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O.S. No. 84/2023

IN THE COURT OF THE CIVIL JUDGE & JMFC., N.R.PURA
(ITINERARY COURT)

Present : Sri. Jeethu R.S., B.A.L.,LL.M.,
Civil Judge & JMFC., N.R. Pura.

Dated : This the 18th day of March 2026.

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Plaintiff/s : Flower Rural Club ®,
Ward No. 8, Koppa Road,
N.R. Pura Town & Post,
N.R. Pura Taluk, Chikkamagaluru District.
Represented by its
The President.

(Represented by Sri. H.A. Saju, Adv.,)

V/S

Defendant/s : The Town Panchayath,
N.R. Pura, Represented by its
Chief Officer.
(Represented by Sri. G.M. Vishwanatha , Adv.,)

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ORDER ON I.A. NO. 1 FILED UNDER ORDER 39 RULE 1
AND 2 OF CPC

The plaintiff/applicant has filed the application under Order 39 Rule 1 and 2 of CPC seeking to restrain the defendant from alienating or transferring the suit schedule 'B' property to any other parties except the plaintiff's club, till the disposal of the suit.

2. In the affidavit annexed to the above application, the applicant has stated that the plaintiff is the absolute owner of plaint 'A' schedule property. It is further stated that they have acquired the 'A' schedule property under the registered sale deed, dated 25.08.2007 for lawful consideration. It is further stated that the revenue records are standing in the name of the plaintiff with respect to suit 'A' schedule property. Thereupon, they have constructed a building measuring to an extent of 350 square feet wherein they are running an association in the name and style as

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“Flower Rural Club” registered in N.R.Pura. The said institution is carrying out the social development programmes such as free blood donating camps, free eye check-up camps, financial assistance to the poor patients etc. It is further stated that the plaintiff is also in possession of the ‘B’ schedule property prior to the purchase of the ‘A’ schedule property and they are in possession of a building measuring to an extent of 32 X 100 feet site since 2002. The said ‘B’ schedule property is situated towards the eastern side of suit ‘A’ schedule property and they are paying the tax before the defendant. In furtherance of the possession over the ‘B’ schedule property the plaintiff has also constructed a building measuring to an extent of 18 X 12 feet. It is further stated that the members of the plaintiff association has given a representation to the defendant panchayath for sanction of ‘B’ schedule property. After visiting the spot and verification by the panchayath officer had assured the plaintiff that since the

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schedule property is being utilized for public purpose they will sanction the same in favour of the plaintiff. Thereby they have continued to be in peaceful possession and enjoyment of plaintiff 'B' schedule property since 2002-03 and regularly paying the tax for the same. It is further stated that they have performed various programs in the building situated in plaintiff 'B' schedule property. But, later the defendant authority persons have visited the plaintiff 'B' schedule property and they have asked the plaintiff to vacate and hand over the vacant possession of the plaintiff 'B' schedule property on 04.12.2023. Therefore, the plaintiff has filed the above suit and application seeking to restrain the defendant from alienating the suit schedule 'B' property in favour of any other parties except the plaintiff.

3. After the institution of the above suit, the summons is served upon the defendant and the defendant panchayath has appeared before the court through its counsel and further filed the written

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statement in the above suit. Further, the counsel for defendant prayed to consider the written statement of defendant as objections to the above I.A. In the written statement, the defendant has contented that one P.S. Ramachandra Hebbar was the absolute owner of a residential site bearing Assessment No. 1068/1012. Subsequently, upon the request of the Government, Tahsildar and Executive Officer of Taluk Panchayath and also the Chief Officer of Pattana Panchayath, the said P.S. Ramachandra Hebbar had handed over his aforementioned residential site for construction of Mini Vidhana Soudha and also for parking area. Thereupon, the government had assured that the alternative site would be allotted to the said Ramachandra Hebbar. Accordingly, the Deputy Commissioner of Chikmagalur as per the Resolution dated 19.11.2010 have allotted the site measuring 30 X 44 bearing Assessment No. 15/58 at Ward No. 9 of Raghavendra Badavane and also another site measuring 50 X 100 bearing

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Assessment No. 728/703 at Hosabeedi. But, the said allotted site was cancelled by the court as the said site belongs to one D.R Nagesh. As such, the said Ramachandra Hebbar approached the government for allotment of alternate site. Thereupon, the defendant panchayath has granted the house site bearing assessment No. 1082/1027 of Pattana Panchayath and the recommendation was sent to the government through the Deputy Commissioner and thereupon the Deputy Commissioner, Chikkamagaluru has directed to allot the said site in favour of Ramachandra Hebbar. Accordingly, the defendant has proceeded to allot the 'B' schedule property in favour of Ramachandra Hebbar. But, he was demised by that time and as such, proceeded to allot the same in favour of the L.Rs of Ramachandra Hebbar. It is further contended that the plaintiff or any other persons are not in possession of the suit 'B' schedule property and they have not paid any tax. It is further contended that the

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plaintiff has not approached the court with clean hands and they are not the real owner of the property and it is encroached property which is a public property. As such, pray to dismiss the above application.

4. Heard both the counsels. The counsel for defendant has relied upon the ratio laid down by the Hon'ble High Court of Karnataka in M.B. Bettaswamy V/S The Commissioner, Bangalore Development Authority and Another, reported in 2008 (1) KCCR 178.

5. On the basis of the above pleadings, the following points arise for consideration are:

- 1) Whether the plaintiff has made out prima facie case?
- 2) Whether the balance of convenience lies in favour of the plaintiff?

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3) Whether the irreparable loss and injury caused to the plaintiff if the temporary injunction is not granted?

4) What order?

6. My findings on the above points are as under:

Point No. 1 : In the negative.

Point No. 2 : In the negative.

Point No. 3 : In the negative.

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

REASONS

7. **Point No.1**:- I have already narrated the facts pleaded by the plaintiff in the affidavit annexed to the above application and also the contentions raised by the defendant in the written statement. This is the suit for the relief of bare injunction.

8. It is the case of the plaintiff that the plaintiff is the absolute owner and in possession of plaint 'A' schedule property by virtue

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of the sale deed dated 25.8.2007. Thereupon, they have constructed a building and are running an association in the name and style as “Flower Rural Club” registered in N.R.Pura, which is an N.G.O. It is further contended that the plaintiff is in unauthorized possession of the ‘B’ schedule property prior to the purchase of the ‘A’ schedule property and in furtherance they have constructed a building measuring to an extent of 18 X 12 feet. It is further contended that upon the assurance of the concerned official of defendant authority, the plaintiff was under the impression that the suit ‘B’ schedule property would be allotted in favour of the plaintiff and as such they have been continued to be in possession and enjoyment of the ‘B’ schedule property by paying tax to the concerned authority. But, on 04.12.2023 the officials of defendant authority had directed the plaintiff to hand over the vacant possession of suit schedule property and as such the plaintiff is before the court.

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9. In support of the said contention, at this juncture the plaintiff has produced the sale deed, dated 25.8.2007 and 28.8.2007 pertaining to the suit 'A' schedule property. The assessment register extract for the year 2022-2024 pertaining to 'A' schedule property and the self declared assessment list for the year 2002-03 to 2023-24 pertaining to 'B' schedule property along with the tax paid receipts and the representation given to the concerned authority with photos.

10. Per contra, the defendant has contented that one P.S. Ramachandra Hebbar was the absolute owner of a residential site bearing Assessment No. 1068/1012 and the said site was acquired for the purposes of construction of Mini Vidhana Soudha and also for parking area. Therefore, the government had assured that the alternative site would be allotted to the said Ramachandra Hebbar. Accordingly, the Deputy Commissioner of Chikkamagaluru as per the Resolution dated 19.11.2010 have

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allotted the site measuring 30 X 44 bearing Assessment No. 15/58 at Ward No. 9 of Raghavendra Badavane and also another site measuring 50 X 100 bearing Assessment No. 728/703 at Hosabeedi. But, the said allotted site was cancelled by the court as the said site belongs to one D.R. Nagesh. As such, the said Ramachandra Hebbar approached the government for allotment of alternate site. Thereupon, the defendant panchayath has granted the house site bearing assessment No. 1082/1027 of Pattana Panchayath and the recommendation was sent to the government through the Deputy Commissioner and thereupon the Deputy Commissioner, Chikkamagaluru has directed to allot the said site in favour of Ramachandra Hebbar. Accordingly, the defendant has proceeded to allot the 'B' schedule property in favour of Ramachandra Hebbar. But, he was demised by that time and as such, proceeded to allot the same in favour of the L.Rs of Ramachandra Hebbar. It is further contended that the

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plaintiff or any other persons are not in possession of the suit 'B' schedule property and they have not paid any tax. It is further contended that the plaintiff has not approached the court with clean hands and they are not the real owner of the property and it is encroached property which is a public property.

11. In support of the said contention the counsel for the defendant has produced the judgment in O.S. No. 67/2012 clubbed with O.S. No. 91/2013, the letter dated 7.2.2020, the letter of Deputy Commissioner, Chikkamagaluru dated 27.3.2020, the letter dated 29.3.2023 of the Secretary, Urban Development Department and another letter dated 19.6.2023 issued by the Deputy Commissioner, Chikkamagaluru in favour of defendant panchayath.

12. Admittedly, the plaintiff has stated that the plaintiff is in unauthorized occupation of the plaint 'B' schedule property.

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The plaintiff has also stated that the defendant panchayath officials had assured that the plaint 'B' schedule property would be allotted to the plaintiff's society. Based on the said assurance the plaintiff has instituted the above suit for bare injunction seeking to restrain the defendant from alienating/transferring the plaint 'B' schedule property in favour of any other third party except the plaintiff along with the consequential relief. Admittedly, the plaint 'B' schedule property is the absolute property of the defendant panchayath and thereby it becomes a public property. Any person by getting an assurance either by an authorized person or the official without the prior leave and sanction order by the appropriate government could not claim a right seeking for transfer of the property in favour of such person. On the other hand, the appropriate government has corresponded many letters among the other departments of the government in relation to the allotment of a residential site in favour of

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Ramachandra Hebbar in consequence to the acquisition of his site for construction of Mini Vidhana Soudha at N.R. Pura. Further, on careful perusal of the judgment of Hon'ble High Court of Karnataka mentioned supra, relied by the counsel for the defendant, supports the case of defendant, wherein the Hon'ble High Court of Karnataka has specifically held that, A person who is in an unauthorized occupation over a public property has no right to be in possession and it diminishes the public interest. As such, the plaintiff has not made out a prima facie case to have the fruits of injunction as sought in the above application. Therefore, the **Point No.1 is answered in Negative.**

13. **Point No. 2 and 3:** Since both these points are interlinked they are taken co-jointly for discussion to avoid the repetition. The plaintiff has failed to establish the prima facie case. In the absence of the prima facie case, can the plaintiff get injunctive relief on the basis of balance of convenience and



irreparable loss and hardship. At this juncture, I feel, it would be proper to rely upon the decision reported in ILR 1989 KAR 1701 between Gourishankar Swamigalu Vs Siddaganga Mutt and others, wherein the Hon'ble High Court of Karnataka has held that, if there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself.

14. So, as per the decision mentioned supra, when the plaintiff has failed to establish the prima facie case, considering of balance of convenience and irreparable loss and hardship do not arise for consideration. Even in the case on hand, the plaintiff has utterly failed to establish the prima facie case, therefore considering balance of convenience and irreparable loss and hardship do not arise for consideration. Therefore for the above

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said discussion this Court answered **Point No.2 and 3 are in the Negative.**

15. **Point No.4:-** For the above reason, this Court proceeds to pass the following;

: O R D E R :

I.A.No. 1 filed by the plaintiff/applicant against the defendant under Order 39 Rule 1 and 2 of CPC is hereby dismissed.

Parties to bear their own costs.

(Dictation given to the Stenographer directly on system, typed by her, then corrected and then pronounced by me in the open court on this the 18th day of March, 2026)

Sd/-xxx 18/3/2026
(Jeethu R.S.)
Civil Judge & JMFC.,
N.R.Pura.