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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. 60/2024

BETWEEN:

Sri. K.M. Shambanna
S/o Sri. A.T. Malleshappa,
Age 48 years,
R/o. Ahdibhuthappa Street,
Vijayapura Extension,
Chikkamagalur City.

PLAINTIFF

(By Sri. R. Shivaraju, Advocate)

-AND-

1. Sri. Onkarappa.C.V.
S/o. Sri. Veerabhadrappe,
Age 63 years,
R/o. #21, Bommalingeshwara Nilaya,
Opp to Taralabalu Ladies Hostel,
Munirathnamma Layout,
Krushinagara,
Shivamogga Town,
Shivamogga Taluk & District.

DEFENDANTS

2. Sri. Kiran,
S/o. Sri. Basavarajappa,
Age 37 years,
R/o. Cheeranahalli village,
Ajjampura Taluk,
Chikkamagalur District.

(By Sri. C.S. Shivaprasad, Advocate)

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

Sri. K.S. Basavaraju

APPLICANT/ PLAINTIFF**-AND-**

Sri. Onkarappa and another

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

<i>i</i>	<i>Provision under which the application is filed</i>	<i>Order XXXIX Rule 1 and 2 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>09.02.2024</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>20.11.2024</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

- Applicant/ Plaintiff has filed the instant application under Order XXXIX Rules 1 & 2 of C.P.C seeking the relief of temporary injunction by restraining the Opponents/ Defendants their men, agents, servants or anybody claiming through them from interfering with the peaceful possession and enjoyment of the Plaintiff's over the suit schedule properties or from trespassing into the same or from causing

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acts of waste and damage over the suit schedule properties in any manner, pending disposal of the suit.

2. In the affidavit appended to the application, it is contended that the Plaintiff is the absolute owner of the suit schedule properties, whereby he acquired the Item No.1 and 2 of the suit schedule properties under registered sale deed dated 17.09.2012 and 22.03.2013 respectively from its previous owners; from the date of such sale deeds, the Plaintiff is in possession, occupation and enjoyment of the suit schedule properties by changing khata to his name and paying necessary tax without interruption from anyone; no one except the Plaintiff has got right, title, interest or possession over the suit schedule properties; the Defendants taking advantage of the fact that, the Plaintiff is residing at distance place, have trespassed into the suit schedule properties by removing the fence and have stolen the areca nuts, poles and barbed wire pillars; on obtaining knowledge of such mischief by the Defendants, the matter was also taken up with the police and criminal case is also registered against the Defendants; the Defendants are very powerful and influential

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persons, whereas the Plaintiff is poor and law-abiding citizens and if the Defendants are not restrained of such their illegal acts, it would be difficult for the Plaintiff to resist the same necessitating the filing of this suit and hence, contending that he has a prima-facie case, the balance of convenience lies in his favour and that he would suffer irreparable injury if temporary injunction is refused, the Plaintiff seeks to have the application allowed.

3. *Per contra*, Defendants have filed objections to I.A.I with the contention that the Plaintiff has failed to appear before this Court with clean hands and is guilty of suppressing material facts; the Defendants own land in Sy.No.337 of Bukkambudi village and such village consist a big tank going by the name of 'Bukkambudi Tank' abutting state highway; when such tank fills with excess water, the water would flow through a stream which passes through various lands in Bukkambudi and Bharamanahalli villages; the land owners of the said villages are using the said Halla/ Stream as boundaries marks for their respective lands from time immemorial; the family of the Defendants own more than 7 acres of land in Sy.No.337 of

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Bukkambudi village and out of which, these Defendants own 3 acres 17 guntas; the family of the Defendants have been growing areca plants for more than 40 to 50 years and they are in possession of the land up to Halla on the northern side which runs in Sy.No.23 and other lands of Bharmanahalli village; the Defendants have planted coconut trees on all four corners abutting such Halla/ Stream and such fact is very much within the knowledge of the Plaintiff and the local residents; the land in Sy.No.23, 24 and 25 etc., of Bharmanahalli village on the northern side of the Halla were barren lands without any cultivation since several decades; the Plaintiff having eagle eye over the areca plantations of the Defendants, has created various documents to stake claim over such lands of the Defendants and to take possession of such land, he has come up with the instant suit; when the Plaintiff himself is not in possession of the properties, he cannot maintain the present suit; the instant suit is being used as a tool by the Plaintiff to somehow get an order from the Court and make unlawful gain and even the Police have given opinion that the Plaintiff is not in possession of the suit

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schedule properties. With these contentions, prayer is to dismiss the application with heavy costs.

4. Heard both sides.
5. 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 : What Order?

6. 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

7. **Point No.1 to 3:** The instant suit is filed seeking relief of permanent injunction by restraining the Defendants their men, agents, servants or anybody claiming through them

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from interfering with the peaceful possession and enjoyment of the Plaintiff's over the suit schedule properties, from trespassing into the same or from causing acts of waste and damage over the suit schedule properties 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.

- 8.** 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) 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**

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**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; 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

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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"

9. 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 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

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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.

- 10.** 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.
- 11.** 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

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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 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

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

- 12.** The Plaintiff primarily contend that, being the owner of the suit schedule properties, which was acquired by him under two registered sale deeds dated 17.09.2012 and 22.03.2022 respectively, he has been enjoying peaceful possession and occupation of the same without any interruption from anyone. The Defendants, having no right, title, or interest in the suit

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schedule properties, have been interfering with the Plaintiff's possession of the properties by taking advantage of his absence, necessitating the filing of the suit.

- 13.** On the other hand, the Defendants would contend that they and their family own lands in Sy.No. 337 of Bukkambudi village, which is home to a large water tank known as Bukkambudi Tank. The excess water from this tank flows through a stream or halla, which passes through various survey number lands in Bukkambudi and Baramanahalli villages. This stream or halla is used by landowners in these villages as a boundary mark for their respective lands. The Defendants' family is in possession of lands on the northern side up to the halla, which also runs through Sy.No. 23 of Baramanahalli village, in addition to Sy.No. 337, which they own. They have grown areca crops on this land for the past 40 to 50 years. This fact is well known to the Plaintiff and other villagers. The Plaintiff, having created certain revenue documents, is now claiming ownership of the land in possession of the Defendants. By concocting false stories and suppressing material facts, he has brought the present suit.

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Therefore, the Plaintiff is not entitled to any relief from the Court.

- 14.** 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 copies of the sale deed, RTCs, police complaint, FIR, documents related to proceedings initiated against the Plaintiffs under Section 164 of B.N.S.S and photographs of the suit schedule properties. The Defendants on the other hand have produced RTC, village map of Barmanahalli village, screenshot taken from the Dishank App, haddu basthu sketch pertaining to Sy.No.23 of Barmanahalli village and the affidavits of alleged abutting land owners.
- 15.** The instant suit has been filed for the relief of a bare injunction. Although a plethora of documents have been produced on both sides and the Learned Counsels appearing for both parties have made extensive submissions regarding the application, I am of the considered opinion that, given that the suit is still at the nascent stage of determining the Plaintiff's entitlement to a temporary injunction, this Court

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cannot conduct a mini-trial at this stage. The Court's focus at this point should be solely on the prima facie aspect of determining the Plaintiff's possession of the suit schedule properties. In such an exercise, referring to only certain documents would help clarify the dispute at this stage, and the discussion on which, would now follow.

- 16.** Given that the suit schedule properties are landed properties, the main document that would assist the Court in ascertaining the Plaintiff's possession of the suit schedule properties are the RTCs pertaining to those properties, which have been produced by the Plaintiff. These RTCs, without dispute, bear the name of the Plaintiff as being in possession of the suit schedule properties. Section 133 of the Karnataka Land Revenue Act, 1964, provides a presumption regarding the correctness of the entries made therein; however, this presumption is rebuttable, and its validity will be adjudicated during the trial. The Defendants' contention that the Plaintiff has fabricated the revenue records and are not in possession of the land on the south side of the stream or halla fails to raise any substantial doubts regarding the genuineness of the

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entries in the RTCs, at this stage. Although the Defendants rely on certain documents, including orders passed by revenue authorities and affidavits from abutting landowners, which they claim create doubts about the Plaintiff's possession of the suit schedule properties, these will not aid the Defendants at this stage, for the reasons mentioned above. The Plaintiff has produced the necessary documents to establish his possession of the suit schedule properties. Therefore, at this stage, I lean in favor of the Plaintiff and hold that he has established a *prima facie* case for being entitled to the relief of a temporary injunction. Accordingly, Point No. 1 is answered in the ***Affirmative.***

- 17. Point No.2 & 3:** The Court having already held that the Plaintiffs has shown a *prima-face* case, would now examine into the other aspects. Given the facts of the case afore-narrated, if the Defendants are not restrained from interfering with the actual possession of the Plaintiff over the suit schedule properties, the comparative mischief, hardship or inconvenience that is likely to be caused in my opinion is more to the Plaintiff than that which is likely to be caused to

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the Defendants. 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.***

- 18. 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 and 2 of C.P.C is hereby allowed -

Defendants their men, agents, servants or anybody claiming through them from interfering with the peaceful possession and enjoyment of the Plaintiff over the suit schedule properties or from trespassing into the same or from causing acts of waste and damage over the suit schedule properties 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.

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