

IN THE COURT OF THE CIVIL JUDGE & JMFC, HARAPANAHALLI

Present: **SMT. B.G.SHOBA, M.A., LL.B.,**
Civil Judge & JMFC,
Harapanahalli.

Dated : This the day of 15th April, 2019.

O.S. NO.94/2018

Plaintiff/s : Shantha Veera Naika
(Rept. by Sri. K.J.P., Advocate)

-Vs.-

Defendant/s: Boja Naika and others
(Rept. by Sri. R.G.P.,/P.J.G., Advocate)

I.A. No.I

Applicant : Shantha Veera Naika

-Vs.-

Opponent : Boja Naika and others

ORDERS ON IA. No.I U/O. 39 RULE 1 AND 2 R/W 151 of CPC

This is an application filed by the plaintiff under Order 39 Rule 1 and 2 of CPC with a prayer to grant an ad-interim order of temporary injunction restraining the defendants, their agents, relatives or anybody acting under them from interfering with the peaceful possession of the plaintiff over the suit schedule property till pending disposal of the suit.

2. The said application is accompanied with an affidavit sworn by the plaintiff wherein he stated that he acquired suit schedule property under grant dated 17-01-1999. The Tahasildar, Harapanahalli has issued grant certificate in favour of him. By virtue of said grant certificate katha was mutated in his name. After order of changing of katha the new survey number has been given as 1/P162. Since the date of grant the plaintiff is in possession of said property by cultivating the same. The defendants have no manner of right, interest or possession over the said property. In spite of that on 28-03-2018 when the plaintiff went to the land for cultivating the defendants trespassed and obstructed the plaintiff. He has resisted him peacefully. In this regard he has convened panchayath. In said panchayath the panchayathdars have advised the defendants not to obstruct the plaintiff, but they have not heard the words of the panchayathdars. The defendants are politically influential persons. They are trying to interfere with the possession of the plaintiff often and often. If the application is not allowed the plaintiff will be put to irreparable loss and injury. On the other hand no hardship will be caused to the defendants. Hence prayed to allow the application.

3. The defendant Nos.1 to 3 have filed memo stating that written statement filed by them may be treated as objection to IA No.I. In written statement they have denied all the allegation made by the plaintiff in plaint. Further contended that the plaintiff is not a domicile of Bapuji Nagara at any point of time. He is permanent residing at Alurhatti village, Davanagere taluk since his birth and even his ancestors are also the domicile of Harapanahalli taluk. One Jana Naika who relative of the plaintiff was working as village accountant in Harapanahalli taluk has concocted revenue documents in favour of the plaintiff illegally and obtained order from the Tahasildar fraudulently. Said Jana Naika has got a criminal history that he has misused his power and got corrected the entries in the original records at Taluk Office. He was convicted by this court. The plaintiff never in possession and enjoyment of any extent in Sy.No.1/P of Narayanapura village at any point of time. The defendant Nos.1 to 3 are the permanent resident of Bapuji Nagar, Harapanahalli Taluk. Their ancestors are also permanent residents of Bapuji Nagar. They are being a poor and landless persons, they used to plough the government land in Sy.No.1 of Narayanapura village it totally measures 2020.60 acres. Out of said total extent the

defendant No.1 is in peaceful possession and enjoyment of the land to an extent of 4.54 acres which is bounded on east by land of Heerya Naika, west by Gokatte and land of Thippa Naika, north by land of defendant No.4 and south by land of defendant No.3. The Tahasildar, Harapanahalli has granted patta in favour of the defendant No.1 with respect said 4.54 acres of land. The defendant No.2 is son of defendant No.3. The wife of defendant No.3 by name Sona Bai applied for grant of land on the basis of Akrama Sakrama. She is in peaceful possession and enjoyment of land bearing Sy.No.1 to an extent of 3.05 acres situated at Narayanapura village with a specific boundary east by land of military Basavarajappa, west by land of Poojari Shankra Naika, north by land of defendant No.1 and south way and land of Manja Naika since more than 25 years. All the defendant Nos.1 to 3 have developed said land by investing huge amount and they are in peaceful possession and enjoyment of said land till today. The plaintiff is no way concern to the said land. On the instigation of busy bodies in the village namely Lachya Naika and his son Sankra Naika, Thippa Naika are colluding with the plaintiff filed this false suit with an intention to grab the land of defendants. The wife of defendant No.3 by name Sona Bai is also necessary party

to the suit. The plaintiff has not made her as party to the suit. Hence the suit is bad for non joinder of necessary parties.

4. The defendant No.4 is also filed memo stating that his written statement may be treated as objection to IA No.I. In his written statement he has denied all the allegation made by the plaintiff in his plaint. Further he has contended that the plaintiff is not residing at Udagatti Dodda Thanda (Bapuji Nagar) of Harapanahalli Taluk. He is residing at Alurhatti. His brother by name Janya Naika was working as village accountant at Togarikatte village, Harapanahalli Taluk. At that time he is created concocted some documents with respect to the suit schedule property in favour of plaintiff and his another one brother by name Shanthaveera Naika. The plaintiff and his another brother by name Sheshagiri Naika are not having any property in suit survey number. On the basis of concocted documents the plaintiff has filed this false suit. The brother of plaintiff by name Janya Naika was convicted by this court regarding concocting of documents. His another brother by name Sheshagiri Naika also filed one suit on the basis of concocted documents in OS No.96/2018. Said suit still pending for adjudication. In Sy.No.1 totally to an extent of 713.23 acres situated

at Narayanapura village. Some extent of property has been granted by the Tahasildar, Harapanahalli in favour of defendant No.4 and issued patta on 03-10-2011. In Sy.No.1/P measuring 1.70 acres of land has been granted in favour of defendant No.4 and he is in possession of said land since for last 20 years. Said property is bounded on east by land of Manya Naika, west by Gokatte, north by road and south by land of Hali Bai. By virtue of said grant certificate katha has been mutated in his name of defendant No.4. There is no existence of land as boundaries given by the plaintiff. Hence prayed to reject the application with costs.

5. Heard argument and perused the records.

6. On perusal of the pleadings, documents and application, the points that arise for my determination are;

1. Whether the plaintiff has made out prima facie case for grant of temporary injunction ?
2. Whether the plaintiff proves balance of convenience lies more in his favour ?
3. Whether the plaintiff proves irreparable loss will be caused more to him, if temporary injunction is not granted ?
4. What order?

7. My answer on above points is as follows:

Point Nos.1 to 3 : In the Affirmative.
Point No.4 : As per the final
order, for the following;

REASONS

8. **Point Nos.1 to 3:-** These points are taken up together for discussion as they require same set of pleadings and documents to avoid repetition of facts.

On perusal contention urged by both parties it appears that the plaintiff has filed this suit seeking relief of declaration of title and consequential relief of permanent injunction with respect to the suit schedule property. According to him he has acquired said property under grant. By virtue of grant katha has been mutated in his name and he is in possession of said property by cultivating the same. The defendants have no manner of right, interest over the said property. In spite of that they are trying to interfere with his possession. In order to prove the allegation he has produced documents such as certified copy of grant certificate, RTC extracts. The grant certificate reveals that 4.00 acres of land in Sy.No.1/P has been granted by the Tahasildar in favour of Shanthaveera Naika i.e., plaintiff which is bounded on east by government land, west by land of Lachha Naika,

north by land of Sheshagiri Naika and south by border of K.Kallahalli. The boundaries mentioned in plaint schedule is tallying with the boundaries mentioned in grant certificate. The RTC extracts from 2001 to 2017 reveal that 4.00 acres of land in Sy.No.1/P162 is standing in the name of Shanthaveera Naika S/o Sakra Naika and Shanthaveera Naika.

9. On the other hand to substantiate the contention of defendant Nos.1 to 3 they have produced documents such as certified copy of Grant certificate, Endorsement, report of RI, Panchanama, Sketch, RTC and Mutation extracts. The Grant certificate reveals that the Tahasildar, Harapanahalli has issued grant certificate in favour of Bojya Naika, i.e., defendant No.1 with respect to the land measuring 4.54 acres in Sy.No.1 situated at Narayanapura village which is bounded on east by land of Heerya Naika, west by Gokatte and land of Tippa Naika, north by Paramesh Naika and south by land of Nanya Naika. The endorsement issued by Tahasildar, Harapanahalli taluk reveals that the Tahasildar, Harapanahalli issued said endorsement on 07-09-2018 to one Ramesh S/o Heerya Naika with respect to the application filed by him under RTI Act regarding issuance of certified copy of register

Form No.53 with respect to the Narayanapura village. The report of RI reveals that the revenue Inspector of Togarikatte village has submitted report by opining that the land measuring 4.54 acres in Sy.No.1 may be granted to Bojya Naika S/o Heerya Naika. Sketch pertaining to Sy.No.1 reveals that the land measuring 4.54 acres in Sy.No.1 is standing in the name of Bojya Naika i.e., defendant No.1 in block No.1 as mentioned in sketch and another 1.50 acre in said survey number is standing in the name of Hali Bai W/o Bojya Naika in block No.2 as mentioned in sketch. The RTC for the year 1992 to 2001 reveals that 4.00 acres of land in Sy.No.1/P162 is standing in the name of Shanthaveera Naika S/o Sakra Naika.

10. In order to substantiate the contention of defendant No.4 he has produced documents such as grant certificate issued by Tahasildar, Harapanahalli in favour of him, mutation extract, RTC extract, Intimation and Challan. The grant certificate reveals that on 22-07-2011 the Tahasildar, Harapanahalli has issued grant certificate in favour of Parameshwara Naika i.e., defendant No.4 with respect to the land measuring 1.70 acres in Sy.No.1/P situated at Narayanapura village which is bounded on east by Manya Naika, west by Gokatte, north by road and south by land of Hali Bai. The

mutation extracts reveals that katha of said property was mutated in his name. The RTC extracts reveals that said property is standing in his name. Intimation slip reveals that the Tahasildar, Harapanahalli taluk has issued intimation on 14-03-2017 stating that katha of land measuring 1.70 acres in Sy.No.1/P has been mutated in the name of Parameshwara Naika by virtue of grant with non-alienation condition for a period of 15 years. The Challan reveals that the defendant No.4 has paid fee and TT penalty.

11. On considering over all material placed before the court it disclose that there is a dispute regarding ownership and possession of the property. According to the plaintiff he is the owner in possession of the suit schedule property. According to the defendants there is no such property is existing. The plaintiff has concocted documents with respect to the property belongs to the defendants by giving false boundaries. However whether the plaintiff is owner in possession of the suit schedule property or not has to be considered after full fledged trial. At this stage it cannot be decided. Whether the plaintiff has concocted the documents or not also has to be decided after full fledged trial. At this stage it cannot be decided. The documents produced by parties reveal that the Tahasildar,

Harapanahalli has issued grant certificate in favour of the plaintiff, the defendant No.1 and defendant No.4 separately. At this stage the grant certificate produced by the plaintiff disclose that suit schedule property is standing in his name. The RTC extracts reveal that said property stands in his name till 2017-18. The defendants have not challenged the katha standing in the name of plaintiff with respect to the suit schedule property. Under such circumstance the RTC column No.9 disclose that the plaintiff is in possession of suit schedule property. As such if the defendants have interfered his possession certainly he will be put to irreparable and injury. The counsel for defendant Nos.1 to 3 has submitted citation reported in **ILR 2005 KAR 884 (T.L. Nagendra Babu Vs. Manohar Rao Pawar)** wherein it is held that “ *Unless the court is satisfied with regard to material details in the light of the material evidence with regard to the identification of the property, no declaration and injunction can be granted*”. The principle laid down in said citation is not applicable to the case on hand, at this stage, as identification of the property cannot be decided at this stage. It requires full fledged trial. The material placed before the court prima facie disclose that the grant certificate stands in the name of plaintiff and boundaries mentioned

in grant certificate is tallying with the boundaries mentioned in
plaint.

12. It is settled principle of law that a party who approaches the Court has to establish prima facie case. Grant of interlocutory injunction is discretionary remedy and in exercise of judicial discretion granting or refusing to grant injunction, the Court will have to take following principles.

1. Whether a person seeking temporary injunction has made out prima facie case ?
2. Whether balance of convenience lies in his favour i.e. whether it could cause greater inconvenience to him if injunction was not granted ?
3. Whether a person seeking temporary injunction would suffer irreparable injury if injunction was not granted ?

Among aforesaid conditions at-least two conditions should be satisfied by the party. Mere proof of one of the three conditions does not entitle for the party to obtain temporary injunction. In the instant suit the plaintiff has established prima facie case. If temporary injunction is not granted certainly the plaintiff will be put to irreparable loss and injury. The balance of convenience also lies more in his favour. When the plaintiff is seeking ownership of suit schedule property the protection of subject matter is required to

adjudicate the matter effectively. As such this court is of the opinion that the application filed by the plaintiff deserves to be allowed. Accordingly point Nos.1 to 3 are answered in the **affirmative**.

13. Point No.4:- In view of above discussion, I proceed to pass the following;

ORDER

IA No. I filed by the plaintiff U/O. 39 Rule 1 and 2 R/w sec. 151 of CPC is hereby allowed.

The defendants or their agents or anybody acting on their behalf are temporarily restrained from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property till disposal of the suit.

(Dictated to stenographer, after her transcription, revised, corrected and then pronounced by me in the open Court on 15th day of April, 2019)

(B.G.SHOBHA)
Civil Judge & JMFC,
Harapanahalli.

(Order pronounced in the open court vide separate)

ORDER

***IA No. I filed by the plaintiff
U/O. 39 Rule 1 and 2 R/w sec. 151
of CPC is hereby allowed.***

***The defendants or their agents
or anybody acting on their behalf
are temporarily restrained from
interfering with the peaceful
possession of the plaintiff over the
suit schedule property till disposal
of the suit.***

C.J. & JMFC, Harapanahalli

(Order pronounced in the open court
vide separate)

ORDER

**I.A. No. I filed by the defendant
U/s.151 of CPC are hereby allowed
on payment of cost of Rs.300/-.**

**Defendant is permitted to file
their written statement.**

Civil Judge & JMFC.,
Harapanahalli.

For payment of cost and written
statement of defendant by:
23.08.2018.

Civil Judge & JMFC.,
Harapanahalli.