



**IN THE COURT OF THE III ADDITIONAL CIVIL JUDGE
AND JMFC, KADUR.**

Present: - Sri. Thahakaleel K.A., B.A., LL.B.,
III Additional Civil Judge & JMFC.,
Kadur.

Dated: This 16th Day of April 2025

O.S.No.526/2018

- PLAINTIFF/S:**
1. **Smt.Laxmamma**
W/o Late Thimmanna,
Aged about 73 years,
House wife,
 2. **Mudlappa**
S/o Late Thimmanna,
Aged about 51 years,
Agriculturist,
 3. **Chandrappa**
S/o Late Thimmanna,
Since dead by LR's
- P-3(a) **Smt. Sharadamma**
W/o Late Chandrappa,
Aged about 44 years,
House wife,
- P-3(b) **Shweatha K.C.**
D/o Late Chandrappa,
W/o Kumar,
Aged about 30 years,
House wife,
R/o Alaghatta Village,
Kasaba Hobli, Kadur Taluk.



- P-3(c) **Dharanesh K.C.**
S/o Late Chandrappa,
Aged about 28 years,
Agriculturist,
3(a) and (court) both are
R/o Karehalli Village, Birur
Hobli, Kadur Taluk.
4. **Smt.Halamma**
D/o Late Thimmanna,
W/o Manjappa,
Aged about 40 years,
House-wife,
R/o Jiganehalli Village,
Kadur taluk, Chikkamagaluru
District.
5. **Smt. Bhagyamma**
D/o Late Thimmanna,
W/o Manjappa,
Aged about 38 years,
House-wife
R/o Doddaghatta Village,
Birur Hobli, Kadur Taluk.
6. **Hanumanthappa**
S/o Late Thimmanna,
Aged about 32 years,
Agriculturist,
The plaintiff No.1 to 3 and 6
are R/o Karehalli Village, Birur
Hobli, Kadur Taluk,
Chikkamagaluru District.

(Rep. By Sri. C.M.Gangappa., Advocate)

**V/S****DEFENDANT/S**

1. **G.H. Govindappa**
S/o Hanumanna,
Aged about 58 years,
Agriculturist,
 2. **Smt. Hemavathi**
W/o G.H.Govindappa,
Aged about 50 years,
House-wife,
 3. **Chandrashekara**
S/o G.H.govindappa,
Aged about 23 years,
Agriculturist,
 4. **Srinivasa**
S/o G.H.Govindappa,
Aged about 20 years,
Agriculturist,
- All are defendants are
R/o Galihalli Village, Birur
Hobli, Kadur Taluk,
Chikkamagaluru District.

(Rep. By Sri. K.M.Jayanna., Advocate)

Parties to I.A No.I

Applicant/s : Smt.Laxmamma and others

Opponent/s : G.H.Govindappa and others

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Sl. No.	Subject	Remarks
1	Provision under which the application is filed	Order XXXIX Rule 1 and 2 CPC
2	Relief sought for	Temporary Injunction.
3	The date of which the application is filed	02.11.2018
4	Number of the application	I.A.No.I
5	The date of which the objections are filed by different opponents.	by the Defendant No.1.
6	The date of Order.	16.04.2025

**ORDERS ON I.A No.I FILED BY THE PLAINTIFF
UNDER ORDER XXXIX Rule 1 AND 2 C.P.C.**

The present suit for the relief of permanent injunction, restraining the defendants or their family members or their agent, servant, or anybody on their behalf from interfering, disturbing, or obstructing the peaceful possession and enjoyment of the suit schedule property of the plaintiff. Along with the plaint, the plaintiff also maintained IA No.1 under Order XXXIX Rule 1 and 2, read with Section 151 CPC, praying to grant Ad-interim order of temporary injunction against the defendants or their family members or their agent,

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servants or anybody on their behalf from obstructing or disturbing the peaceful harvest of maize crop grown by the plaintiffs in the suit schedule property.

2. The Plaintiff No.6 sworn to the affidavit and stated that the suit schedule property is stands in the name of his father Thimmanna S/o. Kenchanna. The said Thimmanna S/o. Kenchanna demised on 20.10.2014, leaving behind plaintiffs as his legal heirs. The plaintiff is in peaceful procession and enjoyment of the suit schedule property and grown maize crop in the suit schedule property. Now the said maize crop is ready for harvesting. The defendants having no manner of right, title much less possession over the suit schedule property are trying to interfere with the possession over the suit schedule property of the plaintiff. In this regard, the Plaintiff No.2 has filed police complaint against the defendants on 17.06.2018. But the police issued endorsement stating that the dispute is in civil nature and directed the plaintiffs to approach civil court. The defendants are very powerful in political and money. The plaintiffs are having a prima facie case and balance of convenience in their favour. if the application is not

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allowed, the plaintiff will be put into great loss and hardship. Hence, prayed to allow the application.

3. On the other hand, the defendant No.1 has filed statement of objection by denying the averments of Plaintiff and the IA No.1. In the objection, it is stated by the defendant no.1 that, the defendant no.1 is the absolute owner and in possession and enjoyment over the suit schedule property. The Defendant No.1 had grown the maize crop in the suit schedule property by incurring expenses of Rs.5000. it is further stated by that Defendant No.1 had grown the maize crop in the suit schedule property and harvested the same crop on 31.10.2018. It is further stated by the defendants that the plaintiffs are neither owners nor in possession over the suit schedule property. Hence, the very filing of the suit is not maintainable and prayed to dismiss the I.A with cost.

4. Heard arguments of both side and perused material available on record.

5. The following points would arise for consideration of this court;

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

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.1 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 Negative*

Point No.2: *Does not survive for consideration.*

Point No.3: *Does not survive for consideration.*

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

:: R E A S O N S ::

7. **Point No.1 to 3:** As these points are interconnected with each other, these points have been taken up together for common discussion.

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8. 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.

9. 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. The plaintiff have filed present suit for the relief of permanent injunction. But, the Defendants in their written statement denied the title and

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possession of the plaintiff over the suit schedule property.

When the title of the Plaintiff is denied by the defendant, then it is incumbent upon the plaintiff to file comprehensive suit for declaration and Injunction and mere filling of the suit for bare injunction is not maintainable. The prima facie case includes maintainability of the suit. At this stage it is necessary to refer the judgment of **Hon'ble High court of Karnataka** reported in **Patel Enterprises v. M.P. Ahuja, 1992 SCC OnLine Kar 302**, wherein the Hon'ble High Court has held that, One of the factors to be considered by the trial Court while considering the case for temporary injunction is whether prima facie case is made out by the plaintiff. This certainly would include the nature of the suit filed and its maintainability. If, on the face of it, the suit is not maintainable, question of issuing any temporary injunction would not arise. As the very filling of the suit is under in question of magnanimity and the defendants

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already stated in the written statement that, they have harvested the maize grown in the suit schedule property, the plaintiff failed to make prima facie case. Hence, this court answers **Point No.1 in the Negative** and **Point No.2 and 3 as does not survive for consideration.**

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

ORDER

I.A.No.1 filed by the Learned Counsel for the Plaintiff under Order 39 Rule 1 and 2 of CPC is hereby rejected.

No order as to cost.

(THAHAKALEEL K.A)
III Addl. Civil Judge and JMFC
Kadur.