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**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND
J.M.F.C., AT TARIKERE**

Present: Smt.Urmila.V. B.A.L., LL.B.,
Addl. Civil Judge & JMFC, Tarikere.

Dated: 14th Day of February 2025

ORIGINAL SUIT NO.374/2023

PLAINTIFF/s :

Anjanappa S/o late Ugrappa, aged 70
years, Coolie Worker, R/o Yarehalli
Village, Amruthapura Hobli, Tarikere
Taluk.

(Reptd. By : Sri S.Sureshchandra, Advocate.)

Vs.

DEFENDANT/s:

- 1) Siddappa S/o late Rajappa, aged 65
years,
- 2) Annappa S/o late Thimmaiah, aged 28
years,
Both are coolie workers, R/o Ittige
village, Amruthapura Hobli, Tarikere
Taluk.

(Reptd. By : Sri K.Chandrappa, Advocate.)

PARTIES TO I.A.NO.I

Applicant : Anjanappa

Vs.

Opponent : Siddappa and another

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i	Provision under which the application is filed	Order XXXIX Rule 1 and 2 of CPC
ii	Relief sought for	Temporary injunction
iii	The date of which the application is filed	29.09.2023
iv	Number of application	I.A.No.I
v	The date on which the objection are filed by different opponents	25.09.2024
vi	The date on which the orders were passed on the said application	14.02.2025

ORDER ON I.A.NO.I

The applicant/plaintiff has filed this interlocutory application under Order XXXIX Rule 1 and 2 of CPC for the relief of ad-interim order of temporary injunction restraining the defendants, their labourers, representatives, supporters or anybody on their behalf from trespassing, encroaching and interfering with the peaceful possession and enjoyment of the schedule property till disposal of this suit.

2. The I.A., is supported with the affidavit of the plaintiff No.1. In the affidavit he has stated that, the suit schedule property was originally belonged to defendants family. The

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defendant No.1 and his father namely Rajappa, brother of defendant No.1 and father of defendant No.2 namely Thimmappa have agreed to sell the suit schedule property in his favour and executed agreement of sale in the presence of witnesses and they have received Rs.5,300/- from him and they have also handed over the possession of the suit schedule property to the plaintiff. It is further stated that from the date of agreement, he is in peaceful possession and enjoyment of the suit schedule property without any interference from anybody and he is residing along with his son-in-law and other family members. He has also obtained electric connection to the suit schedule property and also paying electric bill for the same. It is further stated that he has requested the defendant No.1 and his brother and father to execute the registered sale deed as per agreement of sale, but they have not come forward to execute the sale deed. In spite of the same, the defendants having no right, ownership and possession over the suit schedule property, trespassed

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into the suit schedule property and tried to interfere with his possession for several times and also on 27.09.2023, but he restrained them and in respect of the said act, he has given complaint to Tarikere police, but the police advised to approach the court as the dispute is civil in nature. It is further stated that if temporary injunction order is granted against the defendants, they will not sustain any loss, on the other hand, if temporary injunction is not granted in his favour, he will sustain irreparable loss and hardship. Hence, this I.A.

3. In response to service of summons, the defendants have appeared before the court and defendant No.1 filed written statement and defendant No.2 adopted the same by filing memo. The defendants have also filed the memo and adopted the averments of written statement as objections to I.A.No.I. In the written statement the defendants denied the entire plaint averments. It is further denied that the defendant No.1 and his father Rajappa, brother of defendant

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No.1 and father of defendant No.2 Thimmappa have executed agreement of sale dated 23.05.1989 in favour of plaintiff agreeing to sell the suit schedule property and they have also received Rs.5,300/- from the plaintiff. It is further contended that the defendants are paying tax to the grama panchayath every year. The khata of the suit schedule property was standing in the name of Rajappa S/o Thimmappa and after his death, the khata of the said property jointly standing in the name of Siddappa and Chandramma W/o late Thimmappa as per M.R.No.11/2023-24. The plaintiff has created the above said agreement of sale and filed false suit against the defendants. It is further contended that the father of defendant No.1 namely Rajappa has given the suit schedule property on rent for Rs.500/- per month during 1988-89 and the plaintiff is in possession of the suit schedule property as a tenant. After the death of father of defendant No.1, the defendants requested the plaintiff to hand over the possession of the suit schedule property to them, but the

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plaintiff without handing over possession of the same, has filed this suit. After the death of Rajappa, the plaintiff has also not paid rent amount to the defendants. Hence, it is prayed to reject the I.A.No.I with cost.

4. Heard arguments on both sides. Perused the materials placed on record.

5. Upon hearing arguments and on perusal of materials placed on record, the following points that would arise for my consideration are as under:

- 1) Whether the plaintiff/applicant has made out a prima facie case?
- 2) Whether the balance of convenience lies in favour of the plaintiff/applicant?
- 3) Whether the plaintiff/applicant will be put to irreparable loss and injury, if the temporary injunction is not granted as prayed in the I.A.?
- 4) What order?

6. My answer to the above points are as under :

Point No.1 : In the Affirmative;

Point No.2 : In the Affirmative;

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Point No.3 : In the Affirmative;

Point No.4 : As per final Order,

for the following:

REASONS

7. **POINT NO.1 TO 3** : As these points are interconnected and interlinked with each other, these points are taken up together for common discussion in order to avoid repetition of facts and findings. The plaintiff has filed this suit against the defendants for the relief of permanent injunction in respect of suit schedule property. It is the urge of the plaintiff that the suit schedule property was originally belonged to defendants family, the defendant No.1 and his father namely Rajappa, brother of defendant No.1 and father of defendant No.2 namely Thimmappa have agreed to sell the suit schedule property in his favour and executed agreement of sale in the presence of witnesses and they have received Rs.5,300/- from him and they have also handed over the possession of the suit schedule property to the plaintiff and

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later they have not come forwarded to execute the sale deed and trying to interfere with his possession.

8. On the other hand, the defendants have denied the execution of agreement of sale as stated by the plaintiff and further contended that after death of Rajappa, the khata of the said property jointly standing in the name of Siddappa and Chandramma W/o late Thimmappa as per M.R.No.11/2023-24 and the plaintiff has created the above said agreement of sale and filed false suit against the defendants. It is further contended that the father of defendant No.1 namely Rajappa has given the suit schedule property on rent for Rs.500/- per month during 1988-89 and the plaintiff is in possession of the suit schedule property as a tenant and after the death of Rajappa, the defendants requested the plaintiff to hand over the possession of the suit schedule property to them, but the plaintiff without handing over possession of the same, has filed this suit and fter the

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death of Rajappa, the plaintiff has also not paid rent amount to the defendants.

9. At this stage, without going through the merits of the case and conducting mini trail, the court has considering the aspect of prima facie, at this stage this court makes very clear that this court is looking towards prima facie case and not for the prima facie title. In order to prove the prima facie case, the plaintiff has produced agreement of sale, electricity bill and photographs. On perusal of agreement of sale, it discloses that the defendant No.1 namely Siddappa, Rajappa, brother of defendant No.1 and father of defendant No.2 namely Thimmaiah had executed agreement of sale dated 23.05.1989 in favour of plaintiff in respect of suit schedule property and handed over the possession of the suit schedule property in favour of the plaintiff.

10. In the present case on hand, the defendants have not disputed the possession of the plaintiff over the suit

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schedule property. The only contention taken by the defendants is that the plaintiff is in possession of the suit schedule property as tenant and the agreement of sale produced by the plaintiff is created document. For the sake of arguments, if plaintiff is considered as tenant, he should be dispossessed from the suit schedule property with due process of law. The possession of tenant is protected by court of law. It is well settled law that, till tenants are evicted by due process of law, they are entitle to continue in possession and enjoyment of the said premises and making an attempt to dispossess them without following due process of law, it not permissible under law. Further the plaintiff contended that the defendant No.1 and his father namely Rajappa, brother of defendant No.1 and father of defendant No.2 namely Thimmappa had executed agreement of sale dated 23.05.1989 for consideration of Rs.5,300/- and handed over the possession of the suit schedule property after receiving the full consideration amount. The photographs and

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electricity bill produced by the plaintiff clearly discloses that the plaintiff is in possession of the suit schedule property. At this stage, the rights of the parties cannot be adjudicated, it needs full fledged trial. Hence, looking into the pleadings and agreement of sale and photographs produced by the plaintiff, at this stage the plaintiff has made out a prima-facie case. For considering all these reasons, I answer Point No.1 in the Affirmative.

11. **POINT NO.2** : The term balance of convenience is to see the comparative hardship and mischief of inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to acted from granting it. I have arrived at the conclusion that the plaintiff has made out a prima facie case. It is the urge of the plaintiff that the defendant is trying to interfere with the possession of the plaintiff over the suit schedule property. If at all the defendant has succeed to interfere with the suit schedule property as alleged by the plaintiff, it appears that, greater

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inconvenience will be caused to the plaintiff. The agreement of sale and photographs produced by the plaintiff at this stage discloses that, the balance of convenience lies in favour of the plaintiff and this court is inclined to protect the possession until conclusion on the merits. Accordingly, I answer Point No.2 in the Affirmative.

12. **POINT NO.3** : Needless to say that the irreparable injury need not always mean measurable in terms of money or need not be physical damage. If the injunction is not granted and the apprehension of the plaintiff turns into reality and the defendants have succeed to interfere with the possession of the plaintiff over the suit schedule property, the amount of damage would certainly be substantial and not mere tangential. The plaintiff might have to be subjected to another round of litigation to revive the status of the property. This is certainly against the principles of the grant of injunction. Therefore, this court opined that the plaintiff has

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made out all requirements for grant of injunction. Hence, I answer Point No.3 in the Affirmative.

13. **POINT NO.4** : In the light of the above discussion on Point No.1 to 3, I proceed the following :

ORDER

I.A.No.I filed by the plaintiff/applicant under Order XXXIX Rule 1 and 2 of CPC is hereby allowed.

Consequently, the defendants are hereby temporarily restrained from interfering with the possession of the plaintiff over the suit schedule property till disposal of this suit.

No order as to cost.

(Dictated to the Stenographer directly on computer, typed by her, corrected by me and then pronounced in the open Court, on this the day of 14th day of February 2025)

sd/-
(URMILA.V)
ADDL.CIVIL JUDGE &
J.M.F.C., TARIKERE.