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

Present: Sri Shivakumar.R. B.A.L., LL.B.,
Addl. Civil Judge & JMFC, Tarikere.

Dated: 7th Day of January 2023

ORIGINAL SUIT NO.488/2022

PLAINTIFF/s :

N.C.Rajanna S/o Chikkanna, aged 60 years, Agriculturist, R/o Neralakere Village, Amruthapura Hobli, Tarikere Taluk, Chikkamagaluru District.

(Reptd. By : Sri S.V.A., Advocate.)

Vs.

DEFENDANT/s:

Kirana S/o Vishvakumaraiah, aged 26 years, Agriculturist, R/o Neralakere Village, Amruthapura Hobli, Tarikere Taluk, Chikkamagaluru District.

(Reptd. By : Sri A.R.K., Advocate.)

PARTIES TO I.A.NO.I

Applicant : N.C.Rajanna

Vs.

Opponent : Kirana

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**ORDER ON I.A.NO.I**

The applicant/plaintiff has filed this interlocutory application under Order XXXIX Rule 1 and 2 r/w Section 151 of CPC for the relief of temporary injunction restraining the defendant, their men, agents, supporters, servants from interfering with the peaceful possession and enjoyment of the plaintiff over suit schedule property in any manner till disposal of this suit.

2. The I.A. supported with the affidavit of the plaintiff. In the affidavit he has stated that, he is in peaceful possession and enjoyment of the suit schedule property by fencing the same. Originally the suit schedule property is the ancestral property of plaintiff, the khata of the suit schedule property was mutated in the name of grandfather of plaintiff namely Mallappa, after his death, his son namely Chikkanna had inherited the suit schedule property and the khata of the

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suit schedule property was mutated in his name.

Subsequently with the consent of said Chikkanna, the khata of the suit schedule property was mutated in the name of plaintiff, the said Chikkanna is none other than the father of the plaintiff herein.

3. It is further submitted that when such being the case, the defendant has no manner of right, title, interest and possession over the suit schedule property and he is trying to interfere with the possession of the plaintiff over the suit schedule property. In this regard, the plaintiff has lodged the complaint before the concerned police, but the said police have not taken any action against the defendant. Hence, this I.A.

4. After service of suit summons, the defendant has appeared through his counsel and filed detailed written statement and also filed memo adopting the written statement

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averments as objections to the I.A.No.I. In the written statement, the defendant has totally denied the plaintiff's averments and inter alia contended that, the defendant is in possession and enjoyment to an extent of 9 guntas property which includes 1 gunta of kharab in the land bearing Sy.No.273/4 out of 26 guntas excluding 3 guntas kharab of Neralakere village, Amruthapura Hobli, Tarikere Taluk. It is further contended that one Chikkanna who is the resident of very same village having an evil eye over the defendant's property and number of times he has demanded the defendant to sell the same, for which the defendant has denied. The said Chikkanna has instigated the present plaintiff Rajanna to file suit against the uncle of the present defendant by name Chandrashekar on the file of Civil Judge at Tarikere in O.S.No.487/2022, the plaintiff has filed present suit against the defendant without any documents by furnishing wrong boundaries with an intention to knock of

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the property belongs to the defendant. For all these grounds, the defendant prays for to reject the I.A., filed by the plaintiff with exemplary cost.

5. Heard arguments on both sides.

6. 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?

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

Point No.1 : In the Negative,

Point No.2 : In the Negative,

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Point No.3 : In the Negative,

Point No.4 : As per the Order,

for the following:

REASONS

8. **POINT NO.1 TO 3** : As these points are interconnected and interlinked with each other, these points are taken up together for common discussion to avoid repetition of facts. It is the urge of the plaintiff that he is in peaceful possession and enjoyment of the suit schedule property, the khata of the suit schedule property is standing in the name of plaintiff. The defendant has no manner of right, title, interest and possession over the suit schedule property and he has tried to interfere with the possession of the plaintiff over the suit schedule property. In order to substantiate the case of the plaintiff, at this stage the plaintiff has produced assessment extract and tax paid receipt.

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9. On the other hand, the defendant has contended that he is in peaceful possession and enjoyment of the land to an extent of 9 guntas excluding 1 gunta of kharab in the land bearing Sy.No.273/4 of Neralakere village, Amruthapura Hobli, Tarikere Taluk. The plaintiff has filed this suit by creating documents and by furnishing wrong boundaries only with an intention to knock of the property of the defendant. To substantiate the contention of the defendant, he has produced registered partition deed dated 29.05.2020, copy of 11E sketch, certified copy of acknowledgement issued by surveyor and RTC extract of Sy.No.273/17.

10. 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 the present suit on hand, the

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plaintiff is claiming possession over the suit schedule property as on the date of the suit. In order to show the prima facie case, the plaintiff has produced the true copy of assessment extract, carbon copy of tax paid receipt. On perusal of the assessment extract produced by the plaintiff, at this stage it does not disclose that in which village the suit schedule property is situated. In the absence of the same, it cannot be held that the said document pertaining to the suit schedule property. The injunctive relief is purely discretionary relief of the court, but it has to be exercised in judicious manner. In the instant suit, the plaintiff has not approached this court with clean hands and he has suppressed the material facts. At this stage, the rights of the parties cannot be adjudicated and it needs full fledged trial.

11. Looking into the pleadings and documents produced by the plaintiff and other materials available on record, at this

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stage it appears that, the plaintiff has not made out prima facia case and also balance of convenience is not lies in his favour. If an order of temporary injunction is granted in favour of the plaintiff as prayed in the I.A., certainly the defendant will be put to greater hardship and injury which cannot be compensated in any means. On the other hand, if this application is not allowed, there is no hardship and injury will be caused to the plaintiff. For considering all these reasons, I answer Point No.1 to 3 in the Negative.

12. **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 r/w 151 of
CPC is hereby rejected.

No order as to cost.

(Dictated to the Stenographer directly on computer, typed by her,

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corrected by me and then pronounced in the open Court, on this the day of 7th day of January 2023.)

Sd/-
(SHIVAKUMAR.R)
ADDL.CIVIL JUDGE &
J.M.F.C., TARIKERE.