

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 06th DAY OF SEPTEMBER, 2025

ORIGINAL SUIT No. 281/2025

BETWEEN:

Sri. N.P. Chandrappa,
S/o. Sri. N.B. Puttappa,
Aged about 57 years,
R/o. Nandi village,
Lingadahalli village,
Tarikere Taluk,
Chikkamagaluru Distirct.

PLAINTIFF

(By Sri. K.Lingaraju, Advocate)

-AND-

The Panchayath Development Officer,
Sunnadahalli Village Panchayath,
Sunnadahalli, Lingadahalli Hobli,
Tarikere Taluk.

DEFENDANTS

(By Sri. G.N. Chandrashekar, Advocate)

IN I.A.NO.I

Sri. N.P. Chandrappa

APPLICANT/ PLAINTIFF

-AND-

The Panchayath Development
Officer, Sunnadahalli Grama
Panchayath

OPPONENT/ DEFENDANT

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>09.07.2025</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>23.08.2025</i>
<i>vi</i>	<i>The date on which the orders were passed on the said application</i>	<i>06.09.2025</i>

ORDERS ON I.A. NO.I

1. 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 Opponent/ Defendant, its workers, representatives, supporters, or other persons claiming under them from illegally interfering and trespassing with the peaceful possession and enjoyment 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 suit schedule property was the ancestral property of the Plaintiff, which devolved upon his father by way of inheritance. Upon the death of his father, the Plaintiff alone has been in possession and enjoyment of the suit schedule

property as its absolute owner, regularly paying property taxes to the Panchayath. Previously, the Plaintiff's father was held to be the absolute owner and in possession of the suit schedule property in O.S. No. 22/1982. Prior to that, the Plaintiff's father had filed a suit in O.S. No. 67/1979 against the Sunnadahalli Grama Panchayath, seeking the relief of permanent prohibitory injunction. In that suit, the Panchayath failed to appear before the Court, and a decree of permanent injunction was passed in favour of the Plaintiff's father. Subsequently, the Panchayath filed a suit in O.S. No. 22/1982 with a prayer to set aside the ex parte decree passed against it. That suit was dismissed, and even the appeal preferred against the same was dismissed. Following this litigation, the Plaintiff's family has remained in peaceful possession and enjoyment of the suit schedule property without interference. However, the Plaintiff's family had permitted the general public to draw water from a Well situated in the suit schedule property. Due to subsequent developments, such as rampant construction of bore-wells in and around the village, the Well located in the suit schedule property went dry. Eventually, it also began depleting, leading the Grama Panchayath to close

the Well entirely. Thereafter, several Government schemes were introduced concerning the supply of water to the village, and currently, more than three bore-wells exist in the village. In such circumstances, the Well previously located in the suit schedule property is no longer in use. Despite this, certain villagers, who are inimical to the Plaintiff, submitted a representation to the Grama Panchayath based on false allegations that the Plaintiff was letting sewage into the said Well. However, as stated earlier, no Well exists in the suit schedule property as on the date of the suit. Based on such false representation, the Panchayath has commenced construction of a new Well on the suit schedule property, thereby putting the Plaintiff's house and property at risk, which is unlawful. Hence, with no other remedy available, the Plaintiff has filed the present suit seeking the relief of permanent prohibitory injunction. It is therefore contended that the Plaintiff has established a *prima facie* case, that the balance of convenience lies in his favour, and that he would suffer irreparable injury if a temporary injunction is not granted. Accordingly, he prays that the application be allowed.

- 3.** *Per contra*, the Defendant has filed a memo requesting that the written statement be treated as objections to I.A. No. 1. In the written statement, apart from denying the allegations made in the plaint, it is contended that the Plaintiff's father had earlier filed a suit in O.S. No. 67/1979 seeking the relief of permanent injunction, which was decreed solely because the Panchayath did not appear in the suit. Subsequently, various villagers instituted a suit against the Plaintiff's father in O.S. No. 121/1981, wherein the Court passed a decree restraining the Plaintiff's father from interfering with the villagers' right to draw water from the suit Well. The Well in question, located in the suit schedule property, is claimed to belong to members of the A.K. community. Though the Plaintiff's father preferred an appeal before the Hon'ble High Court of Karnataka, the same was dismissed. While it is acknowledged that the Panchayath and others cannot interfere with the Plaintiff's possession and enjoyment of the suit schedule property, in light of the subsequent decree passed by the Court, the Plaintiff cannot prevent the villagers from accessing the Well situated on the suit schedule property. Hence, it is contended that the present suit is not

maintainable. The Plaintiff has also suppressed the judgment and decree passed in O.S. No. 121/1981 and the subsequent order of the Hon'ble High Court of Karnataka. The general public, particularly members of the A.K. community, have full rights to draw water from the Well situated in the suit schedule property. Therefore, the Plaintiff has no right to seek a restraining order against them. In these circumstances, it is submitted that the Plaintiff's suit is not maintainable. Hence, it is prayed that the application be dismissed.

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 Defendant?

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 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 permanent injunction restraining the Defendant, its workers, representatives, supporters, or other persons claiming under them from illegally interfering and trespassing with the peaceful possession and enjoyment of the suit schedule property by the Plaintiff and such other ancillary 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 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 debita 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 judgements 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 Plaintiff primarily contends that the suit schedule property is his ancestral property, and that he is currently in possession of the same, having inherited it. The father of the Plaintiff was declared the absolute owner of the suit schedule property in an earlier litigation involving the Defendant. The

Plaintiff's family had permitted the Defendant and the general public to draw water from the Well situated in the suit schedule property; however, the said Well, having been depleted, was closed by the Defendant themselves long ago. There are now several water facilities in the village, and there is no present use or utility of the Well that once existed in the suit schedule property. The Defendant, allegedly at the instance of certain villagers who are on inimical terms with the Plaintiff, has now unlawfully embarked upon digging a non-existent Well in the suit schedule property, which has necessitated the filing of the present suit.

- 13.** On the other hand, the Defendant, while admitting the previous round of litigation involving the Plaintiff and the Defendant, contends that there exists a decree in another suit, i.e., O.S. No. 121/1981, filed by certain villagers against the Plaintiff's father. In that case, the Court passed a decree acknowledging the existence of a Well in the suit schedule property and restraining the Plaintiff's father from interfering with the Plaintiffs therein from drawing water from the said Well. The appeals challenging that decree were dismissed. The Defendant submits that the present suit, having been

brought by suppressing such a material aspect, is not maintainable.

- 14.** In light of these rival contentions, it becomes necessary to examine the documents submitted by both parties. The Plaintiff has produced various documents, including the Genealogy Tree, Demand Register, Mutation Register Extract, Building Licence, letters issued by the Panchayat, documents pertaining to O.S. No. 67/1979, O.S. No. 22/1982, O.S. No. 121/1981, R.S.A. No. 313/1983, tax paid receipts, photographs, and a CD.
- 15.** The Defendant, on the other hand, has produced documents pertaining to O.S. No. 121/1981, photographs, assessment extracts, representation given by villagers, proceedings of the Grama Panchayat, a letter addressed to the Taluk Panchayat, a notice, a caveat, and an extract from the Panchayat Raj Act.
- 16.** The Plaintiff asserts possession of the suit schedule property based on inheritance, which is not in dispute. The major contention of the Defendants in the present case is that there is a specific decree passed against the Plaintiff's father in O.S. No. 121/1981, wherein he was restrained from interfering with the rights of the Plaintiffs therein from drawing water

from the Well situated in the suit schedule property which has been suppressed by the Plaintiff. In view of such a decree existing against the family of the Plaintiff, the Plaintiff cannot maintain the present suit.

- 17.** The pleadings of the Plaintiff clearly indicate that a Well did exist in the suit schedule property, and that his family had merely permitted the Defendant and villagers to draw water from it. With the Well now allegedly closed, the Plaintiff contends that the Defendant has no right to dig a new Well in the suit schedule property.
- 18.** The above narration indicates that the Plaintiff has admitted the existence of a Well in the suit schedule property. However, the entire pleading is completely silent about the decree passed in O.S. No. 121/1981 against the Plaintiff's father, wherein he was restrained from interfering with the rights of the parties therein from drawing water from the Well. The proceedings in the said suit cannot be said to be outside the knowledge of the Plaintiff for the simple reason that he has himself produced the suit register extract concerning the said suit and also the judgment relating to the said suit passed by the Hon'ble High Court of Karnataka in the

second appeal preferred by his father in R.S.A. No. 313/1983, which was an appeal preferred by the father of the Plaintiff.

- 19.** It is therefore clear that there is a clear suppression by the Plaintiff of the decree passed in O.S. No. 121/1981 in his pleadings, despite his knowledge of the same. The Plaintiff's contention that the Well is no longer in existence and that it was closed by the Defendant on account of it being rendered useless is not corroborated by any documentary evidence at this stage except for mere assertions.
- 20.** In these circumstances, the action taken by the Defendant under Section 77 of the Panchayat Raj Act based on the representation given by the general public cannot be termed illegal. The Defendant has, in fact, acted in accordance with law, and the Plaintiff's suppression of the decree passed in O.S. No. 121/1981, despite having knowledge thereof, goes against his bona fides. Given these circumstances, it cannot be said that the Plaintiff has established a *prima facie* case warranting the grant of a temporary injunction.
- 21.** The Applicant/ 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)**. With these observations, the **Point No.1 to 3** which have arisen for my consideration are also answered in the **Negative**.

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 of C.P.C is hereby dismissed.

Costs made easy.

(Typed, computerized and corrected by me and then pronounced in the Open Court, on this the 06th DAY OF SEPTEMBER, 2025)

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