

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

**Present :- B.Bhimashankar. BA(law) LLB.,**

Addl. Civil Judge & JMFC ,

Pavagada

**Original Suit.182/2011**

**Dated this the 28<sup>th</sup> day February 2015.**

Plaintiff/ : Nagappa S/o Late Muddeerappa Age: 60 yrs  
R/o K.T Halli Village, Pavagada Taluka.

Vs

Defendants 1 Smt. Hanumakka W/o Late Chikkanagappa  
Age: 55 yrs  
2. Ramakrishna S/o Late Chikkanagappa ,  
Age: 45 yrs.  
3. Nagabhushana S/o Late Chikkanagappa  
Age: 50 yrs,  
D1 to 3 are R/o K.T Halli, Nidagala Hobli  
Tq; Pavagada, Taluka.  
4. Veerabhadrappe S/o Late Chikkanagappa  
Age: 35 yrs,  
5. Smt. Shivamma w/o Late Chikanna Age: 48 yrs  
6. Nagendrappa S/o Late Chikanna Age; 40 yrs.  
D3 to 6 R/o Morabagilu Village, Gudibande  
Mandalam, Madakasira Taluka Ananthpuram Dist. A.P.  
7. Nagaraju S/o Late Erappa Age; 48 yrs

8. Doddanna S/o Muddeerappa, Age: 55 yrs
9. Sanneerappa S/o Muddeerappa, Age: 50 yrs  
Both R/o Pemmanahalli Village, Nidagal Hobli,  
Pavagada Taluka.

**PARTIES TO THE I.A NO.I AND V**

**Applicants:** Nagappa

(By Sri. S.R.V Adv.)

Vs/

**Respondents:** Smt Hanumakka and others

(By Sri.M.B.Adv.)

**ORDERS ON I.A. II & IV**

This I.A.II is filed by the plaintiff U/o 39 Rule 1 & 2 of CPC to restrain the defendants, their men, agents servants or anybody claiming under them from dispossessing the plaintiff's joint possession over the suit property in any manner pending disposal of the suit. I.A.V is filed by the D8, which is annexed with an affidavit reiterating whatever stated in the written statement for vacating the T.I granted in favour of plaintiff.

2. In the annexed affidavit to the IA.No..II, it is averred that, the suit property is an ancestral and joint family property of himself and defendants

and it was originally belongs to one Muddeerappa S/o Madival Nagappa, who died leaving behind the plaintiff and defendants as his successors. After his death the names of plaintiff and defendants were entered in the ROR of suit land jointly as Khatedar and Anubhavadar by virtue of IHR No. 5/1998-99. Since then, they are in joint possession and enjoyment of suit property till today without there being any kind of partition between them. But due to woman folks, the plaintiff and defendants are residing separately since 15 years by dividing the crops every year. There is no partition and separate possession between them in respect of suit property. Now the plaintiff intends to get their share separately by metes and bounds. In this regard several panchayath has been convened, for which the defendant shown his deaf year. Finally, they refused to allot the same. Such being the case, the plaintiff is under apprehension that, the defendants may dispossess the plaintiff from the suit property as they are having political backup in the locality. The documents produced by the plaintiff clearly establishes the prima facie is in his favour, balance of convenience lies in his favour only, as such prayed to allow this I.A No II.

3. Per contra the defendant 1 to 7 have not filed any objection, but the D8 and 9 have filed their objection contending that the suit property was divided between them orally four decades back and the same was reduced into writing on stamp paper as **VIBHAGADA DASTA VEJU YA PARTIKATHU DTD 31.05.1986** and suppressing the said fact this suit is filed in collusion with other defendants. Further it is contended that they have purchased the Hissa of land of plaintiff and defendant no. 5 and 6 through agreement of sale Dtd 12.02.1980. and Dtd 19.01.1992. the plaintiff and D5 and 6 have delivered the possession of their Hissa of land in

favour of D8 and D9. Since then they are in possession and enjoyment of suit land along with their portion of land.

4. It is further contended that, the D8 has improved the hissa of land allotted to himself and hissa of land, which was purchased under the agreement of sale by investing the amount Rs 3,00,000/- and got constructed two residential houses within the boundaries of property purchased under the agreement of sale Dtd. 26.01.1986 and he and his family members are residing in the said houses. Two coconut and other trees were planted and reared in front of the house. He stored hay stock and put up a cattle shed and goats. All these aspects have been suppressed by the plaintiff.

5. Further it is contended that the plaintiff has given a complaint on 17.09.2011 against the D8 and D9 in Arasikere police station for which concerned police official warned them to not to pluck tamarind nuts and they should not harvest the tamarind trees. Accordingly the police have obstructed their possession and enjoyment of suit land, which was purchased by them. Further contended that, they have produced the documents in support of their claim, which clearly establish the prima facie of case in their favor and balance of convenience is in their favor and prayed for rejection of I.A.No.II.

6. Heard and perused the materials available on record.

7. The following common points arise for my consideration:

1. Whether the plaintiff has made out a prima-facie case?

2. Whether the balance of convenience lies in favour of plaintiff ?
  3. Whether the plaintiff will be put to great hardship if T.I. is not granted?
  4. What order?
8. My answers to the aforesaid 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**

9. **POINT NO. 1 to 3** :- In order to avoid repetition of facts I proceed to discuss these 3 points altogether as follows.

The present suit is filed for partition and separate possession contending that, the suit properties are an ancestral and joint family properties of plaintiff and defendant as the same is acquired by them under the rights of inheritance. Accordingly their names have been mutated in ROR of suit property. Since then they are in joint possession and enjoyment over the suit property till today.

10. Per contra, the defendant no. 8 and 9 have filed their written statement stating that, there was already partition taken place between them orally four decades back and the plaintiff, D5 and 6 have sold out their

hissas by executing the agreement of sale. Since then they are in possession and enjoyment of their hissass of land as well as of hissa of land purchased under the agreement of sale.

11. In support of his claim, the plaintiff has produced the ROR of suit land for the year 1997-98, 2005-2006, 2009-10 and 2010- 2011 wherein the names of plaintiff and defendants appearing jointly. The column no. 9 and 12{2} of ROR of suit land clearly depicts the name of plaintiff along with the defendants as Khatedar and Anubhavadar.

12. That as per the Sec. 133 of the Land Revenue Act, there is a presumption regarding entries in Records – an entry in the Record of Rights and a certified copy in the register of mutation or in a patta book shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefore. But it is a rebuttable presumption and is not a conclusive proof.

13 Section 133 of Karnataka land revenue act speaks that, unless contrary is proved, the entries in the revenue records have got presumptive value to prove the possession over the property. Admittedly the column no. 9 and 12{2} of ROR of suit land of the year 1997-98 to till the date of filing of suit clearly discloses the name of plaintiff and defendants jointly as joint Khatedar and Anubhavadar of suit land,. Admittedly the said entries have not been challenged till today. Hence at this stage the prima facie possession of suit land is with the plaintiff.

14. On perusal of the pleadings the relationship and the nature of the suit property is not disputed. It is the specific contention of the D8 and 9 that, the suit property was divided between them four decades back orally. The

same was reduced into writing as VIBHAGADA DASTA VEJU YA PARTIKATHU DTD 31.05.1986 and the plaintiff and D5.D6 have sold out their hissa in favour D8 and D9 by executing an agreement of sale dtd 12.02.1980. and Dtd 19.01.1992. Since then they are in possession and enjoyment of their portion of Hissa of land along with the purchased Hissa of land. In support of their contention they have produced the original partition deed Dtd 31.05.1986 , Agreement of Sale dtd 12.02.1980, Agreement of sale dtd 26.01.1986 Agreement of sale dtd 19.01.1992. These documents are unregistered one. Further some photographs have been produced in which some construction are appearing and one temple is also appearing. Except these documents none other documents are produced to show that the same are acted upon.

15. It is settled law that mere production of documents does not amount proof Ipso facto. Further the documents produced by the defendant no. 8 and 9 are of the year 1986, 1980 and 1992 but why they have not taken any steps to get it implemented the same till today is not properly explained. Admittedly the documents are unregistered one. Hence no rights would be transferred in favor of D8 and D9. The ROR of suit lands clearly depicts that, the suit property is still in joint possession and enjoyment of plaintiff and defendants jointly. Unless the documents produced by the defendants proved, it cannot be considered that, the D8 and D9 have purchased the hissa of land of plaintiff and defendant no. 5 and 6. Further the land revenue paid receipts produced by the D8 and D9 are not sufficient to hold that partition was effected and portion of property was sold out in their favor. It is contended that, the D8 is in possession and enjoyment to the extent of 3 acres 10 guntas. But the said land revenue paid receipts depicts that land

revenue is paid to the entire suit land not to their extent of land only. Hence at this juncture it cannot be said that partition was effected four decades back, and he is in possession of to the extent of 3 acres 10 guntas.

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16. Whether the partition was effected orally between them four decades back as contended ? Whether the plaintiff, D5 and 6 have sold their Hissas by executing the agreement of sale in favor of D8 and D9 or not ? are the matters which requires full fledged trail and it is too premature to consider the said aspects at this ad interim stage. Hence, without going into the merits of the case, it is proper to protect the joint possession of plaintiff over the suit land. Moreover there is no material to show that, the plaintiff is not in joint possession along with the defendants except the alleged agreement of sale. Hence at this stage prima facie joint possession is with the plaintiff. If the TI is not allowed restraining the defendants from causing dispossession of plaintiff from the suit property, it will create multiplicity of proceedings. Moreover, in a suit for partition and separate possession, the rights of all the parties to the suit has to be adjudicated by evidence. Hence I am of the considered view that, the plaintiff has made out the prima facie of case and balance of convenience lies in his favour and if Temporary Injunction is not granted, it will cause great hardship to the plaintiffs rather than to the defendants. Accordingly Point No. 1 to 3 are answered in the affirmative.

**17. Point no. 4 :** In view of the reasons assigned so far, this court proceeds to pass the following

### **ORDER.**

This I. A. No. II filed by the plaintiff U/o 39 Rule 1 & 2 of  
CPC is hereby allowed.



The defendants, their agents, servants or any other persons claiming under them are hereby restrained from dispossessing the plaintiff from his joint possession and enjoyment of suit property.

Accordingly the I.A V is hereby disposed off.

This T.I will be in force till 6 months or till disposal of suit whichever is earlier.

No order as to costs

( Directly typed by me on my laptop, corrected and pronounced by me in the open court on this the 28<sup>th</sup> day of February 2015 ).

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(B. Bhimashankar)

Addl. Civil Judge and Pavagada