

IN THE COURT OF CIVIL JUDGE & JMFC, SINDAGI

**Present: Sri. ASHAPPA,
B.Com., LL.M.
Civil Judge & JMFC, Sindagi.**

Original Suit No.222/2020

Dated this 08th day of October 2020

Plaintiff/s:

1. Pramodacharya S/o. Krishnacharya Jahagirdar
@ Kulkarni through SPA
Kasappa S/o. Irappa Alagur
Age:56 years, Occ: Agriculture,
R/o.Shivanagi, now at Padaganur,
Tq.Devar Hipparagi, Dist. Vijayapur.

(By Sri.S.M.Hiremath, Adv.)

// Versus //

Defendant/s:

1. Ambawwa W/o. Devindrappa Pattar @ Badiger
R/o. Padaganur and others.

(D-1 & 3 by Sri.P.M.Badiger, Adv.)

I.A.No.I

Applicant/ plaintiff :

1. Pramodacharya S/o. Krishnacharya Jahagirdar
@ Kulkarni through SPA
Kasappa S/o. Irappa Alagur

Versus

Opponent/ Defendants :

1. Ambawwa W/o. Devindrappa Pattar @ Badiger
and others

ORDERS ON I.A.No.I

The plaintiff through his SPA has filed this suit against the defendants seeking relief of declaration and injunction. Along with suit I.A.No.I U/O.39 Rule 1 and 2 of CPC is filed praying this court for grant of temporary injunction restraining the defendants or their agents or any body claiming through them from causing interference in the peaceful possession and enjoyment of suit property land bearing Sy.No.162/1 measuring 02 acres of Padaganur village Tq: Devar Hipparagi, till disposal of the suit.

2. Brief facts of the case are as under;

In support of the I.A. the SPA of plaintiff has filed affidavit. In the affidavit it is stated that he is the owner and possessor of land Sy.No.162/1 measuring 2.00 acres having bounding eastern side land of Rudrappa Yamanappa Pattar, Western side Mallappa Bagappa Basalagavi, northern side Sy.No.162/2 and towards southern side land of defendants is situated. It is further stated that previously the father of plaintiff Krishnacharya S/o.Srinivascharya Jahagirdar was the owner and in possession of land Sy.No.162/1 measuring 5 acres 14 guntas and Sy.No.162/2 measuring 3 acres

24 guntas. The plaintiff's father were residing at other place and therefore this SPA is cultivating the said land on crop sharing basis.

3. The defendants and their ancestors Devindrappa are no way concerned to the family of the plaintiff, but the said Devindrappa filed form No.7 before Land Tribunal, Sindagi. After due enquiry land tribunal Sindagi has been granted the land Sy.No. 162/1 measuring 3 acres 14 guntas dated 27.8.1980 and its file No.KLR-SR.No.799/1980. The remaining extent of land measuring 2.00 acres was left to the family of Krishnacharya Jahagirdar and same has been cultivating by the SPA, till today. The ancestors of defendants Devindrappa in collusion with revenue authorities has got entered his name to the entire extent of land Sy.No. 162/1 measuring 5 acres 14 guntas and taking undue advantage of his name appearing in the RTC is interfering in the possession of the plaintiff and denying the title of the plaintiff. Therefore, cause of action arose to file the suit and also filed the present I.A. seeking for the relief of interim orders.

4. After appearance of the defendants through their counsel have filed objections to said I.A. under discussion. It is stated in the objection that the plaintiff has filed this suit by suppressing the real

facts. The claim of the plaintiff as well as in the I.A. and suit are one and the same and such relief cannot be granted by this court. It is further stated that deceased Devindrappa was owner and possessor of land Sy.No.162/1 and after his death same was transferred in the name of defendants and the name of defendants appearing as joint owner and possessors to the extent of 5 acres 14 guntas.

5. It is further stated that the plaintiff has filed appeal before Asst. Commissioner, Indi challenging the mutation order and the Asst. Commissioner Indi passed the order in favour of defendants. It is further stated that the Land Tribunal Sindagi has granted the suit land Sy.No.162/1 measuring 5 acres 14 guntas in favour of the deceased Devindrappa. The plaintiff has not challenged the order of the Land Tribunal Sindagi, before competent authority and has filed this false suit to harass the defendants. On these among other grounds prays to reject the I.A.

6. Heard the arguments.

7. After hearing of both side counsels the following points arises for my consideration are as under;

1. Whether the applicant/ plaintiff proves he has made out prima-facie case in his favour?
 2. Whether the balance of convenience lies in favour of plaintiff?
 3. Whether the plaintiff suffers irreparable loss if the temporary order is not granted?
 4. What order?
8. My answer to the above points are as under;

Point No.1 : In Negative
Point No.2 : In Negative
Point No.3 : In Negative
Point No.4 : As per final order, for the
following;

: R E A S O N S :

9. **POINT No.1 :** The plaintiff has filed this present suit for the relief of declaration and injunction. The plaintiff has filed present I.A. restraining the defendants from causing interfering in his peaceful possession and enjoyment over the suit property.

10. The existence of prima-facie case is an indispensable requirement to have the order of temporary injunction envisaged Order 39 Rule 1 and 2 CPC. Here it is the contention of the plaintiff that he is the owner of land Sy.No.162/1 measuring 2 acres 00 Guntas. The plaintiff has taken up the contention that said property

is acquired from his ancestors. The plaintiff is residing in other place and suit property is cultivating by the SPA of plaintiff on crop sharing basis. The materials averments of the affidavit are categorically denied by the defendants. To grant the temporary injunction the plaintiff has to make out the three golden principles for granting temporary injunction i.e. to say the plaintiff has to make a prima-facie case to go into trial, he has also to make out the balance of convenience lies in his favour and the plaintiff is bound to establish prima-facie that he is going to suffer irreparable loss and injury which cannot be compensated in terms of money, if injunction is not granted.

11. The prima-facie case means the court must be satisfied with the applicant has raised a bona-fide dispute which needs investigation and the decision on merits and facts and there is a probability of the applicant being entitle to the relief claimed by him. The burden is on the plaintiff to prove there is prima-facie case in his favour. When determining whether the prima-facie case has been made out the relevant consideration is whether on evidence laid it is possible to arrive at the conclusion in question or

not, whether what is the only conclusion which could be arrived on that evidence.

12. Keeping above principles in my mind, the contents of the parties and arguments of both side counsels, I have gone through documents filed by the plaintiff under list. The plaintiff has filed totally 19 documents. Document at Sl.No.1 is the original SPA executed by the plaintiff in favour of SPA to proceed the case on his behalf. The plaintiff has also filed Revenue Records pertaining to suit land Sy.No.162/1 from 1963-64 to 1999-2000. On perusal of RTC 1963-64 to 1969-70, 1970-71 to 1981-82 the name of Krishnacharya S/o. Srinivascharya appearing in the column No.9 and 12 as owner and possessor to the extent of 5 acres 22 guntas. The plaintiff himself stated in the plaint that out of said land the Land Tribunal Sindagi has granted 3 acres 14 guntas in favour of Devindrappa S/o. Rudrappa Badiger i.e. father of defendants. In support of the case of the plaintiff the defendant also filed form No.7, 10, check-list, notices and also filed copy of the order of the Land Tribunal, Sindagi. On perusal of order of Land Tribunal, Sindagi on file No.KLR-SR-799 dated 27.9.1980 which reads as under;

ದಾವಾದ ಜಮೀನು ಗ್ರಾಮ	ಸರ್ವೆ ನಂ.	ಕ್ಷೇತ್ರ	ಆಕಾರ
ಪಡಗಾನೂರ	162/1	5-14 ಗುಂಟೆ	3.00
	162/2	3-24 ಗುಂಟೆ	3.10

ಈ ಮೇಲಿನ ಕಾರಣಗಳಿಂದ ಅರ್ಜಿದಾರನು (ದೇವಿಂದ್ರಪ್ಪ) ಸರ್ವೆ ನಂ.162 ಇದಕ್ಕೆ ರೈತನೆಂದು ತೀರ್ಮಾನಿಸಿ ಅವನನ್ನು ಅನುಭೂಗದಾರನೆಂದು ನೋಂದಾಯಿಸಬೇಕೆಂದು ಹಾಗೂ ಸರ್ವೆ ನಂ.162/2 ಇದಕ್ಕೆ ಅವನು ರೈತನಾಗದಿದ್ದರಿಂದ ಆತನ ಅರ್ಜಿಯನ್ನು ಕಿತ್ತಿಹಾಕಬೇಕೆಂದು ಭೂಸುಧಾರಣೆ 1961 ಕಲಂ.48 ಎ (4) ರನ್ವಯ ಹುಕುಂ ಮಾಡಿದ್ದು.

On perusal of above portion of order of Land Tribunal, it discloses that the land tribunal has granted Sy.No.162/1 measuring 5 acres 14 guntas in favouro f Devindrappa, but rejected form No.7 in respect of Sy.No.162/2. On reading entire order of the land tribunal, it is nowhere mentioned the land tribunal granted to the extent of 3 acres 14 guntas in favour of said Devindrappa and there was remaining portion measuring 2.00 acres is left to the plaintiff. Other records filed by the plaintiff also shows that the name of deceased Devindrappa got entered as per M.E.No.2187 dated 24.1.1985. From the date of said mutation order the name of Devindrappa was entered in the revenue records to the extent of 5 acres 14 guntas. After demise of said Devindrappa the name of

these defendants appearing as joint owners and possessors as per M.R.No.H-102/2018-19 dated 6.8.2019.

13. It is specific contention of the plaintiff that land tribunal Sindagi has granted land Sy.No. 162/1 measuring 3.14 guntas in favour of Devindrappa and left 2.00 acres of land in favour of plaintiff. But to show this, no any single document has been produced by the plaintiff. Even the plaintiff has not produced the RTC to show his name is appearing to the extent of 2.00 acres of land Sy.No.162/1. Even the plaintiff has not filed any supporting affidavits of adjoining land holders to show the SPA of plaintiff is cultivating the said land on crops basis. Hence the plaintiff has not made out any prima-facie case in his favour to grant injunction as prayed in the I.A. Accordingly I answered point No.1 in the Negative.

14. **Points No.2 and 3 :** In view of the discussion made above, the plaintiff has not filed documents to prove his possession over the suit schedule property. Therefore the question of interference by the defendants as stated in the application does not arise. If the injunction is granted in favour of the plaintiff definitely the defendants will put into trouble than the plaintiff. The plaintiff will

not suffer any irreparable injury and balance of convenience not lies in his favour. Accordingly, these two points are answered in the Negative.

15. **Point No.4** : For the reasons cited to the above points, I proceed to pass the following:

ORDER

IA.No.I filed by the plaintiff under Order 39
Rule 1 and 2 of CPC is hereby rejected.

(Typed to my dictation directly on computer by the stenographer, corrected, signed by me, and then pronounced in the open Court on this the 08th day of October 2020)

(ASHAPPA)
Civil Judge & JMFC, Sindagi