

KADG420017802024



IN THE COURT OF THE CIVIL JUDGE AT HARAPANAHALLI.

**Present : Shri.Manu Sharma S.P.,
B.A.LAW.LL.M.**

Civil Judge and JMFC, Harapanahalli

Dated this 1st day of August, 2024

OS No.217/2024

Plaintiff/s:

Smt. Kenchamma Kadavvara and another

(Shri.M.N Adv.,)

-Vs.-

Defendant/s:

Smt. Kadavvara Tirukamma and others

(D-1 to 12 by Sri.G.B.M Adv.)

ORDER ON IA No.I

Plaintiff/s/Applicant/s:

Smt. Kenchamma Kadavvara and another

-Vs.-

Defendant/s/Opponent/s:

Smt. Kadavvara Tirukamma and others

ORDER ON I.A.NO.1

Plaintiffs have filed application under Order 39 rule 1 and 2 R/w Section 151 of CPC seeking to restrain Defendants from interfering in the peaceful possession and enjoyment of the Plaintiffs over the suit properties till disposal of the suit.

2. Application is supported by affidavit of Plaintiff No.1.

3. It is case of the plaintiffs that they have filed suit for permanent injunction against the Defendants to restrain them from interfering in the possession and enjoyment of the Plaintiffs over the suit properties. Plaintiffs have contended that one Talawara Kadavvara Ningappa S/o. Phakeerappa is husband of Plaintiff No.1 and father of Plaintiff No.2. Aforesaid Fakeerappa, husband of Defendant No.1 namely Hanumanthappa and husband of Defendant No.7 namely Nagappa and one Ningamma are the children of one Mallareppa and Hanumavva. During life time of Mallareppa there was oral partition in the family in respect of family properties between his aforesaid four children and they were residing separately. Aforesaid Mallreppa has not left behind any self acquired or ancestral properties.

4. Suit Item No.1 is government Parambok land and considering the long standing possession of husband of Plaintiff No.1 namely Talawara Kadavvara Ningappa S/o. Phakeerappa Tahasildar, Harapanahalli granted the said land by issuing hakku patra dated 01-03-1988 in his name as per proceedings No. Dis/R.E.V/Land D.R 33/1987-88 and accordingly records were mutated in the name of Talawara Kadavvara Ningappa S/o. Phakeerappa and he is in possession and enjoyment of the said land by cultivating the same. After his death Plaintiffs succeeded to the suit Item No.1 and they got mutated their names in the records as per M.R.No.H. 16/2023-24.

5. Suit Item No.2 is government Parambok land and considering the long standing possession of father of husband of Plaintiff No.1 namely Fakeerappa S/o. Mallareppa Settlement Officer, Ballari granted the said land by issuing grant certificate dated 15-02-1970 in his name and accordingly records were mutated in the name of Fakeerappa S/o.Mallareppa and continued in his name until 2010-11. Husband of Plaintiff No.1 is the only son of aforesaid Fakeerappa. After death of Fakeerappa when Plaintiff No.2 applied for mutation of records, Defendant No.1 and 7 objected for the same and it was treated as disputed matter and after enquiry Tahasildar passed an order dated 18-03-2011 to mutate the rerecords in the name of Plaintiff No.2 as per MR No. 27/2010-11 and accordingly name of Plaintiff No.2 came to be entered in the records and continued till 2024-25. Plaintiffs have made huge improvements over the suit lands by investing money for installation of borewell by raising loan in the banks and also by levelling the lands with the help of JCB, and Plaintiffs have also removed waste plants from the land. Defendants are interfering the possession of the Plaintiffs over the suit land. They are also interfering in the agricultural activities of the Plaintiffs in the suit lands. Plaintiffs have given complaint to the police against the Defendants alleging interference. But police have not taken any action stating that dispute is of civil in nature. Plaintiffs demanded partition in the properties standing in the name of some of the Defendants in different villages and therefore Defendants started interfering in the possession and enjoyment of the Plaintiffs over the suit properties. Hence, the suit and the application.

6. Defendants have filed objection by raising following contentions:-

Kadavara Mallarappa and his wife namely Kadavara Hanumavva had

three sons and one daughter. Fakeerappa, Nagappa and Hanumanthappa are the sons and Ningamma was their daughter and she was given in marriage long back and she is no more. Plaintiffs and Defendant No.6 belong to the branch of Fakirappa, Defendant No.1 to 5 belong to the branch of Hanumanthappa, and Defendant No.7 to 12 belong to the branch of K.Nagappa. After death of Mallarappa and Hanumavva his children continued in the joint family and when patta was granted in the name of Fakeerappa who is father of husband of Plaintiff No.1, all children of Mallarappa were cultivating the said Item No.1 jointly and considering the long standing possession of the family, patta was granted in the name of Fakeerappa as a elder member of the family for the benefit of entire family. There is no partition in the family till this date.

7. On 18-08-2008 there was family arrangement between husband of Plaintiff No.1 Ningappa and Defendant No.1 and Defendant No.7. In the said family arrangement, Defendant No.1 and 7 along with their sons were nominally given some portion of the lands and they are cultivating the same.

8. During the life time of husband of Plaintiff No.1 namely Ningappa he had filed suit for declaration and injunction against Defendant No.1 and 7 before this court as per OS No.106/2020 which came to be dismissed after contest and Ningappa had not preferred any appeal against the judgment and decree passed by this court in the said suit, as such it has reached finality and the Plaintiffs are also bound by said judgment and decree. Plaintiff No.2 during the pendency of the said suit got mutated his name in the records directly from the name of Fakeerappa who is his grand father as per MR No. 27/2010-11. Defendants have filed partition suit as per OS No. 151/2024 before the court of Senior Civil Judge, Harapanahalli and same is pending consideration and Plaintiffs are having knowledge about the same. Plaintiffs have sought interim

relief which is in the form of main relief and hence same cannot be granted. Based on said contentions Defendants prayed for dismissal of the suit.

9. Based on application and counter, following points arise for my consideration:-

- 1] Whether Plaintiffs have made out prima facie case for grant of temporary injunction?
 - 2] Whether balance of convenience lies in favour of plaintiffs in the present case?
 - 3] Whether Plaintiffs suffer irreparable loss and hardship if temporary injunction is not granted?
 - 4] What Order?
10. Heard arguments and perused records of the case.
11. My findings on above points are as here under:-
- Point No.1:- In the Negative.
- Point No2:- In the Negative.
- Point No.3:- In the Negative.
- Point No.4:- As per final order for following:-

REASONS

12. Point No.1:- It is the case of the Plaintiffs that, suit Item No.1 was granted to Ningappa who is husband of Plaintiff No.1 and father of Plaintiff No.2, and suit Item No.2 is granted to Fakeerappa who is father in law of Plaintiff No.1 and grand father of Plaintiff No.2 by the concerned authorities by issuing Hakku Patra and Grant certificate respectively by considering the long standing

possession in the respective items, and Plaintiffs have succeeded to the same after the death of Ningappa and Fakeerappa and Plaintiffs are in possession and enjoyment of the suit properties. Plaintiffs have contended that Defendants are strangers to the suit properties and in spite of the same they are interfering in the possession and enjoyment of the Plaintiffs over the suit properties. Per contra Defendants contended that Item No.2 was granted to Fakeerappa as an elder member of the family for the benefit of entire family and as such Plaintiffs cannot claim injunction, and another patta was issued in the name of Hanumavva W/o. Mallarappa. Defendants have contended that suit properties are joint family properties. Defendants have also contended that after the death of Mallarappa his three children namely Fakeerappa, Nagappa and Hanumanthappa succeeded to the suit properties jointly and after death of aforesaid 3 children their sons and daughters have jointly succeeded to the same, as such Defendants are also having rights over the suit properties and hence injunction cannot be granted. Defendants have further contended that Ningappa had filed suit for declaration and injunction and same is dismissed by this court. Defendants have contended that partition suit filed by them before the court of Senior Civil Judge, pending consideration.

13. Now it is pertinent to consider the documents produced by the Plaintiffs. First and foremost it is relevant to note that Plaintiffs have produced

grant certified issued by the Tahasildar Harapanahaalli in form No.1 which is standing in the name of husband of Plaintiff No.1 and father of Plaintiff No.2 by name Ningappa. Plaintiff has also produced form No.2 grant certificate issued by settlement officer Ballari in the name of Fakkirappa. It is to be noted that said certificate has been under Section 15 (1) of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948. It is relevant to note that Section 2 (8) of the said act defines term 'Land holder'. As per said definition land holder includes joint family and Darmila Inamadar. Under the said act land is granted to land holders, which would prima-facie indicate that land granted under said act is to the benefit of joint family. Therefore, in view of aforesaid certificate prima-facie it appears that item No.2 is granted in the name of Fakkirappa as elderly member fo the family and for the benefit of the joint family. Here Plaintiff has not produced any prima-facie material to show that at the time of grant in the year 1970 aforesaid Fakkirappa was separate from the joint family. So here whether Fakkirappa was member of the joint family at the time of grant made in respect of item No.2 or he was separate from the family is to be considered at the final stage of the case after recording the evidence. But has already stated the very spirit of the aforesaid act is to make grants to the whole family of the land holder. So far as item No.2 is concerned Plaintiff has produced voluminous documents including RORs commencing from 1983 up to 2009-2010 and mutation order in

the name of Plaintiff No.2. Here it is relevant note that husband of Plaintiff No.1 father of plaintiff No.2 viz., Ningappa had filed previous suit in O.S.No.106/2010 against the defendants for the relief of declaration and injunction contending that Defendants are not at all related to him or the present item No.2 which was suit property in the said suit. It is to be noted that said suit is came to be dismissed on merits. This court in the said suit has observed that Plaintiff in the said suit i.e., Ningappa had failed to prove that suit property was independent property of his father Fakkirappa. In the aforesaid suit Ningappa had contended before the court that present item No.2 i.e., land bearing Sy.No.59/1 was absolute property his father Fakkirappa and after his death he had succeeded to the same and as such he iis absolute owner of the said property. However, Court declined to grant reliefs to Ningappa for want of documents showing independent title of Fakkirappa over the suit property i.e., item No.2 in the present suit. Furthermore, in the said suit this court by referring to the evidence of PW-1 Ningappa had observed that Defendants in the said suit are relatives of Ningappa. So contention of the Plaintiff in the said suit that Defendants are strangers was turned down by this court. The judgment of this court in O.S.No.106/2010 would prima-facie indicate that there is a relationship between Ningappa and Defendants which in turn prima-facie shows that present Plaintiffs being wife and son of Ningappa are also related to Defendants. It is also relevant note that

said suit was dismissed on the ground that Plaintiffs in the said suit was not able to show the exclusive ownership of his father Fakkirappa. This would also prima-facie raises doubt with respect to absolute ownership of Fakkirappa who is grandfather of Plaintiff No.2 and father in law of Plaintiff No.1. Consequentially it also creates doubt in respect of absolute ownership of Plaintiffs over the said item No.2. Furthermore, as already discussed since term land holder defined under the aforesaid act includes joint family, prima-facie it appears that said grant in respect of item No.2 was made in the name of Fakkirappa for the benefit of joint family. Moreover, Defendants have produced documents showing pendency of partition between them and the present suit in the court of Sr.Civil Judge, Harapanahalli. Therefore, mere entry of name of Plaintiff No.2 and his father Ningappa, mutation orders and tax paid receipts pertaining to item No.2 are not helpful to the Plaintiffs for showing prima-facie case in their favour at this stage. Thus combined consideration of the definition word land holder under the act, observation made by this court in the previous suit that Plaintiffs are related to Defendants and pendency of partition suit between the parties would prima-facie indicate that both Plaintiffs and Defendants are having some sort of rights over the item No.2 and as such temporary injunction cannot be granted in favour of Plaintiffs and at the same stage it is to be held that Plaintiffs have not made out prima-facie case for grant of temporary injunction in respect of item No.2.

14. In so far item No.1 is concerned it is to be noted that it was not a subject matter of the previous suit bearing O.S.No.106/2010. Plaintiffs have produced grant certificate in form No.1 issued in the name of Ningappa who is husband of Plaintiff No.1 and father of Plaintiff No.2. It is clear from the said document that grant certificate is issued under the land revenue rules. Plaintiffs have contended that said certificate was issued in the name of Ningappa considering his long standing possession over the suit item No.1. Plaintiffs have also produced RORs, tax paid receipts in respect of the said item No.1. Plaintiffs have also produced certificate issued by the panchayath for taking electricity facility to the pump sets installed in the item No.1. However, as already stated in the previous suit this court has made an observation that Plaintiffs and Defendants are having relationship. As already pointed out Defendants have filed partition suit against the Plaintiffs in respect of both items involved in the present suit before the court of Sr. Civil Judge, Harapanahalli which is pending for consideration. It is to be noted that as per the contention of the Defendants suit properties are family properties and grants are made for the benefits of family. Since prima-facie it appears in view of observation made by the court in earlier suit regarding relationship between the parties and in view of pendency of partition between the same parties, whether grant certificate in respect of item No.1 is issued to Ningappa in his individual capacity or as a member of the joint

family is to be considered after full fledged trial. Here Plaintiffs have not placed prima-facie materials to show that their tie with joint family was severed and Ningappa was separated from the joint family as on the date of grant. So the said question i.e., whether Ningappa was separated from the joint family also requires trial. In this regard it is profitable to refer to the decision of Hon'ble High Court Karnataka in RFA.No.683/2003 disposed on 19.02.2013 between Subbarao Vs Laxman Rao wherein it was held that any grant made even in favour of member joint family it becomes his separate property unless it is shown that grant was intended on behalf of the joint family. The said decision would indicate that whether grant is made individually or to the family can be decided only after trial. As already discussed in this case also trial is necessary in view of observation with respect to relationship between the parties made by this court in the earlier suit and also in view of pendency of partition suit. Hence, in view of settled legal principle and also in view of factual matrix of the present case it is not possible to hold that the Plaintiffs are in exclusion possession of the suit property and they have made out prima-facie case for grant of temporary injunction. It is settled principle of law that no injunction can be granted against co-owners. Although at this stage this court cannot hold Defendants as co-owners, in view of above discussion prima-facie it appears that both parties are having some iota of rights in respect of the suit property

which has to be adjudicated after full fledged trial. Therefore, on this count also it is to be held that no prima-facie case is made out by the Plaintiffs for grant of temporary injunction. Learned counsel for the Plaintiffs has cited decision reported in 1999 (1) Kar. L.J.536 wherein it was held that if Plaintiff proves the possession is entitled for injunction. But said decision cannot be made applicable where it appears that both parties are having some sort of rights over the suit properties. Thus viewed from any angle it is to be held that Plaintiffs have not made out prima-facie case for grant of temporary injunction. Hence, I answer Point No.1 in the Negative.

15. Point No.2 and 3:-As these two points are interconnected they are taken up together for common discussion in order to avoid repetition. As already discussed, Plaintiffs have not made out any prima-facie grounds to grant of temporary injunction. Therefore, it is not possible to hold that balance of convenience lies in favour of Plaintiffs. Under such circumstances, it is also equally not possible to come to conclusion that if temporary injunction is not granted Plaintiffs would be put to irreparable loss or hardship. Hence, I answer point No.2 and 3 are in the Negative.

16. Point No.4:- For the reasons stated above I am of the opinion that, application filed by Plaintiffs is to be rejected. In the result, following:-

ORDER

Application filed by Plaintiffs under Order 39
Rule 1 and 2 read with section 151 of CPC is
hereby rejected.

No order as to cost.

(Dictated to the Stenographer transcribed and typed by him, the transcript revised and corrected by me, and then pronounced in the open court on this 1st Day of August 2024.)

**Civil Judge & JMFC,
Harapanahalli**