

**IN THE COURT OF PRINCIPAL CIVIL JUDGE &  
J.M.F.C., AT KUNDAPURA**

Present: **Smt. Anupama Lakshmi .B., B.A., LL.B.**  
**Prl. Civil Judge & J.M.F.C**  
**Kundapura**

Dated this the 4<sup>th</sup> day of April, 2015

**O.S. No. 2/2015**

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

**Applicant/Plaintiff:**

Sri Vasu Devadiga, 52 years  
S/o Narasimha Devadiga  
R/o Mallana-hithlu of  
Koteshwara Village  
Kundapura Taluk  
Udupi District

(By Advocate Sri MMR/MMH)

//Vs//

**Opponents/Defendants:**

1. The Assistant Executive Engineer  
Public Works Department  
No.2 Sub-Division  
Kundapura
2. The executive Engineer  
Public Works Department  
Udupi
3. The Tahsildar  
Taluk Office  
kundapura
4. The State of Karnataka  
Represented herein by-  
The Deputy Commissioner  
Udupi, Udupi District.

5. Grama Panchayath  
Koteshwara  
Kundapura Taluk-  
Represented herein by its  
Panchayath Development Officer

(By Advocate Sri AGP for D1 to D4  
and D5- Exparte)

**Parties to O.S. No. 2/2015:**

**Plaintiff:** Sri Vasu Devadiga

//Vs//

**Defendants:** The Assistant Executive Engineer and  
4 others

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

Applicant/plaintiff has filed I.A.No.II under Section 94(c), Order XXXIX Rules 1 and 2 section 151 of CPC to issue an ad-interim injunction restraining the opponents/defendants and their people, their servants, their subordinates or any person claiming under them, from dispossessing/evicting the applicant schedule 'B' land without due process of law.

2. Applicant has sworn to an affidavit annexed to the applicant and stated that about 45 years ago father of the plaintiff had encroached a portion of suit schedule 'A' land and install a bunk shop in the plaint schedule 'B' land. There exists a drainage channel of width on about 1½ feet to 2 feet on the northern side of the said bunk shop and beyond the said drainage the Kodi-Kinara or Fisheries road is situated. The bunk shop measures 10 feet \* 10 feet and father of the plaintiff had constructed a platform of a height of about one foot from the ground level under said bunk shop was placed over the said platform. After the death of father of the plaintiff, the plaintiff has been maintaining the said bunk shop while carrying petty business in the said shop. Father of the plaintiff and after his death plaintiff has been in possession enjoyment of the schedule 'B' land peacefully, openly on possessory right, without interruption from the defendant over the last 45 years and the plaintiff is in settled possession of the schedule 'B' land.

Opponent No. 1 has filed, however, had issued a notice calling upon the plaintiff to vacate schedule 'B' land. But contention of the plaintiff is that opponents have no right to evict him without due process of law. That the opponents have no right to

take forcibly possession of schedule 'B' land from the possession of the plaintiff. According to the plaintiff he made out a prima facie case and balance of convenience tilts in his favour and he will be put to irreparable injury which cannot be compensated by damages if an order of temporary injunction is not granted. Hence, the application.

After service of summons defendants have appear before the Court and defendants No. 1 to 4 filed written statement. Defendant No. 5 did not filed written statement and counter statement to I.A. No. II. Defendants No. 1 to 4 in their written statement have stated that plaintiff has no right to carry on petty shop business in the public road. The schedule 'B' land is a part of the public road and defendants have authority to take necessary action against the plaintiff under the Public Premise Act. As such a notice has been already issued to the plaintiff to vacate the schedule 'B' land under the Karnataka Public Premise Act. Plaintiff has no right to question to said notice in the Civil Court. Further defendants have already initiated action against the plaintiff for clearing the encroachment made in the Government Parambok road and a suit is already pending before the II Additional Civil Judge. Hence, the present suit is not maintainable.

Defendants No. 1 to 4 have contended that they have not threatening to the plaintiff to forcible evict him from the schedule land. But only a notice has been issued to vacate the land. Accordingly defendants No. 1 to 4 have prayed to reject the application.

Heard.

8. These points arise for my consideration:

1. Whether the plaintiff has made out a prima facie case?
2. Whether the plaintiff proves that balance of convenience lies in his favour?
3. Whether the plaintiff will be put to greater hardship than the defendants No.1 and 2 if an order of Temporary Injunction is not granted in his favour?
4. What order?

9. My answer to the above points is 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**

**10. Points No.1 to 3** : These points are taken up together for discussion as they are inter connected with one another and to avoid repetition of facts.

Plaintiff has instituted the suit against as a relief of permanent injunction to restraining the defendants, their people, their servants, their subordinates and all persons claiming through them from over the schedule 'B' land or dispossessing, evicting the plaintiff from the schedule 'B' land without due process of law and for costs and other relief.

11. Admittedly bunk shop of the plaintiff is situated in the Government Land. Plaintiff has produced RTC pertaining to Survey No. 169/10A1 measuring 28 cents which is a government land and also a Paramboke road. In the said RTC in its column No. 11 its is shown that the said land is PWD Fisheries road. Defendants No. 1 to 4 have produced RTC pertaining to Survey No. 169/10A3 measuring 4 cents which is also a government land and a loan.

As per the case of the plaintiff for the last 45 years is after his death he is in possession of the schedule 'B' land openly, peacefully. Plaintiff has also contended he is in settled possession of the said bunk shop. However one Anantha Padmanabha Udupa whose land is situated adjoining the schedule 'B' land on its south, with an intention to constructing building over the schedule 'B' land directed the plaintiff to remove the bunk shop for enabling him to extend the building over the schedule 'B' land. Since the plaintiff has refused to heed for the said illegal demand of Sri Anantha Padmanabha Udupa. the said Sri Anantha Padmanabha Udupa started to harass the plaintiff. Plaintiff has complaint to the police against the said Sri Anantha Padmanabha Udupa. Thereafter Sri Anantha Padmanabha Udupa comenced to construct a no building over 'A' schedule land adjoining the bunk shop of the plaintiff and caused nuisance to the plaintiff. Therefore the plaintiff construct the building against Sri Anantha Padmanabha Udupa before the Lokayuktha. Mr. Sri Anantha Padmanabha Udupa also complaint before the Lokayuktha that the bunk shop of the plaintiff is situated over

the road margin and sought to take action against the plaintiff. Thereafter the defendant No. 1 issued noticed to the plaintiff on 18-06-2014 directing the plaintiff to vacate the schedule 'B' land on or before 30-06-2014.

Plaintiff has instituted the suit against the defendants without issuing a notice as required under Section 80 of CPC for the relief of perpetual injunction in O.S. No. 195/2014. Since a threat posed by the 1<sup>st</sup> defendant the said notice was vacate.

After institution of the said suit 1<sup>st</sup> defendant issued a noticed dated 18-09-2014 to the plaintiff calling upon him to vacate the schedule 'B' land within 30 days from the date of service to the said notice on the plaintiff. The plaintiff through his advocate got issued a noticed to the defendant on 30-09-2014 narrating the true facts and directing the defendants to desist doing the illegal act. After service of said notice upon the defendant, 1<sup>st</sup> defendant has issued a reply on 29-12-2014 to the advocate of the plaintiff with untenable pleads. The defendant No.5 alongwith is subordinates of the 1<sup>st</sup> defendant came near bunk shop of plaintiff on 29-12-2014 and

constructed him to vacate the premise with the assistance of the local police, plaintiff will be forcibly evict.

xxx

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

### **ORDER**

I.A. No.II filed by Applicant/plaintiff under Order XXXIX Rules 1 and 2 and Section 151 C.P.C. is allowed.

Defendants No. 1 and 2 are hereby restrained by an order of temporary injunction from dispossessing the plaintiff forcibly from the suit 'A' schedule premises without due process of law and defendant NO. 3 is also restrained from disconnecting the electricity connection provided to the suit 'A' schedule premises without due process of law till the disposal of the suit.

(Dictated to the Stenographer, transcribed by her, corrected and signed by me and then pronounced by me in the open Court on this 4<sup>th</sup> day of April 2015)

**(Smt. Anupama Lakshmi B)**  
**Principal Civil Judge & J.M.F.C.**  
Kundapura

**1994 (1) KLT 570** : (Aiysumma Vs. Mariyamma) The Hon'ble high Court of

The rights of the person in possession are valid against entire world except the true owner. But is not to say that the true owner can take the law into his hands and dispossess the person in possession, although a trespasser, without recourse to the due process of law or forcibly. All that the decisions intended to lay down was that the person in possession can resist claims for recovery of possession from any quarter except the true owner. But the true owner should have recourse to due process of law, to recover possession of the property even from a trespasser. Depriving a person in possession of protection in a civil action for injunction will lead to a situation where might is right, with persons taking the law into their hands and forcibly evicting persons in possession without recourse to the process of law. It must be mentioned here that law abhors violence and use of force, even in assertion of rights. That is why citizens are obliged to have recourse to courts of law for enforcement of their rights. It must also be noted that the person in possession may have his own rights to set up against the owner and her will be deprived of opportunities to set them up if no protection is afforded against forcible dispossession by the owner.

It is true that in the aforesaid cases it was held that the rights of the person in possession are valid against the entire world except the true owner. But that is not to say that the true owner can take the law into his hands and dispossess the person in possession, although a trespasser, without recourse to the due process of law or forcibly. All that these decisions intended to lay down was that the person in

possession can resist claims for recovery of possession from any quarter except the true owner. But their owner should have recourse to due process of law, to recover possession of the property even from a trespasser. That this is the true legal position was laid down by Raman Nair J. in Vasudeva Kurup V. Ammini Amma, 1964 KLT 468. **2002 (10 KCCR 85:** ( Sampagiramaiah Vs. Venkatamma) The Hon'ble High Court of Karnataka has held that:

Section 115 and order XXXIX, Rules 1 and 2—Grant of injunction – Even a trespasser in settled possession is entitled for injunction against true owner – When actual physical possession of the plaintiff is established, mere entries in Revenue Record cannot be acted upon while considering interim relief – In a suit for permanent injunction what is required is continued and settled possession of the property.

**ILR 2007 Karnataka 433:** (Balaji Produce Company Vs. Selvaraj and others) The Hon'ble High Court of Karnataka has held that:

Hence, in the light of the aforesaid principles of law as laid down by Apex Court as well by as this Court, Respondent No.1 herein can be thrown out by the appellant only by having recourse to the due process of law. As such, the contention put forward by the appellant's counsel that the appellant is the lawful owner of the mining area and, as such, Respondent No.1 herein should be refrained from carrying on the mining activities cannot be accepted.

