

KABK710038432024



O.S./244/2024

IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC,
AT: JAMKHANDI.

PRESENT

Smt.Shreedevi,
B.Com LLB (Spl),
Addl. Civil Judge & JMFC,
Jamkhandi.

Dated this the 28th day of June – 2025

O.S. No.244/2024

1. Smt.Shivawwa W/o Kallappa Nandikurali,
Age: 65 years, Occ: Household work/Agriculture,
R/o. Tungal village,
Tq: Jamkhandi, Dist: Bagalkot
and Others.

.....Plaintiffs.

(By Shri.V.M.K., Advocate)

- Vs -

1. Shri.Laxman S/o Ningappa Kharoshi,
Age: 60 years, Occ: Agriculture,
R/o. Tungal village,
Tq: Jamkhandi, Dist: Bagalkot
and Others.

.....Defendants.

(D-1 to 6 – Ex-parte)

(D-8 - By Shri.A.P.K., Advocate)

(D-9 - By Shri.P.N.K., Advocate)

I.A.No.I

1. Smt.Shivawwa W/o Kallappa Nandikurali
and Others,
.....Applicants/Plaintiffs.

- Vs -

1. Shri.Laxman S/o Ningappa Kharoshi
and Others,
.....Opponents/Defendants.

Sl. No.	Details	Particulars
1	Provision under which the application is filed	Under Order XXXIX Rule 1 and 2 R/w Section 151 of CPC
2	Relief sought for	Temporary Injunction
3	The date on which the application is filed	03-08-2024
4	Number of the applications	I.A.No.I
5	The date on which the objections are filed by the different opponent/s	12-11-2024
6	The date on which the orders were passed on the said application/s.	28-06-2025

ORDER ON IA.No.I

The plaintiffs have filed this application under Order XXXIX Rule 1 and 2 R/w Section 151 of CPC, seeking temporary injunction restraining the defendant No.8 from

causing obstruction to plaintiff's peaceful possession and enjoyment of the suit land till the final disposal of the suit.

2. In the accompanying affidavit to the interim application, Plaintiff No.2 has stated that defendant No.9, Smt.Yallawwa W/o Basappa Kharoshi, had filed a suit before this Hon'ble Court in O.S. No.49/2013 against the defendants and the deceased Shekhawwa. This court decreed the suit and held that the plaintiff and defendants No.1 to 6 are each entitled to 1/7th share. In the same case, the counterclaim filed by defendant No.7, who is the mother of defendants No.1 to 7 was dismissed. It is further submitted that the plaintiffs in O.S. No.49/2013 have initiated final decree proceedings against the original defendants, which are currently pending for appearance.

3. It is further submitted that defendants No.1 to 7 have sold the suit property to defendant No.8 with a mala-fide intention to defeat the judgment and decree and to deprive the legitimate share of the plaintiffs and defendant No.9. It is also submitted that defendants No.1 to 7, without having any right, title or interest in the suit schedule

property, have illegally executed sale deed in favour of defendant No.8. The said sale deed is not binding upon the legitimate share of the plaintiffs and defendant No.9. defendants No.1 to 7 have played a fraud upon the Sub-Registrar and the Tahashildar and have succeeded in executing the said sale deed. On the basis of this alleged sale deed, defendant No.8 has managed to get his name entered in the revenue records in respect of the suit property, as per M.R. No. H-156/2023-2024 dated 30.05.2024.

4. It is submitted that defendant No.8 is making hurried attempts to obstruct the peaceful possession and enjoyment of the suit schedule property, despite having no right, title, or interest therein. Since the issuance of the certificate bearing M.R. No. H-156/2023-24, a cloud has been cast upon the title of the plaintiffs. The plaintiffs submit that they have a strong *prima-facie* case in their favour. If the present application is rejected, they will suffer irreparable loss and injury. On the other hand, if the application is allowed, no hardship will be caused to the defendants. Hence prayed to allow the application.

5. In response to the suit summons and notice on I.A. No.I, defendant No.8 has appeared through his counsel and filed objections to I.A. No.I. In his objections, defendant No.8 has contended that the plaintiffs are neither the owners nor in possession of the suit property bearing R.S. No.74/1 measuring 03 acres 39 guntas. It is further contended that the plaintiffs are claiming ownership solely on the basis of the judgment and decree dated 14.02.2024 passed in O.S. No.49/2013 on the file of the Principal Civil Judge and JMFC, Jamkhandi. The said suit was filed by the present defendant No.9, Smt.Yallawwa Kharoshi, wherein the Hon'ble court granted 1/7th share each to the present plaintiffs and defendant No.9. Hence, the plaintiffs are not the absolute owners of the suit property. It is further submitted that defendant No.9 has already filed final decree proceedings before the Principal Civil Judge and JMFC, Jamkhandi, for partition of land bearing R.S. No.74/1 and R.S. No.73/1A. defendant No.8 is the purchaser of the suit property bearing R.S. No.74/1, measuring 03 acres 39 guntas, for a consideration of Rs.5,57,000/- through a registered sale deed

executed by defendants No.1 to 7 on 21.05.2024. Since then, defendant No.8 has been in possession of the suit schedule property. It is also submitted that defendant No.8 has invested huge amount for the development of the property and is a bona-fide purchaser of the suit schedule property. Furthermore, defendants No.1 to 7 have already preferred an appeal before the Additional Senior Civil Judge and JMFC, Jamkhandi, challenging the judgment and decree passed in O.S. No.49/2013. Hence prayed to reject the application.

6. Heard arguments advanced by the both counsels appearing for the plaintiffs and the defendants. In view of the material placed before this court and the rival contentions raised by the parties, the following points arise for determination:

: P O I N T S :

- 1.** Whether the applicants/plaintiffs have made out a prime-facie case for the grant of the TI as prayed?
- 2.** Whether the balance of convenience lies in favor of plaintiffs?

3. Whether irreparable loss would be caused to the applicants/plaintiffs. If the instant interlocutory application is not allowed?

4. What order?

7. 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 and

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

:: R E A S O N S ::

8. **Point No.1 to 3:-** These points are taken up together for a common discussion and to avoid repetition of facts. The complete facts of the interim application have already been narrated at the beginning of this order; therefore repetition is avoided here.

Note: It is made clear that, at this stage, any of the observations made herein do not affect the merits of the case, and the parties are at liberty to prove their respective contentions. These observations have been made solely for

the purpose of disposing of this application and shall not carry any weight in the final disposal of the suit.

9. I have carefully perused the entire plaint, affidavit, objections, and the documents on record. The plaintiffs have contended that the defendants are sold the suit property during the pendency of FDP proceedings in favour of defendant No.8 and the defendant No.8 is causing obstruction to plaintiffs' peaceful possession and enjoyment of the suit property. *Per contra*, the defendant No.8 has denied the allegation and has asserted that the plaintiffs are not absolute owner of the suit property and the defendant No.8 is the absolute owner and in possession of the suit property.

10. Counsel for plaintiffs has relied upon the following decisions of the Hon'ble High court of karnataka

1.KCCR 2023(4) page No.3592

2.KCCR 2016(4) page No.3369

3.KCCR 2016(5) page No.1630

Counsel for defendant No. 8 has relied upon the following decisions of the Hon'ble High court of karnataka

1.KCCR short note 279(2007) part 4

2.ILR 1996 KAR 1883

I have carefully perused the aforementioned decisions cited by both counsels. However, I find that the facts in the above said decisions are not similar to the facts in this present case.

11. The plaintiffs have produced a certified copy of the judgment passed in O.S. No.49/2013, which was pronounced on 14.02.2024. Upon perusal of the judgment, it is evident that the counterclaim filed by defendant No.7 in that case was dismissed. Subsequent to the judgment in O.S. No.49/2013, defendants No.1 to 7, who were arrayed as defendants No.7A to 7G in the said suit, have executed a sale deed in favour of defendant No.8. The plaintiffs have also produced a copy of the said sale deed dated 21.05.2024. On examination of the document, it is clear that defendants No.1 to 7 sold the suit property to Anil S/o Kallappa, who is defendant No.8 in the present case. Thus, it is evident that

the sale of the suit property by defendants No.1 to 7 took place after the judgment in O.S. No.49/2013.

12. On the other hand, the defendant No.8 in his objections, has admitted that the present plaintiffs and defendant No.9 were granted a 1/7th share each in the suit schedule property. Thus, defendant No.9, along with the plaintiffs, is also a co-owner of the suit schedule property. This contention of defendant No.8 has not been disputed by the plaintiffs. In fact, the plaintiffs themselves have admitted that both they and defendant No.9 have a right, title, and interest in the suit schedule property.

13. In the present application, the plaintiffs have prayed for temporary injunction against defendant No.8, restraining him from interfering with their peaceful possession and enjoyment of the suit schedule property. A key consideration for granting temporary injunction is the applicant's possession of the suit property. However, the plaintiffs have not produced any documents to establish that they are in possession of the suit property. In the absence of such documentary evidence, this court is not in a position to

grant the relief of temporary injunction as prayed for. The counsel for defendant No.8 has produced certified copy of order sheet from the final decree proceedings, which are pending adjudication before the Principal Civil Judge and JMFC, Jamkhandi. On perusal of the order sheet it appears that FDP is pending for adjudication. Further it is pertinent to note that, the plaintiffs have got only share in the suit schedule property as per preliminary decree passed in O.S. No.49/2013 and in the said preliminary decree plaintiffs have not get particular possession of the suit property. Rights and liabilities and remedies yet to be adjudicated in the said FDP proceedings. The counsel for the defendant No.8 has argued that, as per the sale deed and other revenue records, the property stands in the name of defendant No.8 and as per records the defendant No.8 is in the possession of the suit property. At this juncture this court cannot presume who is in actual possession of the suit schedule property.

14. The primary purpose of granting interim relief is to preserve the rights of the parties. In other words, the objective of such relief is to evolve a workable arrangement

that addresses the exigencies of the situation, while weighing the pros and cons and maintaining a delicate balance between the competing interests of the parties. In the present case, the plaintiffs have produced documents to establish a *prima-facie* case in their favour. But those documents have not demonstrates the possession of the plaintiffs over the suit property. From the pleadings and the documents submitted by both the plaintiffs and the defendants, it prima-facie appears that a full-fledged trial is required to determine who is in actual possession of the suit schedule property. Hence, this court is of the opinion that the plaintiffs have not made out a prima-facie case and have not shown hardship and balance of convenience in their favour. From the above discussion, it is quite evident that the plaintiffs have not made out a *prima facie* case for the grant of temporary injunction as prayed for. **Accordingly, this court answers the Points No.1 to 3 in the ‘Negative’.**

15. Point No.4:- The plaintiffs have not made out a prima-facie case and have not established both hardship and the balance of convenience in their favor. This court is of the

opinion that the plaintiffs are not entitled to the discretionary and equitable relief of temporary injunction as prayed for. Hence, for the aforesaid reasons, this court proceeds to pass the following;

: O R D E R :

I.A. No.I filed by the plaintiffs under
Order XXXIX Rule 1 and 2 R/w Section
151 of CPC is hereby rejected.

No order as to cost.

*(Dictated to the Stenographer directly on computer and typed by him, and corrected, printout taken, signed by me and then pronounced in the open court on this the **28th day of June - 2025**)*

Sd/-
(Smt.Shreedevi),
Addl. Civil Judge & JMFC,
Jamkhandi.