

**IN THE COURT OF THE II ADDL.CIVIL JUDGE & J.M.F.C.,
CHIKODI AT : CHIKODI**

Present: Smt.Y.L.Ladkhan,
B.A.LL.B.(Spl)
**II Addl.Civil Judge & JMFC,
Chikodi.**

Dated this the 4th day of March-2014

O. S. NO. 174-2012

Plaintiffs: 1) Shri. Basavaraj Dundappa Karoshi,
R/o. Yadur, Tq: Chikod & others,

(By Shri. **S. B. Kulkarni**, Advocate)

Vs_

**Defendant: 1) Shri. Sidharam Shivacharya Maha
Swamigalu, Shri. Kadasidheshwar
Sansthan Math, Yadur**

(By Shri. **S. B. Hiremath**, Advocate)

I. A. No. I

Applicant: Ori.Plaintiffs:

1) Shri. Basavaraj Dundappa Karoshi,
R/o. Yadur, Tq: Chikod & others,

Vs

Opponent:Ori. Defendants:

**1) Shri. Sidharam Shivacharya Maha Swamigalu,
Shri. Kadasidheshwar Sansthan Math,
Yadur**

ORDER ON I.A.NO.1

The Advocate for applicants/plaintiffs has filed this I.A.No.1,
Under order 39 Rule 1 and 2 of C.P.C.

2) The applicant has sworn to the affidavit and prays that the defendant and men on his behalf be restrained from causing any obstruction and interference to the plaintiffs peaceful possession and enjoyment of the suit schedule property by an order of ad-interim injunction till the disposal of the suit in the interest of justice and equity.

3) The applicant/plaintiff No.6 has sworn to the affidavit stating that the plaintiffs have filed the suit for the relief of injunction against the defendant. The suit property is described in the plaint and the hand sketch map. The applicant has sworn that the persons namely Dundappa Kallappa Karoshi and Shripad Kallappa Karoshi (brothers) have together purchased 1/11th share out of the land bearing R.S.No.19 of Yadur village of Chikodi taluka from its lawful owner Shri.Madhukar Virupax Mutalik-Desai for a valuable consideration of Rs.5,000/- under a registered sale deed dated 14-07-1977. The said persons have come in possession and enjoyment of the said property as lawful owner thereof and their names were entered in the records concerned. After the purchase, a building is constructed in the portion as shown in the hand sketch map, remaining is the open space. The construction has taken place after the due permission by the local authority. The portion purchased by the said persons is numbered as GPC No.40, GPC No.41, GPC No.42 and GPC No.43 in the Gram Panchayat records, the names were duly entered. The said Dundappa Kallappa Karoshi and Shripad Kallappa Karoshi are now no more. The plaintiffs No.1

to 3 are the sons of the said Dundappa and the plaintiffs No.4 to 6 are the sons of the said Shripad. Now they have become the owners of the suit property. The names of plaintiffs No.1 to 3 are entered in the records. The said Shripad has died last year and the mutation of the names has also to take place. They have further deposed that the plaintiffs are in peaceful possession and enjoyment of the suit property. The property is shown to have been divided in the records as per the numbers referred to above as to have the arrangement in the family. However, the suit property forms a single block as shown in the hand sketch map. The predecessor in title of the plaintiffs were running a Cinema Talkies earlier and now the building is being used for storing the food grains etc and the open space is being used for the domestic purpose. There was a long standing dispute between the vendor of the suit property, Madhukar Virupax Mutalik Desai and the head of Shri.Kadasidheshwar Math, Yadur over the rights of the management and control over Shri. Virupaxling Devasthan, Yadur, so also in respect of the land R.S.No.19. The said Madhukar Desai had filed form No.1 under certain Inam Abolition Act, 1978 in respect of 10/11th share out of R.S.No.19 and R.S.No.23 of Yadur. The said application is considered by the Land Tribunal, Chikodi in KLR/DI/Yadur/SR-277-281. (The said Dundappa & Shripad had also filed the Form No.1 in respect of their 1/11th share. The occupancy rights are granted.) In the earlier hearing the Form No.1 filed by the said Madhukar Desai was allowed. In the Writ petition W.P.No.3816/92, the matter was remanded. It appears that said

the said Madhukar Desai has compromised the dispute and his application is rejected by the Land Tribunal, Chikodi by its order dated 20-08-2010. After the said order, the defendant is trying to disturb and interfere with their peaceful possession over the suit property. The defendant is trying to encroach upon the suit property illegally and unauthorisedly. They have been receiving the threats of dispossession from the suit property by the defendant and men on his half. They have further submitted that they are lawful owners in possession of the suit property for all these years from the time of their ancestors. They are legally entitled to own, possess and enjoy the suit property in the lawful manner they deem fit. The acts on the part of the defendant is highly illegal. The defendant is supported by the persons, who are acting detrimental to the interest of the plaintiffs. These persons are unnecessarily creating complications, they have requested the defendant not to do such illegal acts. The same are not being given any heed. Hence, they are constrained to file this suit for the relief of permanent injunction restraining the defendant and men on his behalf from causing any obstruction and enjoyment to them in peaceful possession and enjoyment of the suit property. If the defendant and men on his behalf succeeded to encroach and dispossess them, the very purpose of the suit will frustrate. It is necessary to maintain and preserve the status-quo of the suit property. The corpus needs to be protected. The order prayed is of protective character. They have a prima-facie case, the balance of convenience lies in their favour and they will be put to loss and

hardship in case the order as prayed is not passed. On the other hand, no loss will be caused to the other side. Hence, prayed that the accompanying application may kindly be allowed in the interest of justice and equity.

4) The defendant has appeared through his counsel and has filed memo stating that he has filed the written statement and the same may be treated as objections to I.A.No.1.

5) The defendant in his written statement has submitted that the suit of the plaintiffs is false, frivolous and vexatious and this defendant denies the entire plaint allegations in toto. The description of the suit properties mentioned in para No.1 of the plaint and comprise of building and open space as shown in the schedule 'A', a hand sketch map annexed with the plaint are totally denied by this defendant, unless and until the plaintiffs have not furnished the boundaries of each properties, the suit of the plaintiffs is not maintainable under order VII Rule 3 of CPC. So the properties are un-ascertained and un-defined properties. Hence on this count also the suit of the plaintiffs in the present form is not maintainable. The defendant has also denied the contents of plaint para No.2 that the Dundappa Kallappa Karoshi and Shripad Kallappa Karoshi (the brothers) have together purchased 1/11th share out of the land R.S.No.19 of Yadur village of Chikodi taluka from its lawful owner Shri.Madhukar Virupax Mutalik Desai for a valuable consideration of Rs.5,000/- under a registered sale deed dated 14-07-1977 are all

false and same are denied by him and also denied the contents of para No.3 that the said Dundappa and Shripad sons of Kallappa Karoshi have come in possession and enjoyment of the said property as lawful owner thereof and their names were entered in the record of rights concerned are all false and same are denied. The defendant has also denied the contents of plaint para No.4, para No.6, para No.9 and also para No.13 of the plaint and has submitted that the plaintiffs have suppressed the material facts submit before this court and they have not approached this court with clean hands to get the discretionary relief of injunction. The balance of convenience lies infavour of this defendant. If the injunction is granted, this defendant will be put to untold hardship and there are every possibilities of indulging in illegal activities by the plaintiffs by taking law in their own hands infavour of this defendant. The plaintiffs have not produced any cogent evidence to show that they are in possession, use and enjoyment of the suit property. The allegations and averments made in the affidavit accompanying with application are similar to the allegations made in the plaint. So in order to avoid repetition the same may be treated as one of the total denial. The defendant has further submitted that the bare suit for injunction is not maintainable, unless the plaintiffs seeks for the declarative relief and has further submitted that Shri. Veerbhadradev Temple is registered under the Bombay Public Trust Act before the Assistant Charity Commissioner Belgaum bearing Reg.No.A-3155 (BGM) and this defendant is alone a sole trustee and wahiwatdar of Shri.Veerbhadradev Trust and also

Shri.Kadashiddeshwar Math, Yadur. The said Shri.Veerabhadradev Temple is attached to Shri.Kadashiddeshwar Math, Yadur. The suit property involved in this suit is a trust property of Shri.Veerabhadradev Trust and the name of Shri.Veerabhadradev is entered in the R of R of the suit property is in actual possession, use, enjoyment and cultivation by the defendant personally as an sole trustee of Shri.Veerabhadradev Trust. Moreover, this defendant has making management and wahiwat of the said Shri.Veerabhadradev Trust and property of the said Trust personally as a sole trustee. Neither the plaintiffs nor their predecessors in title or any persons have no right, title and interest over the above mentioned trust property and the plaintiffs nor their predecessors in title have not at all in possession, use and enjoyment of the above mentioned trust property, so in view of the provisions of section 80 R/W section 18, 19 and 21 of the Bombay Public Trust Act 1950, suit in the present form is not maintainable. Further the suit of the plaintiff is also not maintainable under section 50 and 51 of the B.P.T. Act to institute the present suit. The suit is also not maintainable under section 92 of C.P.C., as plaintiffs have not invoking the above said provisions before instituting present suit. Therefore, on this court also the suit of the plaintiffs is not maintainable and same may kindly be deserves to be dismissed. The defendant has further submitted that admittedly the suit property is the trust property of Shri.Veerabhadradev Trust of Yadur. So without impleading the trust as party, the suit in the present form is not maintainable. Moreover, the deceased father of

plaintiffs No.1 to 3 also left his wife and 3 daughters and deceased father of plaintiffs No.4 to 6 had also left his wife and 4 daughters as their class-I legal heirs. So the suit suffers for want of non joinder and mis-joinder of necessary parties. Moreover the suit is also not maintainable without impleading the vendor of deceased father of plaintiffs as he is also necessary and proper party to the suit and in his absence, the suit should not be proceeded. The defendant has further submitted that the vendor of deceased father of plaintiffs by name Madhukar Virupax Mutalik Desai has no any right, title or interest to transfer the suit property to the deceased father of plaintiffs, because the suit property is a trust property of Shri.Veerabhadradev Trust while transferring the suit trust property the Madhukar Virupax Mutalik Desai has not obtained any prior permission or sanction from the Assistant Charity Commissioner Belgaum. So any transfer is made by anybody without obtaining prior permission or sanction in respect of trust property from the Assistant Charity Commissioner Belgaum is illegal and void document, neither the plaintiffs nor their deceased father have derived any legal and valid right, title and interest over the suit property and they have also not come in the possession of the suit trust property at any point of time. The deceased father of the plaintiffs and their vendor and attesting witnesses of the alleged sale deed themselves have colluded each other and got created a false, fabricated and concocted document styled as 'Sale deed' dated 14-07-1977 in-respect of trust property. The contents of the alleged documents are all false and same are denied by this

defendant. So the alleged document is illegal and void ab-initio. The deceased father of the plaintiffs No.1 to 3 by name Dundappa Kallappa Karoshi during his life time had filed a form No.1 before the Land Tribunal, Chikodi on 30-12-1979 to grant occupancy rights in his favour as he is the tenant of the suit trust property by suppressing the alleged sale deed dated 14-07-1977. The Land Tribunal Chikodi has considered the said application and given a number as KLR/DI/YDR/143. In the said form No.1 the deceased father of plaintiffs No.1 to 3 have purposely and deliberately not made trust and also this defendant as party because this defendant is sole trust of Shri.Veerabhadradev Trust. The Land Tribunal Chikodi without issuing any prior notice and without giving any opportunity to this defendant, have illegally granted the occupancy rights infavour of the deceased father of plaintiffs No.1 to 3 Dundappa Kallappa Karoshi on 1-2-1982 against the order the devotees of Shri. Veerabhadradev Trust by name Virupax Basayya Hiremath and others have filed a writ petition bearing W.P.No.30352/1993 before the Hon'ble High Court of Karnataka, Bangalore by challenging the order passed by the Land Tribunal, Chikodi dated 01-02-1992. After hearing both the sides, the Hon'ble High Court of Karnataka, Bangalore was pleased to allow the W.P.No.30352/1993 filed by the devotees of Shri. Veerabhadradev Trust of Yadur on 23-07-1996 and set aside the order of the land tribunal, Chikodi passed in KLR/DI/YDR/143 dated 01-02-1982 and remitted the matter back to the Land Tribunal, Chikodi for fresh disposal on merits in accordance with law after affording opportunity to all the parties concerned and

after impleading the trust called Veerabhadradev Trust as a party respondent in the proceedings before the Land Tribunal. So the matter is ending before the Land Tribunal, Chikodi since 1996. The plaintiffs have suppressed this fact before this court and filed this false suit on false grounds and obtained an interim order against this defendant from this court. Therefore, it itself goes to show that the plaintiffs have not approached this court with clean hands to get the discretionary relief of injunction. So the suit of the plaintiffs is not maintainable under section 132 of the Karnataka Land Reforms Act as there is a tenancy dispute is pending before the Land Tribunal, Chikodi between the plaintiffs and this defendant in respect of suit trust property. When there is dispute pending before the Land Tribunal, Chikodi, this court is barred to entertain the present suit. When the suit itself is not maintainable in the present form, the I.A.No.1 filed by the plaintiffs is also not maintainable under the law. Moreover the vendor of deceased father of the plaintiffs by name Madhukar Virupax Mutalik Desai has also filed the form No.1 before the Land Tribunal, Chikodi on 29-12-1986 for grant of occupancy rights in his favour in-respect of the suit trust property and another land R.S.No.23 contending that he is the tenant. The Land Tribunal, Chikodi considering the said application and given a number of KLR/DI/YDR-277/86. In the said form No.1 application shown that he himself is the owner of the suit trust property as a wahiwatdar. But said applicant Madhukar Virupax Mutalik Desai has also not made trust nor previous Swamiji as a party to the said proceedings and in their absence, the Land

Tribunal, Chikodi without issuing any prior notice to the trust no previous swamiji has illegally passed an order dated 22-4-1991 for granting the occupancy rights infavour of the vendor of deceased plaintiffs father in respect of suit trust property. When the Land Tribunal, Chikodi had granted the occupancy rights infavour of deceased father of plaintiffs Madhukar Virupax Mutalik Desai in the year 1991 in respect of the trust property then question of alienation/transfer by the Madhukar Virupax Mutalik Desai infavour of deceased father of plaintiffs in respect of suit trust property does not arise at all. This fact is also suppressed by the plaintiffs to submit before this court and illegally obtained expate temporary injunction from this court against this defendant. Apart from this on going through the order of the Land Tribunal, Chikodi the names of the respondents I.e., owners were shown that deceased father of plaintiffs by name Dundappa and Shripad sons of Kallappa Karoshi. Therefore, it itself goes to show that the deceased father of plaintiffs and their vendor and witnesses of the alleged document have colluded each one and got created document to gulp and grab the valuable trust property of this defendant which is in possession, use and enjoyment of the trust suit property. Against the said order of the Land Tribunal, Chikodi the previous Swamiji had preferred writ petition before the Hon'ble High Court of Bangalore bearing W.P.No.3816/1992. After hearing the Hon'ble High Court of Karnataka, Bangalore was pleased to allow the writ petition on 23-7-1996 and set aside the Land Tribunal order dated 22-4-1991 which is under challenged and remanded the matter back to the

Land Tribunal, Chikodi for fresh enquiry. Thereafter, the said Madhukar Virupax Mutalik Desai has filed a joint application admitted that the suit property and another land bearing R.S.No.23 are the trust properties of Shri.Veerabhadradev Trust of Yadur and the said Trust properties are in actual possession, use and enjoyment of this defendant as he is a sole trustee and wahiwatdar of Shri.Veerabhadradev Trust Yadur and he has no any right, title and interest in the trust properties and requested to reject the form No.1 filed by him. After hearing the Land Tribunal, Chikodi had rejected the form No.1 filed by him on 20-08-2010. So it clearly goes to show that the suit property is a trust property of which defendant is in possession, use and enjoyment of this defendant. It is further submitted that one Shri. Virupaxi Basayya Hiremath and others have filed a Misc.Case No.106/1978 before the Hon'ble Ist Addl. District Judge, Belgaum against Shri. Madhukar Virupaxi Mutalik Desai and others, the said Madhukar Mutalik Desai was vendor of deceased father of plaintiffs to declared that the suit property bearing R.S.No.19 and R.S.No.23 is a trust property of Shri.Veerabhadradev Trust, Yadur. After hearing both the sides, the Hon'ble Ist Addl. District Judge, Belgaum was pleased to allow the said Misc.Case No.106/1978 on 14-03-1986 and declared that the suit property is a trust property of Shri.Veerabhadradev Trust, Yadur. Against the said order, the vendor of deceased father of plaintiffs by name Madhukar Virupaxi Mutalik Desai have preferred a MFA No.570/1980 before the Hon'ble High Court of Karnataka, Bangalore. After hearing both the sides, the Hon'ble High Court of

Karnataka, Bangalore was pleased to dismiss the MFA No.570/1980 on 27-11-1984 by confirming the order passed by the Hon'ble Ist Addl. District Judge, Belgaum in Misc.Case No.106/1978 dated 14-03-1980. So, it clearly goes to show that the suit property is the trust property of Shri.Veerabhadradev Trust, Yadur. So, vendor of deceased father Madhukar Virupax utalik Desai have no right, title to transfer the trust suit property infavour of the deceased father of plaintiffs nor anybody. When the said vendor of deceased father of plaintiffs was not owner of the suit property and he has no any lawful and legal right to transfer or alienate the suit property to the deceased father of the plaintiffs nor any body. Moreover, while alienating or transfer the trust suit property by Madhukar Mutalik Desai have not at all obtained any prior permission or sanction of the Assistant Charity Commissioner, Belgaum. Any transaction or alienation made by the Madhukar Virupax Mutalik Desai in-respect of trust suit property without obtaining or sanctioning prior permission from Assistant Charity Commissioner, Belgaum are illegal and void document. On the basis of the alleged, illegal and void document, the deceased father of plaintiffs nor present plaintiffs have not derived any legal, valid and lawful rights over the suit property. Hence on this count alone the suit of the plaintiffs is not maintain in the present form. When the suit itself is defective and it is not maintainable, then issuance of injunction against this defendant as prayed in I.A.No.1 by the plaintiffs is not maintainable and same is liable to be dismissed. Further it is submitted that the suit property is an agricultural land till today it was not converted

into N.A. So without converting the agricultural land into non-agriculture, the Gram Panchayat, Yadur have no any authority to give GPC numbers. The Gram Panchayat, Yadur illegally given Gram Panchayat numbers and also they have not given any permission to construct any sort of building in the suit property. So, any entry made by the Gram Panchayat, Yadur in respect of suit property bearing R.S.No.19 by giving a GPC numbers are illegal and against the law and procedure. Moreover, the plaintiffs and their deceased father are not the tenants nor they are the owners by virtue of the alleged sale deed dated 14-07-1977 alleged to have been executed by the Madhukar Virupax Mutalik Desai in respect of suit property. So, without taking specific pleadings in their plaint by the plaintiffs, the suit of the plaintiffs in the present form is not maintainable and same be dismissed with costs. So, the plaintiffs are falsely claiming about the suit trust property which is in possession, use and enjoyment of this defendant as a sole trustee and this defendant is the exclusive wahiwatdar and management of the suit trust property. The plaintiffs have no any right, title and interest in the suit trust property, which belongs to the trust property of Shri.Veerabhadradev trust, Yadur. The plaintiffs have falsely and illegally shown the hand sketch map schedule 'A' annexed with the plaint by showing the alleged building and open space in order to dupe the trust property of this defendant. This defendant be permitted to amend the written statement or to file additional written statement if and when necessary. The plaintiffs have filed this false, frivolous and vexatious suit knowing full well just to dupe

the trust property against this defendant without any cause of action and thereby this defendant is sustained physically, mentally loss, therefore this defendant be awarded a compensatory costs of Rs.10,000/- along with other costs. Hence prays to dismiss the suit of the plaintiffs by awarding compensatory costs in the interest of justice.

6) I have heard the arguments of learned counsel for the applicants/plaintiffs and opponent/defendant.

7) I have perused the materials place before the court.

8) The following points have arisen for my consideration ;

POINTS

- 1) Whether the applicants/plaintiffs have made out prima facie case for grant of temporary injunction in their favour?
- 2) Whether the applicants/plaintiffs have made out that the balance of convenience lies in their favour?
- 3) Whether the applicants/plaintiffs have made out an irreparable loss and hardship will be caused to them, if an order of temporary injunction is not granted in their favour?
- 4) What order?

9) My answer to the above points are as under;

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

10) **Points No.1 to 3 :-** Points No.1 to 3 are inter-connected, hence taken-up together for common discussion and consideration in order to avoid the repetition.

11) On perusal of the materials placed before the court and the pleadings of the parties it is evidence that the plaintiffs in their plaint have pleaded that one Dundappa and Shripad both the sons of Kallappa Karoshi have purchased 1/11th share out of land R.S.No.19 of village Yadur in Chikodi taluka from its lawful owner Shri. Madhukar Virupax Mutalik Desai for a valuable consideration of Rs.5,000/- under a registered sale deed dated 14-07-1977 and the suit property is GPC No.40, GPC No.41, GPC No.42 and GPC No.43 situated at Yadur village of Chikodi taluka, which comprise of the building and open space as shown in the suit schedule 'A' hand sketch map produced along with the plaint. The plaintiffs have further pleaded that the said Dundappa and Shripad sons of Kallappa Karoshi after purchase of the said land have come in possession and enjoyment of the said property as lawful owner thereof and their names were entered in the records concerned. After purchasing the said, they have constructed a building in a

portion as shown in the hand sketch map and remaining is open space. The construction has taken place after the due permission by the local authority. They have also pleaded that the plaintiffs No.1 to 3 are the sons of said Dundappa and plaintiffs No.4 to 6 are the sons of said Sripad, who are now no more and the suit property is in peaceful possession and enjoyment of the plaintiffs as per their family arrangement. The plaintiffs have also pleaded that there was a long standing dispute between the vendor of the suit property, Shri.Madhukar Virupax Mutalik Desai and the head of Shri.Kadasidheshwar Math, Yadur over the rights of the management and control over Shri.Virupaxling Devasthan, Yadur , so also in respect of the land R.S.No.19. The said Madhukar Desai had filed form No.1 under certain Inam Abolition Act 1978 in respect of 10/11th share out of R.S.No.19 and R.S.No.23 of Yadur. The said application is considered by the Land Tribunal, Chikodi in KLR/DI/Yadur/Sr-277-281. (The said Dundappa & Shripad had also filed the Form No.1 in respect of their 1/11th share. The occupancy rights are granted.) In the earlier hearing the Form No.1 filed by the said Madhukar Desai was allowed. In the Writ petition W.P.No.3816/92, the matter was remanded. It appears that said the said Madhukar Desai has compromised the dispute and his application is rejected by the Land Tribunal, Chikodi by its order dated 20-08-2010. After the said order, the defendant is trying to disturb and interfere with their peaceful possession over the suit property. The defendant is trying to encroach upon the suit property illegally and unauthorisedly. They have been receiving the threats of dispossession from the suit property by the defendant and men

on his half. Hence, plaintiffs being the lawful owners in possession of the suit property for all these years from the time of their ancestors. Hence they are constrained to file this suit for the relief of permanent injunction restraining the defendant and men on his behalf from causing any interference, obstruction and enjoyment to the plaintiffs in their peaceful possession and enjoyment of the suit property.

12) The defendant, who has appeared through his counsel has filed his written statement and has submitted in his written statement that the suit of the plaintiffs itself is not maintainable in the present form as the suit schedule property is not described as per the provisions of order VII Rule 3 of CPC. Hence, the properties are un-ascertained and un-defined. The defendant in his written statement has also denied that the said Dundappa and Shripad both are the sons of Kallappa Karoshi have become the owners of the said property i.e., R.S.No.19 by virtue of the registered sale deed for a valuable consideration of Rs.5,000/- they together have purchased 1/11th share on 14-07-1977 from its lawful owner Shri.Madhukar Virupax Mutalik Desai. The defendant has denied the contents of plaint para No.3, 4, 6 and 9 of the plaint. The defendant in his written statement has further submitted that there is no cause of action for filing this suit and the plaintiffs have filed their false, imaginary and concocted suit. The plaintiffs themselves have got created false cause of action to file this suit which is false, baseless suit against this defendant. The defendant has further submitted that the plaintiffs have suppressed the material facts

submit before this court and they have not approached this court with clean hands to get the discretionary relief of injunction. The balance of convenience lies infavour of this defendant. If the injunction is granted, this defendant will be put to untold hardship and there are every possibility of indulging in illegal activities by the plaintiffs by taking law in their own hands infavour of this defendant. The plaintiffs have not produced any cogent evidence to show that they are in possession, use and enjoyment of the suit property. The allegations and averments made in the affidavit accompanying with application are similar to the allegations made in the plaint and also has submitted that the bare suit for injunction is not maintainable, unless the plaintiffs are seeks for the declaratory relief. The defendant in his written statement has also submitted that Shri. Veerbhadradev Temple is registered under the Bombay Public Trust Act before the Assistant Charity Commissioner Belgaum bearing Reg.No.A-3155 (BGM) and this defendant is alone a sole trustee and wahiwatdar of Shri.Veerbhadradev Trust and also Shri.Kadashiddeshwar Math, Yadur. The said Shri.Veerabhadradev Temple is attached to Shri.Kadashiddeshwar Math, Yadur. The suit property involved in this suit is a trust property of Shri.Veerabhadradev Trust and the name of Shri.Veerabhadradev is entered in the R of R of the suit property is in actual possession, use, enjoyment and cultivation by the defendant personally as an sole trustee of Shri.Veerabhadradev Trust. Moreover, this defendant has making management and wahiwat of the said Shri.Veerabhadradev Trust and property of the said Trust personally as a sole trustee. Neither the plaintiffs nor their predecessors in

title or any persons have no right, title and interest over the above mentioned trust property and the plaintiffs nor their predecessors in title have not at all in possession, use and enjoyment of the above mentioned trust property. He has also submitted that admittedly the suit property is the trust property of Shri.Veerabhadradev Trust of Yadur. So without impleading the trust as party, the suit in the present form is not maintainable. The defendant has further submitted that the deceased father of plaintiffs by name Madhukar Virupax Mutalik Desai has no any right, title or interest to transfer the suit property to the deceased father of plaintiffs, because the suit property is a trust property of Shri.Veerabhadradev Trust while transferring the suit trust property the Madhukar Virupax Mutalik Desai has not obtained any prior permission or sanction from the Assistant Charity Commissioner Belgaum. So any transfer is made by anybody without obtaining prior permission or sanction in-respect of trust property from the Assistant Charity Commissioner Belgaum is illegal and void document, neither the plaintiffs nor their deceased father have derived any legal and valid right, title and interest over the suit property and they have also not came in the possession of the suit trust property at any point of time. The defendant in his written statement has also submitted that the deceased father of the plaintiffs No.1 to 3 by name Dundappa Kallappa Karoshi during his life time had filed a form No.1 before the Land Tribunal, Chikodi on 30-12-1979 to grant occupancy rights in his favour as he is the tenant of the suit trust property by suppressing the alleged sale deed dated 14-07-1977. The Land Tribunal, Chikodi has considered the said application and given a

number as KLR/DI/YDR/143. In the said form No.1 the deceased father of plaintiffs No.1 to 3 have purposely and deliberately not made trust and also this defendant as party because this defendant is sole trust of Shri.Veerabhadradev Trust. The Land Tribunal, Chikodi without issuing any prior notice and without giving any opportunity to this defendant, had illegally granted the occupancy rights infavour of the deceased father of plaintiffs No.1 to 3 Dundapa Kallappa Karoshi on 1-2-1982 against the order the devotees of Shri. Veerabhadradev Trust by name Virupax Basayya Hiremath and others have filed a writ petition bearing W.P.No.30352/1993 before the Hon'ble High Court of Karnataka, Bangalore by challenging the order passed by the Land Tribunal, Chikodi dated 01-02-1992. After hearing both the sides, the Hon'ble High Court of Karnataka, Bangalore was pleased to allow the W.P.No.30352/1993 filed by the devotees of Shri. Veerabhadradev Trust of Yadur on 23-07-1996 and set aside the order of the land tribunal, Chikodi passed in KLR/DI/YDR/143 dated 01-02-1982 and remitted the matter back to the Land Tribunal, Chikodi for fresh disposal on merits in accordance with law after affording opportunity to all the parties concerned and after impleading the trust called Veerabhadradev Trust as a party respondent in the proceedings before the Land Tribunal. So the matter is ending before the Land Tribunal, Chikodi since 1996. The plaintiffs have suppressed this fact before this court and filed this false suit on false grounds and obtained an interim order against this defendant from this court. Therefore, it itself goes to show that the plaintiffs have not approached this court with clean hands to get the

discretionary relief of injunction. So the suit of the plaintiffs is not maintainable under section 132 of the Karnataka Land Reforms Act as there is a tenancy dispute is pending before the Land Tribunal, Chikodi between the plaintiffs and this defendant in respect of suit trust property. The defendant has further submitted that the vendor of deceased father of the plaintiffs by name Madhukar Virupax Mutalik Desai had also filed the form No.1 before the Land Tribunal, Chikodi on 29-12-1986 for grant of occupancy rights in his favour in-respect of the suit trust property and another land R.S.No.23 contending that he is the tenant. The Land Tribunal, Chikodi considering the said application and given a number of KLR/DI/YDR-277/86. In the said form No.1 application shown that he himself is the owner of the suit trust property as a wahiwatdar. But said applicant Madhukar Virupax Mutalik Desai has also not made trust nor previous Swamiji as a party to the said proceedings and in their absence, the Land Tribunal, Chikodi without issuing any prior notice to the trust no previous swamiji has illegally passed an order dated 22-4-1991 for granting the occupancy rights infavour of the vendor of deceased plaintiffs father in respect of suit trust property. When the Land Tribunal, Chikodi had granted the occupancy rights infavour of deceased father of plaintiffs Madhukar Virupax Mutalik Desai in the year 1991 in respect of the trust property then question of alienation or transfer by the Madhukar Virupax Mutalik Desai infavour of deceased father of plaintiffs in respect of suit trust property does not arise at all. This fact is also suppressed by the plaintiffs before this court and illegally obtained expate temporary injunction from this court against this defendant. Against the said

order of the Land Tribunal, Chikodi the previous Swamiji had preferred writ petition before the Hon'ble High Court of Karnataka, Bangalore bearing W.P.No.3816/1992. After hearing the Hon'ble High Court of Karnataka, Bangalore was pleased to allow the writ petition on 23-7-1996 and set aside the Land Tribunal order dated 22-4-1991 which was challenged and remanded the matter back to the Land Tribunal, Chikodi for fresh enquiry. Thereafter, the said Madhukar Virupax Mutalik Desai has filed a joint application admitted that the suit property and another land bearing R.S.No.23 are the trust properties of Shri.Veerabhadradev Trust of Yadur and the said Trust properties are in actual possession, use and enjoyment of this defendant as he is a sole trustee and wahiwatdar of Shri.Veerabhadradev Trust Yadur and he has no any right, title and interest in the trust properties and requested to reject the form No.1 filed by him. After hearing the matter, the Land Tribunal, Chikodi had rejected the form No.1 filed by said Madhukar Virupax Mutalik Desai on 20-08-2010. The defendant has also submitted that one Shri. Virupaxi Basayya Hiremath and others have filed a Misc.Case No.106/1978 before the Hon'ble Ist Addl. District Judge, Belgaum against Shri. Madhukar Virupaxi Mutalik Desai and others, the said Madhukar Mutalik Desai was vendor of deceased father of plaintiffs to declar that the suit property bearing R.S.No.19 and R.S.No.23 is a trust property of Shri.Veerabhadradev Trust, Yadur. After hearing both the sides, the Hon'ble Ist Addl. District Judge, Belgaum was pleased to allow the said Misc.Case No.106/1978 on 14-03-1986 and declared that the suit property is a trust property of Shri.Veerabhadradev Trust, Yadur. Against the said order, the

vendor of deceased father of plaintiffs by name Madhukar Virupaxi Mutalik Desai have preferred a MFA No.570/1980 before the Hon'ble High Court of Karnataka, Bangalore. After hearing both the sides, the Hon'ble High Court of Karnataka, Bangalore was pleased to dismiss the MFA No.570/1980 on 27-11-1984 by confirming the order passed by the Hon'ble Ist Addl. District Judge, Belgaum in Misc.Case No.106/1978 dated 14-03-1980. The defendant has further submitted that the suit property is an agricultural land till today it is not converted into non agricultural land. So without converting the agricultural land into non agriculture, the Gram Panchayat, Yadur have no any authority to give GPC numbers. The Gram Panchayat, Yadur illegally given Gram Panchayat numbers and also they have not given any permission to construct any sort of building in the suit property.

13) On perusal of the pleadings and the materials placed before the court it reveals that the plaintiffs have not produced any legal documents to show that they are lawful owners and in lawful possession and enjoyment over the suit schedule property. On perusal of the pleadings reveals that the relief claimed in the main suit and in the interim application i.e., I.A.No.1 are one and the same. The plaintiffs have filed this suit for bare injunction without seeking any declaratory relief. On perusal of the materials and the documents placed before the court reveals that the plaintiffs have suppressed the material facts, the sale deed dated 14-07-1977 is also not produced by the plaintiffs. On the basis of the pleadings the plaintiffs are claiming that they are lawful owners and in

possession over the suit schedule property. The plaintiffs have also suppressed the fact that the matter is pending before the Land Tribunal, Chikodi since 1996 pertaining to the dispute regarding tenancy issue. The plaintiffs have not approached the Court with the clean hands and the plaintiffs is seeking the relief of injunction which is an equitable relief. It is well established principles of law that one who seeks equity must do equity. Thereby the plaintiffs have failed to make out prima facie case and balance of convenience does not lies infavour of the applicant/plaintiff No.1. Much loss and hardship will be caused to the defendant rather than the plaintiffs, if temporary injunction order is granted infavour of the applicant/plaintiff No.1. Hence, the above points are answered in the Negative.

14) **Point No.4 :-** For the reasons stated and discussed as above, I proceed to pass the following,

ORDER

The I.A.No.1 filed by the applicants/
plaintiffs Under Order 39 Rule 1 and 2 of
CPC is hereby dismissed with costs in the
interest of justice and equity.

(Dictated to the Stenographer, typed by her, script revised and corrected and then pronounced by me in the Open Court on this the day of 4th March-2014.

(Smt. Y.L.Ladkhan),
B.A.L.L.B.(Spl.)
II Addl.Civil Judge & JMFC.,
Chikodi.

