

KADG320025862024



**IN THE COURT OF
Pr. CIVIL JUDGE AND JMFC
AT, HARIHAR**

(Presided Over by SMT. JYOTI ASHOK PATTAR)

O.S. No.144/2024

Dated this the 04th day of July, 2024

Shamim Banu and others.

....PLAINTIFFS

Vs.

Sahida Balkis Banu and others.

....DEFENDANTS

PARTIES TO I.A.NO.I

Shamim Banu and others.

**....APPLICANTS/
PLAINTIFFS**

Vs.

Sahida Balkis Banu and others.

**....OPPONENTS/
DEFENDANTS**

i	Provision under which the application is filed	U/O XXXIX Rule 1 and 2 R/w Sec.151 of CPC
ii	Relief sought for	T I
iii	The date on which the application is filed	02.07.2024
iv	Number of the application	01
v	The date on which the objections are filed by the defendants opponents	-
vi	The date on which the orders were passed on the said application.	04.07.2025

ORDER ON I.A.No.1

The present application is filed by the plaintiffs U/O XXXIX Rule 1 and 2 R/w Sec.151 of CPC along with suit, seeking an order to grant temporary injunction against the defendants restraining them from interfering in the plaintiff's peaceful possession and enjoyment of suit schedule properties.

2. In the accompanying affidavit, it is stated that the husband of plaintiff No.1 and the father of the plaintiff No.2 to plaintiff No.4 was using the suit schedule property for his business by giving Rs.1,50,000/- to the husband of the defendant No.1 in leave of its interest. After the death of husband of defendant No.1 the defendants demanded Rs.50,000/- more from the husband of plaintiff No.1. And

the husband of the plaintiff No.1 denied the same. Due to which the defendants started to interfere in the peaceful possession and enjoyment of suit schedule property. Therefore, the husband of the plaintiff No.1 has filed a suit under O.S. No.112/2020 seeking permanent injunction against the defendants. The said O.S. is compromised between the both the plaintiffs and defendants out of Court and the husband of the plaintiff No.1 purchased the suit schedule property for consideration amount of Rs.5,31,000/-. Since from its purchase the husband of the plaintiff No.1 and after his death his legal heirs i.e., plaintiffs are in peaceful possession and enjoyment of suit schedule properties. But the defendants are again interfering in plaintiffs peaceful possession and enjoyment of the suit schedule property. Hence, prays to allow the application.

3. After service of summons and notice on I.A. No.1 defendant No.1, 2, 5 and 6 appeared through their counsel. But have not chosen to file any objection to the I.A.No.1 or written statement in the case. Hence written statement and objection to IA No.1 by the defendant No.1, 2, 5 and 6 are taken as not filed. Even after service of summons the defendant No.3 and 4 did not appeared before the Court. Hence, they placed exparte.

4. Heard both the side.

5. The following points arise for this Court determination;

- 1 Whether the plaintiffs have made out prima-facie case?
- 2 Whether plaintiffs have made out the balance of convenience in their favour?
- 3 Whether the plaintiffs will be put to irreparable injury, if the temporary injunction as claimed by is refused?
- 4 What Order?

6. This Court findings on the above points are as under:

Point No.1: In the Affirmative

Point No.2: In the Affirmative

Point No.3: In the Affirmative

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

REASONS

7. Point No.1 to 3: In order to get the order of temporary injunction parties have to show that, prima facie case is in their favour and balance of convenience lies in their favour. Further they have to show that in case of temporary injunction order as sought by is not granted, they will be put to heavy and irreparable loss, which cannot be compensated in terms of money.

8. Keeping the above cardinal principles in mind, this Court has gone through the materials placed on record. It is the specific case of the plaintiffs that, the suit schedule properties are purchased by the husband of defendant No.1

under sale deed dated: 24.03.2021 and thereby plaintiffs are in peaceful possession and enjoyment of suit schedule properties. In order to substantiate their case plaintiffs have relied on the following documents. Harihar Nagara Sabhe E-Khatha No.574/549/574 and 573/549/574, Death certificate, Status of Challan and Sale deed dated: 24.03.2021.

9. It is pertinent to note that plaintiffs have sought relief based on the Registered Sale deed dated: 24.03.2021. Wherein the said sale deed reveals that the suit schedule properties are purchased by the husband of plaintiff No.1. But on the other hand the defendants have not chosen to file their objection to the application. That on the basis of documents produced by the plaintiffs, the plaintiffs have made out prima-facie case. At this juncture, any opinion on merits of the case will prejudice the minds of the parties. Therefore, without going to the merits of the case. This Court opines that the plaintiffs are entitled to interim relief sought for, as the plaintiffs have made out prima facie case.

10. Mere prima facie case itself is not a ground to grant injunction. The plaintiffs/Applicants have to show that, the balance of convenience is also lies in their favour and in case the defendants succeeded in their illegal act, they will be put into heavy and irreparable loss, which cannot be compensated in terms of money. Further, if the injunction

order is granted, no substantive loss would be caused to the defendants. Thus at this stage if the temporary injunction is not granted, the plaintiffs will be put more hardship rather than the defendants. Therefore, considering the facts as discussed herein above, at this juncture, the balance of convenience lies in favour of the plaintiffs. Further in case if temporary injunction is not granted, the plaintiffs will be put to heavy and irreparable loss rather than the defendants. Therefore, this Court is of the opinion that, it is just and proper to grant temporary injunction order as sought for in favour of the applicants. Accordingly, the point No.1 to 3 are answered in the Affirmative.

11. Point No.4: In view of the above discussion, this Court proceed to pass the following:

ORDER

I.A.No.1 filed by the plaintiffs
U/o XXXIX Rule 1 & 2 R/w Sec. 151 of CPC.,
is hereby allowed.

The defendants, their men, their agents or any other person or persons are hereby restrained by way of temporary injunction from alienating the suit schedule properties to third parties till next date of hearing.

No order as to costs.

(Dictated to the Stenographer directly on computer, typed by her, revised and corrected by me and then pronounced in the open Court on this the 04th day of July, 2025).

Sd/-
(Jyoti Ashok Pattar)
Prl. Civil Judge & JMFC,
Harihar.