

KAUK620007292020



**IN THE COURT OF PRL CIVIL JUDGE & JMFC**

**AT: HONNAVAR**

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

**Dated this the 3<sup>rd</sup> day of March, 2023**

**O.S.No.39/2020**

**Plaintiff:**

**Sridevi Sridhar Kini,**  
Aged about 48 years,  
Occupation: Agriculturist & a household,  
R/o. Siddapura Town, Tq: Siddapura.

**//Vs//**

**Defendants:**

- 01. Nagu Hanmant Gouda,**  
Aged about 52 years,  
Occupation: Agriculturist,  
R/o.Kadneeru, Tq: Honnavar.
- 02. Shaniyar Hanmant Gouda,**  
Aged about 38 years,  
Occupation: Agriculturist,  
R/o.Kadneeru, Tq: Honnavar.
- 03. Suggi Hanmant Gouda,**  
Aged about 35 years,  
Occupation: Agriculturist,  
R/o.Kadneeru, Tq: Honnavar.

**Parties to I.A. No. III:****Applicant/plaintiff:**

**Sridevi Sridhar Kini,**  
Aged about 48 years,  
Occupation: Agriculturist & a household,  
R/o. Siddapura Town, Tq: Siddapura.

**(By Advocates Sri.MSB/KVN)**

**//Vs//**

**Opponents/defendants:**

**01. Nagu Hanmant Gouda,**  
Aged about 52 years,  
Occupation: Agriculturist,  
R/o.Kadneeru, Tq: Honnavar.

**02. Shaniyar Hanmant Gouda,**  
Aged about 38 years,  
Occupation: Agriculturist,  
R/o.Kadneeru, Tq: Honnavar.

**03. Suggi Hanmant Gouda,**  
Aged about 35 years,  
Occupation: Agriculturist,  
R/o.Kadneeru, Tq: Honnavar.

**(By Advocate Sri.GVB)**

**Parties to I.A.No.V:****Applicants/defendants:**

**01. Shaniyar Hanmant Gouda,**  
Aged about 38 years,  
Occupation: Agriculturist,  
R/o.Kadneeru, Tq: Honnavar.

**02. Suggi Hanmant Gouda,**  
Aged about 35 years,  
Occupation: Agriculturist,  
R/o.Kadneeru, Tq: Honnavar.

**(By Advocate Sri.GVB)**

//Vs//

**Opponent/plaintiff:**

**Sridevi Sridhar Kini,**  
Aged about 48 years,  
Occupation: Agriculturist & a household,  
R/o. Siddapura Town, Tq: Siddapura.

**(By Advocate Sri.MSB)****ORDER ON I.A. NOS. III & V**

The plaintiff/applicant has filed I.A. No. III under Order 39 Rule 1 and 2 of CPC praying this Court to issue an order of temporary injunction against the defendants restraining them from cutting trees grown over the suit schedule property and also from constructing shed, hut over the suit schedule property and also from interference in the plaintiff's possession over the suit schedule property till the disposal of this suit. On the contrary, the defendants have filed I.A.No. V under order 39 rule 4 of CPC, seeking to vacate the exparte temporary injunction granted in favour of plaintiff.

**2.** The I.A.No. II is supported with the affidavit of the plaintiff, wherein she deposed she is the absolute owner in possession of the suit schedule property and defendants have no right and interest over the suit schedule property. Since from several years, the defendants are trying to purchase the suit schedule property, but this plaintiff had purchased the suit schedule property from its original

vendor and therefore the defendants are having enmity over this plaintiff.

**2.1.** Further she contended that on 3<sup>rd</sup> week of February, the defendants with the help of JCB have destroyed the fence situated over northern portion of the suit schedule property and also tried to construct temporary shed over the suit schedule property. On questioning the act of the defendants, the defendants have abused the plaintiff in filthy language and also threatened to the life of the plaintiff. Accordingly, the plaintiff had filed her first information before Honnavar Police station on 16/02/2020. But, police gave an endorsement stating that the dispute is in civil nature and directed her to solve her dispute in civil Court.

**2.3.** Further she contended that on 23/02/2020, once again the defendants have continued with their mischief work and also threatened to this plaintiff. Hence, having no option the plaintiff has filed this suit along with this application.

**3.** In pursuance of the suit summons, the defendants appeared before the Court through their advocate and the defendant No.1 has filed his written statement and other defendants have adopted the written statement as their objection to the present application.

**4.** In his written statement, the defendant No.1 has contended that he recently came to know that the plaintiff had purchased the suit schedule property from its original

owner by name Sri. Venkatesh s/o Anant Kamat vide sale deed dated 15/12/2014. This was confirmed after seeing the RTC and mutation entry of the suit schedule property. Even though she purchased the suit schedule property, the plaintiff is not in the actual possession and enjoyment of the suit schedule property. Even Sri. Venkatesh s/o Anant Kamat was not in the possession of the suit schedule property.

**4.1.** Towards northern side of the suit schedule property, the property of the defendants bearing Sy.Nos. 58/1, 58/2, 58/3, 59/2 and 59/3 are situated. Originally Sri. Venkatesh s/o Anant Kamat was the owner of these properties. Among these properties, the property measuring 4 acres was in the possession of the defendants' father as cultivator. Since from 1965-66, the defendants' father was in the possession and enjoyment of that property. Thereafter, the defendants' father had filed Form No.7 before the Land Tribunal and sought for grant of that land. Then the said Sri. Venkatesh s/o Anant Kamat had opposed the said application.

**4.2.** Further he contended that, thereafter the said Sri. Venkatesh s/o Anant Kamat filed O.S.No. 59/1975 against defendants' father and compelled him to compromise with him. The said Sri. Venkatesh s/o Anant Kamat compelled the defendants' father to purchase the said property. Thereafter, the defendants' father agreed and purchased the said property from the said Sri. Venkatesh

s/o Anant Kamat. The land which was purchased by the defendants' father is situated towards northern side of the suit schedule property. The suit schedule property and the property purchased by the defendants' father are situated in one compound. There is no fence in between these properties.

**4.3.** The car shed of the defendants is situated over the suit schedule property. Even the road which is used to go to the house of the defendants is situated over the suit schedule property. Even backyard of the defendants is situated over the suit schedule property.

**4.4.** Since from last 50 years, the defendants' father and since from last 25 to 30 years, the defendants are in the actual possession and enjoyment of the suit schedule property. They are in the peaceful possession which is known to Sri. Venkatesh s/o Anant Kamat. Therefore, Sri. Venkatesh s/o Anant Kamat had no right and interest to alienate the suit schedule property in favour of plaintiff.

**4.5.** As the defendants are in possession and enjoyment of the suit schedule property for more than 12 years, the rights and interest of the plaintiff has been extinguished.

**5.** The defendants have filed I.A.No.V under Order 39 rule 4 seeking for vacate or to raise the ex parte injunction granted in favour of plaintiff. The application is supported with the affidavit of the defendant No.2, wherein he deposed that since from last 50 years his father and after

his demise, defendant No.1 is in the actual possession and enjoyment of the suit schedule property and thereby the defendant No.1 had acquired right over the suit schedule property.

**5.1.** The plaintiff is not in the actual possession and enjoyment of the suit schedule property.

**5.2.** By apprehension that the plaintiff is going to file a civil suit, the defendant No.1 had filed a caveat petition before the Court. But this Court without issuing notice to the caveators, has granted ex parte injunction in favour of plaintiff. Therefore, they prayed to vacate ex parte injunction granted in favour of plaintiff.

**6.** On the contrary, the plaintiff has filed her objection and contended that the defendants by filing a caveat, have tried to commit mischief and they have intended to claim their right over the building of the plaintiff. The defendants have not made out any grounds to allow their application and prayed to dismiss the application filed by the defendants. If this application is allowed, then it will cause irreparable injury to the plaintiff. Hence, she prayed to dismiss the application.

**7.** I have heard the arguments of learned Advocate for the plaintiff and learned Advocate for defendants.

**8.** The points which are arising for my consideration are:

1. Whether the plaintiff 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 her favour?
3. Whether the plaintiff proves that she will be put to great loss and hardship if temporary injunction is not granted?
4. Whether the defendants are made out grounds to vacate the temporary injunction granted in favour of plaintiff?
5. What order?

9. 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: in the negative.

Point No.5: as per final order, for the following:

### **REASONS**

**10.Point Nos.1 to 4:-**These points are interconnected and interlinked with each other, to avoid repetition of facts, these points are answered in common.

11. Before going into the merits of the case, it is proper to cite the following judgment with regard to the essential elements which are required to grant temporary injunction. ***In Neon Laboratories Ltd vs Medical***

***Technologies Ltd.,*** reported in ***(2016) 2 SCC 672,*** wherein the Hon'ble Supreme Court of India has held as follows,

**"6. Before granting an ad interim injunction, the court in seisin of the litigation has to address its attention to the existence or otherwise of three aspects—**

**(a) whether a prima facie case in favour of the applicant has been established;**

**(b) whether the balance of convenience lies in favour of the applicant; and**

**(c) whether irreparable loss or damage will visit the applicant in the event injunctory relief is declined.**

**We shall cogitate on the first factor first —is the law favourable to the applicant."**

12. Further in ***Sri Gowrishankara Swamigalu vs Sri Siddhaganga Mutt,*** reported in ***ILR 1989 Kar 1701.*** the Hon'ble High Court of Karnataka has held as follows,

**"19. As pointed out earlier grant of ad-interim injunction has to course through the following slots:**

**(i) prima-facie case,**

**(ii) balance of convenience,**

**(iii) irreparable injury to the plaintiff, and**

**(iv) lastly all injunctions being absolutely discretionary in nature whether there was any overriding consideration that supported the refused of the injunction by the Court-below.**

**It is not disputed before me that the learned Judge considered the facts obtaining from the records in accordance with the foregoing parameters. Briefly I may recall his findings: To start with the learned Judge agreed with the plaintiff that he had made out a prima facie case by commending a serious question for consideration by the Court about the propriety or legality of the order passed by the Senior Pontiff deposing him from office and held that the question commended was one which was neither casual in nature nor was it a postulate tainted by levity."**

**13.** So, to entitle for the relief of temporary injunction, the applicant must prove that he has prima facie case, balance of convenience lies in his favour and if the relief sought is not granted he will suffer irreparable injury. Further, the conduct of the applicant is also one of the major criteria in grant temporary injunction.

**14.** I have already discussed the rival contentions raised by the plaintiff and defendants. So without repeating the facts, I directly move to the documents produced by the parties. In support of her case, the plaintiff has produced RTC pertaining to the land bearing Sy.No. 57 of Kadnir

village. In column No. 9 of the said RTC, the name of the plaintiff is shown as actual possessor of the said land. The land shown in the RTC is none other the suit schedule property of this suit. The name of the plaintiff is entered in the RTC as per MR.No. 12/2014-15. The plaintiff has also produced the said mutation extract, wherein the name of the plaintiff is shown based on registered sale deed. She has also produced survey sketch pertaining to the suit schedule property. Further she has produced acknowledgment and endorsement issued by SHO, Honnavar police station. She has also produced the photocopy of the registered sale deed. On perusal of the said sale deed, it appears that Venkatesh s/o Anant Kamat and other six persons have sold the suit schedule property in favour of plaintiff for the sale consideration of Rs. 3,08,000/-. In the said deed at page No. 3, it is stated that the possession of the said property was delivered on the date of execution of the sale deed in favour of purchaser.

**15.** On the contrary, the defendants have produced photocopy of the sale deed, sketch attached to the sale deed, mutation extracts and RTC which were discussed supra. Further they have produced photocopy of the sale deed dated 29/05/2014. On perusal of this document, it appears that the said Venkatesh s/o Anant Kamat had sold several properties in favour of defendant No.1. But there is no recital about the suit schedule property in the said sale deed. He has also produced the mutation extract, which

were changed in the name of defendant No.1 based on the sale deed dated 29/05/2014. He has also produced the several RTCs pertaining to those properties which were purchased by the defendant No.1 vide sale deed dated 29/05/2014 and in those RTCs, the name of the defendant No.1 is shown as actual possessor of those properties. Further the defendants have produced the copy of the Form No. 7, statement given before the Land Tribunal, proceedings held before the Land Tribunal, Honnavar. On overall perusal of these documents, prima facie it appears that these documents are not relating to the suit schedule property and those documents are relating to the properties which were purchased by the defendant No.1 vide sale deed dated 29/05/2014. He has also produced the documents pertaining to the suit bearing O.S.No. 5/1975 and he has also produced the caveat petitions and two affidavits. Further he has produced several photographs and related compact disk.

**16.** In support of his case, the learned advocate for the defendants has produced the following judgments.

- a. *Karthiyayani Amma vs Govindan*,**  
reported in ***AIR 1980 Ker 224***.
- b. *Rame Gowda (D) by Lrs vs M. Varadappa Naidu (D)*** by Lrs and another,  
reported in ***AIR 2004 SC 4609***.
- c. *Sri. Dasnam Naga Sanyasi and another vs Alahabad Development Authority*,**

***Allahabad and another***, reported in ***AIR 1995 All 418***.

***d. V.Muthiah Pillai (D) and others vs Vedambal and others***, reported in ***AIR 1986 Mad 106***.

**17.** I have perused the above cited judgments. With due respect, those judgments are not applicable to the case on hand. The facts in those case and fact in this case are differed and therefore the principles laid down in those judgments are not applicable to the case on hand. Moreover, in those cases, the possession was not proved. But in the case on hand, the plaintiff has proved her possession over the suit schedule property. Therefore, those judgments are not applicable to the case on hand.

**18.** In this case, the plaintiff has produced sale deed dated 15/12/2014, mutation extract and RTC pertaining to the suit schedule property and thereby she prima facie proved the flow of her right over the suit schedule property. The defendants in their written statement have admitted that the right of the Venkatesh s/o Anant Kamat over the suit schedule property. The said Venkatesh s/o Anant Kamat and other have executed the sale deed dated 15/12/2014 in favour of plaintiff. This itself proves the prima facie case of the plaintiff. 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.”**

**19.** The entries made in RTC 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. On perusal of the above documents and provision of law, prima facie it can be implied that the plaintiff is in the peaceful possession and enjoyment of the suit schedule property as on the date of the suit unless and until contrary is proved. Therefore, this Court is of the opinion that the plaintiff has proved her prima facie case.

**20.** Further the plaintiff has produced the acknowledgment and endorsement issued by the SHO, Honnavar police station. These documents and contentions raised by the defendants in their written statement can be treated as interference in the possession of the plaintiff over the suit schedule property. In such situation, if this Court declines to issue temporary injunction as prayed for, then it will cause irreparable injury to the plaintiff. Further this Court has already opined that the possession of the suit schedule property is with the plaintiff and if this Court declines to issue temporary injunction in favour of plaintiff, then more inconvenience will be caused to the plaintiff. However, the defendants have produced several documents

before the Court. But those documents are not relating to the suit schedule property. Therefore, those documents are not helpful to the defendants to disprove the case of the plaintiff.

**21.** Therefore, the plaintiff has made out prima facie case and she also proved that if this Court declined to issue temporary injunction as sought for, she will be put to great hardship and she will suffer irreparable injury. Further she also proved that the balance of convenience lies in her favour. On the contrary, the defendants have failed to make out grounds to vacate the temporary injunction granted in favour of the plaintiff. Hence, for the above said reasons, I answered point Nos. 1 to 3 in affirmative and point No. 4 in negative.

**22. Point No.5**:- In view of findings on point Nos. 1 to 8, I proceed to pass the following:

### **ORDER**

**I.A.No.III filed by the plaintiff/applicant under order 39 Rule 1 and 2 of CPC is hereby allowed and exparte injunction granted in favour of plaintiff is made as absolute till the disposal of this suit. Consequently, the defendants, their agents, servants and any persons claiming under them are restrained from cutting any trees**

**grown over the suit schedule property and also from constructing shed over the suit schedule property and also from obstructing or interfere in the plaintiff's possession and enjoyment of the suit schedule property till the disposal of this suit.**

**I.A.No. V filed under Order 39 Rule 4 of CPC filed by the defendants is hereby dismissed.**

**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 3<sup>rd</sup> day of March, 2023).

**Sd/-**

**(Chandrashekhar E Banakar)  
Pri. Civil Judge & J.M.F.C.  
Honnavar**