

**IN THE COURT OF CIVIL JUDGE & JMFC., AT: MUNDGOD.**

**PRESENT**

Sri. KESHAVA.K, B.A. L.L.B.,  
Civil Judge & JMFC.,  
Mundgod.

**Dated this the 22<sup>nd</sup> day of June, 2021**

**O. S. No.24 of 2019**

**Plaintiff** : Smt. Radhamani Kom. Divakaran  
(By Sri. B.F.P. Advocate)

**V/s**

**Defendant s** : 1.Smt.Indira Kom. Shyamprasad & Ors.  
(By Sri. R.N.H. Advocate)

**PARTIES IN I.A.NO.I**

**Applicant** : Smt. Radhamani Kom. Divakaran  
V/s

**Opponents** : 1.Smt.Indira Kom. Shyamprasad & Ors.

**PARTIES IN I.A.NO.II**

**Applicant** : Smt. Radhamani Kom. Divakaran  
V/s

**Opponents** : 1.Smt.Indira Kom. Shyamprasad & Ors.

**ORDERS ON APPLICATIONS IN TWO NUMBERS**  
**UNDER ORDER XXXIX RULES 1 & 2**  
**R/W. SECTION 151 OF C.P.C.**

The plaintiff has filed this suit against the defendants seeking for the relief of permanent injunction in respect to suit schedule property

accompanying with I.A.No.I and I.A.No.II under Order XXXIX Rules 1 and 2 r/w. Sec.151 of CPC respectively, praying to grant ad-interim temporary injunction order, against the defendants and anybody representing on their behalf from causing any obstruction for having to construct compound wall in between the plaintiff and defendants properties and restrain the defendants from interfering into the plaintiff's peaceful possession and enjoyment over the suit schedule property till disposal of this suit and such other reliefs.

**Description of the suit property:-**

ಉತ್ತರ ಕನ್ನಡ ಜಿಲ್ಲಾ, ಮುಂಡಗೋಡ ತಾಲೂಕು, ಮುಂಡಗೋಡ ಪಟ್ಟಣ ಪಂಚಾಯತ ವ್ಯಾಪ್ತಿಯ ವಾರ್ಡ್ ನಂ.1 ರಲ್ಲಿಯ ಗಾಂವರಾಣಾದಲ್ಲಿರುವ ಪೂರ್ವ-ಪಶ್ಚಿಮ 67 ಅಡಿ ದಕ್ಷಿಣೋತ್ತರ 190 ಅಡಿ ಕ್ಷೇತ್ರ ಹಾಗೂ ಸದ್ರಿ ಕ್ಷೇತ್ರದಲ್ಲಿರುವ ಸ್ವತ್ತಿನ ಸಂಖ್ಯೆ:21-7-135, ಸ್ವತ್ತಿನ ಹಳೆ ಸಂಖ್ಯೆ:4-117/1, 117/1 ಎ ಮಂಗಳೂರು ಕೆಂಪು ಹಂಚಿನ ಇಟ್ಟಿಗೆ ಗೋಡೆಯ ಕಟ್ಟಡಗಳು ಇದರ ಒಟ್ಟೂ ಚಕ್ಕುಂದಿ: ಪೂರ್ವಕ್ಕೆ ರವಿ ಓಣಿಕೇರಿ ಇವರ ಆಸ್ತಿಗಡಿ, ಪಶ್ಚಿಮಕ್ಕೆ ಪ್ರತಿವಾದಿ ನಂ.1 ನೇದವರ ಬಾಬು ಆಸ್ತಿಗಡಿ, ಉತ್ತರಕ್ಕೆ ರಸ್ತೆ, ದಕ್ಷಿಣಕ್ಕೆ ಮಾರಿಕಾಂಬಾ ದೇವಿ ದೇವಸ್ಥಾನದ ಜಮೀನಿನ ಗಡಿ.

**2. Briefly, the plaintiff's case is as follows:-**

In the annexed affidavit it is stated that the plaintiff has filed this suit against the defendants for the relief of permanent injunction in respect to suit schedule property. In fact suit schedule property was purchased by her father by name K.V.Damodaran during his lifetime from his vendor with the financial assistance of plaintiff and therefore this property became his self acquired property, further it is stated that during his lifetime he has given varadi to the Pattana Panchayat Mudngod by virtue of that varadi khata was transferred in her favour and possession of the same was also handed over in her favour, since from that revenue entry she has been in possession and enjoyment over the same till today by paying necessary taxes to the concerned authority, such being the case towards western side her father

has possessed self-acquired property of 00-05-00 of land which comes under within the jurisdiction of Mundgod Pattana Panchayath measuring to an extent of 65 x 45 feet consisting Mangaluru tiles house, since plaintiff's father blessed four daughters and one son, as such after getting marriage, son has living separately along with his family members, however the plaintiff and defendant No.1 who were looked after her father due to which that extent of 00-05-00 of land being transferred in favour of defendant No.1 by executing registered gift deed, even today in that house defendant No.1 and her sister residing in that premises, in between these two properties for an extent of 14 feet vacant space is available and both were used as ingress and egress only in one gate to reach out their respective properties, therefore on 14-1-2019 plaintiff and defendants amicably entered into the compromise petition before the elders and defendants have agreed not to interfere with the construction process of compound wall which held by the plaintiff in between the said vacant place as described in the affidavit, matter being stood thus the defendants intentionally on 18-1-2019 who dismantle the compound wall & threatened fear of kill, finally the plaintiff has stepped into the police station and lodged complaint before the Mundgod police, herein the concerned police without giving protection but they have suggested her to approach before Civil Court and therefore without any alternative remedy the plaintiff has filed the instant suit accompanying with above said applications, under such circumstances if the present applications are not allowed definitely the plaintiff will be put to great hardship and inconvenience that may cannot compensated in terms of money, therefore the plaintiff prayed that be pleased to allow the above said applications.

3. Per contra, the defendant No.1 has filed memo stating that since she has filed written statement on her behalf and same may be treated as

objections to I.As. where under written statement filed by the defendant No.1 is hereby treated as objections to I.As. In the written statement the defendant No.1 and other defendants have specifically contended that whatever the contents which assigned in the annexed affidavits respectively are totally denied as false and those are not maintainable either in law or on facts, since description of suit schedule property which shown in the plaint which basically wrong and that reason alone these applications are liable to be dismissed, further it is contended that the first defendant's father who has migrated from Kerala State to Karnataka State along with his family members, prior to that he has sold entire ancestral properties which situated in Kerala State and he has purchased the suit schedule property along with other properties in Mundgod taluk, income which derived in the ancestral properties of plaintiff and defendants and therefore he has not having exclusive right over the suit schedule property or other properties which purchased from the income which derived from ancestral properties, among the income which earned upon the agricultural properties herein the plaintiff and defendants jointly constructed the house i.e. 117, during the lifetime of said K.V.Damodaran he has not executed any type of Will in favour of anybody because during the period of his ending days he was suffering from paralysis disease, by that time the defendants & her brother who had taken care and protection about his health, by knowing this pathetic condition of her father the plaintiff who has returned from Muscat country and created false documents colluding with revenue officials by misusing the innocence of defendants and illegally entered her name in the revenue documents which maintained by the Pattana Panchayath. After knowing all these illegal activities by the defendants and her brother have approached this court by filing O.S.No.320/2006 in respect to suit schedule property along with other properties, in the first instance that suit was

remanded to Hon'ble Senior Civil Judge, Yellapur for fresh adjudication from the Hon'ble I Addl. District & Sessions Judge, sitting at Sirsi, now these are pending for consideration, not yet been declared any right, interest, title deeds in favour of anybody. Such being the case the plaintiff intentionally filed this false case without having any right, title, lawful possession over the suit schedule property, these properties have ancestral and joint family properties of plaintiff, defendant No.1 and other children of late said K.V. Damodaran, thus if this court pass any prohibitory orders against the defendants definitely their lawful rights will going to defeat with the hands of this court and no hardship would be caused to other side if the present applications are rejected, for all these reasons the defendants prayed that be pleased to reject these applications with exemplary costs.

4. Decisions referred by the learned advocate for defendants:-

- 1. 2016(4) KCCR 3002 (D.B.)**
- 2. Civil Appeal No.8605/2013**
- 3. Civil Appeal No.18377/2017**
- 4. RSA No.867/2011**
- 5. W.P.No.6872/2013**
- 6. 1994 AIR 853**
- 7. Civil Appeal No.8216/2003**

5. Heard arguments from both sides, perused the pleadings and the documents available on record.

6. In view of above the following points that would arise for my consideration for I.A.No.I are as follows:-

1. Whether, at this stage the plaintiff has made out *prima facie* case in her favour?

2. Whether the plaintiff proves the balance of convenience lies in her favour?
3. Whether the plaintiff proves that in event of not allowing I.A.No.I, she will be put to irreparable loss and injury?
4. What Order?

7. My answers to the above points for I.A.No.I is as follows:-

- |            |   |   |
|------------|---|---|
| Point No.1 | : | In the <b>Negative</b> ,                  |
| Point No.2 | : | In the <b>Negative</b> ,                  |
| Point No.3 | : | In the <b>Negative</b> ,                  |
| Point No.4 | : | As per final order<br>for the following:- |

8. In view of above the following points that would arise for my consideration for I.A.No.II are as follows:-

1. Whether, at this stage the plaintiff has made out *prima facie* case in her favour?
2. Whether the plaintiff proves the balance of convenience lies in her favour?
3. Whether the plaintiff proves that in event of not allowing I.A.No.II, she will be put to irreparable loss and injury?
4. What Order?

9. My answers to the above points for I.A.No.II is as follows:-

- |            |   |   |
|------------|---|---|
| Point No.1 | : | In the <b>Affirmative</b> ,               |
| Point No.2 | : | In the <b>Affirmative</b> ,               |
| Point No.3 | : | In the <b>Affirmative</b> ,               |
| Point No.4 | : | As per final order<br>for the following:- |

### **REASONS**

10. **Points No.1 to 3 in I.As No.I & II:-** All these points are taken together for common discussion as they are inter-linked with each other and to avoid repetition of facts.

11. In order to substantiate her contention the plaintiff has produced documents in support of her case among them copy of Form No.3, copy of unregistered compromise deed dated 14-1-2019, copy of NCR dated 18-1-2019, copy of endorsement dated 18-1-2019 which issued by Mundgod police, copy of registered gift deed dated 15-5-1999, copy of registered sale deed dated 1-7-1971, copy of Will dated 29-7-1999, copy of electrical bills in two numbers, photographs in total 12 numbers and C.D. On going through the all documents produced by the plaintiff it is clearly discloses that as per Form No.3 the plaintiff has been in possession and enjoyment over the suit schedule property bearing No.4-117/1.117/1A measuring to an extent of 78.038520 square meters & she has been paid taxes to Pattana Panchayath, Mundgod, so far as unregistered compromise deed is not been registered and therefore there is no need to look into this document, as far as NCR dated 18-1-2019 is concerned the plaintiff has lodged complaint before the Mundgod police, in response of that they have given NCR No.27/2019, as per gift deed dated 15-05-1999 the plaintiff's father has said to be executed registered gift deed in respect to property bearing No.117 in favour of defendant No.1 according to Will deed several properties have been being given to the plaintiff and defendants by the executor who is none other than the father of the plaintiff, so far as photographs are concerned on careful perusal of them it is visible that somebody has broken concrete pillars where in the alleged property, as such herein it is very clear that there was a dispute between the plaintiff and defendants in respect to 14 feet vacant

place, so far as possession is concerned in respect to suit schedule property there is no dispute about dwelling house property.

12. Per contra, the defendants also been produced several documents among them copy of Form No.3, copy of drilling report, copy of plaint pertains to O.S.No.26/1999, copy of Mutation register, copies of judgment in respect to O.S.No.62/2006, O.S.No.320/2006 and O.S.No.124/2017, copies of R.A.Nos.23, 25 and 26 of 2014 and photographs in total 5 numbers, even herein also on going through the entire documents produced by the defendants it is clearly discloses that according to Form No.3 till today one by name K.V.Damodaran son of Kochakunji is a lawful owner to the site bearing No.4/117 measuring to an extent of 92.9030 square meters and other documents are discloses that the plaintiff and defendants have filed original suits before the Hon'ble Senior Civil Judge, Yellapur, later on after full-fledged trial those suits have been disposed off, finally parties to that suits have filed R.As. before the Hon'ble I Addl.District and Sessions Judge, sitting at Sirsi herein Hon'ble I Addl.District and Sessions Judge, remanded those appeals for fresh adjudication, therefore those are still pending for consideration, however this court cannot brought any inference about ownership in respect to properties which mentioned in the Will as well as the suits which filed before Hon'ble Senior Civil Judge, at Yellapur along with suit schedule property, according to photographs banana plants as well as plastic pipes have been broken in the agricultural land.

13. Apart from these documents the learned advocate for plaintiff addressed arguments in length, specifically he has argued that the plaintiff has been in lawful possession & enjoyment over the suit schedule property along with vacant space of 14 feet which said to be utilizing as ingress and egress towards their respective properties, but the defendants misusing the

innocence of plaintiff, that property even not concerned to them and trying to dispossess the plaintiff and her family members from the suit schedule property along with vacant space that too adjoining property of suit schedule property, further he has argued that during the lifetime of her father K.V.Damodaran had given varadi to the officials of Pattana Panchayath, Mudngod, by virtue of that suit schedule property was transferred in favour of plaintiff and therefore she became absolute owner to that property and all revenue documents stood in the name of plaintiff, all these facts knowing fully well the defendants colluded with each other intending to knock off the plaintiff's property and trying to dispossess her from the same with political and financial background, in the result they have broken the concrete pillars which erected in the said vacant space, if they have succeeded in their efforts definitely the plaintiff will be put to great hardship and inconvenience that may not compensate in terms of money, finally he argued that on 14-1-2019 before the well wishers and community people panchayath was held between them and defendants were agreed the terms and conditions which mentioned therein even if they did not stopped their illegal activities about the plaintiff as well as her properties and therefore without any alternative remedy the plaintiff felt that without assistance of this court the defendants did not stopped their illegal activities, hence she come up with the suit along with above said applications.

14. Learned Sri. RSH advocate who appearing on behalf of defendants argued by relying decisions as stated supra along with documents, according to above said documents he argued that the plaintiff and defendants were already filed several suits before the Hon'ble Senior Civil Judge at Yellapur due to fraud committed by the plaintiff towards this properties, those suits have been not yet disposed off by declaring the rights of litigant parties, however nobody has claimed any right over the suit

schedule property, further he argued that admittedly there is a vacant place between the plaintiff and defendants properties, but that property neither exclusively belongs to plaintiff nor the defendants, it was utilizing for both benefits under the guise of that the plaintiff has trying to install concrete pillars even encroaching the defendants property illegally. That apart according to varadi question of title deeds does not arise for consideration by relying the decisions as below:-

**1. Civil Appeal No.8605 of 2013**

**(Municipal Corporation, Gwalior Vs. Puran Singh  
Alias Puran Chand & Ors.)**

*29. Mutation entries do not confer title. In Smt.Sawarni V. Smt. Inder Kaur & Ors, 1996 (6) SCC 223, This Court held:*

*7. Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment.*

*30. The High Court committed a grave and manifest error of law in reversing the well reasoned judgment and decree passed by the Trial Court by simply placing reliance upon Khasaras entries even without properly appreciating the settled law that Khasara entries do not convey title of the suit property as the same is only relevant for the purposes of*

*paying land revenue and it has nothing to do with ownership.*

*31. For the reasons aforesaid, we set aside the impugned judgment and decree passed by the learned Single Judge in Civil First Appeal No.1 of 1995 and confirm the judgment and decree passed by the Trial Court. The appeal is allowed. No costs.*

## **2. Writ Petition No.6872/2013 (KLR)**

**(Smt.Jayamma & Ors.Vs. The State of Karnataka & Ors.)**

*The revenue authorities have no jurisdiction to decide the title between the parties except the entries based on source of title and there is no need for the aggrieved party to necessarily undergo a futile exercise for any entry made wither under the provisions of Section 127 or 129 of Karnataka Land Revenue Act.*

Further he argued that in view of above law is very clearly establishes that any mutation entries made by the revenue officers does not amount to a title deeds, herein in the given case the plaintiff has pleaded that her father has made varadi to the Municipal office, Mundgod taluka in respect to suit schedule property along with vacant space, but it does not give any right to the plaintiff so far as house as well as vacant space and therefore he prayed that be pleased to reject the above said applications until disposal of suits which pending before the Hon'ble Senior Civil Judge, Yellapur, if this court deserves to pass any prohibitory orders definitely it would affects on lawful rights of defendants and she would not get any right against the co-

sharers, for all these reasons he prayed that be pleased to reject these applications.

15. After considering the materials available on record at this stage one thing is remained for consideration is that whether the plaintiff has made out prima facie case lies in her favour, to this extent herein it is relevant to mention that according to plaintiff plea the suit schedule property was transferred from her father as under varadi, but the learned advocate for defendants drawn attention of this court that, as the varadi was not accordance with law and therefore this court cannot looked into the said varadi as per law laid down in the above said decisions by the Hon'ble Apex Court, further here the question is before this court that, of course if we assume that varadi was not accordance with law, but nowhere it is stated that the plaintiff has not been in possession over the suit schedule property shown in the plaint, however it is appears that so far the plaintiff having possession and enjoyment over the suit schedule property except vacant space of 14 feet area, that apart the plaintiff has sought relief over the vacant space of 14 feet situated in between the plaintiff and defendants property, but that property not been shown as suit schedule property in the plaint, secondly since the plaintiff and defendants have filed original suits before the Hon'ble Senior Civil Judge, Yellapur in respect to suit schedule property along with other properties which left behind her father, but no rights have been declared so far in favour of anybody, however one thing is very clearly makes out the fact that so far as 14 feet space is not belonged to anybody until and unless deciding rights of the parties in the above said suits, suppose any prohibitory orders passed on I.A.No.I with respect to construction of compound wall described in the affidavit definitely in future the plaintiff would be perfected her title deed over the said vacant space by misusing the order of this court.

16. So far as possession is concerned according to Form No.3 and oral submissions of both parties it is going to show that as on the date of filing of this suit the plaintiff has been in possession over the property which shown in Form No.3 either it is lawful possession or ostensible ownership, that thing does not matter before the court here the thing is that whether she is having possession or not when considering this aspect it is clearly appears that she is having possession over the same therefore it is settled principle of law is that even trespasser cannot be vacated or dispossess in any property without due process of law, in this regard there is no dispute from the other side about the possession except the disputed vacant space, other grievances which raised by both parties have to be considered after getting full-fledged trial, for all these reasons this court come to the conclusion that her possession have to be protected from the defendants till disposal of above said suits, otherwise her right may going to defeat, hence points No.1 to 3 on **I.A.No.I** is answered as **Negative** and Points No.1 to 3 on **I.A.No.II** is **Affirmative**.

17. **Point No.4 in I.A.Nos.I & II:-** In view of the findings on points No.1 to 3 on I.A.Nos.I & II, I proceed to pass the following:-

**ORDER**

I.A.No.I filed by the plaintiff under Order XXXIX Rules 1 and 2 r/w. Sec. 151 of C.P.C. is hereby rejected.

I.A.No.II filed by the plaintiff under Order XXXIX Rules 1 and 2 r/w. Sec. 151 of C.P.C. is hereby allowed.

Consequently the defendants and their henchmen's anybody representing on their

behalf are hereby restrained from interfering into the suit schedule property except vacant space of 14 feet until further orders.

*(Dictated to the Stenographer directly on the computer, corrected by me, signed and then pronounced in open court on 22<sup>nd</sup> day of June 2021)*

**(Keshava.K)**  
**Civil Judge, Mundgod.**