

KAVN300001332025



IN THE COURT OF THE CIVIL JUDGE & JMFC.,

AT: HAGARIBOMMANAHALLI

DATED THIS THE 2nd DAY OF DECEMBER 2025

: **PRESENT:**

SRI. **SAYED MOHIUDDIN URF KHAWAJA PEERAN.**, BA. LLB.,(Spl.)
CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI.

O.S.No.40/2025

PLAINTIFF/s : **Sri.Poojaru Mariswamappa @
Marisomappa @ P.Mariswamy
S/o Late P.Sanjeevappa,**
Aged about: 77 years, Occ:Agriculturist,
R/o Native of Morigere Village,
Hagaribommanahalli Taluk, at present
R/o D.No.116, 'Matru Chaya' I Main,
II Cross, KHB Colony, Harihara Town.

Vs

DEFENDANT/s : **Sri.Poojar Sathyappa S/o Late
Poojar Basavanagowda,**
Aged about: 45 years, Agriculturist,
R/o No.297, 6th Ward, Janata Plot,
Basaveshwara Nagara, Morigere Village
& Post, Hagaribommanahalli Taluk,
Vijayanagara District.

I.A.No.II

**APPLICANT/PLAINTIFF: Sri.Poojaru Mariswamappa @
Marisomappa @ P.Mariswamy
S/o Late P.Sanjeevappa.**

(Rep. by Sri.**M.M.H.**, Advocate)

V/s

**RESPONDENT/DEFENDANT: Sri.Poojar Sathyappa S/o Late
Poojar Basavanagowda,**

(Rep.by Sri.**S.V.M.**, Advocate)

ORDER ON I.A.No.II

The plaintiff has filed the IA No.II under Order 39 Rule 1 and 2 R/w Sec.151 of CPC., for the relief of temporary injunction to restrain the defendant from interfering with his peaceful possession and enjoyment over the suit 'B' schedule property bearing Sy.No.433/A measuring 3.45 acres boundaries towards East: by land of Simpigere Mallappa, West: by land of Byalala Tindappa, North: by Didda and Uttangi road, South: by 'A' Schedule property of plaintiff situated at Morigere Village, H.B.Halli Taluk till disposal of the suit.

2. In the accompanying affidavit to the IA., it is stated by the plaintiff that, he is in defacto, dejure, khas, peaceful, settled, long continuous, uninterrupted possession and enjoyment of the suit schedule properties. He is personally cultivating the suit schedule properties with the help of coolies. Except him, nobody is having any manner of right, title and interest over the suit schedule properties. Muchless the defendant that too so far as his legitimate settled, khas, defacto physical cultivation of the suit 'B' schedule property is concerned. The defendant is having knowledge that the plaintiff is in peaceful possession and enjoyment of the suit 'B' schedule property. The defendant with an intention to dispossess the plaintiff from the suit 'B' schedule property trying to interfere with his peaceful possession and enjoyment over the suit 'B' schedule property. On 09.02.2025 at about 10:00 a.m., the defendant has attempted to interfere into the plaintiff's peaceful possession and enjoyment over the suit 'B' schedule property. The plaintiff has resisted the act of the defendant. While returning back, the defendant threatened him that he would come along with more persons and coolies

to oust him from the suit 'B' schedule property. The defendant is trying to dispossess the plaintiff from the suit 'B' schedule property. He has made out prima facie case, balance of convenience lies in his favour. If the temporary injunction order is granted no injustice will be caused to the defendant. If the temporary injunction order is not granted he will be put to hardship. Hence, he prays to allow the IA.

3. After registration of the suit, suit summons along with T.I. notice were issued to the defendant. The defendant served with the same. In response to the same he has appeared before the Court through his Counsel and filed his written statement and a memo adopting the same as objections to I.A.No.II. In the written statement the defendant has denied the entire case of the plaintiff, and further contended that he is permanent resident of Morigere village, he is in possession and enjoyment of the suit schedule properties. The plaintiff behind his back has created revenue entries of the suit schedule properties and filed the false suit. If the reasonable opportunity is offered to the defendant to contest the suit he is ready to disprove the case put-forth by the plaintiff. The suit is

lack of bonafides. Suit is barred by law of limitation. There is no prima facie case in favour of the plaintiff. Hence, he prays to dismiss the same.

4. The Counsel for the plaintiff has filed the written arguments, perused the same. Perused the records.

5. The following points arise for my consideration:

1. Whether the plaintiff has made out *prima-facie* case?

2. Whether the balance of convenience lies in favour of plaintiff?

3. Whether the plaintiff will be put to irreparable loss and injury, if the order of Temporary Injunction is not granted?

4. What order?

6. My answers to the 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 the facts involved in point No.1 to 3 are interlinked together, hence they are taken up together for common consideration.

8. The present suit is filed by the plaintiff against the defendant for the relief of permanent injunction restraining the defendant from dispossessing the plaintiff from the suit 'B' schedule property without due process of law.

According to the plaintiff, he is in possession and enjoyment of the suit schedule 'A' and 'B' properties totally measuring 6.90 acres. He has purchased 3.45 acres of land in Sy.No.433/A total measuring 6.90 acres from Smt.Gangamma W/o Kogali Shettru Shivanagappa under the registered sale deed dated 29.05.1978 for valuable consideration amount of Rs.3,000/-. From the date of purchase, he is in possession and enjoyment of the said property. The remaining extent of 3.45 acres of land is situated towards Northern side of the purchased property, he is also in possession and enjoyment of the said property which is shown as suit 'B' schedule property, over all he is in possession and enjoyment of entire extent of 6.90 acres of land. Due to Covid-19 he was compel to leave his native place Morigere village and inevitably he was shifted to Harihara wherein his 3rd son Srinivas M.P. is residing. After

shifting to Harihara also the plaintiff has not leave the cultivation of the properties. The plaintiff had been in continuous, long, uninterrupted settled possession and enjoyment of the suit schedule 'B' property. At any point of time he has not given up the possession of an inch of land in the suit 'B' schedule property to anybody. He is in possession and enjoyment of the suit schedule properties from 40 years. The defendant has no manner of right, title and interest over the suit schedule properties, the defendant is trying to interfere with his peaceful possession and enjoyment over the suit 'B' schedule property and he is trying to dispossess the plaintiff from the suit 'B' schedule property. Hence, he has filed the present suit.

9. The defendant has taken a contention that, he is in possession and enjoyment of the suit schedule properties. The plaintiff has created the revenue records of the suit schedule properties. With an intention to harass the defendant the plaintiff has filed the false suit. Hence he prays to dismiss the suit as well as I.A.

10. I have perused the documents produced by the plaintiff. At this stage the plaintiff has produced the RTC extract of the suit schedule properties bearing Sy.No.433A measuring 6.90 acres for the year 2024-25, on going through the same prima facie it appears that as on the date of filing of the suit, the suit schedule Sy.No.433/A total measuring 6.90 acres of land is jointly standing in the name of plaintiff and Revamma D/o Nagappa. The plaintiff has produced the copy of the registered sale deed dated 29.05.1978, on going through the same prima facie it appears that the plaintiff has purchased 3.45 acres of land in the above said Sy.No.433/A from its owner Gangamma W/o Kogali Shettru Shivanagappa for valuable consideration amount of Rs.3,000/-. The plaintiff has produced the sketch. Further the plaintiff has produced the affidavits of Smt.Rathnamma, Kumar M.P., P.S.Venkatakrisna, P.H.Srinivasa and Roopa M.Pujar.

11. Specific case of the plaintiff is that he is in possession and enjoyment of suit 'A' and 'B' schedule properties. The plaintiff has taken a contention that he is in settled possession of suit 'B' schedule property from 40 years,

and further contended that the defendant is illegally trying to interfere with his peaceful possession and enjoyment over the suit 'B' schedule property. As stated above the plaintiff has produced the RTC extract of the suit schedule property Sy.No.433A measuring 6.90 acres. As stated above on going through the above said RTC extract, prima facie it appears that as on the date of filing of the suit, the said property is jointly stands in the name of plaintiff and one Revamma D/o Nagappa. The plaintiff in his plaint he has not stated anything that who is the said Revamma D/o Nagappa, whether she is the co-owner or joint owner of the suit schedule properties. In the plaint, the plaintiff has not stated anything that how and when he has acquired the possession of the suit 'B' schedule property. The documents produced by the plaintiff prima facie discloses that the plaintiff and one Revamma are in joint possession and enjoyment of the suit Sy.No.433/A measuring 6.90 acres. He has produced the copy of the registered sale deed, on going through the same it appears that he has purchased 3.45 acres of land in Sy.No.433A. But the RTC extract jointly stands in the name

of plaintiff and Revamma to an entire extent of 6.90 acres. The plaintiff in the plaint has shown suit 'B' schedule property measuring 3.45 acres within the specific boundaries towards East: by land of Simpigere Mallappa, West: by land of Byalala Tindappa, North: by Dibba and Uttangi road, South: by 'A' Schedule property of plaintiff. In order to prove the said contention that he is in actual possession and enjoyment of the suit 'B' schedule property within the given boundaries he has not produced any material documents before the Court. When the plaintiff has failed to prove that he is in actual possession and enjoyment over the entire extent of the suit schedule properties the question of granting temporary injunction does not arise at all. Therefore, I am of the opinion that the plaintiff has failed to made out prima facie case for granting of temporary injunction.

12. The Counsel for the plaintiff has relied the following decisions;

1) AIR 1974 SUPREME COURT 104, Civil Appeal No.1229 of 1973 between M.C.Chockalingam and others V/s V.Manickavasagam and others.

2) AIR 1972 SUPREME COURT 2299, Civil Appeal No.713 of 1967 between M.Kallappa Setty V/s M.V.Lakshminarayana Rao.

3) (1996) 6 Supreme Court Cases 223 between SAWARNI(SMT) V/s INDER KAUR(SMT) AND OTHERS.

4) ILR 1994 KAR 3246 between S.Manojar V/s E.K.Govindaraja Setty.

5) 1975 AIR 1674 between Puran Singh and other V/s State of Punjab.

6) AIR 1989 SC 2097 between Krishna Ram Mahale(Dead), by his Lrs., V/s Mrs., Shobha Venkat Rao.

7) 1968 AIR 702 between Munshi Ram and others V/s Delhi Administration.

8) AIR 1968 SC 1165 between Nair Service Society Ltd., V/s Rev.Father K.C.Alexander & Ors.

9) AIR 1986 KANT 194, between Patil Exhibitors(Pvt.)Ltd., V/s The Corporation of the City of Bangalore.

10) AIR 2008 SUPREME COURT 901, between Gurunath Manohar Pavaskar & Ors V/s Nagesh Siddappa Navalgund & Ors.

I have gone through the above said decisions, the facts and circumstances of the present case on hand and the facts

and circumstances of the above said decisions are totally different. Therefore, I am of the opinion that the said decisions are not application to the case on hand.

13. On going through the entire materials available on record, I am of the opinion that the plaintiff has failed to prove his exclusive possession over the entire suit schedule properties. If the temporary injunction is granted it cause injustice to the defendant as well as joint owner whose name is appearing in the RTC extract of suit schedule Sy.No.433A. On the basis of above reasons and discussions I hold **Point No.1 to 3** in the **NEGATIVE**.

14. Point No.4 :- For the aforesaid reasons and discussions made above, I proceed to pass the following:-

ORDER

I.A.No.II filed by the plaintiff under Order 39 Rule 1 and 2 of CPC., is hereby dismissed.

(Dictated to the Stenographer, transcribed and computerized by her, corrected by me, and then pronounced in the open court on this the 2nd day of DECEMBER 2025.)

(SAYED MOHIUDDIN URF KHAWAJA PEERAN)
CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI.