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**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC,
BELAGAVI**

Present: **SMT. B.G.SHOBHA, M.A., LL.B.,**
Prl. Civil Judge & JMFC,
Belagavi.

Dated : This the day of 31st July 2021.

O.S. NO.746/2020

Plaintiff/s : 1. Sri. Manjunath Bahubali Majagaon.
(Rept. by Sri. S.I Ganamukhi, Advocate)

-Vs.-

Defendant/s: 1. Sri. Sarju Mallappa Kangalgouda and
another.
(Rept., by Sri. Y. G. Gumaj, Advocate)

I.A. No.I

Applicant : Sri. Manjunath Bahubali Majagaon.

-Vs.-

Opponent : Sri. Sarju Mallappa Kangalgouda and
another.

**ORDERS ON IA. No.I U/O. 39 RULE 1 AND 2 R/W SECTION 151
OF CPC FILED BY THE PLAINTIFF:**

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This is an application filed by the plaintiff with a prayer to grant an ad-interim temporary injunction to restrain the defendants, their agents, servants or anybody acting on their behalf from disturbing, obstructing and dispossessing the peaceful possession, use and enjoyment of plaintiff-society over the suit property illegally with due process of law till disposal of the suit.

2. Said application is accompanied with an affidavit sworn by the Director of the plaintiff, wherein he has stated that he is director and authorised signatory of plaintiff-society and he is fully conversant with the facts of the case. He is running ITI college in the suit property as per lease agreement dated 06.05.2010 through their society by name Shri. Arihant Education Society, Mahaveer Nagar, Halaga, Belagavi providing education to the students and rural area. He is in actual physical possession, use and enjoyment over the suit property. But, due to COVID-19 pandemic situation since march-2020 the entire nation is lock-down. Hence, he could not run the college during that period. Later on, in the month of May-2020 the plaintiff and managing committee members of society requested the

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defendant No.1 and his son Mallinath to make payment of collected fees of the students and submit all the accounts and documents of said college. At that time, due to COVID-19 situation, the defendants are unable to accumulate funds to the extent of Rs.27,00,000/- payable to the plaintiff-society and therefore the defendants requested the plaintiff to get extend the lease of the suit property for another two years and meantime they will arrange the funds and make payment. Accordingly, considering the situation, plaintiff has provided an opportunity to them, but inspite of that the defendants did not keep their words. Recently in 3rd week of August-2020 the defendants with an oblique intention to create hurdles in a smooth administration of plaintiff's college, at the instigation of ill-wishers pressurizing the plaintiffs to vacate the suit property. The defendant No.2 at the instigation of defendant No.1 illegally stored building materials in front of plaintiff institution by preventing the plaintiff, staff, students from entering into the college. If the defendants succeed in doing such illegal activities, it will leads to multiplicity of proceedings and the plaintiff will be put to heavy loss and hardship

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and inconvenience lies in providing education to the students. The plaintiff got prima-facie case and balance of convenience lies in his favour. If the application is allowed, no loss will be caused to the otherside. On the other hand, the plaintiff will be put to irreparable loss and hardship. Hence, prayed to allow the application.

3. The defendants have filed the written statement cum objections to said application, wherein they have denied entire allegation of the plaintiff made in the plaint and in I.A. Further the defendant No.1 has contended that since 2016 till this date the plaintiff has not paid the rent as agreed between them. The plaintiff, chairman and other three directors being the family members have created false and bogus Board of Directors and management committee in order to gain wrongfully in the name of the education society. After completion of lease period, the defendant No.1 gave notice to the plaintiff requesting him to vacate the suit property and hand over the actual physical possession of the same. The suit property is in dilapidated condition and endanger to human being, it needs repair and since 2016 till this date, the plaintiff has not made

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any payment of rent. Hence, defendant No.1 informed to the plaintiff that the suit property is required for running business to his son after getting done repair work. For that, the plaintiff undertakes to vacate and hand over the suit property within a month from the date of termination of lease agreement. But in the meantime, with a malafide intention to extract money, the plaintiff has created false story regarding an amount due from defendant No.1 and his son for an amount of Rs.27,00,000/-. The plaintiff has neither paid the rent of Rs.30,000/- since 2016 nor deposited the rent amount before this Court. As far as defendant No.2 is concerned, defendant No.2 has not kept any building materials in front of the suit property as alleged by the plaintiff. The defendant No.2 has started construction work adjacent to the suit property and the entire building materials are kept on the road side, hence question of obstructing the peaceful possession and enjoyment of the plaintiff does not arise. The defendant No.2 has suffered loss due to act of the plaintiff. The plaintiff has suppressed all these facts and only with an intention to

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harass and grab the properties of this defendant has filed this suit as well as application. Hence, prayed to reject the application.

4. Heard arguments and perused the records.

5. 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 favor ?

3. Whether the plaintiff proves irreparable loss will be caused more to him, if temporary injunction is not granted ?

4. What order ?

6. My answer on above points is as follows;

Point Nos.1 to 3 : In the Affirmative.

Point No.4 : As per final order
for the following;

REASONS

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

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On perusal of contention urged by both parties, it appears that the plaintiff has filed this suit for the relief of permanent injunction restraining the defendants from disturbing, obstructing and dispossessing the lawful possession, use and enjoyment of the plaintiff-society over the suit property illegally without following due process of law. The present application is filed by the plaintiff seeking temporary injunction against the defendants restraining them disturbing, obstructing and dispossessing the lawful possession, use and enjoyment of the plaintiff-society over the suit property illegally without following due process of law till disposal of suit. In order to prove the allegation of the plaintiff, he has produced documents such as photographs, copies of correspondence issued by the different Government authorities, copy of registration certificates and list of committee, HESCOM bills and telephone bills, copy of resolution dated 12.08.2020 etc., The photographs disclose the existence and condition of suit property. The receipt dated 24.06.2020 reveals that the same has been issued by Association District Registrar, Belagavi. The list of committee disclose that

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Arihant Education Society has managing committee for the year 2020-21, wherein the Chairman of committee is one Sanmati Bahubali Majagaon and there was nine members in said committee including Chairman. The resolution dated 12.08.2020 discloses that said resolution has been passed in the presence of committee members of Arihant Education society regarding authorising the Director by name Manjunath Bahubali who is plaintiff herein for performing all the activities and for prosecuting case relating to the institution. The copy of lease agreement discloses that said lease has been held between Mallappa Kangalgouda and Chairman and Secretary of Arihant education society with respect to the suit property, wherein the lessor has agreed to let out the suit premises to the lessee for the period of 10 years from 01.05.2010.

8. On the other hand, in order to prove the contention of the defendant No.1, he has produced documents such as copy of legal notice dated 25.08.2020, the copy of reply notice dated 01.09.2020 and 4.08.2020, copy of letter dated 17.08.2020 and copy of lease agreement the copy of legal notice dated 25.08.2020 discloses that

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plaintiff has issued notice to the defendant No.1 and one Mallinath Sarju Kangalgouda by calling upon them to make payment of Rs.27,00,000/- and hand over all the accounts, documents and registers. The copy of reply notice discloses that the defendant No.1 has given reply to said notice on 01.09.2020, wherein he has stated that the present Chairman is none other than the mother of plaintiff and he was the then director of the society. The plaintiff was the record keeper of said society and he was maintaining the accounts of said society as a clerk. Further he has stated that since the term of the lease period is over, the plaintiff has not got extended the same from the defendant No.1. Hence, he has no authority to continue the same for running society. However, the copy of another one reply notice dated 14.08.2020 which has been given by the plaintiff society to the defendant No.1, it discloses that the plaintiff-society calling upon the defendant No.1 to come forward and hand over the important documents pertaining to said society and furnish complete accounts. Further the Chairman of society has requested that considering COVID-19 pandemic situation, reasonable time may be

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granted to search for the alternative premises. The copy of letter dated 17.08.2020 reveals that the defendant No.1 has issued said letter to the Directorate General of Training, ministry of skill development and entrepreneurship, New-Delhi, wherein it is mentioned that the building which is using for M.K. Kangalgouda Pvt ITI is not in good condition to use and it is very dangerous for students to study under the roof of bad condition building. Hence, by thinking about the future of the students life he is not willing to renewed the lease henceforth by considering the condition of the building. The defendant No.1 also produced lease agreement which was held between himself and Chairman and Secretary of Arihant Education Society with respect to the suit property.

9. On considering documents produced and contention urged by both parties, it make clear that there is no dispute regarding relationship between the parties as defendant is landlord and plaintiff is tenant. It is also not dispute that the plaintiff is in possession of suit property. But, there is dispute that the plaintiff is in illegal possession. According to the plaintiff, he is running ITI

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college in the suit property as per lease agreement dated 06.05.2010 through their society by name Shri. Arihant Education Society, Mahaveer Nagar, Halaga, Belagavi providing education to the students and rural area. He is in actual physical possession, use and enjoyment over the suit property. But, due to COVID-19 pandemic situation since march-2020 the entire nation is lock-down. Hence, he could not run the college during that period. Later on, in the month of May-2020 the plaintiff and managing committee members of society requested the defendant No.1 and his son Mallinath to make payment of collected fees of the students and submit all the accounts and documents of said college. At that time, due to COVID-19 situation, the defendants are unable to accumulate funds to the extent of Rs.27,00,000/- payable to the plaintiff-society and therefore the defendants requested the plaintiff to get extend the lease of the suit property for another two years and meantime they will arrange the funds and make payment. Accordingly, considering the situation, plaintiff has provided an opportunity to them, but inspite of that the defendants did not keep their words. Recently in

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3rd week of August-2020 the defendants with an oblique intention to create hurdles in a smooth administration of plaintiff's college, at the instigation of ill-wishers pressurizing the plaintiffs to vacate the suit property.

10. On the other hand, according to the defendant the plaintiff is in illegal possession over the suit property as the lease agreement was terminated, after termination also the plaintiff did not hand over the possession to the defendant. As such, he is in illegal possession of the same. After completion of lease period, the defendant No.1 gave notice to the plaintiff requesting him to vacate the suit property and hand over the actual physical possession of the same. The suit property is in dilapidated condition and endanger to human being, it needs repair and since 2016 till this date, the plaintiff has not made any payment of rent. Hence, defendant No.1 informed to the plaintiff that the suit property is required for running business to his son after getting done repair work. For that, the plaintiff undertakes to vacate and hand over the suit property within a month from the date of termination of lease agreement. But in the

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meantime, with a malafide intention to extract money, the plaintiff has created false story regarding an amount due from defendant No.1 and his son for an amount of Rs.27,00,000/-.

11. However, on considering the contention of both the parties, it makes clear that the plaintiff is tenant under the defendant. Whether the plaintiff is in illegal possession or not? Whether defendant requested the plaintiff to get extend the lease of suit property for another two years? These two points that arise for consideration, but said points cannot be decided at this stage. It requires full fledged trial. At this juncture, admittedly the plaintiff is in possession of the suit property. Moreover admittedly since March-2020, the entire nation was lock-down. Under such circumstances, if at all the defendant evicted the plaintiff from suit property in such pandemic situation, the plaintiff will be put to irreparable loss and balance of convenience lies more in his favour. During the arguments, the counsel for the defendants submitted that the lease agreement itself discloses that it was terminated and there was a condition that 'at the expiry of lease period, lessee shall vacate the



said property and deliver the same to the lessor without any objections and litigation.’ The issuance of notice U/s. 106 of T.P. Act is not required. In this regard, he has submitted the decision of **Hon’ble Supreme Court 2019(3) Civil Court Cases 818(SC) in Sevoke Properties Ltd., V/s. West Bengal State Electricity Distribution Company Ltd.,** wherein it is held that, *“Transfer of Property Act, 1882, S.106 -Notice – Lease – Once lease stood determined by efflux of time, therefore is no necessity for a notice of termination U/s. 106 of the Act, as position of tenant on expiration of lease is of a tenant at sufferance.”*

12. I have gone through aforesaid decision, the principle laid down in said decision is not applicable to the case on hand as the facts of the case is different. In the instant suit, the plaintiff stated that the defendant requested the plaintiff to get extend the lease off suit property for another two years. Further, he has stated that during pandemic situation the defendant asked the plaintiff to vacate the suit property. Admittedly, since March-2020 due to COVID-19 the entire nation was lock-down. During arguments, the

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counsel for the plaintiff submits that the plaintiff is ready to vacate the suit property, but due to pandemic situation, he needs time. Under such circumstances, if at all the defendant No.1 intends to vacate the plaintiff, he would have vacate him with due process of law by granting time to the plaintiff. Whether the defendant requested the plaintiff to get extend the lease period is concerned, it will be considered after full fledged trial.

13. 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 entitled for the party to obtain temporary injunction. In the instant suit three conditions have been satisfied by the the plaintiff. If the temporary injunction is not granted, the plaintiff will be put to irreparable loss and balance of convenience also lies more in his favour. On the other hand, no prejudice will be caused to the defendant. In view of above discussion, this Court is of the opinion that to avoid the multiplicity of proceedings, it is necessary to allow the application. Accordingly, point Nos. 1 to 3 are answered in the **Affirmative.**

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

O R D E R

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 are temporarily restrained from disturbing, obstructing and dispossessing the peaceful possession, use and enjoyment of the

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***plaintiff-society over the suit property illegally
without following due process of law till disposal
of the suit.***

*(Dictated to the Judgment Writer directly on computer, corrected and
then pronounced by me in the open Court on 31st day of July, 2021)*

**(B.G. SHOBHA)
Prl. Civil Judge & JMFC,
Belagavi.**



(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 are temporarily
restrained from disturbing,
obstructing and dispossessing the
peaceful possession, use and
enjoyment of the plaintiff-society over
the suit property illegally without
following due process of law till
disposal of the suit.

Prl. Civil Judge & JMFC,

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