

IN THE COURT OF THE SENIOR CIVIL JUDGE, AT KUDLIGI.

Present: Sri B.S. HONNASWAMY, B.A., LL.M.,
Senior Civil Judge & JMFC, Kudligi.

DATED THIS THE 22ND DAY OF JUNE, 2015.

O.S. NO: 6/2015

PLAINTIFFS/APPLICANTS:-

1. Smt.Eramma, W/o. Late Revanagouda, aged: 60 years, agriculturist,
2. Goudra Rudragouda @ Redreshgouda, S/o. Late G.Revanagouda, aged: 38 years, agriculturist,
3. Goudra Sureshgouda, S/o. Late G.Revanagouda, aged: 33 years, agriculturist,

All are R/o. Ward No.12, Goudara Oni, Kudligi, Bellary District.

(By Sri: G.B.J., Advocate).

//VS//

DEFENDANT/OPPONENT:-

G.Veeranagouda, S/o. Doddabasavanagouda, aged: 68 years, agriculturist, R/o. Ward No.11, Goudara Oni, Kudligi, Bellary District.

(By Sri: A.K., Advocate).

ORDERS ON I.A.NO: 4

The plaintiffs have filed I.A.No.4 U/o.39 Rule-1 and 2 R/w S.94 and 151 of CPC, praying this court to restrain the opponent/defendant, his men, agents and all such

other persons claiming interest through him from alienating the schedule property to the third parties in any manner till the the disposal of the above suit by an order of temporary injunction and pass ad-interim orders in that behalf pending disposal of the above application.

SCHEDULE

The land bearing Sy.No.717A/1 measuring 1.50 acres out of 4.33 acres situated at Kudligi village limits, Bellary district, with in the Registration District of Bellary and Sub-Registration District of Kudligi, with the following boundaries;

East : Land of the defendant

West : Land of B.Nagaraj

North: Rastha

South: Rastha

2. In the affidavit, the plaintiff No.1 has submitted that, she is the 1st plaintiff in the above suit and the plaintiff Nos.2 and 3 are her sons. They have filed the above suit against the defendant seeking declaration of their right, title over the suit schedule land and for consequential relief of permanent injunction. She further submitted that, herself and her two sons have their right, title over the suit schedule land. The suit schedule land was originally belonged to one Halegoudra Gurusiddanagouda, who is her father-in-law Chikkanagouda's father. She further submitted that, the suit schedule

land is absolutely belonging to their ancestors and defendant does not have any right, title over the suit schedule land. Her junior paternal uncle Sannabasavanagouda purchased only 2.50 acres in the land bearing Sy.No.717/A/1 of Kudligi village limits. The defendant has illegally got mutation entry in his name in the ROR in respect of the entire land measuring 4.33 acres in the said survey No.717A/1 on the basis of registered partition deed, wherein it was wrongly mentioned that, the entire land measuring 4.33 acres was allotted to him. The said mutation entry is illegal entry and without notice to them and the same is not valid and not binding on them and it is void against them.

3. She further submitted that, the defendant taking advantage of his name in the ROR to an extent of 4.33 acres and taking advantage of the dismissal of her appeal by the Assistant Commissioner, Hospet, started making his illegal efforts to dispossess them from the possession of suit schedule land. He made such illegal efforts with the help of his men to dispossess them from the possession of the suit schedule land in the first week of December, 2014 and as well as on 22.12.2014 and 23.12.2014, but with the help of their well wisher they succeeded in preventing the defendant and his men from doing so on all the said occasions. But the defendant stated on the last occasion that one or other day he would take possession of suit schedule land with the help of his men, therefore, they approached the Kudligi Police Station seeking necessary action against

the defendant, but said police after verifying the documents, directed them to approach competent civil court to get necessary remedy against the defendant, stating that, the matter in dispute is civil in nature, therefore, they are constrained to file the above suit seeking declaration of their right, title over the suit schedule land. Since the defendant has stated that, he would take possession of the suit schedule land on one or other day from the plaintiffs, the plaintiffs are also constrained the separate application seeking temporary injunction. Since the defendant is also making his frantic efforts to alienate the suit schedule land to third party in order to defeat their right, title over the suit schedule land, they are also constrained to file one more application seeking against the defendant to restrain him from alienating the suit schedule land to any third party pending disposal of the above suit.

4. She further submitted that, they have been in possession of the suit schedule land and they have got right, title over the suit schedule land and the defendant is not in possession of the suit schedule land and he is in possession of only 2.50 acres of land in said land bearing Sy.No.717A/1, though he got illegal mutation entry in his name to an extent of 4.33 acres in the said survey number. They have got a prima facie case and the balance of convenience is in their favour and they have got more chances of success in the above suit. The defendant is not in possession of the suit schedule land and he does not have any right over the suit schedule land. Under such circumstances, if the

application is not allowed, they would be put to great hardship and irreparable injury and loss and on the other hand, if application is allowed, no hardship or injury will be caused to the defendant. Hence, she prayed to restrain the opponent/defendant, his men, agents and all such other persons claiming interest through him from alienating the suit schedule property to any third parties in any manner till the disposal of the above suit, by an order of temporary injunction and pass ad-interim orders in that behalf pending disposal of the above application.

5. The defendant has filed objections contending inter alia that, he denied the entire allegations made in the plaint. He submitted that, the land bearing Sy.No.717A/1 measuring 4.33 acres of land situated at Kudligi, it is an ancestral property of the defendant. The defendant's paternal uncle viz Sanna Basavanagouda was purchased the above said land from its lawful owner Smt.Kogali Mallamma, W/o. Nagaiah, through a registered sale deed dated 1.12.1934 vide document No.1099/1934, since from the date of purchase of land by late Sanna Basavanagouda, he is in peaceful possession and enjoyment and cultivated the property of his own right, title and interest over the same. The Mysore Government has resurveyed the lands in the year 1967 and recognized the cultivators, determined the extent of land and prepared the new sketch, it is called as Fisal Pathrike.

6. He further submitted that, as per the Fisal Pathrike, Sy.No.717A/1 measuring

4.33 acres of land had been cultivated by the Sanna Basavanagouda, who is the ancestor of the defendant, since long ago without interruption from anybody enjoying the land. The land bearing Sy.No.717A/1 is not at all subdivided even to this day, there is no any order passed by the concerned revenue authority regarding subdivision of land, even to this day, the plaintiffs have no manner of right, title or possession over the plaintiff schedule mentioned property without valid deed of title, nor any transactions by the true owner of the land, the question of transfer of the land does not arise at all. He further submitted that, the Kudligi Tahsildar has passed the mutation order dated 10.5.1983 under M.No.288/82-83 it is illegal, irregular and improper order, it is a surprising fact that without any Iota of evidence of document between the plaintiffs and defendant, the revenue authority blindly passed the mutation order along with other survey numbers, it is not binding on this defendant, in the family partition, the defendant has got the share of land Sy.No.717A/1 measuring 4.33 acres, through registered partition deed dated 16.11.1974 the defendant has been openly, exclusively, uninterruptedly cultivating the land measuring 4.33 acres in Sy.No.717A/1 by way of succession and deed of partition since long time, the plaintiffs are fully aware of the cultivating of the land of 4.3 acres by the defendant's ancestors and then defendant also, the mutation is also changed in the name of the defendant G.Veeranagouda dated 13.5.2003 on the basis of documents of partition deed, at the time of mutation, the

plaintiffs are not at all objected the proceedings of the mutation, but they have given consent openly before the revenue authority and signed on Form No.21 also.

7. He further submitted that, after that, on the basis of the documents of title and the RTC and EC, State Bank of Mysore, Kudligi given a loan to the defendant for development of land, since the date of partition dated 16.11.1974 this defendant is in physical possession and actual cultivation of the land on his own right, title and interest over the entire extent of 4.33 acres. He further submitted that, the mutation order was passed on 13.5.2003 and in M.No.47/2002-03 by Tahsildar at Kudligi, in the name of G.Veeranagouda, who is defendant herein. As the defendant applied for survey the land, the surveyor is surveyed the land measuring 4.33 acres and given a report that, Sy.No.717A/1 not subdivided and full extent is enjoying the defendant. Now after complete of 9 years, the 1st plaintiff filed a Revenue Appeal before the A.C., Hospet in ROR appeal No.159/11-12, the A.C., Hospet enquired the matter and passed the order dated 21.1.2014, the appeal petition is dismissed on merits. The plaintiffs not preferred an appeal before the Deputy Commissioner at Ballari, again after one year, they have kept silent, now the plaintiffs filed the present suit for declaration over the extent of 1.50 acres of land without valid deed of title, boundaries mentioned in the plaint are as false and suit itself is barred by law of limitation U/Sec.58 of the Limitation Act. He further submitted that, the case of actions mentioned in the plaint

are all invented for purpose of filing this false suit. The plaintiffs are not having any right, title or document nor possession over the plaint schedule mentioned property and they have filed this false suit against the defendant, this defendant has filed the caveat petition before the Senior Civil Judge at Kudligi and Civil Judge (Jr.Dn.) at Kudligi on 26.11.2014, the plaintiffs are suppressed the matter of caveat filed by the defendant and filed the suit and I.A. U/o.39 Rule 1 and 2 of CPC before the vacation court and got the exparte T.I. against the defendant. Therefore, the defendant prayed this court to dismiss the application with exemplary cost.

8. Heard the arguments on both sides.

9. On the above said pleadings of both the parties, the following points that arise for my consideration are.

- 1. Whether the plaintiffs have made out a prima facie case in their favour?**
- 2. Where does the balance of convenience lies?**
- 3. Who would be put to irreparable loss and injury if injunction is granted?**
- 4. What order?**

10. My answers to the above Points for consideration are:-

Point No:1 Is in the negative.

Point No:2 Is in the negative.

Point No.3 Is in the negative.

Point No.4 Is as per the final order.

For the following:-

REASONS

11. **POINT No.1 to 3:-** As these points are inter connected to each other, hence, I would like to discuss these points together at one stretch in order to avoid repetition of facts.
12. On perusal of the documents produced by the plaintiffs' counsel are that,
 1. Certified copy of the sale deed dated 15-12-1934 executed by Mallamma w/o Nagaiah infavour of the Sannabasavanagouda S/o veeranagoudra.
 2. True translation of the above sale deed.standing in the name of defendant in Sy.717A/1 measuring 4.33 acres.
 3. Certified copy of the mutation order dated 13.5.2003 passed in M.R.No.47/2002-03
 4. Photo copy of the order of A.C., Hospet in R.A.No.159/11-12 Smt Eramma W/o late Revenagouda filed appeal against the defendant.The appeal is dismissed.

5. Certified copy of E.C.standing in the name of the defendant as per partition deed. As per dated 4-9-2003.The said property is mortgaged.to SBM Kudligi.
6. Photocopy of the partition deed
7. Photocopy of the mutation order in M.R.No.298/1982-83
8. Resettlement registered document.
9. Two Record of Rights
- 10.Photocopy of acknowledgement
- 11.Certified copies of 30 RoRs. standing in the name of different persons, but for the year 2003 it is standing in the name of the defendant.
13. On perusal of the documents produced by the defendant counsel are that,
 1. Certified copy of Revision settlement Fisal Pathrike S.No.717A/1 it is standing in the name of the defendant.
 2. Akara Bond
 3. Certified copy of Registered sale deed dated 1.12.1934 executed by Smt.Mallamma infaovur of Sannabasavanagouda S/o Veeranagouda.
 4. Translate paper of Registered sale deed dated 1.12.1934

5. Certified copy of Registered partition deed dated 16.11.1974
6. 3 Encumbrance certificates standing in the name of the defendant it clearly goes to show that it is pledged to SBM kudligi in Sy.No.717A/1.dated 4-9-2003.
7. 21 Mutation extract dated 13.5.2003 standing in the name of the defendant.
8. Revenue notices
9. A.C. Order dated 21.1.2014. wherein the appellants Smt.Earmamma has filed appeal against the present defendant .the appeal is dismissed with regard to the Sy.No.717A/1.The said order has not been challenged before the Deputy commissioner. After lapse of one year the plaintiff has filed this suit.
- 10.Loan paper (Form-3 Declaration Form of S.B.M., Kudligi) in the name of the present defendant.
11. Xerox copy of 21 Form. Standing in the name of Earmmma but the said name is over written the present defendant also singed on backside of the letter.
- 12.30 true copy of R.O.Rs bearing Sy.No.717A/1. Standing in the name of

the defendant and others from 2000 but for the year 2003 the name of the defendant is found.

14. On perusal of the documents produced by both parties, the documents produced by the defendant is not challenged and which is standing in the name of present defendant and prima facie case is made out in favour of the defendant and balance of convenience also lies in favour of the defendant. The appeal filed by the Earamma is dismissed before the Assistant commissioner Hospet. It has become final. She did not challenged the said order before the Deputy commissioner. After lapse of one year the present suit has been filed. There is no prima facie for grant of injunction. Balance of convenience lies infavour of the defendant. If injunction is continued, the defendant will be put to great hardship and injury and further, plaintiff No.1 has not stated for whom the defendant is alienating the suit schedule property and there is no prima-facie case for grant of injunction. Accordingly, I answer the above points NO:1 to 3 in the negative.

15. POINT No:4:- For the aforesaid discussions and reasons stated above on point, I proceed to pass the following:-

ORDER

I.A.No:4 filed by the plaintiffs U/O.39
Rule-1 and 2 R/w S.94 and 151 of CPC is hereby
dismissed.

(Dictated to the stenographer, transcribed by her, corrected by me and then pronounced in the open court on this the 22.6.2015 at Kudligi)

(B.S. HONNASWAMY),
Senior Civil Judge, Kudligi.