

KATK710008782023



**IN THE COURT OF ADDL. CIVIL JUDGE AND JMFC,
PAVAGDA**

Present:- Smt.B. Priyanka, B.A., LL.B.,
Addl. Civil Judge and JMFC,
Pavagada.

Dated this the 17th day of December, 2024

O. S. No.156/2023

Plaintiffs :

1. Govindappa
S/o Late. Mudlappa,
Aged about 65 years,
 2. Kenchamma
W/o Govindappa,
Aged about 60 years,
- Both are R/at V.H.Palya,
Near Mangalawada, Nidagal
Hobli, Pavagada Taluk.

(By Sri.M.N, Advocate)

V/S

Defendants :

1. Giriyappa
S/o Late. Mudlappa,
Aged about 60 years,
2. Rathnamma
W/o Giriyappa,
Aged about 50 years,

3. Venkataravana
S/o Giriyappa,
Aged about 26 years,

Defendant No.1 to 3 are
R/at V.H.Palya,
Near Mangalawada, Nidagal
Hobli, Pavagada Taluk.

**(Defendant No.1 to 3 by
Sri.P.S.M, Advocate)**

I.A.No.1

Applicant/Plaintiff : Govindappa
V/s
Opponents/Defendants : Giriyappa
and others

Provision Under which the application is filed :	Under Order 39 Rule 1 and 2 of CPC
Relief sought for :	Temporary Injunction restraining the defendant No.1 to 3 or their agents, servants, men from interfering with the plaintiff's suit schedule properties.
The date on which the application is filed :	06.04.2023
Number of the application :	IA No.1
The date on which the objections are filed by different Opponents :	11.08.2023
The date on which the orders were passed on the said application :	17.12.2024

**ORDERS ON I.A.NO.I FILED BY THE PLAINTIFF NO.1 UNDER
ORDER 39 RULE 1 & 2 of C.P.C.**

The plaintiff No.1 has filed IA No.1 **Under Order XXXIX Rule 1 and 2 of CPC** with a prayer to restrain the defendants, their men, agents, servants or any other person claiming under them from interfering with the plaintiff's suit schedule properties in any manner pending disposal of the suit.

2. **The suit schedule properties are described as follows:**

1. Sy. No.105/6 of Mangalawada, Nidagal Hobli, Pavagada Taluk, measuring 1 Acre 28 Guntas, Assessed at Rs.00.59 paise, is as bounded by:-

East	:	The land of Hanumantharayappa
West	:	The land of Mudlappa
North	:	The land of Defendants
South	:	Land of Krishnappa.

2. Sy. No.105/8 of Mangalawada, Nidagal Hobli, Pavagada Taluk, measuring 1 Acre 06-08 Guntas, Assessed at Rs.00.40 paise, is as bounded by:-

East	:	The land of Hanumantharayappa
West	:	The land of Govindappa
North	:	The land of 1 st Defendant Giryappa
South	:	Land of Somappa.

3. Sy. No.105/7 of Mangalawada, Nidagal Hobli, Pavagada Taluk, measuring 30 Guntas, Assessed at Rs.00.17 paise, is as bounded by:-

East	:	The land of Hanumantharayappa
West	:	The land of Govindappa
North	:	The land of 1 st Defendant Giryappa
South	:	Land of Kavelamma.

4. Sy. No.105/9 of Mangalawada, Nidagal Hobli, Pavagada Taluk, measuring 20 Guntas, Assessed at Rs.00.17 paise, is as bounded by:-

East	:	The land of Hanumantharayappa
West	:	The land of Kenchamma
North	:	The land of 1 st Defendant Giryappa
South	:	Land of Govindappa.

3. In the affidavit annexed to the I.A, the plaintiff has submitted that the present suit has been filed for the relief of declaration and permanent injunction with respect to the suit schedule properties which fell to his share under division between the plaintiffs and defendants and the suit Item No.1 and 2 are standing in the name of plaintiff No.1 and the suit Item No.3 and 4 are standing in the name of plaintiff No.2 and they are in joint possession and enjoyment of the said properties after the partition.

4. That the defendants have no right, title or interest over the suit schedule properties, but they are unnecessarily attempting to interfere with the plaintiff's peaceful possession and enjoyment and if the defendants are not restrained, the plaintiffs would be put to great hardship and loss and that the plaintiffs have made out a prima facie case and balance of convenience is in their favour and that they would be put to more hardship and loss and among these grounds prays for the IA to be allowed.

5. The defendants have filed a memo to adopt the written statement as objections to the IA No.1 and in the written statement, it is contended that the plaintiffs have not approached the court with clean hands and the plaintiffs are not in possession of the suit schedule properties and that the plaintiff No.1, defendant No.1 and the plaintiff's brother Gujjarappa acquired the suit schedule properties and Sy. No.105/1 measuring 4 Acres 01 Guntas and Sy. No.105/2 measuring 3 Acres under proceeding in FDP No.2/1993 and 3/1993 and that the FDP No.3/1993 dealt with the suit schedule properties and the property mentioned in the schedule of the written statement and as per the decree in FDP No.3/1993, both the plaintiff No.1 and defendant No.2 were entitled equal share in the Sy. No.105/1 and 105/2 and the Vendor of the plaintiff No.2 Gujjarappa was entitled to 20 Guntas of land in the said survey numbers. But the plaintiff in

order to harass the defendants has mentioned false facts. As per registered document dated 18.08.1994, the defendant No.2 has only 20 Guntas in Sy. No.105/1 and 105/2 each. Therefore, he is entitled to only 40 Guntas, but however the defendant No.2 has claimed 30 Guntas in suit Item No.3 and 20 Guntas in suit Item No.4 which is not at all in existence and without the knowledge of the defendant No.1, plaintiffs have got created bogus revenue documents and are interfering with the written statement schedule property without any reasonable cause and as such defendant No.1 has lodged information before the Arasikere Police Station in Cr. No.16/2023 and charge sheet has been filed in C.C.No.1026/2023 on the file of Hon'ble Prl. Civil Judge and JMFC, Pavagada. In order to retaliate against the defendants, the plaintiffs have come up of the present suit and moreover, the plaintiff No.1 and 2 by colluding with their children have illegally interfered with the possession and enjoyment of schedule property mentioned in the written statement of the defendant and have removed stones erected as fence and have encroached 5 Guntas and have planted Areca illegally and are restraining the defendants from carrying out agricultural operations and therefore, the defendants have filed counter claim with respect to the said property and among these grounds prays for the IA to be dismissed.

6. Heard the arguments of learned advocate Sri.M.N, appearing on behalf of the applicant (plaintiff No.1) and the

learned advocate Sri.P.S.M, appearing on behalf of the opponents (defendants) and the learned advocate and perused the records carefully and meticulously.

7. The following points arise for my consideration:

1. Whether the plaintiffs have made out a prima facie case for the grant of temporary injunction?

2. Whether the balance of convenience lies in favour of the plaintiffs?

3. Whether the plaintiffs will be put to irreparable loss and hardship in case of refusal of temporary injunction?

4. What order?

8. My answer to the aforesaid points are as follows:

Point No.1 : In the Negative,

Point No.2 : In the Negative,

Point No.3 : In the Negative,

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

REASONS

9. **Point No.1:-** The plaintiff has filed the present suit for the relief of declaration of title and for permanent injunction to restrain the defendants from interfering with the plaintiff's

peaceful possession and enjoyment of the suit schedule properties and for costs.

10. It is the contention of the plaintiffs that there has already been a partition and the defendants in spite of no right, title or interest are interfering with their peaceful possession and enjoyment of the suit Item No.1 to 4.

11. Per-contra the defendants claim that the plaintiff No.2 has claimed excess property and the plaintiffs have encroached 5 Guntas of land belonging to the defendant in Sy. No.105/1 and 105/2 and have filed this false suit only as a measuring of retaliation against the defendants for having lodged a criminal case against them.

12. The plaintiff in support of their case have produced RTC for the Sy. No.105/6, 105/8, 105/7 and 105/9. They have also produced copy of Pakka Book which contains the survey sketch pertaining to Sy. No.105/1 and 105/2.

13. The defendants on the other hand have not produced any documents in support of their case.

14. It is pertinent to note that, the plaint does not disclose whether the suit schedule properties prior to the partition bore Sy. No.105/1, but however, the pakka book produced by the plaintiffs shows that the suit schedule

properties may have been originally numbered as Sy. No.105/1 and 105/2.

15. The defendants have contended that the plaintiff No.2 is seeking excess property and has encroached 5 Guntas of land belonging to the defendants and in the written statement the property belonging to the defendant is described as follows;

The Written Statement Schedule Property

All the piece and parcel of the land bearing Sy. No.105/1 and 105/2 measuring at 4 Acres 01 Guntas and 3 Acres both are adjacent lands situated at Mangalawada Village, Nidagal Hobli, Pavagada Taluk out of which the share of the defendant No.1 is allotted the land measuring at 3 Acres 0.05 Guntas in both the Sy numbers bounded on:-

East by	:	Road leading to share of the plaintiff No.1 property
West by	:	Land belongs to Nagamma (Now Land belongs to Manjanna)
North by	:	Cart Track/Road leads to Tumkunte
South by	:	Land belongs to Plaintiff No.1.

16. Therefore, after careful consideration of all the materials on record, it is pertinent to note that encroachment has been alleged by the defendants and they have also made a counter claim of delivery of the encroached 5 Guntas of land by the plaintiffs in Sy. No.105/1 and 105/2. However, this Court, at this stage cannot hold a mini trial to determine as to whether

any encroachment has occurred and moreover the averments of the affidavit annexed to the IA does not reveal as to how exactly the defendants interfered with the plaintiff's possession and enjoyment and there is also no date or details as to when the incident of interference occurred and a mere standard statement is made that the defendants are interfering with the plaintiffs possession and enjoyment without giving any details as to what exactly occurred and what constrained the plaintiff to file the present IA. Therefore, under the said circumstances this Court is of the opinion that the plaintiff has failed to make out a prima facie case as far as IA No.1 is concerned. Therefore, I proceed to answer point No.1 in the **Negative**.

17. **Point No.2 and 3:-** Since the plaintiffs have failed to make out prima facie case, the question of considering the balance of convenience, irreparable loss or hardship does not arise. Hence, point No.2 and 3 are also answer in the **Negative**.

18. **Point No.4:** In view of my findings on point No.1 to 3, I proceed to pass the following:

ORDER

I.A.No.1 filed by the plaintiff No.1 under order 39 Rule 1 and 2 of CPC is hereby dismissed.

No order as to costs.

(Dictated to the Stenographer, corrected and then pronounced by me in the open court on this the 17th day of December, 2024)

(Smt.B. Priyanka)
Addl. Civil Judge & J.M.F.C.,
Pavagada.