

KADK610009372025



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE
AND JMFC AT MOOBBIDRI, DAKSHINA KANNADA**

PRESENT: **SRI. CHANDRAIAH B. P.**, B. A. LL.B.,
I Additional Civil Judge & JMFC., Mangaluru,
Dakshina Kannada
C/c of Principal Civil Judge & JMFC, Moodbidri,
Dakshina Kannada.

Dated this the 13th day of March 2026

O. S. No.138/2025

PLAINTIFF:

Shekara Poojary, S/o Late Nemayya
Poojary, aged about 75 years, r/at 1-225,
'Girija Nivasa', Belvai Village, Moodabidre
Taluk, D.K. District.

(By Mr. I.R. Ballal, Advocate)

- Versus -

DEFENDANT:

Poovappa Poojary@ Poovappa Suvarna,
S/o Late Chandu Poojary and Late
Jinnamma Poojarthi, aged about 74
years, r/at Kelagina Mane, Ramettu,
Belvai Post and Village, Moodabidre
Taluk, D.K. District-574213.

(By Mr. B. Mathew Mascarenhas, Advocate)

PARTIES ON INTERLOCUTORY APPLICATION No.II

APPLICANT: Shekara Poojary.

- V/s -

OPPONENT: Poovappa Poojary @ Poovappa Suvarna.

ORDERS ON INTERLOCUTORY APPLICATION No.II

This interlocutory application is filed by the plaintiff under order XXXIX rule 1 and 2 and section 151 of Code of Civil Procedure and prays to pass an order of temporary injunction against the defendant, his men and agents, restraining them from trespassing or committing any waste and damage, selling, mortgaging and alienate or in any way interfering with plaintiff peaceful possession and enjoyment of the suit schedule property, till disposal of the suit.

2. This interlocutory application is supported with an affidavit sworn by the plaintiff and stated that he has been in adverse possession and enjoyment of an immovable property situated at Belvai Village, Moodbidre Taluk comprised in Sy.No.128/1, measuring 0.15 cents (north-eastern portion) bounded on west and south by S.D. lines and portion of the same subdivision, east and north by survey lines. The above property with a farm house bearing Door No.1-225 (old

Door No.1/102A) of Belvai Grama Panchayath, right of way, water and all the appurtenances attached thereto (hereinafter called as suit schedule property). It is further stated that since 07.08.1994 the plaintiff is in possession by constructing the house and also by effecting improvements to the knowledge of the defendant and prior to that to his mother Jinnamma Poojarthi and he has placed prima facie materials to that effect.

3. It is further stated that on 30.12.2024 he found that the defendant has illegally and fraudulently got changed the RTC including the plaint 'A' schedule property in his name. Then he questioned the defendant regarding the same, the defendant started declaring that he has become the owner of the property and he has no right in the plaint 'A' schedule property. Thereafter, the defendant started bringing purchasers to the plaint 'A' schedule property with a view to sell the same. The defendant has no right to sell the plaint 'A' schedule property. The right if any of the defendant is barred by limitation. The plaintiff intimated the defendant that he has been in adverse possession of the plaint 'A' schedule property and as such the defendant cannot acquire any right of sale, but the

defendant started denying the same and forcibly attempted to dispossess him from the plaint 'A' schedule property by taking law into his own hands. There is eminent danger to his possession besides the suit property has to be preserved till the final decision of the suit.

4. It is further stated that the plaintiff has made out prima facie case and balance of convenience is also in his favour. He will be put to great loss and hardship unless an order of temporary injunction is granted. Hence, prays to allow this application.

5. In response to the suit summons, the defendant appeared through their counsel, but failed to file objection to the present application.

6. Heard.

7. Upon hearing arguments and perusal of materials placed on records, the following points would arise for consideration of this court;

P O I N T S

1. Whether the plaintiff has made out a prima facie case to grant an order of temporary injunction?

2. Whether balance of convenience lies in favour of the plaintiff ?

3. Whether any irreparable injury and hardship would cause to the plaintiff, if an order of temporary injunction is not granted ?

4. What order ?

8. Upon hearing and on perusal of the materials on record, this court has proceeds to answer the aforesaid points as under;

POINT No.1 To 3: In the Negative.

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

REASONS

9. **POINT No.1:** The plaintiff has filed this suit for declaration and sought to declare that he is the lawful owner in possession of the suit schedule property and has perfected the right, title over the said property by limitation and adverse possession and the defendant has no right over the suit schedule property. The plaintiff also sought for consequential relief of permanent prohibitory injunction against the defendant to restrain from trespassing into the suit schedule property or committing any waste and

damage therein, from selling, mortgaging and alienating the said property and in anyway interfering with the plaintiff's peaceful possession and enjoyment of the said property. The plaintiff also filed this interlocutory application along with plaint and prays to restraining the defendant from trespassing or committing any waste and damage, selling, mortgaging and alienate or in any way interfering with plaintiff peaceful possession and enjoyment of the suit schedule property. After appearance, the defendant failed to file objection or written statement. The plaintiff has successful to getting exparte temporary injunction against the defendant, said order is extended time to time and still in force. Therefore, prima facie case is to be made out by the plaintiff. In order to consider, whether the plaintiff has made out prima facie case or not, the court has to look into the pleadings and also the documents available on records.

10. The plaintiff in order to prove the prima facie case, has produced the computerized RTC, photo of the house, tax paid receipts, Mescom bills, xerox copy of agreement of sale, copy of building licence dated 18.02.1995 and copy of Aadhar Card of plaintiff.

11. Per contra, the defendant has not produced any documents.

12. This Court has carefully perused the materials on record in order to ascertain the prima facie case. On perusal of computerized RTC of Sy.No.128/1 for the year 2024-2025 of Belvai Village, measuring 0.85 cents is standing in the name of one Poovappa Suvarna i.e., defendant. On perusal of tax paid receipt, it prima facie appears that the plaintiff has paid the taxes to the concerned authority in respect of house bearing Door No.1-225. On perusal of electricity bill, it standing in the name of plaintiff and address of the plaintiff is clearly mentioned. On perusal of Aadhar Card of the plaintiff, it prima facie appears that the plaintiff is residing in the house bearing Door No.1-225, Girija Nivasa of Belvai Village. The specific contention of the plaintiff that said farm house is situated within the suit schedule property, but there is no materials before this court to accept the said contention of the plaintiff.

13. On perusal of copy of an agreement of sale dated 28.12.1985, it prima facie appears that one Jinnamma W/o Chandu Poojary i.e., the father of the defendant had executed the said agreement of sale in favour of

the plaintiff with respect of Sy.No.128/1, measuring 15 cents of Belvai Village. In the said agreement it clearly mentioned the hand over the possession of the said property in favour of the plaintiff. But in the said agreement of sale house door number or there is house is there in the said property is not mentioned in the schedule of the said agreement of sale. So on bare reading of an agreement of sale dated 28.12.1985, it prima facie appears that the plaintiff is in possession of the suit schedule property based on the said agreement. But the plaintiff contended that he has been in adverse, notorious, continuous possession of the suit schedule property. Further the plaintiff also sought relief in the plaint that the plaintiff is the lawful owner of the plaint 'A' schedule property and has perfected the right, title over the said property by limitation and adverse possession. Adverse possession is a doctrine under which a person in possession of land owned by someone else may acquire valid title to it, so long as certain common law requirements are met, and the adverse possessor is in possession for a sufficient period of time as defined by statute of limitation. But in the present case, the plaintiff acquired the possession of the suit schedule property based on an agreement of sale dated 28.12.1985. An

agreement to sell an immovable property does not create any right or interest in the property, as it is only a contract for sale in future, not valid conveyance. Ownership is only transferred through registered Sale Deed. It merely creates a personal obligation allowing the buyer to sue for specific performance. As discussed earlier, the possession of the plaintiff is also under the above agreement of sale dated 28.12.1985. Therefore, it cannot be considered as possession of the plaintiff is adverse possession. It may be treated as permissive possession.

14. ***In T. Anjanappa and others v/s Somalingappa and others (2006) 7 SCC 570***, the Hon'ble court has observed that "It is well recognized proposition in law that mere possession however long does not necessarily means that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owners title must

be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the formers hostile action. The High Court has erred in holding that even if the defendants claim adverse possession, they do not have to prove who is the true owner and even if they had believed that the Government was the true owner and not the plaintiffs, the same was inconsequential. Obviously, the requirements of proving adverse possession have not been established. If the defendants are not sure who is the true owner the question of their being in hostile possession and the question of denying title of the true owner do not arise. Above being the position the High Courts judgment is clearly unsustainable.”

15. From the reading of the above, it clears that possession of the plaintiff is not hostile possession against the true owners. Therefore, possession of the plaintiff cannot be considered as adverse possession. But, in the present suit, the plaintiff sought for declaration of suit schedule property as perfected the right as adverse possession. Therefore, maintainability

of suit itself is yet to be decided. When the maintainability of suit is in question, then question of granting temporary relief does not arise. Accordingly, this court answer point No.1 in the Negative.

16. **POINT No.2 and 3:** For the sake of convenience these two points are taken up together for common discussion. As per the discussion above, the plaintiff is failed to establishing prima facie case for granting temporary injunction in his favour. Under such circumstances, question of balance of convenience and irreparable loss and injury to the plaintiff does not arise. Therefore, this court answer point No.2 and 3 in the Negative.

17. **POINT No.4:** In view of findings to the point No.1 to 3, this court proceed to pass the following;

ORDER

The interlocutory application No.II filed under Order XXXIX rule 1 and 2 and Section 151 of CPC by the plaintiff is hereby dismissed.

Consequently, exparte temporary injunction granted by this court on 25.07.2025 is hereby vacated.

No orders as to costs.

(Directly dictated to the Stenographer on computer, typed by her, corrected and then pronounced by me in the open court on this the 13th day of March, 2026.)

**(SRI. CHANDRAIAH B. P)
PRINCIPAL CIVIL JUDGE & JMFC,
MOODBIDRI, D.K. (C/c)**