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

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

DATED THIS THE 7TH DAY OF DECEMBER, 2024

ORIGINAL SUIT No. 134/2024

BETWEEN:

Smt. Rathnamma,
W/o Sri. Thippeshappa,
Age 53 years,
Household work,
R/o Bapuji Colony,
Tarikere Town,
Tarikere Taluk,
Chikkamagaluru district.

PLAINTIFF

(By Sri. Aseem Ahmed, Advocate)

-AND-

1. Sri. H. Hanumanthappa,
S/o. Sri. T.S. Hanumanthappa,
Age 59 years,
Municipal Employee,

DEFENDANTS

2. Smt. Kariyamma,
W/o. Sri. H. Hanumanthappa,
Age 56 years,

3. Smt. Parvathamma,
W/o. Sri. H. Hanumanthappa,
Age 46 years,

4. Smt. Renuka,
D/o. Sri. H. Hanumanthappa,
W/o. Sri. Jayaram,

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Age 38 years,
Housewife,
R/o. WTB Water Purify Plant,
Haliyuru, B.H. Road,
Tarikere Town,
Tarikere Taluk,
Chikkamagaluru District.

5. Sri. Shivashankar,
S/o. Sri. H. Hanumanthappa,
Age 32 years,
Driver,
R/o. Bapuji Colony,
Tarikere Town,
Tarikere Taluk,
Chikkamagaluru District.

6. Smt. Annapoorna,
D/o. Sri. H. Hanumanthappa,
Age 25 years,

7. Smt. Manjula,
D/o. H. Hanumanthappa,
Age 23 years.

The Defendant No.1 to 3, 6 and 7 are
R/o. Machenahalli, Thyagarajanagara,
Tarikere Town, Tarikere Taluk,
Chikkamagalur District.

(By Sri. K.R. Gurupadappa, Advocate)

IN I.A.NO.I

Smt. Renukamma

APPLICANT/ PLAINTIFF

-AND-

Sri. H. Hanumanthappa and
others

**OPPONENTS/
DEFENDANTS No.1 to 7**

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PARTICULARS

<i>i</i>	<i>Provision under which the application is filed</i>	<i>Order XXXIX Rule 1 and 2 r/w. Section 151 of CPC</i>
<i>ii</i>	<i>Relief sought for</i>	<i>Order of T.I</i>
<i>iii</i>	<i>The date on which the application is filed</i>	<i>30.03.2024</i>
<i>iv</i>	<i>Number of the application</i>	<i>I.A.No.I</i>
<i>v</i>	<i>The date on which the objections are filed by opponent</i>	<i>11.07.2024</i>
<i>vi</i>	<i>The date on which the orders were passed on the said application</i>	<i>07.12.2024</i>

ORDERS ON I.A. NO.I

1. Applicant/ Plaintiff has filed the instant application under Order XXXIX Rules 1 & 2 r/w. Section 151 of C.P.C seeking the relief of temporary injunction by restraining the Opponents/ Defendants their fellowmen, agents from trespassing or causing obstruction and not to interfere with the Plaintiff's peaceful possession and enjoyment over the suit schedule property in any manner till pending disposal of the suit.
2. In the affidavit appended to the application, it is contended that the suit schedule property was granted in favour of Defendant No.1 by TMC, Tarikere in the year 02.10.1989 with

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the condition that he shall not alienate the same for a period of 10 years from the date of grant; on completion of such period, the Plaintiff had purchased the suit schedule property from Defendant No.1 under a registered sale deed pertaining to the year 2006 and since that day, she alone is in possession and enjoyment of the suit schedule property having mutated the khata to her name and is she is also presently paying the necessary taxes regularly; in these state of affairs, the Defendant No.1 had moved petition before the Assistant Commissioner, Tarikere seeking to set aside the sale deed executed in favour of Plaintiff by invoking the provisions of Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter 'the Act', in short); the Assistant Commissioner, Tarikere on enquiry has dismissed such petition on 07.03.2024; the Plaintiff is now intending to construct a residential house in the suit schedule property but recently on 28.03.2024, the Defendants tried to obstruct the same which was somehow resisted by the Plaintiff; the matter was also taken up with the Police, but with no avail; there is a serious

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threat of the Defendants interfering with the possession of the Plaintiff in future and hence, contending that she has a prima-facie case, the balance of convenience lies in her favour and that she would suffer irreparable injury if temporary injunction is refused, the Plaintiff seeks to have the application allowed.

3. *Per contra*, Defendant No.1 has filed a memo to consider the written statement as objections to I.A.No.I and the Defendant No.2 to 7 have filed a memo seeking to adopt the written statement filed by Defendant No.1. In the written statement, apart from denying the allegation in the plaint, it is contended that the suit of the Plaintiff itself is not maintainable both on legal and factual fronts; the fact of the land being granted, restriction being placed on alienation, sale being made to the Plaintiff and the proceedings before the Assistant Commissioner, Tarikere have all been admitted in the written statement; it is contended that, the very order passed by the Assistant Commissioner, Tarikere suffers from improper application of the law and the same is now challenged and pending before the Deputy Commissioner, Chikkamagaluru; the dispute arising out of the Act, cannot be adjudicated by

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the Civil Court and hence, the suit became not maintainable; there is no cause of action for filing the suit. With these contentions, prayer is to dismiss the application with heavy costs.

4. Heard both sides.
5. Learned Counsel for Plaintiff banks on the following Judgment in support of his submissions -

W.P.No.12860/2007, dated 07.07.2010

On the other hand, Learned Counsel for the Defendants banks on the following Judgments in support of his submissions -

- (i) ILR 2001 KAR 3753 (DB)***
- (ii) ILR 2014 KAR 5943***

6. Having heard the rival contention and on perusal of the materials, the points that would now arise for my consideration are as under-

Point No.1 : Whether the Plaintiff has made out a prima-facie case as against the Defendants?

Point No.2 : Whether the balance of convenience lies in favour of Plaintiff?

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Point No.3 : Whether denial of temporary injunction would cause irreparable injury or hardship to the Plaintiff?

Point No.4 : What Order?

7. Now, my finding on the above points are as follows-

Point No.1 : In the Affirmative
to 3

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

REASONS

8. **Point No.1 to 3:** The instant suit is filed seeking relief of permanent injunction by restraining the Defendants, their fellowmen and labourers from trespassing, causing obstruction or interfering with the peaceful possession and enjoyment of the Plaintiff over the suit schedule property and such other ancillary reliefs. The instant application is filed seeking an order of temporary injunction with similar prayer as that of the main relief.
9. Before advertng to the factual matrix any further, it would be beneficial to first understand the overall concept of temporary injunction. The grant of temporary injunction is governed by Specific Relief Act of 1963 as well as the C.P.C. Section 37(1)

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of the Specific Relief Act of 1963 provides that the grant of temporary injunction would be regulated by C.P.C. Order XXXIX Rules 1 & 2 and Section 94 (c) of C.P.C provide circumstances under which an order of temporary injunction can be granted. That apart, it is now settled that Sections 151 of C.P.C also can be invoked sparingly to grant an order of temporary injunction to meet the ends of justice if the circumstances are not covered either under Order XXXIX Rules 1 & 2 or Section 94 (c) of C.P.C (See **MANOHAR LAL CHOPRA VS RAI BAHADUR RAO RAJA SETH HIRALAL** reported in **AIR 1962 SC 527**). Though the above provisions provide the circumstances under which an order of temporary injunction could be granted, the principles governing grant of an order of temporary injunction is evolved by judicial pronouncements. The Hon'ble Supreme of Court of India in **GUJARAT BOTTLING CO. LTD. V. COCA COLA CO.** reported in **(1995) 5 SCC 545** has held at Para No.43 as under –

"The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests – (i) whether the Plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the Plaintiff;

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and (iii) whether the Plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the Plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the Plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the Plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience" lies. [See:Wander Ltd.v.Antox India (P) Ltd.[1990 Supp SCC 727] , (SCC at pp. 731-32.) In order to protect the defendant while granting an interlocutory injunction in his favour the court can require the Plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial"

10. In **GOWRISHANKARA SWAMIGALU V. SRI SIDDHAGANGA MUTT** reported in **1989 SCC ONLINE KAR 116**, the Hon'ble High Court of Karnataka has held at Para No.18, 25 & 26 as under –

(i) Grant of ad-interim injunction has to course through the following slots : (i) prima facie case; (ii) balance of

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convenience; (iii) irreparable injury to the Plaintiff, and (iv) lastly, all injunctions being absolutely discretionary in nature whether there was any overriding consideration that supported the refusal of the injunction by the Court-below.

(ii) The existence of a prima facie case in the matter of granting injunction is really the harbinger or the all clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. 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. But if there was a prima facie case then other considerations governing the grant of injunction would come into play and will also have to be evaluated before granting or refusing the injunction. In other words the existence of a prima facie case or even a very strong prima facie case does not permit, leap-frogging by the Plaintiff directly to an injunction without crossing the other hurdles in between....Even granting that the Plaintiff has an invincible prima facie case, he will not be entitled ex debitaie justitiae, to the grant of an injunction, unmindful of other consequences. If the consequences of granting an injunction are detrimental in nature then an injunction will not be granted even though the Plaintiff might have an unbeatable prima facie case.

11. These two celebrated judgement one of the Hon'ble Supreme Court of India and the other of the Hon'ble High Court of Karnataka beautifully encapsulate the principles underlying the grant of temporary injunction and there arises no necessity to look any further.

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12. In order to be entitled for an order of temporary injunction, the Applicant has to first satisfy the court that he has a prima-facie case in his favour. Prima-facie case is the harbinger or the all clear sign to go ahead in investigating other aspects and on failure to establish it, further questions of balance of convenience and irreparable loss would fade into insignificance. Prima facie case, however, should not be confused with a case that is required to be proved to the hilt. The Court while examining if the Applicant has a prima facie case or not while deciding question of his entitlement for an order of temporary injunction, should not examine the merits of the case closely because at that stage, it is not expected to decide the suit finally. Once prima-facie case is established, the other aspects would have to be examined first being balance of convenience which in other words mean that the Court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the Applicant by refusing the injunction will be greater than that which is likely to be caused to the Opposite Party by granting it. Next, the applicant must further satisfy the Court by

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showing that he will suffer irreparable injury if the injunction as prayed is not granted, and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury. The expression irreparable injury however does not mean that there should be no possibility of repairing the injury. It only means that the injury must be a material one, i.e., which cannot be adequately compensated by damages. Apart from these principles, the grant of temporary injunction being purely discretionary, other aspects would also factor in while considering entitlement for temporary injunction. The relief of temporary injunction may be refused on the ground of delay, laches or acquiescence or where the Applicant has not come with the clean hands or has suppressed material facts, or where monetary compensation can be an adequate relief. Establishing prima-facie case though is harbinger in examining other aspects, even where prima-facie case is established, it would not automatically entitle the Applicant to an order of temporary injunction unless he establishes the other aspects aforesaid. With these principles in mind, it

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would now be appropriate to delve into the essential facts of the case only to the extent necessary for disposal of this application.

13. The Plaintiff primarily contends that she purchased the suit schedule property from Defendant No.1 through a registered sale deed pertaining to the year 2006 and is currently in peaceful possession and enjoyment of the property as its absolute owner. Although the Defendants challenged the sale by seeking resumption under the provisions of the Act, before the Assistant Commissioner, Tarikere, they recently failed in this endeavor. Frustrated by this outcome, they have started interfering with the Plaintiff's peaceful possession and enjoyment of the suit schedule property, thereby necessitating the filing of this suit.
14. On the other hand, while the Defendants admit the entire averments of the plaint regarding the grant, the sale made under the registered sale deed and the failure before the Assistant Commissioner, Tarikere, they primarily contend that the suit schedule property, being granted land under the provisions of the Act, the sale made in favor of the Plaintiff

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would not stand. They further contend that the orders passed by the Assistant Commissioner, Tarikere is bad in law and the matter is currently under appeal before the Deputy Commissioner, Chikkamagaluru. Therefore, the Plaintiff cannot maintain the present suit before this Court, as it is barred by the Act.

15. In the backdrop of these rival contentions, it becomes necessary to examine the documents made available by both sides. The Plaintiff has produced various documents such as the original grant certificate, original sale deed, E-swathu, construction license, plan, order passed by Assistant Commissioner, Tarikere. The Defendants on the other hand have produced order passed by the Assistant Commissioner, Tarikere, appeal memo and interim application preferred before Deputy Commissioner, Chikkamagaluru, tax paid receipts and tax demand register.
16. The documents produced by both sides regarding the earlier grant, the subsequent sale made to the Plaintiff, and the proceedings initiated by the Defendants under the provisions of the Act, are not in dispute. However, since the Defendants

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have admitted all these aspects and have primarily challenged the maintainability of the suit, this aspect requires significant consideration in adjudicating the present application.

17. The instant suit is one filed for the relief of a bare injunction, and the suit schedule property has been described as a vacant site. Although the question of title need not be addressed in a suit of this nature, since the physical possession of the vacant site cannot be ascertained without considering the title, the question of title must also be examined in the present suit. This is because, in cases involving vacant sites, possession always follows title.
18. In the present case, the sale deed executed by Defendant No.1 in favor of the Plaintiff, which is admitted, indicates that the Plaintiff purchased the suit schedule property for valuable consideration in 2006. Since that date, she has been the absolute owner of the property, and as the suit schedule property is a vacant site, it can be inferred that she is in possession of it. Although the Defendants have challenged the sale, claiming it is null and void under the provisions of the Act, it is admitted that they failed before the Assistant

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Commissioner, Tarikere. The order of the Assistant Commissioner, Tarikere, which has been produced by both sides, indicates that there is a clear finding to the effect that the provisions of the Act, do not apply to the grant made to the Defendants. Nevertheless, the Defendants have challenged this order before the Deputy Commissioner, Chikkamagaluru. However, this alone cannot grant the Defendants the right to contend that the present suit is not maintainable due to being barred by the provisions of the Act.

19. The Hon'ble High Court of Karnataka recently in **SRI. MALLAIAH AND OTHERS V. SRI.H.M.GANGADARAIAH** a Judgment rendered on 18.03.2024 in **Civil Revision Petition No.430/2021 (dec/par)**, has held at Para No's. 2, 3 & 4 as under -

2. Since the suit was only for a decree of injunction, the question of jurisdiction of the Civil Court has being barred would not arise. The question of there being a bar under the provisions of the [PTCL Act](#) would also not arise for such a suit.

3. Learned counsel, however, sought to place reliance on Section 11 to state that the [PTCL Act](#) would override every other law and therefore, by implication, the Civil Court jurisdiction would be barred.

4. [Section 11](#) of the PTCL Act clearly indicates that the [PTCL Act](#) would prevail over other enactments and this cannot be construed as creating a bar for the Civil Court

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to determine whether a person is in possession of the land which he contends was a granted land. The Trial Court was, therefore, justified in passing the impugned order. I find no reason to entertain the Revision. Revision Petition is, therefore, dismissed.

20. On reading of the above paragraphs it is clear that, the provision of the Act, would not bar the jurisdiction of Civil Court dealing with a suit brought seeking relief of bare injunction. This being the law that has been laid down and in the backdrop of the sufficient documents placed by the Plaintiff to show that, she is presently in possession of the suit schedule property, at this stage, I am of the opinion that, the Plaintiff has shown a *prima facie* case for the grant of temporary injunction and accordingly, Point No.1 which has arisen for my consideration is answered in the ***Affirmative.***
21. **Point No.2 & 3:** The Court having already held that the Plaintiff has shown a *prima-face* case, would now examine into the other aspects. Given the facts of the case afore-narrated, if the Defendant is not restrained from interfering with the actual possession of the Plaintiff over the suit schedule property, the comparative mischief, hardship or inconvenience that is likely to be caused in my opinion is

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more to the Plaintiff than that which is likely to be caused to the Defendant. The same would also cause irreparable injury to the Plaintiff, which in my opinion is material one and cannot be compensated in terms of cash or kind. Accordingly, **Point No.2 & 3** which have arisen for my consideration are also answered in the ***Affirmative.***

22. **Point No.4:** For the foregoing reasons, I proceed to pass the following -

ORDER

I.A No.I filed by the Applicant/ Plaintiff under Order XXXIX Rules 1 & 2 and r/w Section 151 of C.P.C is hereby allowed.

Defendants, their fellowmen, agents are hereby restrained from trespassing, causing obstruction or in any manner interfering with the peaceful possession and enjoyment over the suit schedule property by Plaintiff, pending disposal of the suit.

(Typed, computerized and corrected by me and then pronounced in the Open Court, on this the 7th DAY OF DECEMBER, 2024)

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