

**IN THE COURT OF THE CIVIL JUDGE AND J.M.F.C.
HARAPANAHALLI**

Present : Smt. Fakirawwa Kelageri,
B.A.,LL.B.,
Civil Judge & JMFC, Harapanahalli

O S No.32/2022

Dated: This, the 2nd Day of August, 2023

Plaintiffs : B.Rajasahekar Gouda another
(By Sri.B.K.M., Advocate)

-VS-

Defendants: Smt. Pushpa Patil @ Mukdakamma and others
(D-1 to 4 by Sri.B.R.G., Adv.,)
(D-9 by Sri.P.J.G., Adv.,)

I.A.NO.I

Applicant/s: B.Rajashekar Gouda

-VS-

Opponent: Smt. Pushpa Patil @ Mukdakamma and others

ORDERS ON IA NO.I

This is an application filed by Plaintiff U/o 39 Rule 1 and 2 R/w Sec.151 CPC., seeking grand ex-parte injunction order restrain the defendants/respondents or their agents or anybody claiming under them from interfering with the peaceful possession of the plaintiff over the suit schedule property in any manner, whatsoever, pending disposal of the above suit in the interest of justice.

2. In the affidavit, in support of the application, it is stated by this plaintiff that, the plaintiff has filed suit for relief of declaration and permanent injunction against the defendants. She is the owner and possessor of petition schedule land bearing Sy.No.310C/1 measuring 2 acres 48 cents situated at Gajapura village, Chigateri Hobali, Harapanahalli taluk, The defendants are not at all concerned to the suit schedule lands. This being so, land bearing Sy.No.310C/2 by virtue of mutation proceedings No.114/78-79 was mutated in the name of B.Kotragouda S/o. Channanagouda to an extent of 0.25 cents and B.Chandragouda S/o.Channanagouda to an extent of 0.12 cents. However, instead of mutating the name of said B.Kotragouda and B.Chandragouda to Sy.No.310C/2 as per mutation No.114/78-79 the revenue authorities mutated the names of above persons in respect of Sy.No.310C/1 by inadvertence. Even though their name was mutated in respect of Sy.No.310C/1, it is this plaintiff who is in actual possession and enjoyment of the suit schedule land even to this day. This being the state of affairs, the defendant No.3's father P.Kotragouda behind the back of plaintiff by creating false documents got mutated his name to an extent of 0.80 cents as per mutation No.150/2009-2010 on the basis of an alleged "WILL" said to have been executed by his father-in-law B.Kotragouda, S/o.

Channanagouda. So also B.Kotragouda and B.Chandargouda sons of Channagouda's name is recorded as joint pattadars along with plaintiff to an extent of 1.68 cents in the ROR. It is pertinent to note here that neither B.Kotragouda S/o. Channanagouda nor B.Chandragouda were the owners in possession of the suit schedule land bearing Sy.No.310C/1. Therefore, B.Kotragouda S/o. Channagouda had no title or interest or bequeath the suit schedule land in favor of his son-in-law P.Kotragouda S/o. Linganagouda. Recently the legal heirs of B.Kotragouda, B.Chnadragouda and P.Kotragouda i.e., the defendants tried to dispossess the plaintiff from the suit schedule land on the basis of false and fabricated entries in the ROR. This plaintiff has also filed an appeal before the Assistant Commissioner, Harapanahalli against the third defendant, her father P.Kotragouda and against the LR's of Chandragouda, the same was contested by the respondents. The Assistant Commissioner, Harapanahalli RA/CR/76-2019 dated 05.10.2021 was pleased to dismiss the said appeal holding that the claim of the appellant is of civil in nature and directed to get the matter redressed before the civil court. After the above said orders in appeal the defendant appeared on the suit schedule land on 25.01.2022 and tried to obstruct the cultivation of the plaintiff and

also tried to dispossess the plaintiff from the suit schedule land by denying the title of the plaintiffs. The plaintiff apprehends that the defendants who are rich persons, having support of persons against this plaintiff are likely to repeat their illegal act to dispossess the plaintiff from the suit schedule property. Under these circumstances, the plaintiff has no other go to approach this Hon'ble court to protect his possession and proprietary rights over the suit schedule property. The balance of connivance and comparative hardship is greater on this plaintiff. In case if no injunction is not granted he will be dispossessed from the petition schedule property and thereby he will be put to irreparable loss and injury that cannot be compensated by any other means. He will be leading to multiplicity of proceedings and his valuable rights in the petition schedule property will be jeopardized. If temporary injunction order is granted no prejudice will be caused to the respondents. If no injunction order is granted the very suit of the plaintiff will be frustrated. Hence, prayed to allow the application.

3. The defendant No.4 has objected said application and contended that, the present application is not maintainable either in law or on facts as such liable to be rejected in limine. The allegation

made in the affidavit is false and vexatious. The plaintiff is not in possession of the suit schedule property. Hence, the plaintiff has to pay court fee on the market value of the suit schedule property. The plaintiff has not made party his own brother and sisters. The plaintiff has not produced document to prove he is the owner in possession of the suit schedule property. The plaintiff has not preferred appeal as against the order of the Assistant Commissioner. During the life time of father of the defendant No.1 has orally partitioned the suit schedule property in favour of his daughters. On the basis of oral partition, the mutation was effected in their respective names. The father of the defendants and husband of the defendant No.1 has bequeathed the suit schedule property on 30.03.2000. On the basis of said Will 01 acre 02 cents fallen to the share of the husband of the defendant No.1. Thereafter, the husband of the defendant No.1 died on 21.04.2021 due to Covid-2019 at Davanagere hospital. After the death of the husband of the defendant No.1, the defendant No.1 to 4 are the legal heirs of the suit schedule property and they have not taken any legal steps in respect of the suit schedule property. There is no any prima- facie case or balance of convenience or irreparable loss in favour of plaintiff. Hence the the defendant No.4 prayed for dismissal of application.

4. Heard the Learned Counsels appearing for the parties and perused the materials on record.

5. Now the following points arise for consideration of this Court are.

- 1) *Whether the plaintiff has made out prima-facie case?*
- 2) *Whether the balance of convenience lies in favour of plaintiff?*
- 3) *Whether the irreparable loss will be caused to the plaintiff, if the T.I is refused?*
- 4) *What order?*

6. My findings on the above points are as follows:

Point No.1 : In the Negative.

Point No.2 : In the Negative.

Point No.3 : In the Negative.

Point No.4 : As per the final order
for the following:

REASONS

7. **Point No.1 to 3** : Since these points are interlinked with each other, in order to avoid repetition, they are taken together for common discussion.

8. At the out set, it is material to note that of person seeking grant of injunction as to prove that they have made out prima-facie case to go for trail. They are also required to show that

balance of convenience is in their favour and they will suffer irreparable loss and injury if injunction is not granted. It is equally well-settled that when the party fails to prove prima facie case to go for trial, the question of considering balance of convenience or irreparable loss and injury to the party concerned would not be material at all. If that party fails to prove prima-facie case to go for trial it is not open to the court to grant injunction in his favor if he has made out case of balance of convenience being in his favour and he would suffer irreparable loss and injury if no injunction order was granted. This proposition of law has been laid down by the Hon'ble Supreme Court of India in **2010 AIAR (Civil) 1 (Kashimath Samstan and another V/s Srimad Sudhindra Thirthaswamy and another)** in the light of above proposition of law now I have to see as to whether plaintiff has made out prima-facie case or not?

9. In order to prove prima-facie case, the plaintiff has produced record of rights pertains to Sy.No. Sy.No.310C/1 from the year 1968-69 and 1974-75 to 1978-79, copy of ROR pertaining to Sy.No.310C/1 of Gajapura village from the year 1978-79 to 1983-84, copy of record of rights pertains Sy.No.310C/1 for the year 2018-19,

to Sy.No.310C/1 for the year 2021-2022, true copy of the mutation proceedings No.114 and 115/78-79 and certified copy of order of Assistant Commissioner, Harapanahalli in RA/CR/76/2019 dated 05.10.2021. On the other hand, the defendants have not produced any documents before the court.

10. On careful perusal of pleadings of couple parties and documents it appears that the plaintiff has filed suit for declaration and permanent injunction as against the defendants. According to plaintiff, the suit property originally belongs to the grandfather of plaintiff by name Basavanagowda. The said Basavanagowda died living behind his four sons by name kenchanagowda, Sivanagowda, Gurubasavanagowda and Naganagowda. The plaintiff is son of Kenchangada. In the partition the suit schedule property was allotted to the plaintiff's father by name Kanchengowda. After death of Kenchanagowda the plaintiff succeeded to the suit schedule property and became owner and processor of the same.

11. Per contra, the defendants have taken specific contention that the suit property belongs to father of husband of dependent No.1. During the during his lifetime, his all sons and daughters orally partitioned in respect of suit property and other family properties in

the year 1978. In the said partition the property bearing Survey No. 310/C2 to an extent of 1.2 acre and other properties were allotted to father-in-law of defendant No.1. After words father of B.Kotragouda i.e., Channanagouda had executed will in favour of defendant No.1 to 4 and B.Kotragouda in respect of 1.2 acre out of suits survey number and accordingly their names have been entered to said properties and after death of father of husband of dependent No.1 on 21-4-2000 the mutation was certified and husband of Defendant No.1 died on 21-4 -2020 due to Covid-19. But the after death of husband of defendant No.1 they have not submitted any application before the revenue authority to change the khata in their name by way of inheritance.

12. Now the points for consideration is whether grandfather of plaintiff owner in possessor of suit schedule property or not? whether father-in-law of defendant No.1 was owner of suit property or not, whether father of B.Kotrabasappa having right over the suit property to execute Will in favour of defendant No.1 to 4 and husband of defendant No.1 and how on the basis of which document name of grand father of plaintiff and father in law of plaintiff entered to suit property in the year 1968-69 and 1978-79

are to be looked into full pledged trial are to be decided by the court after evidence of the parties.

13. It is worth to note here that, this is a suit for declaration and injunction, at this stage of proceeding this court cannot conduct mini trial in order to ascertain possession of the suit property. The documents produced by th plaintiff disclose that name of father of plaintiff had been entered to suit property in the year 1968-69 without any document. Similarly, name of father of dependent No.1's husband namely B Kotrabasappa is also entered in the year 1978-79 without any document. But the defendant No.1 has stated that lifetime of Kotrabasappa the partition was taken place in between his sons and daughters. As per mutation proceedings, it appears that on the basis of partition the name of Kottragouda S/o. Channanagouda mutated to property Sy.No.310C/2 to an extent of 25 cents as per mutation No.114. As per mutation proceedings No.115, it appears that name of Chandragouda S/o. Channanagouda has mutated Sy.No.310C/2 to an extent of 12 cents and other property on the partition deed. As per contention of defendant No.1 Chandragouda is brother of husband of defendant No.1. In the present case, the plaintiff and defendants are tracing title over the suit property based on revenue records. Admittedly either the

plaintiff or father in law of defendant No.1 have not challenged the revenue records in the year 1978-79. Considering the nature of suit, prima-facie case means, prima-facie possession of the plaintiff over the suit schedule property as on the date of filing the suit. Now the revenue records are still standing in the name of plaintiff and husband of defendant No.1 and other defendants. Hence, the plaintiff has not made out prima-facie case and balance convenience lies in their favour and also irreparable loss caused to them, if application is allowed defendants will be caused to more hardship other than the plaintiffs. **Accordingly, point No.1 to 4 are answered in the Negative.**

14. Point No.4 : As already discussed above on points No.1 to 3, I proceed to pass th following:

ORDER

I.A. No.I filed by plaintiffs U/o.39 Rule 1
and 2 R/w 151 of CPC., is hereby dismissed.

No order as to costs.

(Dictated to the Stenographer directly on computer, revised by me and then pronounced in the open court this the **2nd day of August 2023**).

(Fakirawwa Kelageri)
Civil Judge & JMFC,
Harapanahalli.

***Order pronounced in the open court vide
separate order)***

ORDER

I.A. No.I filed by plaintiffs U/o.39
Rule 1 and 2 R/w 151 of CPC., is hereby
dismissed.

No order as to costs.

For compliance of U/sec.89 of CPC.

Call on:29.09.2023

Civil Judge & JMFC,
Harapanahalli