

KADG420023772022



**IN THE COURT OF THE CIVIL JUDGE & JMFC,
HARAPANAHALLI.**

Present

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

Dated this the 21st day of December 2023.

O.S.NO.281/2022

Plaintiff/s: Smt. B.Kotramma and others
(By Sri.S.G.T., Adv.,)

-VS-

Defendant/s: The Tahasildar, Harapanahalli and another
(By Sri. A.G.P Adv.,)

I.A.NO.II

Applicant/s: Smt. B.Kotramma and others
(Original plaintiffs)

-VS-

Opponents: The Tahasildar, Harapanahalli and
(Original defendants) another

ORDERS ON IA.NO.II

This is an application filed by plaintiffs U/Order 39 Rule 1 and 2 R/w Section 151 of CPC., seeking the relief of temporary injunction against the defendants restraining them from interfering the plaintiffs

peaceful possession and enjoyment over the suit schedule property till disposal of the suit.

2. In the affidavit, in support of the application, it is stated by this plaintiffs that, the government has been issued Form No.I/grant certificate in favour of the Lasi Barikara Kenchamma mother of Late. Siddamma on the basis of the possession of the suit schedule property. The said Barikara Siddamma who is none other than mother-in-law of plaintiff No.1 and grand mother of plaintiff No.2 and 3. Ever since she in peaceful possession and enjoyment of the suit schedule property. The said Barikara Kenchamma died on 22.04.1986. After the death of said Barikara Kenchamma, her only legal heir i.e., husband of plaintiff No.1 Barikara Ramappa S/o. Lasi Barikara Kenchamma is in peaceful possession and enjoyment of the suit schedule property and cultivating the same. After the death of her husband, on the basis of pothi varasu the Khata of the suit schedule property has been mutated in her name vide M.R.No.225/2011-2012 dated 30.07.2012. The defendants are the government officials, on 29.10.2022 the defendant No.1 has got issued notice to them to produce the document pertaining to the suit schedule property on or before 03.11.2022, otherwise they will taking legal action against them as per law. Hence, they have filed

the suit for a relief of declaration and permanent injunction against the defendants in respect of the suit schedule property. If the injunction is not granted they will put to great hardship. On the other hand, no hardship will be caused to other side. Hence, prayed to allow the application.

3. The defendant No.1 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 Assistant Commissioner, Harapanahalli has passed order No.L.N.D/C.R:01-2022-2023 dated 01.09.2022 and directed to the Tahasildar, Harapanahalli to remove the encroachment area of the suit schedule property bearing Sy.No.539/B measuring 0.84 cents by the plaintiffs and abolish the name of the plaintiffs and insert the Government in the ROR by following due procedure of law. As per the direction of the Assistant Commissioner, Harapanahalli, the Tahasildar, Harapanahalli conducted enquiry and came to the conclusion that the said land is paramaboke land it is public land and said land is non-grantable land and thereby abolish the name of plaintiffs and mentioned as Government in the ROR. The Tahasildar, Harapanahalli passed order on 05.11.2022 and directed to the Revenue Inspector,

Harapanahalli to conduct enquiry and take necessary action in this case. The plaintiffs have appeared before the Assistant Commissioner, Harapanahanalli and Tahasildar, Harapanahlli court and argued the matter on their behalf. Thereafter, the Assistant Commissioner and Tahasildar after hearing both side have passed the order. But the plaintiffs have not preferred any appeal before the appellate court. The plaintiffs have not issued notice U/Section 80 of CPC. The plaintiffs ought to have file this suit U/Section Land Revenue and Land reform Act. But the plaintiffs have filed this suit seeking declaration and permanent injunction against the defendants. Hence, the present suit is not maintainable. The court fee paid by the plaintiffs is insufficient. Hence, prayed to reject the application

4. Heard learned counsel for the plaintiffs and defendants and perused the materials on record.

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

- 1) Whether the plaintiffs have made out prima-facie case?
- 2) Whether the balance of convenience lies in favour of plaintiffs?

3) Whether the irreparable loss will be caused to them, 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** : As these points are inter related to each other, finding on one point bearing on other points, as such in order to avoid repetition of facts and for convenience sake, these points taken together for common discussion.

8. At the out set it is material to note that of person seeking permanent injunction as to prove that they have made out prima-facie case to go for trail. There 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 trail, 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 their favour if they have made out case of balance of convenience being in their favour and they 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 AIR (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 plaintiffs have made out prima-facie case or not?

9. In order to prove prima-facie case, the plaintiffs have produced copy of grant certificate/Form No.I issued by Tahasildar dated 16.08.1980 in respect land bearing Sy.No.539/B, certified copy of RTC land bearing Sy.No.539/B measuring 0.84 acres of Harapanahalli for the year 1974-75 to 1975-76, certified copy of RTC land bearing Sy.No.539/B measuring 0.84 acres of Harapanahalli for the year 1980-1981 to 1997-98, certified copy of land bearing Sy.No.539B1Bp5 dated 02.11.2022, copy of mutation order in M.R.No.16/1990-1991 dated 06.02.1991, copy of mutation order in M.R.No.H225/2011 dated 30.07.2012, survey sketch bearing Sy.No.539/B and notice issued by Tahasildar dated 29.10.2022.

10. On careful perusal of pleadings and documents produced by the plaintiffs, it appears that the plaintiffs have filed the suit for a relief of declaration to declare that they are the owners of the suit property and also sought for consequential relief of permanent injunction against the defendants. According to plaintiffs, they are owners of the suit property and the government has been issued grant certificate in favour of Lasi Barikara Kenchamma D/o Late. Siddamma. After the death of said Barikara Kenchamma, her only legal heir i.e., husband of plaintiff No.1 Barikara Ramappa S/o. Lasi Barikara Kenchamma is in peaceful possession and enjoyment of the suit schedule property and cultivating the same. After the death of her husband, on the basis of pothi varasu the Khata of the suit schedule property has been mutated in her name. Now the defendants are trying to evict them from the suit schedule property.

11. Per contra, the defendants have taken specific contention that, the Assistant Commissioner, Harapanahalli has passed order No.L.N.D/C.R:01-2022-2023 dated 01.09.2022 directed to the Tahasildar, Harapanahalli to remove the encroachment area of the suit schedule property bearing Sy.No.539/B measuring 0.84 cents by

the plaintiffs and abolish the name of the plaintiffs and insert the Government in the ROR by following due procedure of law. As per the direction of the Assistant Commissioner, Harapanahalli, the Tahasildar, Harapanahalli conducted enquiry and come to the conclusion that the said land is paramaboke land, it is public land and said land is non-grantable land and thereby abolish the name of plaintiffs and mentioned as Government in the ROR. The Tahasildar, Harapanahalli passed order on 05.11.2022 and directed to the Revenue Inspector, Harapanahalli to conduct enquiry and take necessary action in this case.

12. In the instant suit, the plaintiffs are tracing title over the suit property on the basis of grant certificate issued by the Tahasildar, Harapanahalli. In support of their case, the plaintiffs have produced grant certificate. On perusal of the same, it appears that, the Tahasildar, Harapanahalli had granted Form No.I/grant certificate in favour of Barikara Kechavva D/o. Siddamma on 18.06.1980 by mentioning extent and boundaries. The record of right of the year 1974-75 discloses that name of Barikara Kenchavva is mentioned to an extent of 84 cents as cultivator, in owners column it is mentioned as Paramaboke land. Further this document disclose that, in column

No.11 it is mentioned as in Halekote Anjeneya temple Kanthewara Swamy temple, Kamma temple and Jain Basadi.

13. It is undisputed fact that the suit property originally belongs to Government land. It is also undisputed fact that, to an extent of 6.48 acres given to Kamma temple, to an extent of 2.89 acres given to Jain Basadi and to an extent of 6.04 acres given to Anjineya Temple out of an extent of 179.65 acres situated at Harapanahalli village. As per Writ Petition No.54494/2017(GM-RES), it could be seen that, one Sarkari Jameenugala Bhoogallatana Virodhi Vediki (Forum Against Encroachment of Government Land) have approached Hon'ble High Court of Karnataka, Bengaluru against government represented by its Secretary, Bengaluru, Deputy Commissioner, Davanagere, the Assistant Commissioner, Harapanahalli, The Tahasildar Harapanahalli and the Town Municipality, Harapanahalli to direct the said respondents to take action to clear all encroachment in land bearing Sy.No.539/B measuring 6.48 acres, 2.89 acres and 6.4 acres out of to an extent of 179.65 acres situated at Harapanahalli. Wherein the Hon'ble High Court of Karanataka has directed to respondent No.5/Town Municipality, shall take action for removal of the encroachment in

accordance with law if the encroachment in question falls within the limits of corporation. Further, directed to respondent No.2 and 4/Deputy Commissioner, Davanagere and defendant No.1 herein shall take action for removal of the encroachment in accordance with law if the encroachment in question beyond the Town Municipal Limits and further directed to both parties shall take action removal of encroachment in accordance with law after affording an opportunity of hearing to all the necessary parties.

14. Main points for consideration is whether the plaintiffs are encroacher of the suit property or not, whether the defendants have cancelled the patta or not, whether the defendants have taken action for removal of encroachment in accordance with law or not, whether the defendants have given opportunities to the plaintiffs or not are to be looked into after full fledged trial. At this stage, this court cannot hold mini trial. Absolutely, there is no material on record to show that the plaintiffs have putting shed by encroaching the government land and also there is no material on record to show that, they have taken action against plaintiffs by following due procedure of law.

15. Admittedly, the suit property is standing in the name of plaintiffs and as such if the defendants are removed the plaintiffs' from the suit property, it will irreparable loss to the plaintiffs. Considering all these facts, in case ad-interim injunction is granted no hardship and injury would be caused to other side, purpose for granting temporary injunction is to preserve property till rights of the parties in suit decided. At this juncture the plaintiffs have made out prima-facie case and balance of convenience lies in their favour and no irreparable loss would be caused to the defendants if temporary injunction is granted. **Accordingly, point No.1 to 3 are answered in the Negative.**

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

ORDER

*I.A. No.II filed under Order 39
Rule 1 and 2 R/w Section 151 of C.P.C.,
by the plaintiffs is hereby rejected.*

No order as to costs.

(Dictated to the Stenographer directly on computer, revised by me and then pronounced in the open court this the 20th day of December 2023).

(Fakirawwa Kelageri)

Civil Judge & JMFC,
Harapanahalli.