



**IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC ,**  
**AT: HONNAVAR**

**Present: Chandrashekhar E Banakar, B.A.LL.B.LL.M,**  
**Principal Civil Judge and JMFC, Honnavar**

**Dated this the 12<sup>th</sup> day of June, 2024**

**O.S. No. 55/2023**

**Plaintiff:**

**Timmanna Vishnu Hegde.**

Age: 87 years, Occ: Agriculture,

R/o. Kelaginooru, Tq: Honnavar, U.K.,

**//Vs//**

**Defendants:**

**01. Shambhu Ishwar Gouda,**

Age: 58 years, Occ: Agriculture,

R/o. Kelaginooru Paiki Achchalagundi,

Tq: Honnavar, U.K.,

**02. Kanya Ishwar Gouda,**

Age: 55 years, Occ: Agriculture,

R/o. Kelaginooru Paiki Achchalagundi,

Tq: Honnavar, U.K.,

**03. Dinesh Shambhu Gouda,**

Age: 22 years, Occ: Agriculture,

R/o. Kelaginooru Paiki Achchalagundi,

Tq: Honnavar, U.K.,

**04. Mahesh Shambhu Gouda,**

Age: 20 years, Occ: Agriculture,

R/o. Kelaginooru Paiki Achchalagundi,

Tq: Honnavar, U.K.,

**Parties to I.A. No. I:**

**Applicant/plaintiff:**

**Timmanna Vishnu Hegde.**

Age: 87 years, Occ: Agriculture,

R/o. Kelaginooru, Tq: Honnavar, U.K.,

**(By Advocate. Sri. MSB).**

//Vs//

**Opponents/defendants:**

- 01. Shambhu Ishwar Gouda,**  
Age: 58 years, Occ: Agriculture,  
R/o. Kelaginooru Paiki Achchalagundi,  
Tq: Honnavar, U.K.,
- 02. Kanya Ishwar Gouda,**  
Age: 55 years, Occ: Agriculture,  
R/o. Kelaginooru Paiki Achchalagundi,  
Tq: Honnavar, U.K.,
- 03. Dinesh Shambhu Gouda,**  
Age: 22 years, Occ: Agriculture,  
R/o. Kelaginooru Paiki Achchalagundi,  
Tq: Honnavar, U.K.,
- 04. Mahesh Shambhu Gouda,**  
Age: 20 years, Occ: Agriculture,  
R/o. Kelaginooru Paiki Achchalagundi,  
Tq: Honnavar, U.K.,  
**(By D-1&2 Sri. RMB Adv, D-3&4 Absent )**

**ORDER ON I.A. NO. I**

The plaintiff/applicant has filed I.A. No. I under Order 39 Rule 1 and 2 of CPC praying this Court to issue an order of temporary injunction against the defendants from interfering into the suit schedule property and from demolishing the item No.3 of the suit schedule property till the disposal of this suit.

2. The application is supported with the affidavit of the plaintiff, wherein he deposed that some of the suit schedule properties are absolute properties of this plaintiff and some of the suit schedule properties were granted in favour of plaintiff's brother by name Ganapati s/o Vishnu Hegde as the member of the joint family. The said Ganapati s/o Vishnu Hegde died on 13/01/2023 and still bring his Lrs on record is pending. Therefore, the suit schedule properties are the ancestral joint family properties of this plaintiff.

2.1. Earlier, the ancestors of the defendants have also filed Form No.7 before the Land Tribunal and sought for the grant of suit schedule properties in LRT-SR.No. 12/273. Based on their application, the Land Tribunal had granted the occupancy right over the suit schedule properties in favour of ancestors of the defendants. Aggrieved by the said order, the plaintiffs preferred an Writ Petition No.19201 before the Hon'ble High Court of Karnataka, wherein the Hon'ble High Court of Karnataka vide its order dated 06/04/1983 had quashed the order of the Land Tribunal and observed about the possession of the plaintiffs over the suit schedule properties.

2.2. Thereafter, the ancestors of the defendants have filed Form No.7A before the Assistant Commissioner, wherein the Assistant Commissioner had also rejected the said application. Aggrieved by the said order, the ancestors of the defendants have preferred a Writ Petition No. 23409/2022 before the Hon'ble High Court of Karnataka, wherein the Hon'ble High Court of Karnataka has dismissed the said Writ Petition vide its judgment dated 25/07/2022. Based on the said judgment, the possession of the suit schedule properties were delivered by the bailiff in favour of plaintiffs. Since from then, the plaintiffs are in the actual possession and enjoyment of the suit schedule properties.

2.3. The defendants are goes on trying to grab the suit schedule properties. In the 1<sup>st</sup> week of February, 2022, the defendants have trespassed into the suit schedule properties and destroyed the fence formed around the suit schedule properties.

Even the defendants have threatened the plaintiffs. Hence, they filed this suit and application.

3. On the other hand, the defendant Nos. 1 and 2 appeared before the Court through their advocate and filed their written statement and filed a memo stating about the adoption of their written statement as their objection to the present application. In their written statement, the defendant Nos. 1 and 2 have contended as follows,

3.1. All the averments of the plaint are denied as false.

3.2. Originally, Sri. Kanya s/o Chandru Gowda, who is the grand father of the defendant Nos. 1 and 2 had gifted the suit schedule properties and other 9 properties in favour of Eswar s/o Shambu Gowda, who is the father of the defendant Nos. 1 and 2 by way of registered gift deed vide dated 03/06/1946. Since from then, the ancestors of the defendant Nos. 1 and 2 were in the actual possession and enjoyment of the suit schedule properties.

3.3. The defendant Nos. 1 and 2 have developed the suit schedule properties. Thereafter, the ancestors of the defendant Nos. 1 and 2 have filed the Form No.7 before the Land Tribunal and the Land Tribunal had also granted the occupancy right over the suit schedule properties in favour of ancestors of the defendant Nos. 1 and 2. Therefore the defendant Nos. 1 and 2 are in the actual possession and enjoyment of the suit schedule properties and therefore, the question of interference by the defendant Nos. 1 and 2 would not arise. Hence, they prayed to dismiss the application.

4. I have heard the arguments of learned advocate for the plaintiff. The learned advocate for the defendant Nos. 1 and 2

sought for time without assigning reasons and therefore, this Court taken the arguments of the learned advocate for the defendant Nos. 1 and 2 as nil.

5. The points which are arise for my consideration are:

1. Whether the plaintiff has made out a prima facie case for the grant of temporary injunction against the opponents/ defendants?
2. Whether the plaintiff proves that the balance of convenience lies in his favour?
3. Whether the plaintiff proves that he will be put to great loss and hardship if T.I. is not granted?
4. What order?

6. By considering the materials on record, my answers to the above points are as follows:

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. **Point Nos. 1 to 3:-** These point required are interconnected with each other, to avoid repetition of facts, these points are answered in common.

8. I have already discussed the rival contentions raised in this case. Therefore, I directly move to discuss about the documents produced in this case.

9. In order to prove his case, the plaintiff has produced the RTCs pertaining to the suit schedule properties, wherein the name

of Ganapati s/o Vishnu Hegde is shown as actual possessor of the said lands. From this RTC, it appears that the Ganapati s/o Vishnu Hegde is in the actual possession and enjoyment of the suit schedule properties as on the date of the suit. The plaintiff further produced the original records pertaining to the O.S.No.163/1970. He also produced the Form No.7, copy of the order passed by the Land Tribunal dated 22/08/1981, Form No.10. Under these documents, the suit schedule properties were granted in favour of Eswar s/o Shambu Gowda. The plaintiff has also produced the certified copy of the order passed by the Hon'ble High Court of Karnataka in W.P.No. 19201/1981, wherein the Hon'ble High Court of Karnataka has quashed the order passed by the Land Tribunal in favour of ancestors of the defendants pertaining to the suit schedule properties. The plaintiff has also produced the Form No.7A filed by the defendant Nos. 1 and 2 and others. He has also produced the copy of the order passed by the Hon'ble High Court of Karnataka in W.P.No. 23409/2018, wherein the Hon'ble High Court of Karnataka had dismissed the petition filed by the defendant Nos. 1 and 2 of this suit.

10. On the other hand, the defendant Nos. 1 and 2 have not produced any documents in support of their contentions.

11. In this case, the plaintiff has produced the RTC, wherein the names of Ganapati s/o Vishnu Hegde, who is the brother of the plaintiff is shown as actual possessor of the suit schedule properties. With regard to the presumption of contents of the RTC, section 133 of the Karnataka Land Revenue Act reads as follows,

**"133. Presumption regarding entries in the records.  
—An entry in the Record of Rights and a certified**

**entry in the Register of Mutations or in the patta book shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.**

12. Further the Hon'ble Supreme Court of India in Gurunath Manohar Pavaskar and others v/s Nagesh Siddappa Navalgund and others, reported in AIR 2008 SC 901, has held that **"Record of right is not a document of title. Entries made therein in terms of section 35 of Indian Evidence Act although are admissible as a relevant piece of evidence and although the same may also carry a presumption of correctness, but it is beyond any doubt or dispute that such a presumption is rebuttable."**

13. At this point of time, the plaintiff has proved that he is in the actual possession and enjoyment of the suit schedule properties as on the date of the suit. Therefore, at this point of time, prima facie it is clear that the plaintiff is in the actual possession of the suit schedule properties.

14. At this point of time, it is proper and necessary to cite the following judgment. In the State of Karnataka and others v/s S. Venkatraj, reported in AIR 1975 KANT 119, the Hon'ble High Court of Karnataka has held as follows,

**"5. I do not want to express any opinion as to the merits of the plaintiff's case as that may prejudice one or other of the parties in the trial of the suit. The object of an interim injunction is to keep things in status quo, so that if at the hearing the plaintiff obtains a judgment in his favour, the defendants will have been prevented in the meantime from dealing with the property in such a way as to make that judgment ineffectual — vide Preston v. Luck, (1884) 27 Ch.**

**D 497. A temporary injunction maintaining the status quo may properly issue whenever the question of law or fact to be ultimately determined in a suit is grave and difficult and injury to the moving party will be immediate, certain and great if denied, while the loss or inconvenience to the opposing party will be comparatively small and insignificant if granted. The party who seeks the aid of the Court in that behalf must as a rule, be able to satisfy the Court on three points; (a) that there is a serious question to be tried at the hearing and there is a probability that he is entitled to the relief sought by him, or in other words, that he has a prima facie case to go to the trial; (b) that the Court's interference is necessary to protect him from that species of injury which the Court calls irreparable before his legal right is established at the trial; and (c) that the comparative mischief or the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting it."**

15. The Hon'ble High Court of Karnataka in the above cited judgment has held that the object of an interim injunction is to keep thing in status quo, so that if at the hearing the plaintiff obtains judgment in his favour, the defendants will have been prevented from dealing with the property in such a way as to make that judgment ineffectual. Further held that for grant of temporary injunction, whether the plaintiff has a prima facie case, and the existence of a triable question, are to be considered, and is not to involve an enquiry into the merits of the case.

16. The party to the litigation, who seeks an injunction, must satisfy the court that there is a serious question to be tried at the hearing of the suit and every probability tilts in his favour for the relief sought for i.e. prima facie is in his favour. Here prima facie

case is not to be confused with prima facie title which has to be established on evidence at the trial. Prima facie case is a substantial question raised, bonafide, which needs investigation and a decision on merits. Satisfaction of court that there is a prima facie case by itself is not sufficient to grant injunction. The court has to further satisfy that non-interference by court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. "Irreparable injury" however does not mean that there must be no physical possibility of repairing the injury but means only that the injury must be material one, namely one that cannot be adequately compensated by way of damages. The third condition is that the "balance of convenience" must be in favour of grant of interim injunction. The court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief of injury which is likely to be caused to the parties if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury, the court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. These principles are laid down in Dalpat Kumar and another vs Prahlad Singh and others, reported in (1992)1 SCC 719 and in Maria Margarida Sequeira Fernandes and others Vs Erasmo Jack De Sequeira(dead) through LRs, reported in (2012) 5 SCC 370.

17. Therefore, the party to the litigation, who seeks an injunction, must satisfy the court that there is a serious question to be tried at the hearing of the suit and every probability tilts in his favour for the relief sought for i.e. prima facie is in his favour. The prima facie case may not be confused in prima facie success, but simply if there is serious question to be tried the test of prima facie is satisfied and further court's interference is necessary without which a right accrued in favour of the party concerned, cannot be protected from species of injury which is known as irreparable injury and comparative mischief which is likely to cause in the absence of the injunction will be greater and not compensable, thus the balance of convenience also tilts in his favour.

18. In this case on perusal of the documents produced by the plaintiff, it appears that the plaintiff is in the actual possession and enjoyment of the suit schedule properties and it is settled principle of law the based the contents of the RTC, Court can presume about the contents of the RTC unless and until it is rebutted by the adverse party.

19. So on perusal of the records, it appears that there is a triable question in this suit. In this case, the plaintiff has made out grounds for trial, thereby he has made out prima facie case. Further if this Court refuses to grant the relief sought in this application, obviously it is the plaintiff, who will suffer irreparable injury. Because, if the defendants granted the liberty to interfere in the suit schedule properties, then it will cause irreparable injury to the plaintiff. Further, on comparing the inconvenience, it is the plaintiff who will suffer greater inconvenience on refusal of the relief sought

in the application. On the other hand, no injustice will cause to the defendants. Hence, I answered point Nos. 1 to 3 in the affirmative.

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

**ORDER**

The I.A. I filed by the plaintiff under Order XXXIX Rule 1 and 2 of CPC is hereby allowed.

The defendants are restrained from demolishing or destroying the agricultural building situated over the item No.3 of the suit schedule properties and also from interfering into the possession and enjoyment of the suit schedule properties till the disposal of this suit.

No order as to costs.

(Typed by me in my laptop, corrected and signed by me and then pronounced in the open Court on this 12<sup>th</sup> day of June, 2024).

**Pri. Civil Judge & J.M.F.C.  
Honnavar.**