

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

PRESENT

**SRI. BHARATH CHANDRA K. S. B.A.LL.B,
CIVIL JUDGE & JMFC,
SIDDAPUR.**

Dated this the 19th day of July, 2024

O.S. No. 95/2022

**Plaintiff: Laxman Ishwar Gowda S/o Ishwar
Gowda**

(By shri N R T Adv.)

V/s

**Defendant: Subraya Narayana Gowda S/o
Narayana Gowda**

(By shri GSH/MNH Adv.)

I.A.No.V

**Applicant : Laxman Ishwar Gowda S/o Ishwar
Gowda**

V/s

**Opponent: Subraya Narayana Gowda S/o
Narayana Gowda**

ORDER ON I.A. No.V

The Plaintiff has filed I.A No. V, U/O XXXIX Rule 1 & 2 of Code of Civil Procedure, 1908, seeking to restrain the defendant, his agents, servants, assignee's or any person from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property.

2) In the affidavit filed in support of I.A.No.V, the plaintiff has stated that, he is the absolute owner of the suit schedule property i.e. Sy.No. 75/7 and he is in possessing and enjoyment over the same since 40 years. the Defendant is the owner of Sy. NO.75/5 which is not fertile for the purpose of growing crops. Such being the case the defendant is unlawfully interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property, by trying to trespass and cut the areca nut crops and derive the income from that. Further, subsequent to the filing of this suit also the wife of the defendant name Ganga Sybraya Gowda has entered the suit schedule property and trying to collect the areca nuts. Accordingly, the plaintiff gave a police complaint on 27-7-2023, further that, the plaintiff is depended solely on the income derived from the areca nuts, cultivated in the suit schedule property. Hence he has filed the present suit seeking to restrain the defendant from cutting the areca crops grown over the suit schedule property belonging to the plaintiff. Hence prayed to pass order in accordance with I.A.No.V.

3) On the other hand, the Defendant has filed objections to I A No. V, wherein he has strongly objected the application and has denied the entire affidavit averments. It is the case of the Defendant that originally the land bearing Sy.No.75 belonged to the father of plaintiff and defendant. Such being the case there was a partition effected amongst them and in accordance with partition the Defendant was given 00-02-00 Guntas of land in Sy.No.75 and the Plaintiff was given

00-04-00 Guntas of land in Sy.No.75. However, the said land was not surveyed and phoded. Further that the above land was phoded by the ADLR, Siddapur and the same was challenged by the Defendant before the DDLR, Karwar, accordingly the said phody order was set aside vide order dated 04.01.2023 and the ADLR was directed to conduct fresh phody proceedings. Thus, as on today the Sy.No.75 is not sub divided. Further that, as the phody has been set aside by the DDLR, the present suit of the plaintiff based on the said phody proceedings is not maintainable and the plaintiff is not in possession and enjoyment of suit schedule property as per the boundaries mentioned therein. The defendant has stated the schedule of the property he is in possession and objected and contest that the plaintiff was seeking the suit with respect to the land belonging to the defendant. Hence sought to dismiss the suit and the application along with cost.

4) Upon perusal of the applications, objections and the material available on record, the following points arise for my consideration:-

- 1) Whether the plaintiff has made out a prima facie case?
- 2) Whether the balance of convenience lies in the favour of plaintiff?
- 3) Whether the plaintiff will be put to irreparable loss or hardship, if injunction is not granted?
- 4) What order?

5) Heard the arguments and perused materials on the record.

6) My answer to above points are as under:

Point No.1- In the **Negative**

Point No.2- In the **Negative**

Point No.3- In the **Negative**

Point No.4- As per final order, for the following.

REASONS

7) Point No.1 to 3: As these points are interlinked with each other, this court shall take these points together for common discussion, in order to avoid repetition of facts and circumstances and for the sake of brevity.

8) The plaintiff has filed the above suit against the defendant seeking the relief of permanent injunction with respect to the suit schedule property. The plaintiff has alleged that, the defendant is trying to trespass the suit schedule property belonging to the plaintiff and cut the areca crops and make unlawful gains. Accordingly sought to restrain them by way of permanent injunction from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property and not to trespass and cut the areca crops over the suit schedule property.

9) In I.A.No V the plaintiff has sought to restrain the defendant, his agents, servants, assignee's or any person from interim the suit schedule property till the disposal of the suit.

10) In the plaint or the affidavit, plaintiff has averred that he is the absolute owner of the suit schedule property and the Defendant without possessing any manner of right, title or interest over the same is trying to interfere with the peaceful possession and enjoyment of the plaintiff and is trying to cut the areca crops grown over the suit schedule property.

11) It is not a dispute that the plaintiff owns an extent of 4 guntas and the defendant owns an extent of 2 guntas in the Sy. no. 75 . further it is also not in dispute that the said Sy. No. 75 was

phoded and Sy. no. was divided, wherein the Sy. No. 75/7 was fallen to the plaintiff and Sy. No 75/5 was fallen to the defendant. Further it is also not in dispute that the said phody proceeding was set aside by the DDLR during the pendency of the suit vide its order dated 4-1-2023 and has directed the ADLR to conduct a fresh phody proceedings.

12) There is serious dispute with regard to the boundaries mentioned by the plaintiff over the suit schedule property. Since both the plaintiff and the defendant possess certain extent of lands in Sy. No 75 it becomes expedient for the plaintiff to critically establish the exact possession of the plaintiff over the suit schedule property. Now that, the phody proceedings have been set aside by the DDLR it adds further to the difficulty of the plaintiff to establish the boundary.

13) The plaintiff while filing the suit and during hearing has produced certain documents such as RTC of sy. No 75/7, the mutation registers and Grant certificate. However none of these documents show or establish the boundaries of the suit schedule property. The plaintiff has not produced any sketches such as Hadbasth or phody sketches to at least establish the exact possession of the plaintiff over the Sy. No. 75. Even if, considering the possession of the plaintiff as on the date of suit there is no documents to establish the boundaries as alleged in the plaint schedule.

14) During the course of arguments the counsel on behalf of plaintiff has submitted two decisions of the Hon'ble High court of Karnataka which is as follows:-

ILR 1995 KAR 1561 Wherein, Hon'ble High Court of Karnataka has held as follows -

“ 4. Disputes relating to agricultural lands and disputes relating to joint family properties are quite common in the civil litigation of this country. Courts have, therefore, been required to evolve certain broad principles which have now become almost well defined while dealing with disputes of this type which principally take into account the fact that the litigation takes some time and that if certain changes take place in the character of the property under dispute during the interim period, that it would only give rise to further litigation and some times render the relief itself infructuous. For this purpose, more as a measure of safety, caution and legal expediency, the Courts have culled out certain well defined principles which ordinarily ought not to be departed from. One of this principle is that where there is a dispute in relation to immovable property which happens to be vacant that if the property were to be encumbered, alienated, built upon or if third party rights are permitted to be created during the interim period that the situation might become and in fact does become totally irreversible by the time the Court passes final orders. It is a well defined principle of law that a Court is required to be equally fair to the defendants as also to the parties who have approached the Court and, therefore, necessary safety precautions in relation to the plaintiffs' interest are also of some consequence. This is in fact the essence of the principle behind the grant of interim orders.”

2. 2000(1) KCCR 535 wherein Hon'ble High court of Karnataka has held as follows -

“10. The further argument is that the Assistant Commissioner set aside the order passed by the Tahsildar changing khata to the name of the Respondent which was subsequently confirmed by the Deputy Commissioner. Therefore, these documents also go against her case and both the Courts have not taken note of this

lacuna in the case of the Respondent and it ought to have rejected her application. Needless to say that the Respondent had filed a writ petition and the same is still pending. Therefore, the entries in the revenue records also are in dispute and the Petitioner himself was a party to the earlier suit and that suit which was filed for injunction came to be rejected. Therefore, it is clear that the Respondent has been in possession of the property. That being the case and in view of the decisions cited above, it is clear that even a trespasser can protect his/her right against a true owner till he/she is dispossessed by due process of law and the mere entry in the revenue record cannot be acted upon at this stage when the actual physical possession is established by the Respondent. In a suit for permanent injunction what is required is continued and settled possession of the property.”

15) I have carefully perused the decisions cited by the learned counsel on behalf of plaintiff, which would show that, Hon'ble High Court of Karnataka in the first decision i.e., **ILR 1995 KAR 1561** has discussed about granting temporary injunction restraining the parties from alienating the suit schedule property to 3rd parties in suit pending between joint family members . It is held that, “ *One of this principle is that where there is a dispute in relation to immovable property which happens to be vacant that if the property were to be encumbered, alienated, built upon or if third party rights are permitted to be created during the interim period that the situation might become and in fact does become totally irreversible by the time the Court passes final orders.*” Hence, it would show that, the Hon'ble High court has held about the repercussions if any of the parties alienates the suit schedule property during the pendency of the suit, when there is serious dispute with regard to suit schedule property, as it would lead for further litigation and complications. However, in the present suit the plaintiff is not seeking to restrain the defendant from alienating the suit schedule property but to restrain the defendant from entering the suit schedule property. It is

not in dispute that the defendant also possess land in Sy. No. 75. Hence, in the absence of establishing the clear boundaries of the suit schedule property the plaintiff cannot seek to restrain the defendant from entering the suit schedule property. Hence, the decision of the Hon'ble High Court does not aid to the relief sought for by the plaintiff. The Hon'ble High Court in the said decision has also held that, *"It is a well defined principle of law that a Court is required to be equally fair to the defendants as also to the parties who have approached the Court and, therefore, necessary safety precautions in relation to the plaintiffs' interest are also of some consequence. Hence, as the defendants also possess right over Sy. No 75 to an extent of 2 guntas it would be unfair to restrain the defendants from entering certain portion of Sy. No. 75 in the absence of clear demarcation of their respective boundaries."*

16) Upon perusal of another decision cited by the plaintiff i.e., **2000 (1) KCCR 535**, the Hon'ble High court of Karnataka has discussed about principle of settled possession. It has been held that, *"That being the case and in view of the decisions cited above, it is clear that even a trespasser can protect his/her right against a true owner till he/she is dispossessed by due process of law and the mere entry in the revenue record cannot be acted upon at this stage when the actual physical possession is established by the Respondent. In a suit for permanent injunction what is required is continued and settled possession of the property."* In the present case, the plaintiff has not sought settled possession and the fact and circumstances of the case also does not attract the principles of settled possession, as the plaintiff is rightfully claiming that she has possession of 4 gutnas in Sy. 75/7.

17) As rightly argued by the counsel on behalf of defendant that, when there is serious dispute with regard to boundaries it becomes very necessary for the plaintiff to at least prima-facie prove the claimed boundaries of the suit schedule property. The plaintiff has not

produced any documents showing the existence of the claimed boundaries. It is not the case of the plaintiff that the defendant does not have any manner of right, title or interest over Sy. no. 75, it is his only contention that it has been phoded and defendant is in possession of Sy. No. 75/5. Thus, in the absence of the document to at least prima-facie establish the boundaries of the suit schedule property, this court is of the clear opinion that, the plaintiff has failed to establish prima-facie case to grant temporary injunction as sought for.

18) It is relevant to go through the decision of the Hon'ble High court of Karnataka decided between **Gowrishankara Swamigalu V/s Siddaganga Mutt** reported in ILR 1989 KAR 1701 : 1989 (2) KAR L.J 548, wherein it was held that :-

25. I need hardly add the existence of a prima facie case in these matters of granting injunction is really the harbinger or the all clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself. But if there was a prima facie case then other considerations governing the grant of injunction "would come into play and will also have to be evaluated before granting or refusing the injunction.

19) In view of the above judgment of the Hon'ble High Court of Karnataka, as the plaintiff has failed to establish prima facie case, the question of delving on the aspect of balance of convenience and irreparable loss does not arise at all. Therefore looking from any angle the plaintiff has failed to establish prima facie case at this stage of the suit, to grant a Temporary injunction against the Defendant as sought for in the application. Hence this court answers Point No. 1 to 3, in the **NEGATIVE**.

20) Point. No. 4: In view of above discussion and the answer given to Point No.1 to 3, this court proceeds to pass the following:

ORDER

I.A. No. V filed by the Plaintiff, Under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, 1908, is hereby dismissed.

No order as to cost.

(Dictated to the stenographer directly on the computer, typed by her, corrected by me and then pronounced in the open Court, on this 19st day of July 2024)

(BHARATH CHANDRA K.S.)

CIVIL JUDGE & JMFC,

SIDDAPUR.

