

IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC.,
YADGIRI

:- PRESENT :-

SRI. JAGADISH KITTUR B.A. LL.B.,
Addl. Civil Judge & JMFC., Yadgiri

OS No. 84/2026

DATED ON THIS THE 06th DAY OF JULY 2026

Balappa S/o Late Chinnanna Yelvar and others

Plaintiffs

V/s

Bhirappa S/o Narasappa

Defendant

ORDER ON IA.No.I

Balappa S/o Late Chinnanna Yelvar and others

Petitioners/Plaintiffs

V/s

Bhirappa S/o Narasappa

Respondent/Defendant

The learned counsel for plaintiffs filed an application U/o XXXIX Rule 1 and 2 of CPC to restrain the defendant from not to take up any sort of construction work over the suit land bearing Sy.No.33/2 measuring 00 cares 19 guntas situated at village Idloor, Tq: Gurumatkal, Dist: Yadgiri, till disposal of the suit.

2. It is the case of the plaintiffs that, the father of the plaintiffs was owner and possessor of suit property bearing Sy.No.33/2 measuring 00 acres 19 guntas situated at Village Idloor, Tq: Gurumatkal, Dist: Yadgiri, same is bounded as East: land of Sambashiva, West: Land of Iranna, North Canal and South: Road. The father of the plaintiffs expired about 40 years ago, leaving behind plaintiffs and their mother. Till his demise his name was appearing in ROR. Thereafter the name of the plaintiffs mother, namely Smt. Kistamma, came to be entered in the ROR by virtue of MR.No.24/2005-06 dated 11.08.2005. Till date her name is appearing in ROR even though she expired on 27.11.2023, leaving behind the plaintiffs. The plaintiffs further state that, the suit land is adjoining to Gramatana and therefore not cultivable land. With the permission of the plaintiffs, some villagers have been using the said land. The plaintiffs further state that, they are the joint owners and possessors of suit property, the same being their ancestral property.

3. The defendant, being a stranger to the suit property, has started construction of a cattle-shed over the said property. Though the plaintiffs restrained the defendant from carrying

out such construction, the defendant, being an influenced person and supported by gunda elements, threatened the plaintiffs that he would proceed with the construction during the summer. The act of the defendant is illegal and unauthorized; hence, the plaintiffs have filed the present suit seeking the relief of permanent injunction. The plaintiffs further submit that, they have made out prima-facie case and that the balance of convenience lies in their favour. On these grounds, the plaintiffs have prayed that the application be allowed and have sought temporary injunction against the defendant from carrying out any construction work over the suit property.

4. Per contra, the defendant has filed the written statement, and also submitted a memo stating that, the contents of the written statement may be treated as objections to IA.No.I. On perusal of the written statement, the defendant has denied the case of the plaintiffs. He stated that, one Sri. Chinnanna S/o Balappa R/o Idloor, was the owner for 20 guntas out of 01 acre 37 guntas in Sy.No.33/2, and he was in possession of the said extent until his demise on 10.12.2000. Thereafter, by virtue of inheritance, his wife, Smt. Kistamma

became the owner and possessor to the said extent. Even to this day, the name of Kistamma is nominally reflected in the ROR. It is further contended that, during her life time, Smt. Kistamma, for the benefit of the family, sold the entire extent of 20 guntas to the various interested purchasers. The respective purchasers have constructed houses and are residing peacefully in the suit property and necessary amenities such as roads, drainage and water connections have been provided to the said property. Hence, it is contended that the plaintiffs are neither the owners and nor in possession of the suit property. It is further stated that the defendant has also purchased 2½ guntas (measuring East-West 62 feet, North-South 44 feet, total area of 2728 Sq. Feet) out of the suit property from Smt. Kistamma for a valuable consideration of Rs.5,000/-. The mother of plaintiffs, i.e., Smt. Kistamma, executed a Kararu patra on Rs.50/- stamp paper dated 21.01.2009, on which the present plaintiffs and Kistamma affixed their thumb impressions/signatures, and same was duly attested by witnesses. Since the date of purchase for about 17 years, the defendant has been in continues possession and enjoyment of the said extent of 2½ gunta. The defendant had constructed a

hut therein and was residing in it; however, due to its dilapidated condition, the defendant now intends to construct a new house. For this purpose, he has stored building materials such as stone and sand by incurring substantial expenses, and pillars have already been erected on the said 2½ gunta. It is further contended that, with an intention to extract more money, the plaintiffs have instituted the present false suit only to harass the defendant, and there is no cause of action for the suit, as the plaintiffs have no right, title and interest on the suit property.

5. Further it is contended that, plaintiff No.3 alone moved an application before the Tahasildar Gurmatkal, seeking mutation of his name over the suit property. After hearing both parties i.e., plaintiff No.3, the defendant and other purchasers, the Tahasildar Gurumatkal by order dated 30.09.2024, directed maintenance of status-quo. Thereafter, the plaintiffs jointly moved an application before Tahasildar Gurumatkal seeking mutation of their names over the suit property. The defendant and other purchasers objected to the said application for mutation and produced tax paid receipts in support of their possession and enjoyment. Upon consideration

of the same, the Tahasildar Gurumatkal, once again passed an order directing maintenance of Status-quo.

6. Further it is contended that, Sri. Chinnanna and Smt. Kistamma had four children. One Smt. Kamala, who is the sister of plaintiffs, has not been impleaded as a party to the suit, and therefore the suit is not maintainable for non-joinder of necessary party. It is further contended that the plaintiffs have not challenged the ownership of other purchasers, and in the absence of a prayer for declaration, a suit for bare injunction is not maintainable. On these grounds the defendant has prayed for dismissal of the present application with costs.

7. Heard both the counsels.

8. Upon hearing the argument and perusal of the material placed on records the following points arise my consideration.

POINTS

1. Whether plaintiffs have made out prima-facia case?
2. Whether balance of convenience lies in their favour ?
3. Whether any irreparable loss caused to the plaintiffs, if T I is not granted and which is not compensated in terms of money?

4. What order?

9. My findings to 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 final order
for the following:

REASONS

10. Point No.1:- It is the case of the plaintiffs that, they are the absolute owners and possessors of the suit property. The father of the plaintiffs was the owner and possessor of the suit property. After his demise, the mother of the plaintiffs became the owner of suit property by virtue of MR.No.24-2005-06 dated 11.08.2005. Even after her demise, the name of mother of plaintiffs continued in ROR. The plaintiffs are presently in actual possession and enjoyment of the suit property.

11. In support of their case, the plaintiffs have produced manual records of rights for the year 1988 to 2001 in respect of Sy.No.33 Idloor village. On perusal of the said ROR, which denotes that, the name of Chinnanna appeared i.e., the father of plaintiffs to an extent of 20 guntas. The Plaintiffs have also

produced computerized ROR for the year 2001 to 2005 wherein also the name of Chinnanna appeared. Further plaintiffs have produced ROR for the year 2011 to 2025-26 wherein the name of Kistamma appeared to an extent of 19 guntas.

12. Further, the plaintiffs submit that, the suit land is adjoining to Gountana of village, therefore it is not cultivable. It is stated that some of the villagers have been using the land with permission of plaintiffs. Taking the undue advantage of the same, defendant is illegally putting up construction on the suit property. The plaintiffs have also produced photographs of suit property, which disclose that building material have been stored therein.

13. On the other hand, the defendant has denied the entire case of the plaintiffs. He contends that, he is the purchaser of 2½ guntas in Sy.No.33/2 under a Kararu patra dated 21.01.2009 on stamp paper of Rs.50/-. It is further contended that the plaintiffs, their mother and the attesting witnesses have affixed their thumb impressions/signatures on the said Kararu patra. The defendant claims that he has been in possession of the said extent of 2½ guntas since 2009, and

the possession was handed over to him by the plaintiffs in the year 2009 itself i.e. about 17 years ago.

14. The defendant has produced several documents in support of his case. Such as ROR, mutation registers, applications, objections filed before Tahasildar Gurumatkal, tax paid receipts, photo copies, original Kararu patra, Google map, and village map. On perusal of the applications and objections filed before Tahasildar Gurumatkal which denotes that, plaintiffs had moved an application seeking mutation of their names over the suit property. The defendant, along with other villagers, filed objections to the said mutation on the ground that they have purchased entire suit property. Considering the said circumstances the Tahasildar Gurumatkal passed an order directing maintenance of Status-quo.

15. The defendant specifically contends that, the mother of plaintiffs Smt. Kistamma had sold the entire extent of 20 guntas of land to various purchasers. It is further contended that all such purchasers have constructed houses in their respective portions, and accordingly the defendant has also purchased a portion therein. The defendant has produced original unregistered Kararu patra dated 21.01.2009. Hence,

defendant submits that, no portion of the suit property remains available to the plaintiffs and that they are not in possession of any part thereof. The defendant has also produced affidavits of Sri. Nagappa S/o Dodda Bhimshappa @ Monappa, Beerappa S/o Bhimshappa, Siddappa S/o Dodda Bhimshappa @ Monappa and Tippanna S/o Bhimshappa, wherein they have stated that, they are purchasers of portions of the suit property. They have affirmed that they are in possession of their respective portions. Accordingly defendant also claims to be a purchaser and states that he had a hut on his portion and, after it became dilapidated condition he has commenced constructing of a new house. Further, the defendant has produced tax paid receipts pertaining to various purchasers. On perusal of the said receipts, it is evident that taxes have been paid to the Grama Panchayath in respect of their respective portions. The defendant has also produced Google map indicating that the entire suit property is covered with houses and other structures. On perusal of the photographs produced, it is seen that pillars have been erected and building materials have been stored in the suit property.

16. On perusal of all the material placed on record, it prima facie appears that the defendant is in possession of portion of the suit property. Whether such possession is legal or illegal is a matter of trial. Even assuming that the defendant is in unlawful possession, he cannot be dispossessed except in accordance with due process of law. However on perusal of photographs produced, the defendant has already under taken construction work on a portion of the suit property.

17. It is well-settled law that, when parties to proceedings remain silent for a considerable period and permit the opposite party to deal with the property exclusively, such parties are not at a later stage entitled for the relief of injunction. Under such circumstances, if the ongoing construction is restrained, the defendant would be put great hardship. The proposition of law is supported by the judgment of **Hon'ble Supreme Court** reported in **(2008) 11 SCC 1** in between **Mandali Ranganna and others V/s T. Ramachandra and others**, in the said judgment at para No.21 and 22 it is held that,

Para No.21: while considering an application for grant of injunction the court will not only take in to consideration the basic elements in relation their

to namely existence of prima-facie case balance of convenience and irreparable injury, it must also take in to consideration the conduct of the parties.

Para No.22: Grant of injunction is an equitable relief a person who had kept quiet for a long time and allowed another to deal with the property exclusively, ordinarily would not be entitled to an order of injunction. The court will not interfere only because the property is valuable one.

In the case on hand the alleged unregistered Kararu patra relied by the defendant could be looked into collateral purpose about his possession.

ILR 1998 KAR 419 between Basavaraj Shivrama Gowda Patil V/s Mahesh. The Hon'ble High Court of Karnataka has held in para No.9 that, "It is well settled law in this country that, where a person is in his settled possession of the property, even on the assumption that, he had no right to remain on the property, he cannot be dispossessed by the owner of property except by recourse of law." Therefore the said judgment is very much applicable to the case on hand.

ILR 1999 KAR 1451 between Satyam @ Ramayya and others V/s Karnataka Milk padaration cooperation Ltd., in the said case

Hon'ble Lordship has held that, where a trespasser is in settled possession of the land, is entitled to resist or defend his possession even as against the rightful owner who tries to dispossess him.

In this case also on perusal of tax paid receipts and photographs it appears that defendant is in settled possession. Therefore he cannot be dispossessed without due process of law.

*Further as per judgment of Hon'ble Supreme Court reported in **2022 SCC Online SC 258** between **Padiyar P Channaji v/s Maniben Jasamalbai**. It is held that in suit for permanent injunction, in ordinarily injunction cannot be issued against true owner or title holder in favour of a trespasser or a person in lawful possession, however injunction may be granted even against true owner of property, but only when person seeking relief is in lawful possession and enjoyment of property and also legally entitled to be in possession and cannot be dispossessed, except by due process of law.*

18. Therefore as per the said observation in this case also the defendant is in settled possession, so he cannot be dispossessed without due process of law. Therefore the said

judgment is very much applicable to the case on hand. Therefore as per the above said judgments the defendant can protect his possession against the plaintiffs.

19. However, if the defendant proceeds with construction work on the suit property, the same shall be at his own risk. Therefore at this stage the plaintiffs have not made out any prima-facie case. Hence my answer on **point No.1 in the Negative.**

20. POINT NO.2 AND 3: These points are interlinked with each other, hence they are taken up together for common discussion in order to avoid the repetition of facts. Since the plaintiffs have not made out prima-facie case, the question of ascertaining balance of convenience and irreparable loss and injury to plaintiffs does not arise. If there is no prima-facie case at all or the case put forth is having very little base of being accepted by the Court, the further questions of hardship and irreparable injury need not be considered. The plaintiffs have not made out that any hardship or inconvenience would be caused to them, if the order of temporary injunction is refused or not granted. The other aspects contended by both sides are matter of trial and at this stage the plaintiffs have not made out

that the balance of convenience would lie in their favour for grant of temporary injunction and they have not made out that irreparable loss or injury would be caused to them. Therefore, I answer **Point No.2 and 3 in the Negative.**

21. POINT No.4:- Forgoing discussion and observation I pass the following.

ORDERS

I.A.No.I filed by the plaintiffs U/o.
XXXIX Rules 1 and 2 of CPC is hereby
dismissed with cost.

(Directly Dictated to the Stenographer on computer, printout taken, corrected and then pronounced by me in the open court today this the 06th day of July 2026)

(JAGADISH KITTUR)
Addl. Civil Judge & JMFC.,
Yadgiri.