

KACM710011122019



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

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

DATED THIS THE 22nd DAY OF JANUARY, 2026

ORIGINAL SUIT No. 274/2019

BETWEEN:

1. Smt. Ammaiah,
W/o. Late. Sri. Thimmanna,
Aged about 63 years,

PLAINTIFFS

2. Sri. Chithappa,
S/o. Thimmanna,
Age 43 years,

3. Sri. Govindappa,
S/o. Sri. Thimmanna,
Aged about 39 years,

4. Sri. Chandrappa,
S/o. Sri. Thimmanna,
Aged about 37 years,

5. Sri. Ravi,
S/o. Sri. Thimmanna,
Aged about 35 years,

All are Agriculturist,
R/o. Karehalli Gollarahatti,
Shivani Hobli,
Tarikere Taluk,
Chikkamagaluru District.

(By Sri. B.P. Rajashekar, Advocate)

KACM710011122019



-AND-

1. Sri. Eshwrappa,
S/o. Late. Sri. Erajappa,
Age 56 years,

DEFENDANTS

2. Sri. Pathalingappa,
S/o. Sri. Eshwarappa,
Age 35 years,

3. Sri. Chandrappa,
S/o. Sri. Eshwarappa,
Age 33 years,

4. Sri. Govindappa,
S/o. Sri. Eshwarappa,
Age 26 years,

All are R/o. Bhakthanakatte,
Gollarahatti @ Huchhanahatti,
Thyagadakatte post,
Shivani Hobli,
Tarikere Taluk,
Chikkamagalur District.

(By Sri. R. Chandrashekar., Advocate)

IN I.A.NO.XII

Sri. Chittappa and others

**APPLICANTS/
PLAINTIFFS**

-AND-

Sri. Eshwarappa and others

**OPPONENTS/
DEFENDANTS**



PARTICULARS

<i>i</i>	<i>Provision under which the application is filed</i>	<i>Order XXXIX Rule 1(a) 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>20.07.2023</i>
<i>iv</i>	<i>Number of the application</i>	<i>I.A.No.XII</i>
<i>v</i>	<i>The date on which the objections are filed by opponents/ Defendants</i>	<i>11.08.2023</i>
<i>vi</i>	<i>The date on which the orders were passed on the said application</i>	<i>22.01.2026</i>

ORDERS ON I.A. NO.XII

1. Applicants/ Plaintiffs have filed the instant application under Order XXXIX Rules 1(a) r/w. Section 151 of C.P.C seeking the relief of temporary injunction by restraining the Opponents/ Defendants, their followers, representatives, or anybody claiming under them from taking further construction/developmental activities in or over the suit schedule property, pending disposal of the suit.
2. In the affidavit appended to the application, it is contended that the suit has been filed seeking the relief of declaration and the consequential reliefs of permanent injunction and mandatory injunction as against the Defendants. It is alleged

KACM710011122019



that the Defendants have raised a structure on a portion of the suit schedule property. Despite resistance by the Plaintiffs and repeated oral requests, which proved futile, the suit came to be filed. It is further contended that, notwithstanding the pendency of the suit, the Defendants, without any right, title, or interest, have continued construction on the suit schedule property. Despite resistance by the Plaintiffs, the Defendants have persisted with such alleged illegal acts. The Plaintiffs contend that they have established a prima facie case, that the balance of convenience lies in their favour, and that they would suffer irreparable injury if a temporary injunction is not granted. Hence, they pray that the application be allowed.

3. *Per contra*, the Defendants by way of objections, have contended that the application is not maintainable either in law or on facts and is liable to be dismissed in *limine*. It is contended that the construction alleged by the Plaintiffs was completed nearly eight years ago and that there is no ongoing construction, which has been falsely alleged by the Plaintiffs. It is further contended that the application has been filed at a

KACM710011122019



belated stage and only with an intention to harass the Defendants. Hence, a prayer is made to reject the application.

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 Plaintiffs have made out a prima-facie case as against the Defendants?

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

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

Point No.4 : What Order?

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

Point No.1 : In the Negative
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 declaration to declare that the Plaintiffs are the absolute



owner of the suit schedule property; consequential relief of permanent injunction concerning suit schedule property and such other ancillary reliefs. The instant application is filed seeking an order of temporary injunction with the prayer to restrain the Opponents/ Defendants, their followers, representatives, or anybody claiming under them from taking further construction/developmental activities in or over the suit schedule property, pending disposal of the suit.

- 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 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 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 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 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 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 case of the Plaintiffs is that the suit schedule property has devolved upon them from their ancestors. Defendant No.1 was allegedly only permitted to use the property for a certain duration. It is contended that he has, by furnishing false documents, caused the khata of the property to be mutated in

KACM710011122019



his name and has been denying the Plaintiffs' title over the suit schedule property. Further, it is alleged that he has been interfering with their peaceful possession and enjoyment of the property, which necessitated the Plaintiffs filing the present suit seeking relief of declaration, permanent injunction, and mandatory injunction.

- 13.** The Defendants, on the other hand, have resisted the suit, contending that the Plaintiffs have filed it with a mala fide intention to grab property belonging to the Defendants. It is stated that the suit schedule property has devolved upon the Defendants through their ancestors, and the khata was mutated in the name of Defendant No.1 as far back as 2006–07. The Defendants claim to be in lawful possession and enjoyment of the suit schedule property. It is further contended that the Plaintiffs have no right, title, or interest, much less ownership, over the property and have instituted the suit with an unlawful intent to dispossess the Defendants. On this basis, it is submitted that the suit itself is not maintainable.

KACM710011122019



- 14.** It is noted that the suit pertains to the year 2019, and the trial has already commenced, reaching the stage of further cross-examination of PW-1. Until the filing of the present application, the Plaintiffs have not pressed for relief under I.A. No.1 which was filed at the earliest stage seeking a similar relief. At this belated stage, they have now come up with the present application once again seeking a temporary injunction restraining the Defendants from undertaking any construction or developmental activities on the suit schedule property.
- 15.** The case records indicate that it is an undisputed fact that the khata of the suit schedule property was mutated in the name of Defendant No.1 in 2006-07, whereas the suit was instituted only in 2019. The Plaintiffs, as noted above, did not press their previous application for temporary injunction or claim any urgency in the matter at that time. However, they have come up with the present application on bald contentions, without supporting documents, such as photographs, to substantiate the alleged construction on the property.

KACM710011122019



- 16.** Considering these aspects, including the fact that the suit has reached the stage of cross-examination of PW-1 without pressing for any interim relief, the Court cannot arrive at a positive finding in favour of the Plaintiffs, till the trial is concluded. Hence, there is no prima facie case made out in their favour, nor is there any ground for indulgence by the Court. In these circumstances, the Plaintiffs have failed to establish a prima facie case in their favour.
- 17.** The Applicants/ Plaintiffs 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)**. With these observations, the **Point No.1 to 3** which have arisen for my consideration are also answered in the **Negative**.
- 18. Point No.4:**For the foregoing reasons, I proceed to pass the following -

KACM710011122019



ORDER

*I.A No.XII filed by the Applicants/ Plaintiffs
under Order XXXIX Rules 1(a) r/w. Section 151
of C.P.C is hereby dismissed.*

Costs made easy.

(Dictated to Stenographer, after transcription, print out corrected and then pronounced by me in the Open Court on this the 22nd JANUARY, 2026)

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