

IN THE COURT OF ADDL. CIVIL JUDGE AND J.M.F.C.,**AT: CHALLAKERE.**

Present: **Sri. PUNITH .B.R.,**
B.A. LL.B.,

Addl. Civil Judge and JMFC., Challakere.

Dated on the 2nd day of May 2026

OS No.247/2025

Sri. K. Mahaboob

.... Plaintiff

//Versus//

The Chief Officer & Another

.... Defendants

PARTIES TO I.A. No.III

Sri. K. Mahaboob

.... Applicant/Plaintiff

//Versus//

The Chief Officer & Another

.... Opponents/Defendants

Provision under which application is filed	:	U/O XXXIX Rule 1 & 2 r/w Sec.151 of CPC
Relief sought for	:	Temporary injunction
The date on which application is filed	:	14.07.2025
The date on which the objection is filed by the defendants	:	02.09.2025
The date on which the orders passed on the said application	:	02.05.2026

ORDERS ON IA No.III

The plaintiff has filed the present application under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure,

seeking a temporary injunction restraining the defendants, their agents, servants, or any person acting on their behalf, from demolishing the hotel constructed on the suit schedule property, pending disposal of the suit.

2. The application is supported by the affidavit of the plaintiff, wherein it is averred that the plaintiff is carrying on a hotel business in the suit schedule property by virtue of a cement sheet house constructed thereon. It is stated that the said hotel was constructed more than 40 years ago, and that the plaintiff has obtained electricity service from the competent authorities. The plaintiff further contends that he has been in continuous, peaceful possession and enjoyment of the suit property for the past 40 years by paying taxes, electricity charges and license fee . It is further alleged that on 11.07.2025 at about 2:00 PM, the defendants, being officials of the Panchayath, arrived at the suit property with earth-moving machinery and attempted to forcibly demolish the hotel, which act was resisted by the plaintiff. The defendants allegedly warned the plaintiff to vacate the suit property on or before 14.07.2025, failing which they would proceed to demolish the structure. Hence, the present suit and application have been filed. The plaintiff contends that a prima facie case exists in his favour, that the balance of convenience lies with him, and that irreparable injury would be caused if the relief sought is not granted. Accordingly, the plaintiff prays for allowance of the application.

3. Per contra, the defendants have filed their written statement and a memo seeking to treat the same as objections to the present application. The defendants contend that the suit schedule property belongs to the Pattana Panchayath. It is stated that the plaintiff's father had been conducting a hotel business on the said property on a daily rent basis. After the demise of the plaintiff's father, no such business has been carried on. It is further submitted that upon upgradation to Pattana

Panchayath, the authorities resolved to construct a private bus stand and a commercial complex, and that the suit property, being Panchayath property, is required for the said purpose and is presently an obstruction. The defendants assert that they had orally directed the plaintiff and others to remove the structures and hand over vacant possession of the suit property. It is also contended that the plaintiff had sought time until the completion of the fair of Sri Guru Thipperudraswamy. Alleging suppression of material facts by the plaintiff, the defendants have filed a counterclaim seeking a mandatory injunction directing the plaintiff to vacate the suit property and hand over vacant possession to the Panchayath. On these grounds, the defendants pray for dismissal of the application.

4. Upon the perusal of this application, objection and documents place before this court, the following points arise for the consideration of this Court:

P O I N T S

- 1) Whether plaintiff has made out a prima-facie case?
- 2) Whether balance of convenience lies in favour of plaintiff?
- 3) Whether irreparable loss and injury would be caused to the plaintiff if an order of temporary injunction is not granted?
- 4) What Order?

5. Heard counsel for both sides. Perused the materials place on record and relevant provision of law. Now, this Court answers the above points as under:

Point Nos.1 to 3 : Partly in the Affirmative

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

: REASONS :

6. **Points No.1 to 3:** These points are taken up together for common consideration, as they involve overlapping questions of fact and law.

7. At the outset, this Court has carefully examined the pleadings of both parties, the affidavit filed in support of the application, the objections filed by the defendants, and the documents placed on record.

8. The case of the plaintiff rests primarily on his assertion of long-standing possession. It is contended that he has been in continuous possession and enjoyment of the suit schedule property for more than 40 years by running a hotel business in a cement sheet house constructed thereon. However, a critical scrutiny of the affidavit reveals that it is conspicuously silent as to the origin of such possession. The plaintiff has neither pleaded nor produced any material to show under what authority or in what capacity he entered into possession of the suit property. There is no document evidencing grant, lease, licence, allotment, or any manner of lawful induction into possession.

9. The documents produced by the plaintiff are limited to certain electricity bills, tax paid receipts, photos. These documents, at the highest, indicate that the plaintiff or his predecessor was in occupation of the premises during the said period. It is well settled that such documents do not confer title, nor do they by themselves establish lawful possession when the same is specifically disputed.

10. Per contra, the defendants have asserted that the suit schedule property is the property of the Pattana Panchayath and that the plaintiff's father was permitted to occupy the same on daily rent basis for running a hotel business. It is further contended that after the demise of the plaintiff's father, the plaintiff has no subsisting right to continue in possession. The defendants have also placed on record their intention to utilize the property for public purpose, namely construction of a bus stand and commercial complex.

11. However, what assumes significance in the present case is that the defendants have not denied the plaintiff's present possession over the suit schedule property. On the contrary, their own pleadings disclose that they have called upon the plaintiff to vacate and hand over vacant possession. Such a plea necessarily implies and constitutes an admission that the plaintiff is in possession as on the date of the suit. Further, the allegation that the defendants attempted to remove the structure by deploying machinery lends support to the inference that the plaintiff is in settled possession.

12. In this context, it is a settled and well-recognized principle of law that even a person in unauthorized or unlawful possession cannot be dispossessed except by following due process of law. The rule of law mandates that no person, including the State or its instrumentalities, can take the law into their own hands and effect dispossession by force. Thus, though the plaintiff has failed to establish a prima facie case in respect of title or lawful entitlement to the suit property, he has succeeded in establishing a prima facie case with regard to his settled possession, which stands corroborated by the pleadings of the defendants themselves.

13. Coming to the aspect of balance of convenience, if the defendants are permitted to dispossess the plaintiff or demolish the structure during the pendency of the suit without recourse to lawful procedure, the plaintiff would be deprived of possession and the very subject matter of the suit would be irreversibly altered. Such a situation would render the adjudication in the main suit worthless. On the other hand, if the defendants are restrained only from taking forcible action, no prejudice would be caused to them, as they are not remediless and are at liberty to initiate appropriate proceedings in accordance with law for eviction and recovery of possession.

14. With regard to irreparable injury, forcible dispossession or demolition without due process would undoubtedly result in injury to the plaintiff which cannot be adequately compensated in monetary terms. The injury lies not merely in loss of structure, but in the deprivation of possession otherwise than in accordance with law.

15. This Court is also conscious of the fact that the suit property is claimed to be public property belonging to the Panchayath. However, even in such cases, the authorities are required to act strictly in accordance with law and cannot resort to extra-legal measures for eviction.

16. In the totality of the circumstances, this Court is of the considered view that the plaintiff is not entitled to protection of possession as an incident of any established right or title, but is entitled to protection against unlawful dispossession. The relief, therefore, requires to be moulded appropriately. Accordingly, Points No.1 to 3 are answered partly in the affirmative, holding that the plaintiff has made out a limited prima

facie case confined to protection of his settled possession, and not with respect to title.

17. **POINT No.4:** In view of the foregoing discussion, this Court proceeds to pass the following:

ORDER

The application filed by the plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure is hereby partly allowed.

The defendants, their officials, agents, servants, or any person claiming through or under them are hereby restrained from dispossessing the plaintiff or demolishing the structure standing on the suit schedule property otherwise than by due process of law, pending disposal of the suit.

It is hereby clarified that this order shall not be construed as recognition of any right, title, or interest of the plaintiff over the suit schedule property. The defendants are at liberty to take appropriate steps in accordance with law for recovery of possession.

No order as to costs.

[Dictated to the Stenographer directly on computer, typed by him, corrected, signed and then pronounced by me in the open Court on 2nd day of May 2026 2026]

(PUNITH. B.R.)
Addl. Civil Judge & JMFC.,
Challakere.