

IN THE COURT OF THE CIVIL JUDGE & JMFC, AT SANDUR

:: PRESENT ::

Sri. Md. Shaiz Chouthai,

B.A.,LL.B. (Hons.), LL.M,(M.L.)

Civil Judge & JMFC, Sandur

Dated: 9th day of December 2025

O.S. No.99/2025

Plaintiff/s : Daroji Ibrahim Sab,
S/o Late Daroji Fakru Sab,
Aged about 45 years, Agriculturist,
R/o Dowlathpura village,
Sandur Taluk, Ballari District.

(By Sri. R.V.K., Advocate)

V/S

Defendant/s : Smt. Jabeena Begum,
W/o B. Nazeer Sab,
Aged about 32 years, Housewife,
R/o Dowlathpura village,
Sandur Taluk, Ballari District.

(By Sri. T.M.S., Advocate)

I.A.No.I

Applicant : Daroji Ibrahim Sab,
S/o Late Daroji Fakru Sab
(Plaintiff)

V/s

Opponents : Smt. Jabeena Begum,
W/o B. Nazeer Sab
(Defendant)

ORDER ON I.A.No.I FILED UNDER ORDER XXXIX

RULE 1 AND 2 R/W Sec. 151 OF C.P.C.

The plaintiff has filed this application U/O XXXIX Rule 1 and 2 R/w Sec. 151 of C.P.C., seeking to restrain the defendant from interfering and causing obstruction in his possession over the suit property, till the disposal of the suit.

2. According to plaintiff, he is the absolute owner and in possession of suit property bearing land Sy. No.198A, measuring 4.37 acres, situated at Doulatpura village, Sandur Taluk. According to him, the said property is purchased by his father Daroji Faku Sab S/o Khuthubuddin Sab from its previous owner Shivaji Rao Poal S/o Manik Rao, on 11.02.2004 for consideration amount of Rs.1,40,000/-. From the date of purchase, he was in possession and enjoyment of the said property. After his demise,

in a oral partition, the suit property fell to the share of the plaintiff, followed by mutation of his name in the revenue records vide MR No.29/2009-10 Dt. 12.11.2009. Thus, the plaintiff is the absolute owner and in possession of the suit schedule land.

3. The defendant is not the owner and in possession of the suit land but, unnecessarily causing interference towards southern side of the suit land. It is further alleged that the defendant is trying to encroach upon the suit land on its southern side. It is submitted that on 08.05.2025 when the plaintiff was in the suit land, the defendant caused disturbance which continued on 25.05.2025. The plaintiff apprehend the repetition of interference by the defendant. It is submitted that the plaintiff has got *prima-facie* case and balance of convenience in his favour. If the injunction is not granted he will be put to hardship and inconvenience. As such, he seeks to grant temporary injunction by allowing the application.

4. After service of summons, defendant appeared and

filed written statement. She files memo to consider her written statement as also objections to the application.

5. The defendant denied the entire case of the plaintiff, more particularly his alleged possession over the suit property and interference. According to defendant, the plaintiff has deliberately suppressed the material facts and filed this false and frivolous suit. It is the case of defendant that she is the absolute owner and in possession of the land bearing Sy. No. 198B, measuring 2.25 acres, which is her ancestral property. The plaintiff without any right and title has encroached upon the said land to the extent of 0.30 cents. Similarly, another person has encroached 0.12 cents in the above land. Therefore, the defendant was constrained to institute suit against them before the court of Hon'ble Senior Civil Judge, Kudligi / Sandur in O.S. No.49/2025 for mandatory injunction for removal of encroachment. The suit is pending for consideration. The plaintiff suppressed the pendency of the above litigation.

6. The plaintiff has approached the Deputy Director of Land Records, Ballari disputing the phodi division between land Sy. No.198A, 198B and 198/1 alleging mistake in the survey and sought to cancel the phodi and to conduct fresh phodi proceedings. Even these material facts have been suppressed in the plaint. Therefore, the plaintiff is not entitled to the discretionary relief of injunction for having suppressed material facts. Since the plaintiff is not in lawful possession of the suit land, the question of interference by the defendant does not arise. Amongst other grounds, the defendant prays to dismiss the application.

7. Heard the argument of learned counsel for the plaintiff and defendant. Perused the records.

8. The points that arise for my consideration are:-

1. Whether the applicant proves that he has *prima-facie* case in his favour to the grant the interim relief as sought for?
2. Whether the applicant proves balance of convenience in his favour?

3. Whether the applicant proves that he would suffer irreparable loss if injunction is not granted as sought for?
4. What order?
9. My answer to the above points are as under:-

Point No.1 : In the Affirmative
Point No.2 : In the Affirmative
Point No.3 : In the Affirmative
Point No.4 : As per final order
for the following:-

REASONS

10. **POINT NO.1 TO 3:-** All these points are taken together for common discussion to avoid repetition of facts and appreciation of materials on records.

11. The rule that before issuance of temporary injunction the court must satisfy itself that the plaintiff has *prima-facie* case. The court must deal with *prima-facie* case and not with *prima-facie* title or dwell upon into the merits of the case. The *prima-facie* case implies the probability of plaintiff obtaining the relief on

the materials placed before the Court. At this stage the court cannot conduct a mini trial but look only for *prima-facie* case.

12. The plaintiff has placed records before this court to establish his *prima facie* case. His pleadings would substantiate with the documents furnished by him, at this stage. According to him, his father acquired the suit land bearing Sy. No.198A, measuring 4.37 acres, situated at Doulothpura village through Registered Sale Deed Dt. 11.02.2004. After his demise, in a oral partition, the suit land fell to the share of plaintiff, followed by transmission of his name in the revenue records. In this regard, the plaintiff has filed revenue documents and the copy of sale deed.

13. As stated above, the plaintiff claim to be in possession of land bearing Sy. No. 198A, situated at Doulothpura village. The defendant on the other hand, claim right in land Sy. No.198B, measuring 2.25 acres of the same village.

14. The allegations against the plaintiff is that he has

encroached the land bearing Sy. No. 198B to the extent of 0.30 cents. In this regard, the matter is pending before the court of Hon'ble Senior Civil Judge, Sandur in O.S. No.49/2025 between the plaintiff and defendant. It is true that the defendant denied the possession of plaintiff over the suit property bearing Sy. No.198A, but no materials are placed at this juncture to substantiate the same. The ROR of suit land is standing in the name of plaintiff. The copy of Registered Sale Deed No.1600/2003-04 Dt. 11.02.2004 clearly reflect that the father of the plaintiff purchased the suit land. The extent and the boundaries described in the plaint schedule tally with the details set out in the sale deed. It is not the case of defendant that the plaintiff by encroaching upon the land Sy. No.198B has included in his land Sy. No.198A and claiming excess area. Whether the plaintiff has encroached land bearing Sy. No. 198B is a matter to be decided in pending *lis* in O.S. No.49/2025. In case, the defendant proves encroachment, she will be entitled to recover the possession.

15. In regard to non-averment of proceedings before the DDLR, Ballari is concerned, the plaint should contain only the material facts in concise form and not the evidence. What is required to be averred in suit for permanent injunction has been done. This cannot disentitle the plaintiff from claiming temporary injunction when he has shown *prima-facie* case in his favour.

16. In the proceedings before DDLR, Ballari, the plaintiff *herein* has claimed the factual aspects of phodi proceedings in respect of land bearing Sy. No. 198A, 198B and 198/1 is not tallying with the actual possession. His appeal challenging the phodi proceedings got dismissed on the ground of pending litigation in O.S. No.49/2025. However, the phodi sketch and details are not furnished before this court, at this juncture, for its perusal.

17. At this juncture, the applicant/plaintiff has shown *prima-facie* case in his favour to grant interim relief. The records placed at this stage demonstrate that the plaintiff is in possession

of the suit property. The applicant/plaintiff has submitted that the defendant is causing interference in his possession and enjoyment of the suit property in the manner narrated in the application. If the defendant is not restrained from causing interference and obstruction, there are all possibilities that the defendant will continue interference in the enjoyment of the plaintiff over suit property. Therefore, the balance of convenience tilt in favour of plaintiff. As stated above, the defendant did not refute the case of plaintiff with cogent records. The applicant has raised apprehension of recurring interference by the defendant. Since the plaintiff *prima-facie* appears to be in possession of the suit property, the defendant must be restrained from causing interference, otherwise irreparable loss will be caused to him. As such, I answers Point No.1 to 3 in the **AFFIRMATIVE**.

18. **POINT NO.4:-** In view of the above findings and discussions, I proceed to pass the following:-

ORDER

I.A. No.I filed by the applicant– plaintiff
U/O XXXIX Rule 1 and 2 R/W. Sec. 151 of
C.P.C., is hereby allowed.

The defendant, or her agents etc., or
anybody on her behalf are hereby restrained
from interfering in the possession and
enjoyment of the plaintiff over the suit schedule
property by any means, till the disposal of the
suit.

The observations made in this order shall
not come in the way of, affect or cause
prejudice to the rights of the parties to prove
their case by leading evidence during the trial.

*(Dictated to the stenographer, computerized by him, corrected
by me and then pronounced in the open Court, on this the 9th day of
December-2025).*

(Md. Shaiz Chouthai)
Civil Judge & JMFC, Sandur.