IN THE COURT OF SENIOR CIVIL JUDGE & JMFC., AT MUDIGERE

Present: Sri. Prakash.P.M M.B.A., LL.B.,
Senior Civil Judge & JMFC.,
Mudigere.

Dated this the 3rd day of February 2026

O.S. No.44/2025

Plaintiff: **M/S. Kalasa Estate,**
A registered Partnership Firm
Having its Office at
Kalasa Estate, Kalasa Taluk,
Chikkamagaluru District-577 124

Rep. by its Working Partner
Sri. S. Alaghu Vairam
S/o. So. S. Sockalingam
Aged about 31 years,

[By Sri. A.S., Advocate]

V/s.

Defendants: **1. Sri. Mohammed Harris,**
Aged about 55 years,
S/o. Mohammed Sadiq Siddiq,
R/at "Royal Benshood",
No.90, Nagenahalli Cross Bus Stop,
Kannur Post, Bagalur,
Bengaluru-562 149.

2. M/S. Assa Real Estate PVT. LTD.,
A Company incorporated under
the Companies Act.
Having its registered Office
at No.18, 1st Floor,
7th Main Road,
HRBR Layout, Kalyananagara,
Bengaluru-560 043.

Rep. by its Director,
Sri. Sundar
Aged about 52 years

**[D1 By Sri. M.V.J./A.B.M., Advocate,
D2 By Sri. K.S.A/K.C.C.]**

RANK OF PARTIES IN IA.No.XI

Applicant: **M/S. Assa Real Estate PVT. LTD., Defendant No.2**

V/s.

Opponent: **Sri. Kalasa Estate plaintiff**

1	Provisions under which the application is filed	Under order XXXIX rule 1 and 2 of CPC
2	Relief sought for	Ad-interim Exparte order of temporary injunction

3	The date on which the application is filed	25.10.2025
4	Number of the application	I.A.No.XI
5	Date on which the objection filed by opponents	30.10.2025
6	The date on which the order passed on the application	03.02.2026

PRAKASH P M

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Senior Civil Judge and JMFC, Mudigere

ORDER ON I.A.No.XI FILED BY THE DEFENDANT No.2 UNDER ORDER 39 RULE 1 & 2 OF CPC

The defendant No.2 has filed IA No.XI under Order 39 rule 1 and 2 of C.P.C. to grant temporary injunction order infavour of defendant No.2 and against plaintiff, restraining the plaintiff, his men, agents, servants or any other persons from illegally interfering with the 2nd defendant's possession, enjoyment and cultivation of the plaint schedule property or from dispossessing the

defendant No.2 from the same unless due by due process of law till the disposal of the suit.

2. In the affidavit filed in support of IA No. XI, Sri Mohamed Asif, Manager of Defendant No.2 Company, he submits that the written statement filed by him may be read as part and parcel of this affidavit. He states that Defendant No.2 was put in lawful possession of the plaint schedule properties by Defendant No.1, acting on behalf of the plaintiff, pursuant to a Memorandum of Understanding dated 12.04.2023/13.04.2023. Defendant No.1 is the General Power of Attorney holder of the plaintiff, under an irrevocable and interest-coupled GPA executed by the plaintiff and its partners. The said GPA cannot be revoked unilaterally and authorises Defendant No.1 to perform all acts, deeds and things in respect of the plaint schedule properties. In furtherance of the said authority, Defendant No.1 has undertaken several acts for the benefit of the plaintiff.

3. It is submitted that, in exercise of the powers under the GPA, Defendant No.1 entered into the aforesaid MOU, which is binding on the plaintiff and its partners. Pursuant thereto, Defendant No.2 was placed in possession of the plaint schedule properties and has invested substantial amounts towards upkeep, maintenance and development of the estate, and was also ready to settle the dues of other investors. However, the sale transaction could not be concluded due to the failure of the plaintiff and its partners to furnish Income Tax returns for the past 12 years, audit reports, PCC clearance, and other necessary documents, as well as due to change in ownership of the plaintiff firm without notice. In the meantime, Defendant No.1 successfully negotiated a One Time Settlement with the Bank, thereby preventing auction of the estate and saving substantial value to the plaintiff. Thereafter, with a mala fide intention to defraud the defendants, the plaintiff issued a notice cancelling the GPA, began negotiating with third parties, and started interfering

with the lawful possession of Defendant No.2. The plaintiff, while concealing the fact that the defendants are in settled possession, lodged false complaints with the police and threatened forcible dispossession. Defendant No.2 was constrained to file OS No.79/2023 before the Civil Judge, Mudigere. Defendant No.1 has also filed OS No.11/2025 against the plaintiff and others. To prejudice the defendants, the plaintiff has now concocted a false story alleging forcible dispossession on 13.04.2025 and has filed the present suit under Section 6 of the Specific Relief Act seeking possession and damages, with the intention of portraying the defendants as trespassers.

4. It is submitted that Defendant No.2 is in settled and lawful possession of the plaint schedule properties, having invested huge sums under the bona fide belief of becoming the owner. Possession of such a large estate measuring over 400 acres could not have been taken forcibly, and the allegation of illegal dispossession is false, imaginary and malicious. The

plaintiff itself harvested crops for two years on the pretext of adjusting the same towards final settlement, which further establishes the defendants' lawful possession. Despite the pendency of multiple suits, the plaintiff and its men continue to obstruct the management of the estate and threaten forcible dispossession, causing grave hardship, loss and irreparable injury to the defendants. The possession of Defendant No.2 cannot be disturbed except in accordance with due process of law. Hence, Defendant No.2 prays that this Hon'ble Court be pleased to allow the application in the interest of justice and equity.

5. The plaintiff has filed objections denying all the averments made in IA No. XI. It is contended that Defendant No.2 is a rank trespasser who has illegally dispossessed the plaintiff from the suit schedule property on 13.04.2025 and, therefore, cannot seek the relief of temporary injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure. The plaintiff has specifically pleaded in paragraph 17 of the plaint

that Defendant No.1, while acting as GPA holder, has created a back-dated and unregistered MOU dated 12.04.2023 in favour of Defendant No.2. Defendant No.1 has neither invested any money nor contributed any consideration towards the suit schedule property. Once the GPA dated 27.07.2022 stood cancelled, Defendant No.1 ceased to have any authority to act on behalf of the plaintiff. Consequently, any MOU or transaction executed thereafter is null, void and does not confer any right, title or possession upon Defendant No.2. The alleged possession of Defendant No.2 is unlawful, unauthorized and obtained by force, which forms the very subject matter of the present suit filed under Section 6 of the Specific Relief Act.

6. It is further submitted that in Assa Real Estate Pvt. Ltd., Defendant No.2 herein, one Mr. Salman Siddiqi, son of Defendant No.1, Mr. Mohammed Harris, is a Director. This clearly establishes that O.S. No.79/2023 instituted by Defendant No.2 is a collusive suit filed in active concert with Defendant No.1. Such

collusive proceedings demonstrate a joint and fraudulent attempt to illegally take over the suit schedule property without investing any amount for the benefit of the plaintiff. The contention of Defendant No.2 that he was put in possession by Defendant No.1 on behalf of the plaintiff is unsupported by any valid document evidencing delivery or acknowledgment of possession. Defendant No.2 cannot seek protection on the basis of a fabricated and void MOU. In fact, Defendant No.1 himself was never put in possession of the suit schedule property so as to deliver possession to Defendant No.2. The claim that the GPA dated 27.07.2022 was irrevocable and coupled with interest is false and contrary to the record. The GPA was executed only for the limited purpose of negotiating with banks for One Time Settlement and not for transfer of possession or creation of any third-party rights.

7. As pleaded in paragraph 12 of the plaint, the MOU dated 19.07.2022 specifically provides that if the

proposed sale of Kalasa Estate does not materialize, the GPA would automatically stand cancelled. The proposed sale in favour of M/s Cardier Foods and Beverages Private Limited never materialized. Consequently, the GPA stood terminated and was expressly revoked by declaration dated 25.08.2023. After such cancellation, Defendant No.1 had no authority whatsoever to execute any MOU or deliver possession. In O.S. No.11/2025 filed by Defendant No.1, this Hon'ble Court initially granted an ex parte injunction on 18.02.2025, which was subsequently vacated by a detailed order dated 22.09.2025 after hearing both parties. This Court has categorically held that the GPA was not coupled with interest and was therefore revocable. This finding conclusively negates the claim of Defendant No.2 that any lawful authority existed to transfer possession under the alleged MOU dated 12.04.2023.

8. Defendant No.2's alleged possession arose only through acts of trespass committed on 13.04.2025 along with Defendant No.1 and others, as evidenced by the

police complaint and FIR No.16/2025 dated 15.04.2025. The pendency of O.S. No.79/2023 and O.S. No.11/2025 is being misused to project a false narrative of possession. No injunction has been granted in O.S. No.79/2023. Defendant No.2, being an unauthorized occupant, cannot claim hardship for being restrained from continuing an illegality. The question whether Defendant No.2 has lawfully obtained possession or has illegally trespassed is a matter for trial. At this interlocutory stage, no relief can be granted on the basis of self-serving assertions. The plaintiff's prima facie documents clearly establish ownership and prior possession. In any event, in a suit filed by the plaintiff, the defendant is not entitled to seek an injunction under Order XXXIX Rules 1 and 2 CPC. Hence, the plaintiff prays that IA No. XI be dismissed with costs in the interest of justice and equity.

9. Heard the learned counsel for the plaintiff and defendant No.2 and perused the materials on record.

10. Now the points that would arise for my consideration is:

1. Whether the defendant No.2 has made out prima-facie case in its favour**?**
2. Whether the defendant No.2 proves that balance of convenience lies in its favour**?**
3. Whether the defendant No.2 proves that it would be put to irreparable loss and injury if T.I. is not granted in its favour**?**
4. What order**?**

11. My finding on the aforesaid points for consideration is:

Point No. 1 : In the Negative.

Point No. 2 : In the Negative

Point No. 3 : In the Negative.

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

:R E A S O N S:

12. **Point No.1 :** The plaintiff has filed the suit under Section 6 of the Specific Relief Act, 1963 seeking restoration of possession of the suit schedule properties alleging that he was unlawfully dispossessed there from by the defendants without due process of law.

13. The learned counsel for the plaintiff and defendant no.1 have reiterated what is stated by them in their application and objection. I am going through the entire records of the case. Now, Defendant No.2 this Ia.No.IX seeking an order of temporary injunction restraining the plaintiff, his men, agents or anybody claiming through him from interfering with the alleged possession, enjoyment and cultivation of the plaint schedule property by Defendant No.2 till disposal of the suit.

14. As I have already narrated the facts of the case in detail above in nutshell, I will not repeat the facts

once again at length but confine myself to material facts.

15. The burden of establishing a prima facie case lies squarely on Defendant No.2, who seeks equitable relief of injunction.

16. The case of Defendant No.2 is that it was put in lawful possession of the plaint schedule property by Defendant No.1 under a Memorandum of Understanding dated 12.04.2023/13.04.2023, executed pursuant to an irrevocable and interest-coupled General Power of Attorney.

17. On the other hand, the plaintiff has specifically contended tha, the GPA dated 27.07.2022 was executed only for a limited purpose of negotiating with banks and was not coupled with interest, the GPA stood automatically terminated on failure of the proposed sale as per the MOU dated 19.07.2022, the GPA was expressly revoked on 25.08.2023, Defendant No.1 had no authority to execute any MOU or deliver possession

thereafter, Defendants forcibly trespassed into the suit property on 13.04.2025, which is the very subject matter of the present suit filed under Section 6 of the Specific Relief Act.

18. It is significant to note that this Court, in O.S. No.11/2025 filed by Defendant No.1, by a detailed order dated 22.09.2025, has already held that the GPA was not coupled with interest and was revocable. The said finding directly undermines the foundation of Defendant No.2's claim that Defendant No.1 had authority to transfer possession under the alleged MOU. Further, the alleged MOU dated 12.04.2023 is unregistered and is seriously disputed as being fabricated and back-dated. No independent document evidencing lawful delivery of possession is produced by Defendant No.2.

19. The suit itself is filed under Section 6 of the Specific Relief Act, wherein the plaintiff alleges forcible dispossession. Whether Defendant No.2 is in lawful

possession or has trespassed is a matter that requires full-fledged trial. At this interlocutory stage, Defendant No.2 has failed to establish a clear, lawful and settled possession so as to claim protection.

20. The learned counsel for Defendant No.2 has placed reliance on the order passed by the Assistant Commissioner, Chikkamagaluru in RRTCR:CKMAC: 34014/424/2023 dated 26.12.2024, contending that the plaintiff has no right over the suit schedule properties, and hence, prays for allowance of IA No.XI.

21. A perusal of the said order reveals that it essentially states that the lands in question are Devadaya/Inam lands, and that the statutory vesting proceedings with the Government were not completed. The order directs that the Government is required to take possession and complete the necessary formalities. It is, however, evident that the said order neither recognises the possession of Defendant No.2 nor confers any right, title, or lawful authority in its favour. The

order merely contemplates the initiation of statutory proceedings and does not determine any civil rights or entitlements of the parties.

22. In view of the above, such an administrative order cannot form the basis for granting a temporary injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, particularly in a suit filed under Section 6 of the Specific Relief Act. Accordingly, the reliance placed by Defendant No.2 on the said order is misconceived and does not advance its case.

23. Furthermore, in **Shakuntalamma and Others v. Kantamma and Others (ILR 2014 KAR 6025),** the Hon'ble High Court of Karnataka has categorically held that, **"**a defendant cannot seek relief under Order XXXIX Rule 1(b) and (c) in a suit filed by the plaintiff**".** The present application squarely falls within the mischief of the said ruling.

24. In Premji Ratansey Shah v. Union of India, the Hon'ble Supreme Court has held that, "no injunction

can be granted in favour of a trespasser or a person in unlawful possession as against the true owner".

25. In view of the above facts and settled principles of law, this Court is of the considered opinion that Defendant No.2 has not made out a prima facie case. Accordingly, **Point No.1 is answered in the Negative.**

26. **Point No.2** :The balance of convenience has to be assessed by weighing the comparative hardship likely to be caused to the parties. The plaintiff has produced material to show ownership and prior possession. The plaintiff alleges that Defendant No.2 has illegally dispossessed him on 13.04.2025. If injunction is granted in favour of Defendant No.2, it would amount to protecting and perpetuating an alleged act of trespass, which is impermissible in law.

27. On the contrary, if Defendant No.2 ultimately succeeds in the suit, it can always seek appropriate reliefs in accordance with law. No irreparable prejudice

is shown to arise merely by refusal of injunction. The balance of convenience cannot be said to lie in favour of a party whose possession itself is seriously disputed and is the very issue to be adjudicated. Accordingly, **Point No.2 is answered in the Negative.**

28. **Point No.3**: Irreparable injury means an injury which cannot be compensated in terms of money or remedied by legal means. Here, the defendant No.2 claims to have invested huge sums in the property. Such a claim, even if assumed to be true, is compensable in terms of money and does not constitute irreparable injury. Further, a person in unlawful or disputed possession cannot claim equity to protect such possession. Courts cannot grant injunction to restrain the true owner from asserting his lawful rights. Therefore, Defendant No.2 has failed to establish irreparable loss or injury. Accordingly, **Point No.3 is answered in the Negative.**

29. Point No. 4 :- In view of my findings on Point No. 1 to 3, I proceed to pass the following.

:: O R D E R ::

The I.A. No. XI filed by Defendant No.2 under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure is **hereby dismissed.**

Nothing contained in this order shall be construed as an expression of opinion on the merits of the main suit.

No order as to cost.

(Dictated to the stenographer directly on computer, computerized by her, corrected and then pronounced by me in the open court on this the 3rd day of February 2026)

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(Prakash P.M.)
Senior Civil Judge & JMFC,
Mudigere.