

IN THE COURT OF II ADDITIONAL CIVIL JUDGE AND J.M.F.C.,
ARASIKERE

DATED THIS THE 13th DAY OF OCTOBER 2025

:PRESENT:

Smt.Pooja S. Kumar, M.B.A., LL.B.,
II Addl. Civil Judge and J.M.F.C.,
Arasikere

ORIGINAL SUIT No.588 OF 2025

Plaintiffs :

1. Sri.Venugopalaiah G.N.
S/o Late Narasimhaiah G.N.,
Aged about 64 years,
R/o: G.Doddi, Laxmipura Post,
Ramanagara Taluk & District.
2. Smt.Rukminamma
D/o Late Narasimaiah G.N.,
Aged about 62 years,
R/o: Anchekoppalu,
Arsikere Town.
3. Smt.Dhanalaxmi N.
D/o Late Narasimaiah G.N.,
Aged about 60 years,
R/o: Gokula Nilaya,
NSS Layout, Behind Taluk Office,
Arsikere Town.

(By Sri.N.S.S., Advocate)

// Versus //

Defendants:

1. B.S.Shivaprasad
S/o B.N.Srikanta Guptha,
C/o Arun Kumar B.S.,
Maruthinagara, Arsikere Town,
Now R/at: K.R. Extension,
Tiptur Town, Tumkur District.
2. Arun Kumar B.S.
S/o B.N.Srikanta Guptha,
"The President,
Arsikere Town Planning Authority.
B.H. Road, Arsikere,
R/at: Maruthi Nagar, Arsikere.
3. Ashoka K.
S/o Kalegowda,
Aged about 55 years,
R/o: Kanchenahalli Village,
Banavara Hobli, Arsikere Taluk.

**(D-1 by Sri.B.K.V., Advocate &
D-3 by Sri.H.S.K., Advocate)**

PARTIES TO I.A.NO.I

APPLICANTS/ PLAINTIFFS : Sri.Venugopalaiah G.N. & Others

V/s

OPPONENTS/DEFENDANTS : Shivaprasad B.S. & Others

i	Provision under which the application is filed	Under order XXXIX Rule 1 and 2 R/w Sec.151 of CPC
ii	Relief sought for	Temporary Injunction
iii	The date on which the application is filed	23.09.2025

iv	Number of the application	I.A.No.I
v	The date on which the objections are filed by different opponents	26.09.2025
vi	The date on which the orders were passed on the said application	13.10.2025

**ORDER ON I.A.No.I UNDER ORDER XXXIX RULE 1 AND 2 OF
R/W SECTION 151 OF CPC**

The application due for consideration is filed by the plaintiffs U/o XXXIX rule 1 and 2 R/w Section 151 of CPC praying to restrain the defendants and their agents, servants, successors, legal heirs, attorneys etc., or anybody claiming under them from interfering and trespassing over the peaceful possession and enjoyment of plaintiff over the suit schedule property.

2. The reasons ventilated by the plaintiff in the affidavit annexed to the application are that the plaintiff has filed this suit for the relief of permanent injunction. The plaintiff has stated that the property bearing Sy.No.434/1, 434/2, 434/3 and 434/4 measuring 6 Acres 24 Guntas of land is an ancestral property of

the plaintiffs. The plaintiffs' father and his brother have got partitioned the aforesaid property equally by way of compromise decree held in OS No.25/1995 dated 26.11.1996. After that the plaintiffs became the absolute owners and in possession of the property measuring 3 Acres 13 Guntas in Sy.No.434/1, 434/2, 434/3. In the lifetime of plaintiffs' father his paternal uncle G.N.Rangaswamy has interfered with the peaceful possession of the share which was allotted to the plaintiffs and they have also encroached 5½ Guntas of land in the Western side of the property which was allotted to the plaintiffs. The plaintiffs filed a suit in OS No.78/1999 before the Hon'ble Senior Civil Judge, Arasikere for the relief of declaration and injunction to the extent of 3 Acres 13 Guntas and the same is partly decreed that plaintiffs as absolute owners to the extent of 3 Acres 10½ Guntas of land only and the same was confirmed in RA and RSA. It is also stated that plaintiffs are entitled to recover the encroached portion to an extent of 5½ Guntas from G.N.Rangaswamy. According to the verdict held in RSA plaintiffs' father has filed an execution petition in 12/2011 for the recovery of 5½ Guntas and later plaintiffs entered into compromise with G.N.Rangaswamy

and he has given up 5½ Guntas of encroached land in the Western side of the plaintiffs' property. Later the plaintiffs being the absolute owners and in possession of the property measuring 3 Acres 10½ Guntas in Sy.No.434/1, 434/2 and 434/3 out of other necessities plaintiffs has alienated the portion of the property in the year 2008 measuring 2.39 Guntas to one Shankaralingappa and Ashoka with two Registered Sale Deeds dated 10.01.2008 and 11.01.2008 respectively. Remaining 11 ½ Guntas of land in Sy.No.434/1, 434/2 and 434/3 remained with the plaintiffs' family. Out of 11½ Guntas, plaintiff has given up 0.05 Guntas to their uncle Rangaswamy and finally 0.06 Guntas of land in the Northern side remained with the plaintiff and the Northern side of the property the entire boundary is auspicious to plaintiffs because they were performing poojas of folk Gods. The plaintiffs has not made out any encumbrance over 0.06 Guntas of land.

3. It is further averred that the one person who purchased 2 Acres 39 Guntas by taking undue advantage of innocence of plaintiffs and by applying political influence got transferred all

revenue documents with respect to entire 3 Acres 10 ½ Guntas in the said survey number by giving false boundary. As such, the defendants interfered in the 6 Guntas in the said survey number. Hence, the plaintiffs have filed this suit in 2009 in OS No.303/2009 for the relief of permanent injunction and also for declaration of 'not binding' to any alienation with respect to 6 Guntas of land in the said survey number and the purchaser has not appeared before this Court. Hence, Hon'ble Court has decreed the suit declaring the plaintiff as absolute owner and in possession of 6 Guntas in the said survey number. Later the judgment debtor has preferred an appeal before the Hon'ble Senior Civil Judge, Arasikere in RA No.37/2017 and the said appeal has been restored and allowed the defendant to file their written statement. Later also defendant has not filed any written statement. Hence, the suit has been decreed.

4. The plaintiff has further submitted that the plaintiff as owners to the extent of 6 Guntas, in violation of the said judgment and decree, the purchaser has sold 6 Guntas to one K.N.Govindaraju who is the third defendant. It is stated that in

OS No.303/2009, plaintiff has got issued the public notice in the Newspaper about the said survey number not to purchase the land. If any alienation made thereupon, they will also subjected to outcome of OS No.303/2009. The above said Sale Deed held in favour of 3rd defendant during lis pendency is void abintio by the virtue of judgment and decree passed in OS 303/2009. Hence, the Sale Deed is manipulated one and the defendant who is President of Arasikere Town Planning Authority and being the brother of 1st defendant having personal malicious interest and by misusing his official capacity trying to dig drainage over the suit agricultural property and thereby committed illegal encroachment. When the plaintiff went for the Pooja on 21.09.2025, they came to know about the illegal act of the defendant No.1. Hence, the plaintiff has come up with this application.

5. Per contra defendant has filed objections to the aforesaid application and denied the entire application averments and contended that the identity of the schedule property is not in accordance with law and when the identity is not perfect, the suit

is not maintainable. On the other hand, the present status is non-agriculture and site numbers have been allotted by the town planning authority such being the case, suit is barred by jurisdiction and also identity of the property is in dispute. Further there is no cause of action for the suit and the suit is false, created and concocted. With all these contentions prayed to dismiss the application.

6. Heard, arguments from both side and perused material on record. The counsel for the defendant has furnished a judgment in MFA No.6095/2024 C/w MFA No.6055/2024 C/w MFA No.6200/2024.

7. The points that would arise my consideration are as follows:

:: POINTS ::

1. *Whether the plaintiffs have made out prima facie case to grant temporary injunction as prayed in application?*
2. *Whether the balance of convenience lies in favour of plaintiffs?*

3. *Whether irreparable loss or hardship would be caused to the plaintiffs, if the injunction is not granted in their favour?*
4. *What order?*

8. My answer to the above points are as follows:-

Point No.1 :- In the Negative

Point No.2 :- In the Negative

Point No.3 :- In the Negative

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

:: REASONS ::

9. **Point No.1** : The plaintiff has filed this suit for the relief of permanent injunction. The plaintiff has stated that the property bearing Sy.No.434/1, 434/2, 434/3 and 434/4 measuring 6 Acres 24 Guntas of land is an ancestral property of the plaintiffs. The plaintiffs' father and his brother have got partitioned the aforesaid property equally by way of compromise decree held in OS No.25/1995 dated 26.11.1996. After that the plaintiffs became the absolute owners and in possession of the property measuring 3 Acres 13 Guntas in Sy.No.434/1, 434/2, 434/3. In the lifetime of

plaintiffs' father his paternal uncle G.N.Rangaswamy has interfered with the peaceful possession of the share which was allotted to the plaintiffs and they have also encroached 5½ Guntas of land in the Western side of the property which was allotted to the plaintiffs. The plaintiffs filed a suit in OS No.78/1999 before the Hon'ble Senior Civil Judge, Arasikere for the relief of declaration and injunction to the extent of 3 Acres 13 Guntas and the same is partly decreed and it was partly declared that plaintiffs as absolute owners to the extent of 3 Acres 10½ Guntas of land only and the same was confirmed in RA and RSA. It is also stated that plaintiffs are entitled to recover the encroached portion to an extent of 5½ Guntas from G.N.Rangaswamy. According to the verdict held in RSA plaintiffs' father has filed an execution petition in 12/2011 for the recovery of 5½ Guntas and later plaintiffs entered into compromise with G.N.Rangaswamy and he has given up 5½ Guntas of encroached land in the Western side of the plaintiffs' property. Later the plaintiffs being the absolute owners and in possession of the property measuring 3 Acres 10½ Guntas in Sy.No.434/1, 434/2 and 434/3 out of other necessities plaintiffs has alienated the portion of the property in the year 2008

measuring 2.39 Guntas to one Shankaralingappa and Ashoka with two Registered Sale Deeds dated 10.01.2008 and 11.01.2008 respectively. Remaining 11 ½ Guntas of land in Sy.No.434/1, 434/2 and 434/3 remained with the plaintiffs' family. Out of 11 ½ Guntas, plaintiff has given up 0.05 Guntas to their uncle Rangaswamy and finally 0.06 Guntas of land in the Northern side remained with the plaintiff and the Northern side of the property the entire boundary is auspicious to plaintiffs because they were performing poojas of folk Gods. The plaintiffs has not made out any encumbrance over 0.06 Guntas of land.

10. It is further averred that the one person who purchased 2 Acres 39 Guntas by taking undue advance of innocence of plaintiffs and by applying political influence got transferred all revenue documents with respect to entire 3 Acres 10 ½ Guntas in the said survey number by giving false boundary. As such, the defendants interfered in the 6 Guntas in the said survey number. Hence, the plaintiffs have filed this suit in 2009 in OS No.303/2009 for the relief of permanent injunction and also for declaration of 'not binding' to any alienation with respect to 6

Guntas of land in the said survey number and the purchaser has not appeared before this Court. Hence, Hon'ble Court has decreed the suit declaring the plaintiff as absolute owner and in possession of 6 Guntas in the said survey number. Later the judgment debtor has preferred an appeal before the Hon'ble Senior Civil Judge, Arasikere in RA No.37/2017 and the said appeal has been restored and allowed the defendant to file their written statement. Later also defendant has not filed any written statement. Hence, the suit has been decreed.

11. The plaintiff has further submitted that the plaintiff as owners to the extent of 6 Guntas, in violation of the said judgment and decree, the purchaser has sold 6 Guntas to one K.N.Govindaraju who is the third defendant. It is stated that in OS No.303/2009, plaintiff has got issued the public notice in the Newspaper about the said survey number not to purchase the land. If any alienation made thereupon, they will also subjected to outcome of OS No.303/2009. The above said Sale Deed held in favour of 3rd defendant during lis pendency is void abintio by the virtue of judgment and decree passed in OS 303/2009. Hence, the

Sale Deed is manipulated one and the defendant who is President of Arasikere Town Planning Authority and being the brother of 1st defendant having personal malicious interest and by misusing his official capacity trying to dig drainage over the suit agricultural property and thereby committed illegal encroachment. When the plaintiff went for the Pooja on 21.09.2025, they came to know about the illegal act of the defendant No.1. Hence, this application.

12. The counsel for the plaintiff has furnished hand sketch, district court sketch copy, sketch copy in OS No.303/2009 and a citation in ILR 2009 KAR 2105 between Yajaman Gowraiah by his LRs Vs. Shivaram by his LRs and Others. The plaintiff has relied upon the judgment in OS No.303/2009 and the said judgment has already pronounced on 25.06.2016 in which the suit of the plaintiff is partly decreed for 6 Guntas in the suit schedule property. It is pertinent to note that the suit schedule property in OS No.303/2009 and the present case suit schedule property is different. In the present case, it is difficult to identify the property by perusing the schedule property in this case. As the plaintiff has

contended that the defendant has encroached the property and the same defendant No.1 has sold the same to others. Even the plaintiff has furnished the sketch of the property which was given in the OS No.303/2009 which does not come to the aid of this case and the plaintiff has furnished some photographs in this case of the vacant land.

13. The counsel for the defendant has furnished the documents such as judgment and decree passed in OS No.78/1999, hand written RTC extract, Sale Deeds. The counsel for the defendant has filed a memo by furnishing judgment in OS No.303/2009 dated 11.08.2023 and also furnished the RTC Extract which shows the Sy.No.434/1 which was there in the name of K.N.Narayanaswamy and Lakshamma and transferred to one Narasimhaiah via Sale Deed. Late the same has been transferred in the name of Rangaswamy S/o Mestri Narasimhaiah. But on perusal of the RTC, it shows that Sy.No.434/1 and 2 was in the name of Narasimhaiah.

14. Later on 10.01.2008 Narasimhaiah and his wife and children Rukminamma, Venugopal, Dhanalakshmi and Mohan Kumar have executed the Sale Deed in the name of Shankaralingappa with respect to Sy.No.434/2 out of 1.06 Guntas of land to an extent of 0.32 Guntas and in Sy.No.434/3 to an extent of 1.33 Guntas Narasimhaish has executed Sale Deed with respect to Sy.No.434/3 to an extent of 1.28 Guntas to Shankaralingappa. Further in the Sy.No.434/2 Narasimhaiah's property exists in the Northern side. In the Sy.No.434/2 in the Northern side 0.14 Guntas were left and the same has been expressed in the judgment in OS No.303/2009. In Sy.No.434/3 in the Northern side, it has been written in the Sale Deed 0.05 Guntas were left for Narasimhaiah.

15. Again in 11.01.2008 Narasimhaiah's wife and children have executed Sale Deed in the name of Ashoka S/o Thimmegowda with respect to Sy.No.434/1. Remaining 0.08 Guntas and in Sy.No.434/2 0.06 Guntas and in Sy.No.434/3 0.05 Guntas in total 0.19 Guntas has been executed in the name of Ashoka.

16. By comparing the Sale Deed dated 10.01.2008 and 11.01.2008 and the plaint averments, father of plaintiff has got 3 Acres 13 Guntas in his name by comparing the plaint averments and there are two Sale Deeds, plaintiff has already sold 1.33 Guntas in Sy.No.434/3 and 0.32 Guntas in Sy.No.434/2. In the plaint schedule property, plaintiff has stated that he has 0.06 Guntas in the Sy.No.434/3 and 434/2. But on perusal of the Sale Deed which was executed by the father of the plaintiff, it is pertinent to note that there is no land left in Sy.No.434/3 because as per the Sale Deed dated 11.01.2008 to an extent of 1.33 Guntas has already been sold 1.28 Acres and in 1st Sale Deed dated 10.01.2008. In the 2nd Sale Deed dated 11.01.2008 plaintiff's father has sold the remaining 0.05 Guntas to one Ashoka. Hence, there are no remaining land present in Sy.No.434/3.

17. The same is executed by M.B.Ashok infavour of Sri.J.P.Praveen Kumar with respect to Sy.No.434/17 to an extent of 0.06 out of 0.08 Guntas. Later the same M.B.Ashoka has executed a Sale Deed dated 01.08.2011 in favour of one K.Raghavendra and K.Jithendra jointly, with respect to

Sy.No.434/3 to an extent of 0.05 Guntas. The same M.B.Ashoka has executed another Sale Deed dated 18.01.2012 infavour of K.N.Govindaraju with respect to Sy.No.434/18 to an extent of 0.06 Guntas. Another Sale Deed dated 26.07.2012 executed by Sri.Ashok infavour of Sri.D.Chandraiah with respect to Sy.No.434/17 to an extent of 0.02 Guntas. Later Govindaraju who has purchased from Ashoka S/o Thimmegowda has executed Sale Deed dated 30.04.2012 in the name of Sri.Ashok K. S/o Kalegowda with respect to Sy.No.434/18 to an extent of 0.06 Guntas. Another Sale Deed 28.03.2025 executed by Sri.Ashok K. infavour of B.S.Shivaprasad S/o Late B.N.Srikantaguptha with respect to Sy.No.434/18 to an extent of 0.06 Guntas. Defendant No.1 has furnished the RTC in which at present Sy.No.434/18 is in the name of Shivaprasad who is the defendant No.1 to an extent of 0.06 Guntas and also furnished a sketch of survey number 434 and an official memorandum issued by the Office of Commissioner, Hassan.. On perusal of the two Sale Deeds dated 10.01.2008 and 11.01.2008 it shows that father of the plaintiffs has already sold the property to one Ashoka S/o Thimmegowda and Shankaralingappa and even there is no property left in

Sy.No.434/3 as per the documents furnished by the defendant and at present there is no revenue documents which is in the name of plaintiffs to show the possession of the schedule property or for the identification of the schedule property. Hence, the plaintiffs have not made out prima-facie case in their favour. Accordingly, Point No.1 is answered in the **Negative**.

18. **Point No.2 and 3** : In view of the discussion made above with regard to point No.1, Point No.2 and 3 are taken together.

The *Hon'ble apex court in **Kashi Math Samsthan And another V/s Shrimad Sudhindra Thitha Swamy and another reported in AIR 2010 SC 296*** has held as follows:

“If a party fails to prove prima-facie case to go for trial, it is not open to the court to grant injunction in his favour even if he has made out a case of balance of convenience and would suffer irreparable loss and injury if no injunction is granted”

When the plaintiffs have failed to show prima-facie case in their favour, the question of considering the balance of convenience and

irreparable loss and injury does not arise. ***Hence I answer the points No.2 and 3 in the Negative.***

19. **Point No.4** : In view of above said reasons while answering point No.1 to 4, I proceed to pass the following;

:: ORDER ::

The I.A.No.I filed by the plaintiffs under Order XXXIX Rule 1 and 2 R/w Section 151 of CPC is hereby dismissed.

No order as to the cost.

(Dictated to the Stenographer, directly on computer and typed by her, corrected by me and pronounced in the open court today this the 13th day of October, 2025.)

**(SMT. POOJA S. KUMAR)
II Addl. Civil Judge and JMFC,
Arasikere.**