

KABR500033642025



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE
AND JMFC AT HOSAKOTE**

Present: - Sri. Satisha B.,
B.A., LL.B.,
Prl. Civil Judge and JMFC, Hosakote

Dated this the 15th day of April, 2026

Original Suit No.132/2025

Plaintiff ...

Dr. P. Shivananda Maiya @
P. Shivanandayya
S/o. P. Ganapaiah Maiya,
Aged about 80 years,
Residing at: No.116/1,
Bull Temple Road,
Basavanagudi,
Bengaluru-560 019.

- And -

Defendants ...

1. Sri. Atul Kumar K. N.
S/o. K. N. Bangera,
Aged about 56 years,
Residing at: No.26/3,
Srinivasa Nivasa, 2nd Floor,
K.V. Layout, 4th Block,
Jayanagar, Bengaluru-560 011.

2. Sri. B. Prasannaiah
S/o. Brhmasuraiah,
Aged about 75 years,
Residing at: No.17,
Shiva Geetha,
KAS Officer's Layout,
1st Main, Dollars Colony,
J. P. Nagar 4th Phase,
Bengaluru- 560 078.

Parties to IA. No. I

Applicant/Plaintiff : Sri. Dr. P. Shivananda Maiya @
P. Shivanandayy
-V/s-

Opponents/Defendants : Sri. Atul Kumar K. N. and others.

Parties to IA. No. IV

Applicant/Defendants : Sri. Atul Kumar K. N. and others.
-V/s-

Opponents/Plaintiff : Dr. P. Shivananda Maiya @
P. Shivanandayy.

COMMON ORDERS ON IA No.I & IV

IA No.I filed by the plaintiff under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 (Hereinafter referred to as 'CPC', for brevity) seeking to grant of Temporary Injunction restraining the defendants, their men, children, relatives, legal

representatives, agents, officials, staff, servants, workers, GPA Holders or anybody acting under them from interfering with the plaintiff's peaceful possession and enjoyment of the plaint schedule property till the disposal of the suit.

IA No.IV filed by the defendants under Order XXXIX Rule 4 of C.P.C. seeking to vacate/set aside the exparte ad-interim order of temporary injunction granted infavour of the plaintiff.

Plaint Schedule Property

All that piece and parcel of the property bearing plot/site No.172 formed in Sy. No.240 (Sy. No.240P) (Old Sy. No.14/2) Property No.931 measuring 10,000 square feet in 'Coral Country' situated at Jadigenahalli Village, Jadigenahalli Hobli, Hosakote Taluk, Bangalore Rural District.

Bounded by:

East : Boundary;
West : Road;
North : Plot No.187;
South : Plot No.157.

2. It is averred in the affidavit annexed to the applications that, the plaintiff is the absolute owner in possession and enjoyment of the plaint schedule property having acquired under

the registered sale deed dated 28.06.2001 from its erstwhile owner Mr. M. Srinivasa Rao S/o M. Pitchaiah, the Chairman and Managing Director of 'Attorney Windsor Gardens Private Limited' for valuable consideration. After the purchase, the khata and revenue records were got transferred in his name and since then, he has been in possession and enjoyment of the same. The defendants without any right, title or interest over the plaint schedule property, are making an hectic efforts to dispossess the the plaintiff illegally from the plaint schedule property. Thereafter, the plaintiff approached the jurisdictional police, but police advised him to approach the civil court, since dispute is in civil nature. As such, the plaintiff has made out prima-facie case in his favour. If the defendants are not restrained from interfering into the plaint schedule property, he will be put to irreparable loss and injury which cannot be compensated in terms of money. With these, plaintiff prayed to allow the application.

3. In pursuance to the summons issued by this Court, the defendants entered their appearance through their counsel and resisted the suit by filing joint written statement. The defendants adopted the joint written statement as counter to IA No.I and also filed application under Order XXXIX Rule 4 of C.P.C. seeking to vacate/set aside the exparte ad-interim order of temporary injunction granted infavour of the

plaintiff. The defendants specifically contended that the plaintiff suppressed the true and material facts before the court. He has not come to the court with clean hands and is guilty of suppression of true and material facts. The land bearing Sy No. 14, New No. 240 measuring 03 acres 25 guntas (**‘Compact land’**, for brevity) originally belonged to one Smt. Narayanamma and she was acquired the same under the registered sale deed dated 02.03.1951 from its erstwhile owner Sri. Yajaman Kanappa. After the purchase, the revenue records were got transferred in her name and since then, she has been in possession and enjoyment of the same. The foster brother of Narayanamma namely Basappa had created some documents in respect of compact land. As such, Smt. Narayanamma filed a suit for Declaration and Possession against Basappa and his legal heirs namely Byregowda, Hanumathegowda, Rajanna, Devaraj, Chikkashamanna, Munibyregowda before the 1st Addl. Senior Civil Judge, Bangalore Rural District in OS. No.232/1996 and the said suit was decreed in favour of the Narayanamma vide judgment and Decree dated 29.06.2004. In the said judgment, Smt. Narayanamma was declared as absolute owner in respect of the compact land and ordered that defendants to hand over vacant possession of the compact land within 3 months from the date of the decree. The defendants have not complied the decree and as such execution petition bearing Ex. Petition No.

83/2005. The Hon'ble court was pleased to order delivery warrant against Judgment debtors and physical possession of the compact land of the plaint schedule property was hand over to Smt. Narayanamma. When the said Smt. Narayanamma filed a memo stating satisfaction of decree, at this stage, plaintiff filed an application under Order 21 rule 97 read with Section 151 of CPC and application under Section 151 of C.P.C., for grant of Temporary Injunction against the Decree holder and other. The Decree holder resisted the said applications and same are pending for consideration. After obtaining the physical possession of the compact land of the plaint schedule property, the decree holder approached the Tahsildar, Hoskote Taluk to affect the katha in her name. The Tahsildar, Hoskote Taluk was pleased was order to change khatha and mutation in the name of Narayanamma by canceling the entries of Srinivas Rao in the revenue records. Aggrieved by the said order, Srinivas Rao had preferred an Appeal before the Assistant Commissioner in R.A.(H) No; 6/2007-2008 and an Assistant Commissioner was rejected the appeal filed by the Srinivas by its order dated 25.04.2012. The said Srinivas Rao has not filed any appeal before the Deputy Commissioner against and the orders passed by the Assistant commissioner dated 25.04.2012 attained finality. Subsequently, the said Narayanamma had bequeathed the compact land in favour of his daughter namely

Smt. Shoba under the registered Gift Deed dated 25.09.2019. The said Shoba entered into an agreement of sale with the defendants and executed registered agreement of sale along with irrevocable general power of attorney on 25.09.2019. In terms of the said agreement, the said Shoba executed a sale deed in favour of the defendants on 19.06.2020 and put the defendants in possession of the compact land of the plaint schedule property. As such, the defendants are the absolute owners in possession of the compact land of the plaint schedule property. The plaintiff knowing these all facts had filed the present false suit. The claim of the plaintiff is pending for adjudication in Execution Petition No.8/2022. The present suit for simplicitor injunction is not maintainable. Therefore, the defendants sought for dismissal of the application and vacating of the ad-interim order of temporary injunction.

4. The points that would arise for consideration are:-

1. Whether the plaintiff has made out a prima - facie case in his favour?
2. Whether the plaintiff has made out a balance of convenience and he would suffer irreparable injury if the prayer of temporary injunction is not granted?
3. What order?

5. I have heard the learned counsel for parties to the lis and meticulously perused the entire material on record.

6. The learned counsel for the defendants, in support of his arguments, has relied upon the following decisions:

1. 2022:KHC:15325: RFA No.639/2016 C/w. RFA No.638/2016 (Inj) Dated 01.06.2022 - Hon'ble High Court of Karnataka Bengaluru – Smt. Ramadevi and Others -Vs- Smt. Rajeshwari and Another;

7. My answer to the above said points are as follows:-

Point No.1: In the Negative;

Point No.2: In the Negative;

Point No.3: As per final order for the following:

REASONS

8. **Point No.1:-** The plaintiff has filed the present suit against the defendants for grant of permanent injunction restraining them from interfering with the peaceful possession of the plaintiff over the plaint schedule property. The Learned Counsel for the plaintiff argued that, the material placed on record clearly shows that the plaintiff is the absolute owner and in exclusive possession of the plaint schedule property. The vendor of the plaintiff is not a party to the suit bearing OS No.232/1996. Therefore, the judgment and

decree in OS No.232/1996 are not binding upon the vendor of the plaintiff nor the plaintiff. The compact land of the plaint schedule converted from agricultural to non agricultural. The vendor of the plaintiff and defendants are colluded with each other. The sale deed executed infavour of the plaintiff un-challenged. The defendants are not party to the execution proceedings. Therefore, the plaintiff has made out a prima-facie case and balance of convenience also lies in his favour. If the defendants are not restrained from interfering with possession of the plaintiff, he will put to irreparable loss and hardship. As such, he prayed to allow of the application. **Counter to that**, the learned counsel for the defendants to refute the argument canvassed by the learned counsel for the plaintiff argued that the plaintiff has not come to the Court with clean hands and guilty of suppression of material facts. The documentary materials placed by the defendants clearly shows that Smt. Narayanamma is the absolute owner of the compact land of the plaint schedule property. The sale deed executed by Sri. Srinivas Rao infavour of the plaintiff during the pendency of OS. No.232/1996. In the said comprehensive suit, Smt. Narayanamma declared as absolute owner of the compact land of the plaint schedule property. Therefore, the sale deed executed infavour of the plaintiff non est and does not hold sanctity. The plaintiff was already adjudicating his rights in Execution Petition No.83/2005

and he cannot maintain independent suit in the present form. Therefore, the plaintiff is not entitled to equitable relief. There are chances of misuse of order. As such, he prayed to dismissal of the application and vacating of exparte ad-interim order of temporary injunction granted infavour of the plaintiff

9. After hearing respective submissions canvassed by the Learned Counsel for the parties to the lis, it is worth to refer decision of the Hon'ble Apex Court in the case of the Gujrat Bottling Co. Ltd and Others -Vs- Coca Cola Co. and Others reported in (1995) 5 SCC 545, wherein their lordships held that, **the grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests- (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.**

10. Now, let us examine the existence of prima-facie case in favour of the plaintiff. It is undisputed that the plaint schedule property is a portion of the compact land i.e., Sy. No. 14, New Sy. No. 240 measuring 03 acres 25 guntas situated at Jadigenahalli

Village, Hosakote Taluk, Bangalore Rural District. A perusal of the copy of sale deed dated 28.06.2001 shows that one Sri. M. Srinivasa Rao chairman and managing director of M/s. Windsor Garden Private Limited had formed a layout called 'Coral Country' in the land bearing Sy. No.240 of Jadigenahalli Village, Hosakote Taluk and sold the plaint schedule property in favour of plaintiff on 28.06.2001. A perusal of the recitals of the sale deed dated 28.06.2001 does not depict the nature of acquisition or derivation of title over the of the compact land of the plaint schedule property.

11. In the case on hand, the defendants had taken specific defence that the compact land of the plaint schedule property originally belongs to one Smt. Narayanamma and she was acquired the same under the registered sale deed dated 02.03.1951. The foster brother of Narayanamma namely Basappa had created some documents in respect of the compact land. As such, Smt. Narayanamma filed a suit for Declaration and Possession against Basappa and his legal heirs namely Byregowda, Hanumathegowda, Rajanna, Devaraj, Chikkashamanna, Munibyregowda in OS. No.232/1996 on the file of the First Additional Senior Civil Judge, Bangalore Rural District and the said suit was decreed in favour of the Narayanamma vide judgment and Decree dated 29.06.2004. In the said judgment, Smt. Narayanamma was declared as absolute owner in respect of the compact land and ordered that defendants

to hand over vacant possession of the compact land within 3 months from the date of the decree. The defendants have not complied the decree and as such execution petition bearing Ex. Petition No. 83/2005 was filed. The Hon'ble court was pleased to order delivery warrant against Judgment debtors and physical possession of the compact land of the plaint schedule property was hand over to Smt. Narayanamma.

12. A perusal of copy of judgment in OS No.232/1996 shows that one Smt. Narayanamma had filed a suit for declaration of title and recovery of possession of the compact land of the plaint schedule property against Basappa and Others and the said suit was decreed infavour of Smt. Narayanamma on 29.06.2004. For better appreciation, it is worth to recapitulate the operative portion of the judgment, which is re-extracted us under:

ವಾದಿಯರ ದಾವೆಯನ್ನು ಭಾಗಶಃ ಡಿಕ್ರಿ ಮಾಡಲಾಗಿದೆ.

ವಾದಿಯರು ದಾವಾ ಸ್ವತ್ತಿನ ಪೈಕಿ 3 ಎಕರೆ 25 ಗುಂಟೆ ಜಮೀನಿಗೆ ಮಾತ್ರ ಹಕ್ಕುದಾರ ಮಾಲೀಕರಾಗಿದ್ದು. ಸದರಿ ಸ್ವತ್ತಿನ ಸ್ವಾಧೀನವನ್ನು ಪ್ರತಿವಾದಿಯವರಿಂದ ಪಡೆದುಕೊಳ್ಳಲು ಅರ್ಹರಾಗಿರುತ್ತಾರೆ. ಪ್ರತಿವಾದಿಯರತು ಇಂದಿನಿಂದ 3 ತಿಂಗಳೊಳಗಾಗಿ ದಾವಾ ಸ್ವತ್ತಿನ ಸ್ವಾಧೀನವನ್ನು ವಾದಿಯವರಿಗೆ ವಹಿಸಿಕೊಡತಕ್ಕದ್ದು. ಆದರೆ ವಾದಿಯರು ದಾವಾ ಸ್ವತ್ತು ಬಗ್ಗೆ ಕೋರಿದ್ದ ಪ್ರಸ್ತುತ ಪ್ರಬಂಧಕಾಜ್ಞೆಯ ಪರಿಹಾರವನ್ನು ವಜಾ ಮಾಡಲಾಗಿದೆ.

13. So far as the above judgment is concern, the learned counsel for the plaintiff strenuously argued that the plaintiff is not the party to the said judgment and it has been obtained behind the back of the plaintiff. Therefore, the above judgment and decree are not binding upon the plaintiff. A cumulative perusal of the copy of the sale deed dated 28.06.2001 and copy of the judgment in OS No.232/1996 shows that the sale deed was executed infavour of the plaintiff during the pendency of OS No.232/1996 and it has been executed after a lapse of five years from the date of filing of the above suit. In order to determine the sanctity of judgment and findings, this Court lacks jurisdiction.

14. A perusal of the copy of the delivery warrant and possession receipt issued in Ex. No.83/2005 shows that Smt. Narayanamma initiated execution proceedings before the Hon'ble First Additional Senior Civil Judge, Bangalore Rural District in Ex. No.83/2005, wherein the delivery warrant was duly executed and reported delivery of possession of the compact land of the plaint schedule property in favor of Smt. Narayanamma. In this regard, the learned counsel for the plaintiff strenuously argued that at the time of execution of delivery warrant, plaintiff was not present and the same was reported behind the back of the plaintiff. As discussed above, this Court lacks jurisdiction to express opinion or give findings on the execution of delivery warrant. A perusal of the

copy of the application filed by the plaintiff under Order 21 Rules 97, 101 and 102 read with Section 151 of the C.P.C., shows that the plaintiff appeared in the execution proceedings as objectors and claimed that he is the absolute owner and in possession of the plaint schedule property and the same is pending for adjudication.

15. Order 21 Rule 101 of C.P.C., enables the executing Court to decide inter-se claims of third parties in execution proceedings and does not require a separate suit to be filed by the third party. As admitted, an adjudication of the claim of the plaintiff with respect to title and possession over the plaint schedule property is pending before the executing court. Unless and until the determination of the claim of the plaintiff by the executing Court, this court lacks jurisdiction to give findings in the case on hand. Therefore, the plaintiff has an efficacious remedy in Ex. No.83/2005. A cumulative perusal of documentary materials produced by the parties to the lis shows a cloud over the title as well as the possession of the plaintiff over the plaint schedule property. It is worth to refer decision of the Hon'ble Apex Court in the case of Anand Prasad Agarwalla -Vs- Tarkeshwar Prasad and Others reported in (2001) 5 SCC 568, wherein their lordships have held that, **the court should not hold mini trial at the stage of grant of temporary injunction and examine various aspect of the case.** In view of above discussion, at this stage the plaintiff has

not made out a prima-facie case in his favour. Accordingly, I answer point no.1 in the '**Negative**'.

16. **Point No.2:-** As discussed above, the plaintiff was not made out a prima-facie case in his favour. In respect to balance of convenience and irreparable loss, it is the specific contention of the plaintiff that, during the pendency of Ex. No.83/2005, Naryanamma had executed a gift deed in respect of the plaint schedule property in favour of her daughter. In turn, her daughter, sold the compact land of the plaint schedule property in favour of the defendants. As discussed above, there is pendency of comprehensive proceedings before the Hon'ble Senior Civil Judge in respect of the compact land of the plaint schedule property. The plaintiff resisted the execution proceedings and claimed title over the plaint schedule property. Therefore, the plaintiff has an efficacious remedy in Ex. No.83/2005. If this Court proceeded to determine the sanctity of judgment in OS No.232/1996 and Ex. No.83/2005 amounts to misfeasance of judicial discipline. Therefore, the balance of convenience also not lies infavour of the plaintiff. If temporary injunction is not granted infavour of the plaintiff, no hardship will be caused to the plaintiff. Accordingly, I answer point No.2 in the '**Negative**'.

17. **Point No.3:-** In view of discussion and the findings arrived at point No.1 to 2, I proceed to pass the following:

ORDER

IA No. I filed by the plaintiff under Order XXXIX Rule-1 and 2 read with Section 151 C.P.C., is dismissed.

IA No. IV filed by the defendants under Order XXXIX Rule-4 read with Section 151 C.P.C., is allowed.

Consequently, exparte ad-interim temporary injunction granted against the defendants is vacated.

No order as to costs.

(Typed to my dictation by the stenographer directly on the computer, corrected and signed by me and then pronounced in the open Court on this the 15th day of April, 2026)

**(Satisha B.)
Prl. Civil Judge & JMFC.,
Hosakote**