

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

Present : **Sri. Krishna J. B.A. LLB.,
C/c Addl. Civil Judge & JMFC,
Kunigal.**

Dated this the 7th day of March 2020

O.S. No.276/2018

Plaintiff : Sri. Srinivasa KK
 S/o late Kempaiah,
 Aged about 48 years,
 R/o Kantanahalli village,
 Amruthur hobli,
 Kunigal taluk.

(Represented by Pleader Sri.ARR)

V/s

Defendants : 1. Sri. Ramaiah,
 s/o late Kempaiah
 Aged about 50 years,
 2. Sri. Kempegowda @ Kumara,
 s/o Ramaiah,
 Aged 50 years,

(Represented by Pleader Sri.BRR)

I.A. No. I

Plaintiff/Applicant : Srinivasa KK

V/s

Defendant/Opponent : Ramaiah and another

ORDERS ON IA NO. 1

The plaintiff has filed the application U/o XXXIX Rules 1 and 2 of CPC as I.A. No.1 seeking ad-interim temporary injunction restraining the defendants, their agents, servants, or anybody acting on their behalf from interfering with plaintiff's peaceful possession and enjoyment over the suit schedule property till disposal of the suit.

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

3. The land bearing Sy.No.11/7 measuring 38 gunta and Sy.No.76/4 measuring 33 gunta situated at Kanthanahalli village, Amruthur hobli, Kunigal taluk, was belonged to Kempaiah of Kantanahalli village. He had 4 children namely Ramaiah defendant No.1, Gundaiah, Gangamma and Srinivas K.K plaintiff herein. They had partition of their joint family properties orally later it was reduced into writing as per

Panchayath Parikath dated 12-02-1993. In the said partition the plaintiff allotted with 7 gunta in Sy.No.11/7 and $3\frac{3}{4}$ gunta in Sy.No.76/4 more fully described in the schedule of the plaint, hereafter, referred to as suit schedule properties. In view of partition mutation is accepted in the name of plaintiff under MR No.19/98-99 and he is in possession and enjoyment. The defendants are strangers to the suit schedule properties. The defendant No.1 filed appeal before the Assistant Commissioner, Tumkur, the matter remanded to Tahasildar, Kunigal for fresh disposal. The Tahasildar, Kunigal set aside the MR No.19/98-99 in RRT (DIS) CR 82/15-16 and ordered to mutate $15\frac{1}{2}$ guntas in Sy.No.11/7 and $13\frac{1}{2}$ gunta in Sy.No.76/4 in the name of 1st defendant. The said order is under challenge in RA KUN 82/02 by the plaintiff. The Tahasildar and defendant No.1 in collusion as set aside the MR No.19/98-99. With the help of said order defendants are trying to interfere with plaintiff's peaceful possession and enjoyment, Hence the suit and the application. The plaintiff submitted plaintiff is having prima facie case balance of convenience in his favor if application is rejected he will be put

to more hardship and injury than defendant. Accordingly prays to allow the application.

4. The defendants have appeared filed common written statement and a memo to treat the written statement as objections to the I.A. No.1. The defendants have admitted Sy.No.11/7 and Sy.No.76/4 was belonged to Kempaiah. He had 4 children namely Ramaiah defendant No.1, Gundaiah, Gangamma and Srinivas K.K plaintiff herein. It is admitted defendant No.1 has challenged the MR 19/98-99 it was set aside by the Tahasildhar Kunigal and ordered to mutate 15½ gunta in Sy.No.11/7 and 13½ gunta in Sy.No.76/4. The plaintiff has challenged the said order, that apart he has denied all the averments of plaint. It is specifically submitted during the life time of Kempaiah his children had partition orally in the year 1997 and subsequently it was reduced into writing as per Panchayath Vibhaga pathra dated 12-02-1998. In the said partition the written statement schedule property i.e.15½ guntas in Sy.No.11/7, 9¾ gunta and 3¾ gunta in Sy.No.76/4 allotted to defendant No.1, however plaintiff

created MR No.19/98-99 in relation to properties fallen to the share of defendant No.1. Therefore the defendant No.1 challenged the MR consequently it was set aside and ordered to mutate the name of defendant No.1 in relation to written statement schedule properties, he is in possession and enjoyment. He has obtained loan from Canara Bank, Amruthur Branch, Kunigal taluk on written statement schedule properties. The alleged Panchayath Parikath dated 12-02-1993 is created to knock of the written statement schedule property. Hence prays to reject the application.

5. Heard the advocate Sri.ARR for plaintiff and Sri. BRR for defendants perused the record. 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?

6. 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

7. Points No.1 to 3: On perusal of affidavit, plaint and written statement/objections, it is clear that Sy.No.11/7 totally measuring 38 guntas and Sy.No.76/4 measuring 33 gunta of Kanthanahalli village was belonged to Kempaiah. He had 4 children namely Ramaiah, defendant No.1, Gundaiah, Gangamma and Srinivas K.K plaintiff herein, is not in dispute. It is the case of the plaintiff that he and his brothers had partition orally subsequently it was reduced in the writing under Panchayath Parikath dated 12-02-1993 wherein suit schedule properties have been allotted to plaintiff. Accordingly katha has been mutated under MR No.19/98-99. In this

regard plaintiff has produced unregistered Panchayath Parikath dated 12-02-1993 and he has paid duty and penalty. The panchayath parikath discloses the suit schedule properties allotted to plaintiff. The Plaintiff has produced MR No.19/98-99 which discloses that as per partition suit schedule properties and other properties mutated in the name of plaintiff and his brother namely Ramaiah and Kempaiah.

8. It is the case of the defendant that the alleged Panchayath Parikath dated 12-02-93 is created. The plaintiff, defendant No.1 and brothers had partitioned in the year 1997 and it was reduced into writing under Panchyath Parikath dated 12-02-1998. No such record is placed before the court.

9.The plaintiff submitted that the defendant No.1 has challenged the MR 19/98-99 without arriving plaintiff as opponent and obtained the order and it is sufficient to hold the collusion between revenue authorities and defendant to get set aside the MR No.19/98-99. The order of Assistant Commission, Tumkur in RRT (A) (k) 2/15-16 discloses that defendant No.1 is filed appeal challenging the MR No.19/98-

99. The respondents therein are Tahashildar and revenue inspector. The plaintiff is not a respondent. Since plaintiff is beneficiary under MR No.19/1998-99. It is just and necessary to array as party which clearly reveals the Assistant commissioner has not followed the principles of natural justice. Even Tahasildar in RRT (DIS) (CR) 82/15-16 has not followed the principles of natural justice. Therefore the orders passed by Tahasildar and the Assistant Commissioner Prima facie shown they are illegal. It is relevant to note the plaintiff has challenged the said order before the AC and it is pending.

10. The plaintiff has obtained katha into his name in the year 1998-99 and enjoying the same. In the same mutation some properties were mutated in the name of defendant No.1 till 2015 the said MR has not been challenged before any forum. Even in 2015 the appeal has been filed keeping the plaintiff in dark which shows defendant No.1 is not bonafide. Therefore considering the MR 19/98-99 and it was challenged after 15 years. This court is of the humble opinion that plaintiff is in possession of suit schedule property as per

partition deed dated 12-02-1993. The defendant No.1 is making some illegal efforts to knock of the plaintiff's property. Therefore it is just and necessary to restrain the defendant No.1 from interfering with plaintiff's peaceful possession and enjoyment over suit schedule property. Accordingly I answered Point no 1 to 3 in the affirmative.

11. **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
plaintiff/Applicant U/o XXXIX Rules 1 &
2 of CPC is hereby allowed.

The defendants, their agents,
servants, or anybody on their behalf are
restrained from interfering with the
plaintiff's peaceful possession and

enjoyment over the suit schedule
properties till disposal of suit.

(Dictated to the stenographer, transcribed, typed by her,
printout taken by her and corrected by me and then pronounced by
me in the open court on this the 7th of March 2020.)

(Sri Krishna J.,)
C/c Addl. Civil Judge & JMFC.,
Kunigal.