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

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

DATED THIS THE 30th DAY OF AUGUST, 2025

ORIGINAL SUIT No. 535/2022

BETWEEN:

Sri. N.L. Gopyanaika,
S/o. Sri. Lachanaika,
Aged about 71 years,
Coolie worker,
R/o. Nagenahalli village,
Amruthapura Hobli,
Tarikere Taluk.

PLAINTIFF

(By Sri. B.T. Kenchappa, Advocate)

-AND-

Sri. Shekharappa,
S/o. Sri. Rajappa,
Aged 55 years,
Agriculturist,
R/o. Ganesapura village,
Amruthapura Hobli,
Tarikere Taluk.

DEFENDANTS

(By Sri. T.N. Mahadevaswamy, Advocate)

IN I.A.NO.I

Sri. N.L. Gopyanaika

APPLICANT/ PLAINTIFF

-AND-

Sri. Shekharappa

OPPONENT/ DEFENDANT

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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>16.12.2022</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>25.02.2025</i>
<i>vi</i>	<i>The date on which the orders were passed on the said application</i>	<i>30.08.2025</i>

ORDERS ON I.A. NO.I

1. Applicant/ Plaintiff has filed the instant application under Order XXXIX Rules 1 & 2 r/w. Section 151 of C.P.C seeking the relief of temporary injunction by restraining the Opponent/ Defendant, his workers, representatives, supporters, or other persons claiming under him 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 has been filed seeking the relief of permanent prohibitory injunction. The suit schedule property originally belonged to one Murthymesthri, to whom it was granted under Dharkasth. The Plaintiff purchased the suit schedule

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property through a registered sale deed executed in 1981 from the said person, and the revenue records have also been mutated in his name. The Plaintiff has been in possession and enjoyment of the suit schedule property, conducting agricultural activities therein for several years. He has also obtained a loan against the suit schedule property and has been regularly paying property taxes. The Defendant owns property situated to the north of the suit schedule property and is attempting to unlawfully encroach upon it. The Plaintiff has also issued a legal notice to the Defendant, despite which the Defendant has continued with the unlawful acts. 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. Hence, 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. I. In the written statement, apart from denying the allegations made in the plaint, it is contended that the Plaintiff is not at all in possession of the suit schedule property and has filed

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the suit by falsely describing the boundaries. An extent of 4 acres in Sy. No. 100 of Nagenahalli Village was granted to one Thimmanna. Thimmanna executed an agreement for sale in the year 1967 in favour of the Defendant's father, receiving a sum of Rs. 500/-, and also delivered possession of the said property. The Defendant's father remained in possession of the said property until his death in 1981. After his death, the family members of Rajanna, including the Defendant, have been in possession and enjoyment of the said property. Since the Plaintiff's father had earlier interfered with the Defendant's family's possession, the Defendant's mother filed a suit in O.S. No. 83/1982 seeking a declaration by way of adverse possession. However, the said suit was dismissed in 1984. The judgment was challenged in appeal, and the appellate Court granted a decree of permanent injunction in favour of the Defendant's mother. The said judgment and decree have attained finality. Subsequently, one N.M. Gangappa filed a suit in O.S. No. 165/1992 against the Defendant's mother, seeking a declaration and permanent injunction, which was dismissed in 1994. The appeal filed against the said judgment was also dismissed by both the first

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and second appellate courts. It is contended that the Plaintiff has suppressed all these material facts and has approached this Court by concocting false stories. The Defendant's family alone has been in possession of the suit schedule property. 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 Affirmative
to 3

Point No.4 : As per the final order, for the following -

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REASONS

- 7. Point No.1 to 3:** The instant suit is filed seeking relief of permanent injunction restraining the Defendant, his labours, representatives, supporters or anyone claiming under him from illegally trespassing and interfering 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

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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

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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

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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

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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

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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 he purchased the suit schedule property under a registered sale deed executed in the year 1981, and that the revenue records have also been mutated in his name. He claims to be in continuous possession and enjoyment of the suit schedule property, which has been interfered with by the Defendant despite the

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issuance of a legal notice. The Defendant has continued such unlawful acts, thereby necessitating the Plaintiff to file the present suit.

- 13.** On the other hand, the Defendant contends that a property measuring 4 acres in Sy. No. 100 of Nagenahalli Village earlier belonged to one Thimmanna, and that the Defendant's father purchased the said property in the year 1967. Since then, the Defendant's family has been in possession and enjoyment of the said land. The Defendant further submits that the Plaintiff's mother had earlier filed a suit against the Defendant's father and others, seeking the relief of declaration by way of adverse possession, which was dismissed. However, in the appeal, it was held that the Defendant's mother was in possession of the said property. Additionally, one N.M. Gangappa had filed a suit against the Defendant's mother seeking relief of declaration and permanent injunction, which also came to be dismissed. The said person failed in the appeals preferred against that judgment. The Defendant contends that the dispute concerning the suit schedule property has already been adjudicated by various courts, and is thus hit by the principles

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of *res judicata*. He further asserts that the Plaintiff was never in possession and enjoyment of the suit schedule property and has instituted the present suit by suppressing material facts.

- 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 sale deed, RTC extract, and *hiduvali* certificate. The Defendant, on the other hand, has produced records relating to O.S. No. 83/1982 and O.S. No. 165/1992.
- 15.** The Plaintiff in the present case asserts his possession over the suit schedule property based on the registered sale deed dated 1981. The revenue records, including the RTC extract and *hiduvali* certificate, also reflect the Plaintiff's name. The sale deed indicates the transfer of title and possession in favour of the Plaintiff from the earlier vendor.
- 16.** The suit documents pertaining to O.S. No. 83/1982 and O.S. No. 165/1992 do not refer to the sale deed now being relied upon by the Plaintiff to assert his title and possession over the suit schedule property. Moreover, the Plaintiff was not a party to the earlier litigation. Therefore, at this stage, it appears

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doubtful that the present suit is barred by the principles of *res judicata*. Based on the sale deed and the revenue records produced, which stand in the Plaintiff's name, it prima facie appears that the Plaintiff is in possession of the suit schedule property.

- 17.** The other aspects raised by the Defendant the matter that has to be adjudicated during the course of trial, but at this stage the Plaintiff has shown a clear prima-facie case warranting granted of temporary injunction. Accordingly, Point No. 1 is answered in the ***Affirmative***.
- 18. 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 Defendant. 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,

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Point No.2 & 3 which have arisen for my consideration are also answered in the ***Affirmative***.

19. 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 r/w. Section 151 of C.P.C is hereby allowed.

Defendant, his labourers, representatives, supporters or anyone claiming under him 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.

(Dictated to Stenographer, after transcription, print out corrected and then pronounced by me in the Open Court on this the 30th of AUGUST, 2025)

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