

KACM210041492024



**IN THE COURT OF THE I ADDL. CIVIL JUDGE AND
JMFC, KADUR.**

Present: Smt. Amrin Sultana. B.A., L.L.B.,
I Addl. Civil Judge & JMFC, Kadur.

Dated: This the 18th day of January 2025

OS.No.565/2024

Smt. N. Bhagya,
W/o H.M. Basavarajappa,
Aged about 60 years, Housewife,
R/o K. Hosahalli Extension,
Kadur Town, Kadur Taluk,
Chikkamagalur district.

PLAINTIFF

(Reptd by Sri. M.O.J. Advocate)

-versus-

The Town Municipal Council,
Kadur, represented by
Chief Officer, Town, Municipal Council,
Kadur Town, Kadur Taluk,
Chikmagalur District.

DEFENDANT

(Reptd by Sri. K.R.S. Advocate)

I.A.No.II

Smt. N. Bhagya

Applicant

Vs

The Chief Officer,
The Municipal Council, Kadur.

Opponent

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1.	Provision under which the application is filed.	U/O.XXXIX Rule 1 & 2 CPC
2	Relief sought for	Temporary Injunction against defendant.
3	The date on which the application is filed	20.08.2024
4	Number of applications	I.A.No.II
5	The date on which the objections are filed by different opponents	20.08.2024 filed by defendant.
6	The date of order	18.01.2025

**ORDERS ON I.A No. II FILED BY THE APPLICANT UNDER
ORDER XXXIX RULE 1 AND 2 C.P.C**

The Plaintiff has filed this suit seeking relief of Permanent Injunction, along with the Plaint the Plaintiff has maintained this I.A under Order XXXIX Rule 1 and 2 CPC praying to restrain the Defendant, his agents, servants or anybody on its behalf from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property, pending disposal of the suit on merit by way of temporary Injunction.

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2. The Plaintiff has sworn to the affidavit, wherein he has stated that the Government has granted the suit schedule property in favour of his mother on 15.12.1982 through grant certificate. Since then the mother of the plaintiff is in possession and enjoyment over the suit schedule property and Khata of the suit schedule property is standing in the name of the mother of the Plaintiff. The mother of the plaintiff demised on 17.12.2020 leaving behind plaintiffs as her only legal heirs. The Plaintiff have approached the concerned revenue authority to transfer the khata and other revenue records of the suit property into the joint name of the plaintiff. The said application is pending for consideration. The Defendant having no right, interest over the suit schedule property and no way concerned with the suit schedule property are illegally trying to obstruct and interfere with the peaceful possession and enjoyment of the suit schedule property. The Defendant came to the suit schedule property along with his

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henchmen and threatened the plaintiffs with dire consequences and also trying to dispossess the plaintiffs from the suit schedule property. when the Plaintiff approaches the jurisdictional police, they directed the plaintiffs to approach the competent court. The Plaintiff has got prima facie case, if the Defendant will succeeds in the illegal act, the Plaintiff will be put into great hardship and humiliation and he will loose his property and very purpose of filling of the suit will be frustrated. Hence, prayed to allow I.A No.II.

3. On the other hand, the learned counsel for the Defendant has filed statement of objection contending that, the Plaintiff has sworn to the false affidavit with an intention to grab the property of the Defendant. It is contended that the there was Government land situated within the Jurisdiction of the Chikkangala Grama Panchayath, Kadur Taluk. After extension of the Jurisdiction of Kadur Town Municipality, in the year 1985-86, the Chikkangala Grama Panchayath have

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handed over the said landed property to the Kadur Town Municipality. In order to form the site, The Defendant have approached the survey department to conduct survey of the property and to prepare the sketch to form the site and town Municipality Kadur have intends to form 54 sites measuring 40 X 60 feet each. Now there is survey work is in progress. At no point of time, the Chikkangala Grama Panchayath, have granted the sites either in favour of the mother of the plaintiff or anybody. The plaintiff and his mother have concocted and fabricated the documents and got created documents. Hence, prayed to reject I.A No. II with cost.

4. Heard Arguments of the both side and perused pleadings and documents produced by the both parties.

5. The following points would arise for consideration of this Court.

Point No.1: Whether the Plaintiff has made out prima-facie case for grant of Temporary Injunction as sought for?

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Point No.2: Whether the balance of convenience lies infavour of the Plaintiff?

Point No.3: Whether the Plaintiff will be put irreparable loss and hardship, if IA No.II is not allowed?

Point No.4 : What Order?

6. The findings of this Court on 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 the final order for the following;

:: REASONS ::

7. Point No.1:- This suit is filed by the Plaintiff against the Defendants for seeking the relief of perpetual Injunction. It is the case of the plaintiff is that the suit property has been granted in favour of the mother of plaintiff as per grant certificate dated 15.12.1982 and

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Khata of the suit schedule property is standing in the name of the mother of the plaintiff. Such being the case, the Defendants without having any right over the suit schedule property is disturbing the possession of the plaintiff over the suit schedule property. On the other hand, the Defendant in his written statement has claimed that, the grama panchayath has not issued any grant certificate to the mother of the plaintiff.

8. At this stage, without going in to the merits of the case and holding mini trial, this court has considered the aspect of Prima facie case. At this stage, this court makes it very clear that this court is looking towards prima facie case and not prima facie title. It is well-settled principles of law that at the time of disposing the Temporary Injunction application, the court cannot go into the prima facie title and only to consider whether the Plaintiff has made out a prima facie case for granting interim relief.

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9. The primary purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and prejudice, likely to be caused to the Plaintiff if the relief is refused; and injury and prejudice likely to be caused to the Defendants if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.

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10. The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.

11. The first rule is that the applicant must make out a prima facie case in support of the right claimed by him. The court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of Temporary Injunction.

12. In order to ascertain the prima-facie case, this Court has carefully perused the materials on record. The Plaintiff has produced copy of the grant certificate, on

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perusal of the same, it appear that the suit schedule property has been granted in favour of mother of the plaintiff vide grant certificate dated 15.12.1982. On the other hand, Defendant denies the issuance of the grant certificate. The contention of the Defendants, is the Plaintiff is trying to grab the property of the Defendant. It is left open to the Learned Counsel for the Defendant to establish the said fact during the trial. But at this stage this Court is of the opinion that the plaintiff is in possession of the suit schedule property by virtue of the grant certificate. their possession needs to be protected. The Plaintiff has made out prima-facie case, hence this Court is of the opinion that he is entitle for the equitable relief of temporary injunction. With these observations, this Court has answered point No.1 in the **Affirmative.**

13. Point No.2 & 3:- This Court while answering point no.1 has held that, the plaintiff has made out prima facie case to grant temporary injunction. The Suit Schedule property is site land, and if the defendant is not

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restrained from interfering there may be chances of causing damages to the suit schedule property. Hence this Court is of the opinion that the balance of convenience leans in favour of the Plaintiff and if equitable relief of temporary injunction is not granted in favour of the Plaintiff, then the Plaintiff will be put to irreparable loss and hardship. With these observations, this Court has answered Point **No.2 and Point No.3 in the Affirmative.**

14. Point No.4:- For the aforesaid discussion on Point No.1 to 3, this Court proceeds to pass the following:

ORDER

I.A.No.II filed by the Learned Counsel for the Plaintiffs under Order 39 Rule 1 and 2 R/W Sec.151 of CPC is hereby allowed.

By way of granting temporary injunction in favour of the Plaintiff, the Defendant, his agents, servants, or any authorized persons or any body acting on their behalf are hereby temporarily

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restrained from interfering with the peaceful possession and enjoyment of the plaintiffs over the suit schedule property till disposal of the suit.

No Order as to Cost.

(Dictated to the Stenographer, typed by her on computer and corrected by me, then pronounced in the open Court on this day 18th day of January 2025).

Sd/-

(Amrin Sultana)

**I Addl. Civil Judge and JMFC
Kadur.**

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