

**IN THE COURT OF PRL. CIVIL JUDGE AND J.M.F.C., TARIKERE**

**PRESENT: Sri. Rahul Shettigar, B.Com (Hons.), LL.B
Prl. Civil Judge & J.M.F.C, Tarikere**

DATED THIS THE 17th DAY OF JUNE 2026

ORIGINAL SUIT No. 45/2024

BETWEEN:

Sri. T. Venkatesh,
S/o Late. Sri. B. Annappa,
Aged about 49 years,
Agriculturist,
R/o. Kalabyraweshwara Street,
Bhavikere village,
Tarikere Taluk,
Chikkamagalur District.

PLAINTIFF

**(By Sri. G.N. Chandrashekar,
Advocate)**

AND

Sri. Pandu,
S/o. Late. Sri. Lakshman,
Aged about 41 years,
Agriculturist,
R/o Government High School,
Bhavikere village,
Tarikere Taluk.

DEFENDANT

**(By Sri. T.N. Mahadevaswamy,
Advocate)**



PARTICULARS OF THE SUIT

1.	Date of Institution	:	01.02.2024		
2.	Nature of the suit	:	Suit seeking permanent prohibitory injunction		
3.	Date of commencement of evidence	:	09.07.2025		
4.	Date of pronouncement of judgment	:	17.06.2026		
5.	Total duration	:	<u>Year/s</u>	<u>Month/s</u>	<u>Day/s</u>
			02	04	16

sd/-
(Rahul Shettigar)
Prl. Civil Judge & J.M.F.C,
Tarikere.

JUDGMENT

1. Plaintiff has instituted the suit seeking the relief of permanent prohibitory injunction restraining the Defendant, his workers, representatives, supporters or any person claiming under him from unlawfully trespassing or interfering with the peaceful possession and enjoyment of the suit schedule property by the Plaintiff and such other ancillary reliefs.



2. The case of the Plaintiff as discernable from plaintiff averments, is as under –

In the plaint, it is contended that the Plaintiff is the absolute owner and in lawful possession of the suit schedule property. It is further contended that the Defendant has recognized the Plaintiff's possession over the suit schedule property for several years. The khata pertaining to the suit schedule property has been mutated in the name of the Plaintiff, and since the date of such mutation, the Plaintiff has been regularly paying property taxes in respect of the same. It is further stated that the Defendant owns a property situated on the southern side of the suit schedule property. The said property originally stood in the name of the Defendant's father, one Lakshmana, who has since expired. It is alleged that the Defendant, without having any right, title, or interest over the suit schedule property, has been continuously interfering with the Plaintiff's peaceful possession and is attempting to encroach upon the suit schedule property. Though the matter was brought to the notice of the police authorities, no action was taken. Hence, the present suit.



3. Subsequent to the filing of the suit, suit summons were issued to the Defendant. Defendant on due service of the same, though has appeared before the Court through his counsel, but he has failed to file his written statements and contest the suit.
4. The points that would now arise for my consideration are as under -
 - Point No.1** : Whether the Plaintiff proves that he is in actual possession of the suit schedule property as on the date of the suit?
 - Point No.2** : Whether the Plaintiff proves the unlawful interference by the Defendant as alleged in the plaint?
 - Point No.3** : Whether the Plaintiff is entitled for the relief of permanent prohibitory injunction as sought for?
 - Point No.4** : What order or decree?
5. In order to prove his case, the Plaintiff was examined as PW-1 and got marked the documents as Ex.P-1 to Ex.P-10. Since the Defendant failed to contest the suit by filing written statement, his evidence was taken as NIL.
6. Heard the Learned Counsel for Plaintiff and considered the material made available to me.
7. My findings on the aforesaid points are as hereunder -



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

- 8. Point No.1:** Plaintiff has knocked on the doors of justice seeking the relief of permanent prohibitory injunction restraining the Defendant, his workers, representatives, supporters or any person claiming under him from unlawfully trespassing or interfering with the peaceful possession and enjoyment of the suit schedule property by the Plaintiff and such other ancillary reliefs.
- 9.** Plaintiff being the initiator of the legal proceedings by way of this suit and possessing the role of *dominus litus* to his suit, assumes the burden to prove it in accordance with the stipulations outlined in Sections 101 to 103 of the Evidence Act. Moreover, the legal maxim in "*Actori Incumbit Onus Probandi*" further reinforces his obligation to discharge this burden.



- 10.** This being a suit seeking a bare injunction, Plaintiff shall prove two things, one being his possession over the suit schedule property and the other, the interference with his possession and enjoyment of the same by Defendant.
- 11.** In order to prove it, the Plaintiff who got examined as PW-1 has nothing but reiterated the averments of plaint in the affidavit which he has filed in lieu of his examination-in-chief. Since the plaint averments have already been extracted in the opening paragraph of this judgment, let me switch over to the documentary evidence on record.
- 12.** The documents produced in support of the case of the Plaintiff are Ex.P-1 and 2 are the assessment extracts; Ex.P-3 is the notice; Ex.P-4 to 6 are the Photographs and a CD; Ex.P-7 is the acknowledgment; Ex.P-8 is the endorsement and Ex.P-9 & 10 are the tax paid receipts.
- 13.** In order to establish his possession over the plaint schedule property, the Plaintiff has relied upon the assessment extracts and tax paid receipts.
- 14.** When these documents are considered cumulatively, it becomes evident that the suit schedule property stands in the



name of the Plaintiff and that he has been regularly paying taxes in respect thereof. Hence, it can safely be inferred that the Plaintiff alone is in possession of the suit schedule property.

15. This contention of the Plaintiff has neither been refuted nor rebutted by the Defendant, either by filing a written statement or by conducting cross-examination so as to discredit the case of the Plaintiff.
16. Such being the state of affairs, there exists no legal impediment in holding that the Plaintiff has successfully proved his possession over the suit schedule property. Accordingly, Point No.1 which has arisen for my consideration is answered in the ***Affirmative.***
17. **Point No.2:** Having answered the point on possession of suit schedule property in favour of the Plaintiff, the next aspect that would now require consideration is the interference by the Defendant to the peaceful possession and enjoyment of the suit schedule property by the Plaintiff. The Plaintiff has based his case on the alleged incidents that occurred on 26.10.2023 and 29.01.2024, in which the Defendant allegedly



attempted to unlawfully trespass upon the suit schedule property. It is also stated that the matter was taken up with the police. In this regard, except for pleading it and stating the same on oath, there is no real documentary evidence that is produced. Just for the reason that no documentary proof is produced, the said contention cannot be discarded. Where Plaintiff proves possession over the property, even a mere mental apprehension of interference would be sufficient. No real interference would be expected to be proved by the Plaintiff but if proved; the same would be another feather in the cap of the Plaintiff in proving the interference. At this stage, it would be apposite to refer to the Judgment of the Hon'ble High Court of Karnataka in **LAKSHMAMMA V. M.P. KRISHNAPPA** reported in **1998 SCC ONLINE KAR 146** at Para No.3 has held as under-

"Once the Appellate Court finds the possession is with the plaintiff, thus rendering a concurrent finding with the Trial Court, there should not be any hesitation on the part of the Appellate Court to grant injunction. An aggrieved person comes to the Court complaining of interference of the defendant, may be at a particular point of time the defendant has not caused interference, but once the fear stands heavily in the mind of the aggrieved person, there shall be no difficulty for the



Court to grant injunction, especially when it is found that particular person is in possession”.

Likewise, in **ROMEO M.F. AQUINAS V. FLORINA MOTHIAS** reported in **1997 scc online kar 614**, the Hon’ble High Court of Karnataka has held at Para No.9 as under –

“He also contended that in the absence of any interference an injunction cannot be granted. These two decisions are not applicable to the facts of this case because there is an allegation of threat of interference and both the above authorities are to the proposition that threat of interference itself is enough to grant an injunction. In fact, the Division Bench of Calcutta High Court goes on to say that if a pleading is not available then injunction cannot be granted. In this view, relying upon these decisions, I hold that the plaintiff is entitled to injunction. The mere fact that there is a defence raised by the defendant that he has no intention of obstruction does not dispel the threat of interference that has been caused in the mind of the plaintiff”

- 18.** The above two Judgments throw light on the aspect that mental apprehension or fear of interference would suffice and there is no necessity to prove the real threat or interference for granting the relief of injunction where possession is unequivocally proved.
- 19.** It is common knowledge that no prudent man would approach the Court of law thereby exhausting some of his financial resources in the process for the sake of nothing. Hence, when



the Plaintiff approaches the Court and has proved the possession over the property, the doors of justice cannot be shut in the face merely because interference cannot be proved. Since the Plaintiff has proved the possession over the suit schedule property and even though the real apprehension by producing supportive documentary evidence is left not proved, only on the basis of the mental apprehension in view of the above discussion, it is to be held that Defendant has indeed interfered with the possession of the Plaintiff over suit schedule property. Accordingly, Point No.2 which has arisen for my consideration is answered in the **Affirmative**.

- 20. Point No.3:** I have already answered Point No.1 & 2 in favour of Plaintiff; it would now be necessary to examine whether Plaintiff would be entitled to the relief of permanent prohibitory injunction as sought for. The law governing the said aspect is Specific Relief Act, 1963. It is necessary to notice Section 38 of the Specific Relief Act, 1963 which reads thus –

38. Perpetual injunctions when granted.—(1)
Subject to the other provisions contained in or referred to by this Chapter a perpetual injunction may be granted to the plaintiff to prevent the breach of an



obligation existing in his favour, whether expressly or by implication.

(2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.

(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property the court may grant a perpetual injunction in the following cases, namely:—

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

- 21.** Sub-Section (3) of the above provision is of relevance in considering the case on hand. The law relating to the said provision is subject of catena of judgments rendered both by the Hon'ble Supreme Court of India and the Hon'ble High Court of Karnataka and the principle which emerges therein are that perpetual injunctions are issued by Courts as a form of equitable relief, typically in cases involving property disputes. To obtain a perpetual injunction under Section 38, the Plaintiff must demonstrate that he has a legal right that is being violated or threatened by the actions of the Defendant. The Court will consider various factors before granting a



perpetual injunction, including the nature of the right being infringed, the extent of harm caused or likely to be caused, and whether monetary compensation would be an adequate remedy. If the Court determines that a perpetual injunction is the appropriate remedy, it will issue an order to that effect. Perpetual injunctions are a powerful tool for protecting legal rights and preventing ongoing harm or violations. However, they are typically granted sparingly and only when other remedies, such as damages, would be insufficient to address the harm caused. Additionally, perpetual injunctions can be subject to certain conditions or limitations imposed by the Court to ensure fairness and equity in their application. However, it's important to note that perpetual injunctions are not automatic and are subject to the discretion of the Court. The Court will carefully weigh the circumstances of each case, considering factors such as the balance of equities, the conduct of the parties, and the general interest, before deciding whether to grant the injunction. Overall, perpetual injunctions represent a vital tool in the arsenal of legal remedies, offering an effective means of preventing harm,



resolving conflicts, and protecting rights in a diverse array of situations. As a cornerstone of equitable relief, perpetual injunctions play a critical role in maintaining justice, fairness, and order in the legal system.

- 22.** Keeping these principles in mind, when embarked upon the facts on hand, in view of my discussion on Point No.1 & 2 above, it can safely be held that Plaintiff has proved his actual possession over the suit schedule property and the interference by the Defendant affecting his right of possession and enjoyment over the same by sufficient ocular and documentary evidence. Such being the case, by applying the standard of preponderance of probabilities, only probable conclusion that could be arrived at is that Plaintiff is entitled for the relief of permanent prohibitory injunction as sought for.
- 23.** That apart, since the Defendant on appearance has failed to contest the suit, the Court cannot disbelieve the case of the Plaintiffs by applying the principle laid down by the Hon'ble Supreme Court of India in **VIDHYADHAR V. MANIKRAO**



reported in **(1999) 3 SCC 573** wherein it is held at Para No.17 of as under –

"Where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in Sardar Gurbakhsh Singh v. Gurdial Singh [AIR 1927 PC 230 : 32 CWN 119] . This was followed by the Lahore High Court in Kirpa Singh v. Ajaipal Singh [AIR 1930 Lah 1 : ILR 11 Lah 142] and the Bombay High Court in Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh [AIR 1931 Bom 97 : 32 Bom LR 924] . The Madhya Pradesh High Court in Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat [AIR 1970 MP 225 : 1970 MPLJ 586] also followed the Privy Council decision in Sardar Gurbakhsh Singh case [AIR 1927 PC 230 : 32 CWN 119] . The Allahabad High Court in Arjun Singh v. Virendra Nath [AIR 1971 All 29] held that if a party abstains from entering the witness-box, it would give rise to an adverse inference against him. Similarly, a Division Bench of the Punjab and Haryana High Court in Bhagwan Dass v. Bhishan Chand [AIR 1974 P&H 7] drew a presumption under Section 114 of the Evidence Act, 1872 against a party who did not enter the witness-box"

- 24.** With these findings, Point No.3 which has arisen for my consideration is answered in the **Affirmative.**
- 25. Point No.4:** For the reasons discussed above, I proceed to pass the following :



ORDER

- (i) *The suit of the Plaintiffs is hereby decreed with costs.*
- (ii) *By an order of permanent prohibitory injunction, Defendant or any person claiming under him is hereby restrained from unlawfully trespassing into the suit schedule property, thereby causing unlawful interference to the peaceful possession and enjoyment of the suit schedule property by the Plaintiff.*
- (iii) *Draw decree accordingly.*

(Dictated to Stenographer, after transcription, print out corrected and then pronounced by me in Open Court on this the 17th day of JUNE, 2026).

sd/-

(Rahul Shettigar)
PrI. Civil Judge & J.M.F.C,
Tarikere.

DESCRIPTION OF THE SUIT SCHEDULE PROPERTY

ತರೀಕೆರೆ ತಾಲ್ಲೂಕು, ಭಾವಿಕೆರೆ ಗ್ರಾಮದಲ್ಲಿರುವ ಗ್ರಾಮ ಪಂಚಾಯಿತಿ ಅಸೆಸ್ಮೆಂಟ್ ಸಂಖ್ಯೆ 187/1 ರ ಸ್ವತ್ತಿನ ಅಳತೆ 50 X 50 ರ ಖಾಲಿ ನಿವೇಶನದ ಒಟ್ಟು ಚಕ್ಕುಬಂದಿ:-

ಪೂರ್ವಕ್ಕೆ	:	ರಸ್ತೆ
ಪಶ್ಚಿಮಕ್ಕೆ	:	ಹುಸೇನ್ ಖಾನ್‌ರವರ ಸ್ವತ್ತು
ಉತ್ತರಕ್ಕೆ	:	ರಸ್ತೆ
ದಕ್ಷಿಣಕ್ಕೆ	:	ಪ್ರತಿವಾದಿ ತಂದೆ ಲಕ್ಷ್ಮಣ ಇವರ ಹೆಸರಿನಲ್ಲಿರುವ ಸ್ವತ್ತು

sd/-
(Rahul Shettigar)
PrI. Civil Judge & J.M.F.C,
Tarikere.

**ANNEXURE****List of witnesses examined on behalf of the Plaintiff**

PW:1 : Sri. T. Venkatesha

List of documents marked on behalf of the Plaintiff

Ex.P:1 : Assessment extracts
and 2

Ex.P:3 : Notice

Ex.P:4 to : Photographs and CD
6

Ex.P:7 : Acknowledgement

Ex.P:8 : Endorsement

Ex.P:9 & : Tax paid receipts
10

List of witnesses/ documents on behalf of the Defendants

:NIL:

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