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IN THE COURT OF CIVIL JUDGE AND ADDL. J.M.F.C, TARIKERE
(ITINERATE AT AJJAMPURA)

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

DATED THIS THE 19TH DAY OF JUNE, 2025

ORIGINAL SUIT No. 172/2025

BETWEEN:

Sri. Nagappa.B.R,
S/o. Late. Sri. Ramappa,
Age 85 years,
R/o. Baggavalli Village,
Ajjampura Hobli,
Ajjampura Taluk,
Represeted by his SPA holder,
Sri. Sadhashiva.B.N,
S/o. Sri. Nagappa.B.R,
Age 53 years,
R/o. Baggavalli Village,
Ajjampura Hobli, Ajjampura Taluk.

PLAINTIFF

(By Sri. K.G. Prasanna, Advocate)
-AND-

1. Smt. Gangamma,
W/o. Late. Sri. Mylarappa,
Age 75 years,

DEFENDANTS

2. Sri. B.M. Ningappa,
S/o. Late Sri. Mylarappa,
Age 45 years,

Both are R/o. Baggavalli Village,
Ajjampura Hobli,
Ajjampura Taluk,

(By Sri. K. Lingaraju, Advocate)

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**IN I.A.NO.II**

Sri. Nagappa.B.R

APPLICANT/ PLAINTIFF**-AND-**

Sri. Smt. Gangppa and another

**OPPONENTS/
DEFENDANTS****PARTICULARS**

i	<i>Provision under which the application is filed</i>	<i>Order XXXIX Rule 1 and 2 of CPC</i>
ii	<i>Relief sought for</i>	<i>Order of T.I</i>
iii	<i>The date on which the application is filed</i>	<i>24.04.2025</i>
iv	<i>Number of the application</i>	<i>I.A.No.II</i>
v	<i>The date on which the objections are filed by opponent</i>	<i>13.06.2025</i>
vi	<i>The date on which the orders were passed on the said application</i>	<i>19.06.2025</i>

IN I.A.NO.IV

Smt. Gangamma and another

**APPLICANTS/
DEFENDANTS****-AND-**

Sri. Nagappa

OPPONENT/ PLAINTIFF**PARTICULARS**

i	<i>Provision under which the application is filed</i>	<i>Order XXXIX Rule 4 of CPC</i>
ii	<i>Relief sought for</i>	<i>Vacate the Order of T.I</i>

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iii	<i>The date on which the application is filed</i>	13.06.2025
iv	<i>Number of the application</i>	I.A.No.IV
v	<i>The date on which the objections are filed by opponent</i>	Orally objected
vi	<i>The date on which the orders were passed on the said application</i>	19.06.2025

COMMON ORDERS ON I.A. NO. II and IV

1. Plaintiff has filed the I.A No.II under Order XXXIX Rules 1 & 2 of C.P.C seeking the relief of temporary injunction by restraining the Opponent/ Defendants, his labourers, representatives, supporters or anyone claiming under him from causing any kind of obstruction for the use of 2 feet strip situated on the eastern side of the suit schedule property by the Plaintiff, pending disposal of the suit.
2. In the affidavit appended to the application, it is contended that the Plaintiff was granted the suit schedule property by the Government in the year 1989. Subsequent to such grant, he alone has been in possession and enjoyment of the suit schedule property. On the eastern side, he has left a two-foot strip of land for the free flow of air and light, and in the remaining extent, he has constructed a Mangalore-tiled

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house. The said two-foot strip is also being used by him for movement. The property of the Defendants lies to the east of the suit schedule property. Taking advantage of the Plaintiff's absence from the premises, the Defendants has erected a fence on the said two-foot strip. The Defendants has also colluded with the Panchayat officials and has caused the extent of the Plaintiff's property to be incorrectly recorded in the Panchayat documents. Though the Plaintiff approached the Defendants and requested that the fence be removed, the Defendants refused. It is therefore contended that the Plaintiff has a prima facie case, the balance of convenience lies in his favour, and he would suffer irreparable injury if the temporary injunction is not granted. Hence, he prays that the application be allowed.

3. *Per contra*, the Opponent/ Defendants No. 2 has filed objections to I.A. No. 2, contending that the application is not maintainable either in law or on facts, and that the appended affidavit is filled with falsehoods. The Plaintiff is not entitled to the relief sought in the suit, as his contentions lack corroborative documents. There are clear discrepancies

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between the averments in the plaint and the supporting documents. The suit schedule property has been incorrectly described, both in terms of its extent and boundaries. Hence, it is prayed that the application is liable to be rejected.

4. The Defendants have filed I.A.No.IV under Order XXXIX Rules 4 of C.P.C. with the prayer to vacate the ex-parte ad-interim order of temporary injunction granted in the above suit.
5. In the affidavit appended to the application, it is contended that the suit schedule property is incorrectly described, both in terms of its extent and boundaries. There is a clear mismatch between the averments in the plaint and the supporting documents. The Defendants is in possession of his property, which lies to the east of the suit schedule property. Erroneous entries have also been made in the Panchayat records concerning the suit schedule property. The Plaintiff has not effected mutation in the revenue records, and no assessment documents stand in his name. Furthermore, the Plaintiff has withheld material documents from the Court. The present suit, seeking the relief of bare injunction, is not maintainable without a prayer for declaration of title. The

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Plaintiff is guilty of suppressing material facts and, in reality, is the one causing trouble to the Defendants. Hence, it is prayed that the application be allowed.

6. The Counsel for the Plaintiff has orally objected to the application in I.A. No. IV.
7. Heard both sides.
8. 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?

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

Point No.4 : Whether Defendants have made out grounds to vacate the ex-parte ad-interim order of temporary injunction?

Point No.5 : What Order?

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

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Point No.1 : In the Negative
to 3

Point No.4 : In the Affirmative

Point No.5 : As per the final order, for the following -

REASONS

10. Point No.1 to 3: The instant suit is filed seeking relief of mandatory injunction directing the Defendants to remove the illegally set-up fence on the eastern side of the suit schedule property, for consequential relief of permanent injunction and such other ancillary reliefs. The instant application is filed seeking an order of temporary injunction with the prayer to restrain the Opponent/ Defendants, his labourers, representatives, supporters or anyone claiming under him from causing any kind of obstruction for the use of 2 feet strip situated on the eastern side of the suit schedule property by the Plaintiff, pending disposal of the suit.

11. 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

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Specific Relief Act of 1963 as well as the C.P.C. Section 37(1) 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)

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whether the Plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the Plaintiff; 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 Defendants 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 Defendants while granting an interlocutory injunction in his favour the court can require the Plaintiff to furnish an undertaking so that the Defendants can be adequately compensated if the uncertainty were resolved in his favour at the trial".

12. 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 –

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

13. 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

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the grant of temporary injunction and there arises no necessity to look any further.

- 14.** 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

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which is likely to be caused to the Opposite Party by granting it. Next, the applicant must further satisfy the Court by 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

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an order of temporary injunction unless he establishes the other aspects aforesaid. With these principles in mind, it would now be appropriate to delve into the essential facts of the case only to the extent necessary for disposal of this application.

- 15.** The Plaintiff primarily contends that the suit schedule property, in its entire extent of 30x40 feet, was granted to him by the Government, and that he has left a two-foot strip of land on its eastern side for his convenience. The Defendants have allegedly been unlawfully interfering with the Plaintiff's use of this two-foot strip of land, prompting him to file the present suit.
- 16.** On the other hand, the Defendants contend that there is a clear mismatch between the pleadings in the plaint and the supporting documents with respect to both the extent and the boundaries of the suit schedule property. They assert that the Plaintiff owns only an extent of 28x40 feet, and that the present suit concerning the remaining two feet of land is not maintainable unless a relief of declaration is also sought.

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Accordingly, the Defendants contend that the suit, as filed, is not maintainable.

- 17.** In light of these rival contentions, it becomes necessary to examine the documents submitted by both parties. The Plaintiff has produced various documents, including a grant certificate, demand register, photographs, and a CD. The Defendants, on their part, have produced documents such as the RTC, E-Swathu records, endorsements issued by the police, and the demand register.
- 18.** The pleadings and materials placed on record indicate that the parties to the suit are owners of adjoining properties. The Plaintiff claims ownership of property measuring 30x40 feet. The dispute in the suit centers around a two-foot strip of land located on the eastern side of the Plaintiff's property, which he alleges is being obstructed by the Defendants.
- 19.** In this regard, while the grant of the suit schedule property was made in the year 1984, the demand register produced by the Plaintiff himself reflects that the extent of property now shown in the revenue records is only 28x40 feet. The Plaintiff has not produced any other document, apart from the

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demand register, to substantiate his claim. Notably, the assessment register and E-Swathu records have not been produced by the Plaintiff, for reasons best known to him.

20. The foregoing facts suggest that the two-foot strip of land is indeed in dispute, and that the Plaintiff has failed to produce sufficient corroborative documents to prove his ownership or possession over the full extent of 30x40 feet. In such circumstances, the Plaintiff ought to have sought the relief of declaration of title. This raises serious questions regarding the maintainability of a suit seeking only a bare injunction. Given these factors, it cannot be said that the Plaintiff has established a prima facie case warranting the grant of a temporary injunction.

21. The Plaintiff having failed to prove prima-facie case which is the harbinger in examining other aspects, there is no necessity to examine the questions of balance of convenience or irreparable injury in view of dictum laid down in **GOWRISHANKARA SWAMIGALU V. SRI SIDDHAGANGA MUTT (supra)**. This observation also indicates that the ex-parte ad-interim order of temporary injunction granted by this

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Court deserves to be vacated. With these observations, the **Point No.1 to 3** which have arisen for my consideration are answered in the **Negative** and Point No.4 which has arisen for my consideration is answered in the **Affirmative**.

22. Point No.5: For the foregoing reasons, I proceed to pass the following -

ORDER

I.A No.II filed by the Plaintiff under Order XXXIX Rules 1 & 2 of C.P.C is hereby dismissed.

I.A No.IV filed by the Defendants under Order XXXIX Rules 4 of C.P.C is hereby allowed.

The Ad-interim Ex-parte Order of T.I passed on I.A. No.I dated 28.04.2025, hereby stands vacated.

Costs made easy.

(Dictated to the Stenographer then transcribed, typed, computerized and corrected, then pronounced by me in the Open Court, on this the 19th DAY OF JUNE, 2025)

(Rahul Shettigar)
Civil Judge & Addl. J.M.F.C,
Tarikere.
(Itinerate at Ajjampura)

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