

**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 12th day of October 2020

O.S. No. 185/2020

Plaintiff : H.D. Jayaramgowda S/o late Dasegowda,
 Aged about 59 years,
 Agriculturist, R/o Y. Hosahalli, Yediyur hobli,
 Kunigal taluk.

(Represented by Pleader Sri. BTR)

V/s

Defendants : 1. H.T. Girigowda S/o late Thimmaiah,
 Aged about 61 years,
 2. H.V. Govindaraju S/o Venkataramaiah,
 Aged about 35 years,
 3. Hemegowda M S/o Mudlagirigowda,
 Aged about 41 years,
 4. Babu @ Balu S/o Shivanna,
 Aged about 33 years,
 5. Nagaraju H.J S/o Javaregowda,
 Aged about 38 years,
 6. Ramesha H.T. S/o late Thimmappa,
 Aged about 32 years,
 7. H.T. Srinivasa S/o Thimmaiah,
 Aged about 45 years,
 8. Venkataramaiah S/o late Thimmaiah,

Aged about 67 years,

9. Mudlagirigowda S/o late Thimmaiah,
Aged about 80 years,
10. Krishna S/o late Thimmaiah,
Aged about 43 years,
11. Varadamma W/o Chinnagiri,
Aged about 50 years,
12. H.K. Jayaramgowda S/o late Karigowda,
Aged about 80 years,
All are agriculturists and
R/o Y. Hosahalli village, Yediyur hobli,
Kunigal taluk.
13. Thimmegowda @ Sathisha
S/o Girigowda, Aged about 40 years,
R/o Y. Hosahalli, Kunigal taluk.

**(Represented by Pleader Sri. BRR for D.1 to 5 and 7
to 13 and defendant No.6- absent.)**

I.A. No. I

Plaintiff/Applicant : H.D. Jayaramgowda

V/s

Defendant/Opponent : H.T. Girigowda

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 interfering with plaintiff's peaceful possession and enjoyment over suit schedule property 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;

Land bearing Sy.No.6 measuring 2 acres 13 gunta consisting a farm house and coconut storage shed situated at Hosahalli Village, Yedyur Hobli, Kunigal taluk morefully described in the schedule of the plaint, hereafter, referred to as suit schedule property, was a thoti inam land. One Muttaiah @ Kuniyappa was doing the service of thoti and in possession of suit schedule property. He died leaving behind a son by name Mannamestri. On the death of Muttaiah @ Kuniyappa his son Mannamestri continued the service of thoti and succeeded the suit schedule property. He applied for re-grant under Karnataka Village Officers Inam abolition Act and obtained the re-grant order. Due to inadvertence and lack of

knowledge he failed to have the mutation in to his name. He had leased the suit schedule property to one Dasegowda s/o Daffedar Thimmegowda on 14-04-1973 for a covsideration of 180 seru Ragi per year. Accordingly Dasegowda inducted in to the possession of suit schedule property. In the year 1977 Dasegowda filed Form No.7 under Karnatka Land Reforms Act 1974 seeking occupancy right. The land tribunal granted the occupancy right in favor of Dasegowda and his name entered in the colum no 12(2) of RTC. Dasegowda died on 01-11-1996 leaving behind 4 sons namely H.D.Jayaramegowda, H.D. Thimmegowda, H.D.Lakshmanagowda and H.D.Devaraju. They succeeded the suit schedule property and in joint possession and enjoyment without any interruption. They are cordial in relationship. The defendants are strangers to the suit schedule property; they have no right, title or interest whatsoever over the suit schedule property. However they in collusion attempted to interfere with plaintiff's and brothers of plaintiff's possession over suit schedule property, tried to demolish the farmhouse and coconut storage shed. In this

regard plaintiff filed a complaint before Amruthur police on 19-07-2020 the police have advised to approach the civil court as the matter is Civil in nature, hence, the suit and this application. It is submitted the plaintiff is having prima facie case, balance of convenience in his favor, if application is rejected she will be put more hardship and injury than defendants. Hence prays to allow the application.

3. The defendant No.1 to 5 and 7 to 13 has appeared through advocate Sri. BRR filed objections. They submitted the application is not maintainable, the plaintiff has filed false affidavit by suppressing the real facts in support of the application. They denied that Dasegowda had filed form No.7 and obtained occupancy right as false. According to the plaintiff suit schedule property is a government land, if Dasegowda had filed form No.7 should be against Govt. but according to the plaintiff Dasegowda filed form No.7 against Muttaiah @ Kuniyappa. Therefore the case pleaded by the plaintiff is false. They specifically submitted the suit schedule property is a government property, these defendants are

cultivating separately in a portions of suit schedule property. The defendant No.1 constructed a tractor shed and coconut stock shed in the portion which he is in possession. The defendant No.2, 4 and 6 have kept Haystack in the portion of suit schedule they are in possession. The defendant No.2 has put fence around the property that he is in possession. One Rathnamma W/o Srinivas also in possession of portion of suit schedule property by constructing a tiled roof house for a long time. The Grama Pachayath formed a cement road to reach the house of Rathnamma and above said tractor shed, coconut stock shed and Haystack of defendants. Even drinking water facility is made available and pipeline is taken through suit schedule property. Considering the possession of Rathnamma W/o Srinivas and one Girigowda in a portion of suit schedule property Grama Panchayath has recorded the katha in their name in relation to the property they are in possession respectively. The name of Dasegowda find place in the RTC is no way concern and it is created. The father of plaintiff never

cultivated the suit schedule property. Accordingly the defendants pray to dismiss the application.

4. Summons to defendant No.6 served personally but he remained absent.

5. Heard the advocate Sri. B.T.N for plaintiff, Sri. B.R.R for defendant No.1 to 5 and 7 to 13, 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 plaintiffs?
2. Whether the balance of convenience lies in favour of the plaintiffs?
3. Whether the plaintiffs would suffer irreparable injury if the prayer for interim injunction is disallowed?
4. What order?
6. My answer to the above points are 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

7. **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 suit schedule property is a Thoti Inam land, one Muttaiah @ Kuniyappa was doing the service of Thoti and he was doing cultivation. He died leaving behind a son by name Mannamesthri, he succeeded the suit property and was doing Thoti service. The defendants in their objections admitted the suit property is a Inam land but they failed to deny whether Muttaiah @ Kuniyappa was cultivating and doing Thoti service, after his death his son Mannamesthri succeeded the property. As such the averments of plaintiff Muttaiah @ Kuniyappa was cultivating the land, he was doing the Thoti service, after his death his son Mannamesthri succeeded the property and was

doing Thoti service is not in dispute. However the plaintiff has failed to produce any document to evidence Muttaiah @ Kuniyappa was a Thoti, he was in possession of suit property, after his death his son Mannamesthri was in possession. It is relevant to note plaintiff specifically asserted Mannamesthri had filed application seeking re-grant under Karnataka Officers Inam Abolition Act and obtained re-grant order. Even this fact is not disputed by the defendants. However the re-grant order is required to produce before the court, in the absence of such order the averments of the plaintiff is not acceptable at this stage. The advocate for plaintiff argued that plaintiff has filed application to obtain the copy of re-grant order before Thasildar on 22-07-2020, The Thasildar office still not supplied the copy in pursuance of the application filed by the plaintiff. An acknowledgment having filed the application before Tahasildhar on 22-07-2020 is filed before the court. According to the plaintiff the re-grant order passed more than 45 years back. Now plaintiff applying for a copy is not diligent move and same is not acceptable.

8. It is the case of the plaintiff Mannamesthri had leased the suit schedule property in favor of Dasegowda S/o Dafedar Thimmegowda on 14-04-1973. To evidence the same plaintiff has produced an unregistered original Guttige Kararu pathra dated 14-04-1973, discloses Mannamesthri S/o Muttaiah @ Kuniyappa had given the suit schedule property in favor of Dasegowda S/o Dafedar Thimmegowda for a consideration of 180 seru Ragi per year. It is relevant to note the Guttige Kararu is not registered and duly stamped, written on a white paper. Therefore the document is not acceptable to evidence the lease alleged by the plaintiff.

9.The plaintiff pleaded Dasegowda had filed form No.7 seeking occupancy right before land tribunal under Karnataka land reforms Act 1974 and obtained the occupancy right. No document is placed before the court to evidence the grant of occupancy right by the tribunal. The plaintiff argued he has filed the application before the District Commissioner, Tumkur on 11-09-2020 to grant copy of Form No.7 and 10 and it is pending for consideration and the acknowledgment having

filed the application is produced. In the absence of form No.7 and 10 only on the application filed seeking copy of form No.7 and 10, the case of the plaintiff is not acceptable at this stage.

10. The plaintiff has produced RTCs of suit schedule property from 1978-79 to 2019-20. They disclose at column No.9 the suit property is a Thoti service inam land and at column No.12(2) Dasegowda is the cultivator. With these RTCs plaintiff argued his father name find place in RTC because he was in possession. After his death plaintiff and his brothers are in possession. On perusal of the above said RTCs for more than 40 years the name of Dasegowda find place in the cultivators' column. Therefore the court can infer Dasegowda was the cultivator of suit schedule property. The defendants argued the entry find place in RTC is created one; Dasegowda had no relationship with suit schedule property. On perusal of the RTCs name of Dasegowda find place from the year 1978-79 by the time no dispute among the plaintiffs and defendants and no one would predict a dispute will arise after 40 years RTC could create now only. Therefore the argument of

defendants that RTC is created is not acceptable. It is relevant to note plaintiff has produce death certificate of Dasegowda discloses Dasegowda died on 01-11-1996 i.e. 24 years back to the date of suit. According to the plaintiff he and his brothers succeeded Dasegowda, and Dasegowda obtained Form No.10 from the Land Tribunal. However, they kept quite to have the mutation in their name and make suitable correction to column No.9 of the RTC. What prevented them from doing so is not forthcoming before the court. Therefore the plaintiff and his brothers are in possession of suit schedule property to the date of suit is not acceptable.

11. The defendants No.1 to 5 and 7 to 13 have contended the defendants are in possession of suit schedule property separately in respective portions. The defendant No.1 constructed a tractor shed and coconut stock shed in the portion he is in possession, defendant No.2, 4 and 6 have kept Haystack in the portions they are in possession and defendant No.2 has put fence around the property that he is in possession. To evidence the same they relied upon a mahazar

drawn by revenue inspector, Yediyur hobli and village accountant, Yediyur circle. The mahazar discloses Sy.No.6 totally measuring 2 acres 13 gunta, is a Thoti nowkari inam land, the villagers are in unauthorized possession of the said land. In the report it is stated there are 22 members including plaintiff, his 3 brothers, defendant No.1, 6, 8 and 10 are in possession illegally. It is relevant to note the mahazar does not bear the date. Even it does not bear the proceedings number. The mahazar does not disclose defendant No.2, 4 is in possession. Therefore the case of the defendant pleaded in the objection is not acceptable.

12. The defendants argued one Rathnamma W/o Srinivas is in possession in the portion of suit schedule property by constructing a house, in Gramapanchayath katha has been recorded in her name and Gramapacnhayath formed a cement road to the house. To evidence the same defendants have produced a demand register extract discloses a property bearing Sl.No.22 of Hosahalli village, Yediyur grama Panchayath is in the name of Rathnamma. On the contrary

plaintiff argued the said house is in Sy.No.5 not in suit schedule property. To counter the plaintiff, defendants have not placed any records to show property of Rathnamma is the portion of suit scheduled property. Therefore the case of the defendants that Rathnamma is in possession of portion of suit schedule property is not acceptable.

13. The plaintiff and defendants have field several photographs to support their contentions particularly to prove their possession over suit schedule property. The defendants have produced photographs not only to prove possession thy produced them to evidence the water facility, road and Haystack. Only on photographs court cannot believe they are in suit schedule property and belongs to plaintiff or defendants. Therefore photographs are not acceptable at this stage.

14. The advocate for defendant while arguing attempted to take the notice of this court to the complaint filed by the plaintiff before the police. Submitted in the complaint the plaintiff admitted the defendants have plough the land with

tractor, it is sufficient to hold possession of defendants. The argument advanced by the defendants is not acceptable because if any person ploughs the land once with the force is not a lawful possession or settled possession.

15. As stated supra the documents clearly reveal the suit schedule property is a Thoti inam land. The Plaintiff has failed to establish the re-grant under inam Abolition Act in favor of Mannamesthri or grant of occupancy right under land reforms Act in favor of Dasegowda. Therefore Dasegowda was the lessee or owner in terms of occupancy right granted under Land Reforms Act is not at all established. Dasegowda died in the year 1996 however RTC never changed. In this regard no explanation is offered by the plaintiff. Therefore they failed to establish the possession over suit schedule property as on this day at this stage.

16. On the other hand defendants submitted they are in possession of portion of lands in suit schedule property separately. Firstly they failed to describe the area with boundaries of which they are in possession. Secondly the

mahazar relied by the defendants did not disclose all the defendants are in possession. It discloses defendant No.1, 6, 8 and 10 are in possession illegally. As such both the plaintiff and defendants have failed to establish their possession in suit schedule property at this stage. Therefore question of interference by the defendants to the plaintiff does not survive for consideration at this stage as such plaintiff has failed to establish prima facie case and balance of convenience in their favor. Hence I answered Point No.1 to 3 in the Negative

17. **Point No. 4:-** For the foregoing reasons and discussions stated therein the application filed by the applicant/plaintiff is deserves to be dismissed, 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 rejected.

(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 12th October 2020.)

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