

KACM710014872022



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

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

DATED THIS THE 2nd DAY OF JUNE, 2025

ORIGINAL SUIT No. 183/2022

BETWEEN:

Smt. Jaythunnisa,
W/o Late. Sri. Abdul Khadar Jilani,
Age 63 years,
Housewife,
R/o. Halasuru village,
Lakkavalli Hobli,
Tarikere Taluk,
Chikkamagaluru District.

PLAINTIFFS

(By Sri. T.D. Kirankumar, Advocate)

-AND-

1. Sri. Mahadevappa,
S/o. Late Sri. Basappa,
Age 64 years,

DEFENDANTS

2. Smt. Hemavathi,
W/o. Sri. Mahadevappa,
Age 56 years,

Both are R/o. T.M. Road,
Mudugodu-Rangenahalli village,
Lakkavalli Hobli,
Tarikere Taluk,
Chikkamagaluru District.

(By Sri. T.R. Srinivas, Advocate)

KACM710014872022

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

Smt. Jaithunnisa

APPLICANT/ PLAINTIFF**-AND-**

Sri. Mahadevappa and others

**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>21.04.2022</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>14.08.2023</i>
<i>vi</i>	<i>The date on which the orders were passed on the said application</i>	<i>02.06.2025</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 agents, labourers, representatives, supporters or anyone claiming under them from illegally trespassing and interfering with the peaceful possession and enjoyment of the suit schedule property by the Plaintiff, pending disposal of the suit.

KACM710014872022



2. In the affidavit appended to the application, it is contended that the present suit is one filed seeking the relief of permanent injunction. The suit schedule property was originally the joint family property of Defendant No.1, which was gifted to the vendor of the Plaintiff, one Santhosh @ Santhoshkumar.R, under a registered gift deed executed in the year 2020. Subsequently, a partition was effected among the family members of the said Santhosh @ Santhoshkumar.R under a registered partition deed, also executed in the year 2020, and under this deed, the suit schedule property fell to the share of Santhoshkumar.R. Thereafter, the Plaintiff purchased the suit schedule property under a registered sale deed in the year 2022 from Santhoshkumar.R. Since then, the Plaintiff has been in possession of the suit schedule property and has mutated the revenue records in her name. The Defendants, having no right, title, or interest over the suit schedule property, are interfering with her possession. In this context, on 13.04.2022, the Defendants allegedly trespassed into the suit schedule property and disturbed her possession. Though the matter was reported to the police, no action was taken on the ground that it is a civil dispute. It is therefore

KACM710014872022



contended that the Plaintiff has a prima facie case, the balance of convenience lies in her favour, and she would suffer irreparable injury if the temporary injunction is not granted. Hence, she prays that the application be allowed.

- 3.** *Per contra*, the Opponent/Defendant No.1 has filed objections to the instant application, and Defendant No.2 has adopted the written statement filed by Defendant No.1. It is stated that the application lacks essential facts, and there is a prayer to consider the averments in the written statement of Defendant No.1 as objections to the application. In the written statement, apart from denying the allegations made in the plaint, it is contended that Defendants No.1 and 2 are husband and wife, and the suit schedule property originally belonged to one Sri Annaiah.B. Upon his demise, the revenue records were mutated in the name of his wife, from whom the Defendants jointly purchased the property through a registered sale deed in the year 2018. Among the children of the Defendants, the younger son, Santhoshkumar.R.M, voluntarily expressed willingness to discharge a loan borrowed from Vijaya Bank, Rangenahalli Branch, and to bear other household expenses. He agreed to spend a total amount of

KACM710014872022



₹29,00,000/- and demanded execution of a registered gift deed in his favour. Believing his assurance, the Defendants executed the registered gift deed in the year 2020 in respect of the suit schedule property in favour of Santhoshkumar.R.M. However, the Defendants have retained possession of the said property to date. A consent deed was also executed by Santhoshkumar.R.M on the date of the gift deed, undertaking to discharge the loan of ₹29,00,000/-. This consent deed has since been allegedly stolen by him, and he has failed to repay the loan to date. Hence, the registered gift deed is claimed to be null and void and an incomplete document. Although objections were filed against the mutation of revenue records in favour of Santhoshkumar.R.M, the Grama Panchayath proceeded with the mutation. Defendant No.1 was also in ill-health at the time of executing the registered gift deed. Based on the gift deed, Santhoshkumar.R.M attempted to dispossess the Defendants and interfered with their possession, which the Defendants resisted, and the matter was reported to the police. The Defendants subsequently filed a suit in O.S.No.26/2021 against Santhoshkumar.R.M, seeking a declaration and consequential relief of permanent injunction.

KACM710014872022



The matter was compromised on 27.08.2021, and under the terms of the compromise, Santhoshkumar.R.M undertook not to alienate the suit schedule property, to clear the loans, and to maintain the Defendants. Despite having no right, title, or possession over the suit schedule property, Santhoshkumar.R.M sold it to the Plaintiff under a registered sale deed. This sale is in violation of the compromise decree, has no legal force, and is void ab initio. It is not binding on the Defendants. The Defendants have now filed a suit in O.S.No.149/2022 on the file of this Court against the Plaintiff and Santhoshkumar.R.M, seeking the relief of declaration and consequential relief of permanent injunction. Though the Plaintiff was served with suit summons, she has filed the present suit by suppressing material facts. The Defendants assert that they are in possession and enjoyment of the suit schedule property, and hence, the present suit for permanent injunction is not maintainable. Therefore, they pray that the application be dismissed with heavy costs.

4. Heard both sides.

KACM710014872022



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 restraining the Defendants, their agents, labourers, representatives, supporters or anyone claiming under them from illegally trespassing and interfering with the peaceful possession and enjoyment of the suit schedule property by the Plaintiff and such other ancillary

KACM710014872022



reliefs. The instant application is filed seeking an order of temporary injunction with the prayer which is same 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 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

KACM710014872022



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".

KACM710014872022



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.

KACM710014872022



- 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,

KACM710014872022



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

KACM710014872022



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 contends that the suit schedule property was lawfully purchased by her under a registered sale deed by paying valuable consideration. The suit schedule property was originally the joint family property of the Defendants, which was gifted by them to her vendor. There was also a subsequent partition between the parties, which also reflects the ownership of the suit schedule property being vested in her vendor. The Plaintiff alone is in peaceful possession and enjoyment of the suit schedule property, which is now being interfered with by the Defendants, compelling her to file the present suit.
- 13.** On the other hand, the Defendants contend that the suit schedule property was originally purchased by them and, under a family arrangement, was gifted to their son who is the vendor of the Plaintiff on the condition that he would

KACM710014872022



discharge certain family loans. As he failed to fulfill this condition, the Defendants subsequently filed a suit, wherein their son undertook, under a compromise, not to part with the suit schedule property during the lifetime of the Defendants and to discharge the said loans. However, their son, having failed to comply with the terms of the compromise, has alienated the suit schedule property in favour of the Plaintiff. As a result, a comprehensive suit has now been filed against both the Plaintiff and their son. Therefore, the Defendants contend that the present suit is not maintainable.

- 14.** In the backdrop of these rival contentions, it becomes necessary to examine the documents submitted by both parties. The Plaintiff has produced various documents, including Form No. 9 & 11-A, the gift deed, partition deed, sale deeds, photographs, CD, compromise petition, order of the Assistant Commissioner, relinquishment deed, and documents related to the suit in O.S. No.149/2022.
- 15.** The Defendants, on the other hand, have produced documents including sale deeds, the gift deed, documents related to the suits in O.S. No.26/2021, O.S. No.149/2022, and O.S. No.312/2024, along with Form No. 9 & 11-A.

KACM710014872022



- 16.** The instant suit has been filed seeking the relief of permanent injunction. The suit documents suggest that the dispute regarding the suit schedule property, in its origin, lies between the Plaintiff's vendor and the Defendants. At this stage, the Plaintiff appears to be a bona fide purchaser, having bought the suit schedule property without full knowledge of the complications surrounding the title.
- 17.** While there may be a default on the part of the Plaintiff's vendor in adhering to the terms of the compromise decree passed in O.S. No.26/2021, it is also notable that the vendor had previously sold another portion of the suit schedule property to one R.M. Sathish on 20.09.2021. The sale to the Plaintiff took place later, on 21.03.2022. Both sale transactions occurred after the compromise decree dated 27.08.2021 passed in O.S. No.26/2021.
- 18.** The fact that the Defendants have resisted only the sale made in favour of the Plaintiff, while not challenging the earlier sale made to R.M. Sathish, raises some suspicion of mala fides, at least at this stage. Furthermore, the revenue records reflect the Plaintiff's name following the sale.

KACM710014872022



- 19.** In these circumstances, the matter clearly requires a full trial. Denying the Plaintiff interim relief at this stage may result in serious prejudice to her rights. Therefore, I am inclined to lean in favour of the Plaintiff and hold that she has established a *prima facie* case, entitling her to the relief of temporary injunction. Accordingly, Point No. 1 is answered in the ***Affirmative.***
- 20. 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 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 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.***

KACM710014872022



21. 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 agents, labourers, representatives, supporters or anyone claiming under them are hereby restrained from illegally trespassing and interfering with the peaceful possession and enjoyment of the suit schedule property by the Plaintiff, pending disposal of the suit.

(Typed, computerized and corrected by me and then pronounced in the Open Court, on this the 2nd DAY OF JUNE, 2025)

sd/-

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