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O.S. No. 114/2024

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 15th day of December 2025.

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Plaintiff/s : Smt. K.H. Prabhavathi,
W/o Late D. Nagesh,
Aged about 51 years, Home Maker,
R/o Menasoor Village,
N.R. Pura Taluk, Chikkamagaluru
District.
Represented by her G.P.A. Holder
Sri. Shivasiddarth N.,
S/o Late D. Nagesh,
Aged about 24 years,
R/o Menasoor Village,
N.R. Pura Taluk, Chikkamagaluru
District.
(Represented by Sri. H.M. Sudhakar, Adv.,)

V/S

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Defendant/s : Smt. Kumari Bai, W/o Devaraj,
Aged about 50 years, R/o Medara Beedhi,
N.R. Pura Taluk, Chikkamagaluru
District.

(Represented by Sri. Santhosh Kumar S.S., Adv.,)

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ORDER ON I.A. NO. 3 FILED UNDER ORDER XXXIX RULE 1
AND 2 OF CPC

The plaintiff has filed the I.A. No. 3 under Order XXXIX Rule 1 and 2 CPC against the defendant seeking to restrain the defendant or any other person on behalf of defendant from interfering with the peaceful possession of the plaintiff over the suit schedule property, till the disposal of the suit.

2. In the affidavit annexed to the above I.A., the plaintiff has stated that the plaintiff has instituted the above suit against the defendant for the relief of declaration and perpetual injunction. It

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is stated that the suit schedule property is situated in Menasoor Village in Survey No. 41 and bearing Assessment No. 139, measuring to an extent of 30 X 40 square feet site in which a residential house is situated. It is further stated that the plaintiff and her husband Nagesh are in possession of the said property since 1967-68 and they have built a residential house therein. Further stated that the plaintiff is residing there after her marriage with her family. It is further stated that during 2012, the Revenue Inspector have also reported that the plaintiff is residing in the said house from the past 45 years. As such, a residential certificate dated 16.8.2012 is also issued in favour of them. The plaintiff has regularly paid the tax pertaining to the suit schedule property till date. It is further stated that the plaintiff's husband Nagesh had filed an application before the concerned authority for the allotment of the said site in his name. After the demise of Nagesh during 2012, the children of the plaintiff are residing

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therein. The application filed by the said Nagesh before the concerned authority has not been taken up by the concerned authority till date. It is further stated that the defendant's husband is known to the plaintiff's husband. The defendant's husband is a Government employee at Taluk Office at Narasimharajapura. By abusing the said position, the defendant's husband has created false and fabricated documents pertaining to the suit schedule property with an intention to grab the suit property. Thereupon, the plaintiff herein has filed O.S. No. 14/2018 before the Civil Judge and JMFC Court, Narasimharajapura seeking permanent injunction against the defendant. The said suit was dismissed. The defendant herein had also filed O.S. No. 18/2018 against the plaintiff herein for the relief of declaration and injunction. The said suit of the defendant herein has been decreed. Thereupon, the defendant herein has filed Execution Petition No. 3/2024 before this court and it is pending for adjudication. At this

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juncture, the defendant is intending and attempting to get the suit schedule property for her possession. As such, the plaintiff has instituted the above suit. It is further stated that on 25.11.2024 the defendant along with her workmen had entered into the suit schedule property with an intention to vacate her from the suit schedule property and also attempted to take the possession of the suit schedule property and as such the defendant had also abused the plaintiff in filthy language. It is further stated that if the plaintiff is dispossessed from the suit schedule property, she will be put to irreparable hardships and therefore has prayed to allow the above application.

3. After the service of summons, the defendant has appeared before the court through her counsel and has filed the objections to the above I.A. The defendant has specifically contented that the defendant is the absolute owner of property in Survey No. 41

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situated at Menasuru Village, N.R. Pura Taluk in Kaneshumari Site No. 23, measuring to an extent of 30 X 40 feet. It is further contented that thereupon the defendant has constructed a residential house therein and she is continuously paying the taxes before the concerned panchayath. It is further contented that the defendant had filed a mandatory injunction suit against the plaintiff with respect to the part and parcel of the suit schedule property and the said suit was decreed on 2.2.2023, wherein the plaintiff herein is directed to vacate and hand over the suit schedule property to the defendant. Being aggrieved by the judgment of the trial court the plaintiff herein had preferred the regular appeal before the first appellate court which came to be dismissed. Thereupon the plaintiff herein had preferred RSA No. 433/2024 and RSA No. 460/2024. Both the appeals preferred by the plaintiff herein have been dismissed by the Hon'ble High Court of Karnataka and have reached the finality. Thereupon, the

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defendant herein has filed Ex. No. 3/2024 on the file of this Court. Thereupon, this Court has also issued the delivery warrant against the plaintiff herein who is the judgment debtor therein. In view of the said facts, the plaintiff is barred to seek any relief as sought in the above application and therefore prays to dismiss the above application.

4. 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?
- 3) Whether the irreparable loss and injury caused to the plaintiff if the temporary injunction is not granted?

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4) What order?

5. 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

6. **Point No.1** :- I have already narrated the facts stated in the affidavit annexed to the application by the plaintiff. This is the suit for the relief of declaration and injunction against the defendant pertaining to the suit schedule property. The plaintiff claims that the plaintiff and her family are in possession over the suit schedule property since 1967-68 and in support of her contention at this stage has produced the assessment register along with the tax paid receipts. Further, the plaintiff has stated that during the life time of her husband had filed the application before the concerned authorities for allotment of the suit schedule property in their favour. Mean while, at this

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stage, the counsel for the plaintiff has also drawn the attention of this court regarding the report of the Revenue Inspector said to be done during the year 2012.

7. Per contra, the defendant has specifically contended that the plaintiff had earlier instituted O.S. No. 14/2018 before this court seeking the relief of permanent injunction against the defendant. Further, the defendant has specifically stated that even the defendant had filed O.S. No. 18/2018 on the file of this court seeking the relief of mandatory injunction against the plaintiff herein. The said suit came to be decreed. Thereupon the aggrieved plaintiff herein has taken up the matter up to High Court in RSA No. 433/2024 and RSA No. 460/2024 which have been dismissed and thereby the decree passed in O.S. No. 18/2018 and O.S. No. 14/2018 have reached the finality. Thereupon the defendant herein has filed Ex.No. 3/2024 before this court and thereupon this court has issued delivery warrant through the bailiff. The said proceedings between the plaintiff and the defendant are pleaded and it is admitted fact between both the

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parties. The only contention of the plaintiff herein is the dispute regarding the boundary with respect to the suit schedule property herein and the suit schedule property as mentioned by the defendant in O.S. No. 18/2018. The plaintiff had all the opportunity to take up such contention therein itself. The plaintiff herein who has lost her case till before the Hon'ble High Court of Karnataka by way of RSA has now come up with this fresh suit. The conduct of the plaintiff clearly demonstrates that the defendant herein should not be allowed to have the fruits of decree. The plaintiff who approaches the court has to come up with clean hands and then only the plaintiff would be able to have the fruits of an injunction. The plaintiff has not made out prima facie case in the above case. Accordingly, the point No. 1 is answered in the negative.

8. **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 plaintiffs get injunctive relief on the basis

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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 Siddhaganga Mutt and others, where in 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.

9. So as per the ratio laid down by the Hon'ble High Court of Karnataka in the judgment 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

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arise. Therefore, for the above said discussion this Court answers point No.2 and 3 in the **NEGATIVE**.

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

: O R D E R :

I.A. No. 3 filed by the plaintiff
under Order XXXIX Rule 1 and 2
of CPC is hereby dismissed.

(Dictated to the Stenographer directly on system, print out corrected and then pronounced by me in the open court on this the 15th day of December, 2025)

Sd/-xx 15/12/2025
(Jeethu R.S.)
Civil Judge & JMFC.,
N.R.Pura.