of property allotted to him also no document is placed before the court.

16. It is the case of the defendants that from 1960 to 1991 the revenue records of Sy.No.23/9A was in the name of Kempaboraiah S/o Chikkaboraiah. To evidence this fact no revenue records from 1960 to 1991 is placed before this court.

17. It is the case of the defendants that one Hanumanthaiah S/o Doddamma and Nanjappa taking the undue advantage of his name, is similar to that of defendant No.2 and in collusion with revenue authority got mutated his name to the extent of 26 gunta out of 2 acres 20 gunta in Sy.No.23/9A. Then he sold the same to one Subramanya S/o Nanjundashetty on 16.08.1991, he in turn sold in favour of Karnataka State Road Transport Corporation Employees House Building Co-operative Society on 16.03.2001. When, KSRTC Employees House Building Co-operative Society in the year 2007-08 came near the Sy.No.23/9A claiming total 2 acres 20 gunta belongs to them. Then defendants verified the records and astonished, immediately filed RRT appeal in RRT (A) 409/2007-08 challenging the MR.6/91-92 and MR.9/91-92 before the assistant Commissioner Tumkur sub-division.

After verification of records the A.C. Tumkur set-aside the above said mutation entries and remanded to Thasildar for fresh disposal. Hanumanthaiah S/o. Doddamma and Nanjegowda is none other than one of the grand children of Boraiah, who is the 1<sup>st</sup> son of propositus. Boraiah had only son by Nanjappa @ Nanjegowda. Nanjappa alias Nanjegowda had 2 wives namely one Huchamma and second Doddamma. Through 1<sup>st</sup> wife Huchamma he had a son by name Chikkahanumanthaiah. Through 2<sup>nd</sup> wife Doddamma he had 5 children namely, Hanumanthaiah (who got 26 gunta into his name in Sy.No.23/9A). 2. Gangadharaiah 3. Bettaswamy 4.Boregowda 5.Shivanna @ Nanjappa. To avoid future disputes among the above said 6 grand children of Boraiah S/o Chikkaboraiiah, he executed a registered Will dated:06.11.1962 bequeathed all the family properties. In the Will Sy.No.23/8A measuring 28 gunta, Sy.No.32/8 measuring 21 gunta, Sy.No.33 measuring 1 acre 12 gunta and Sy.No.34/3A measuring 13 gunta allotted to Hanumanthaiah S/o Doddamma and Nanjappa, no property in SY.No.23/9A is

allotted to him, however, he has created the revenue records into his name by suppressing the real facts.

18. To evidence Hanumanthaiah S/o Doddamma and Nanjappa got mutated his name to the extent of 26 gunta in Sy.No.23/9A no document is placed before this court. Having challenged the entry made in favor of Hanumanthaiah, and his transferee Subramanya and subsequent transferee, the KSRTC Employees House building co-operative society the defendants have filed appeal before the Assistant commissioner, Tumakuru in RRT(A)(K) 409-2008, produced copy of the order passed therein, discloses the defendants have challenged the MR No.6/1991-92 under which 33 gunta mutated in the name of Doddamma W/o Nanajaiah, MR No.9/91-92 under which 33 gunta mutated in the name of K.N. Subramanya and MR No.6/2001-02 under which 26 gunta mutated in the name of KSRTC Employees House building co-operative society. The Assistant commissioner ordered to set aside the above said mutation registers and remanded for fresh disposal. On receipt of remand order the

Tahasildhar, Kunigal hold an enquiry in RRT (DIS) CR 88/2019-20 and order to registered the katha of 26 gunta in Sy.No.23/9A in the name of Kempaboraiah S/o Chikkaboraiah and directed the parties to get decide their title before civil court. It is relevant to note no parties to the RRT proceedings have filed suit for declaration of their title till today. The plaintiff herein claiming the title through KSRTC Employees House building co-operative society but till today the KSRTC Employees House building co-operative society has not been filed suit for declaration with respect to 26 gunta of Sy.No.23/9A. This suit is for permanent injunction with respect to residential site formed in Sy.No.33, 32/8, 23/8 and 23/9A of Mallaghatta village. The dispute is only in respect of Sy.No.23/9A measuring 26 gunta. Whether suit property is falls within Sy.No 23/9A or in any other survey numbers in which the KSRTC Employees House building co-operative society formed residential site, is a matter to be adjudicated. If suit schedule property falls within Sy.No.23/9A then it is necessary to file suit for declaration, otherwise suit for injunction is suffice to protect right of plaintiff. Therefore I find



it is necessary to direct the parties to maintain status-quo as to the nature of suit schedule property, otherwise if any party acted in aggression other party will put more hardship, accordingly **I answered point No.1 to 3 in the affirmative.**

19. **Point No. 4:-** For the foregoing reasons and discussions stated therein the application filed by the applicant/plaintiff is deserves to be allowed, in the result I pass the following:-

**ORDER**

IA No. I filed by the plaintiffs/Applicants U/o XXXIX Rules 1 & 2 of CPC is hereby allowed.

The plaintiff and defendants, their agents, servants or any body acting on their behalf are hereby directed to maintain status-quo in relation to suit schedule property till disposal of suit.

(Dictated to the stenographer directly, typed by her, printout taken by her and corrected by me and then pronounced by me in the open court on this the 05<sup>th</sup> April 2021.)

**(Sri Krishna J., )  
Prl. Civil Judge & JMFC.,  
Kunigal.**