



**IN THE COURT OF THE CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS, SAVANUR.**

PRESENT : **SRI. SRINIVASA.S.N.**,
Civil Judge and JMFC.,
Savanur.

O.S.No.118/2010

Dated, this day of 20th day of March, 2025

Plaintiffs : Sri.Dilerkhan
S/o Abdulkarimkhan Biradar & others

V/s

Defendants : Smt. Shahajadbegum M Biradar & others

PARTIES IN IA- XLV

Applicants : Sri.Dilerkhan S/o Abdulkarimkhan Biradar &
[Plaintiffs] others

V/s

OPPONENT : Smt. Shahajadbegum M Biradar & others
[Defendants]

i	Provision under which the application is filed :	U/S. 151 of CPC
ii	Relief sought for :	To pass ad-interim temporary injunction restraining the defendant No.1 and 2, their men/agents, servants, heirs or any persons claiming through them, from alienating the suit schedule properties to others till disposal of the suit.
iii	The date on which the application is filed :	28-01-2025



iv	The date on which the objection is filed by opponents:	06-02-2025
v	The date on which the order is passed on the said applications	20-03-2025

ORDER ON IA No.XLV (45)

The plaintiffs have filed IA-XLV (IA NO.45) under Order XXXIX Rules 1 and 2 r/w Section 151 of the Code of Civil Procedure 1908 seeking an order of temporary injunction restraining Defendants No.1 and 2 and their men/agents, servants, heirs or any persons claiming through them, from alienating the suit schedule properties to others till disposal of the suit in the interest of justice and equity.

2. In the accompanying affidavit, the plaintiff No.10 has stated that the plaintiffs have filed this present suit seeking for the relief of declaration and etc. Further deposed that they are having definite share in the suit schedule properties after the death of late Sardar Mehaboobalikhan. Further stated that Defendant No.1 by suppressing the material facts and by playing fraud upon the court and during the life time of her mother and so also knowing very well that she had no right, title and interest over the suit properties, has obtained the decree in question behind their back. Based on that decree, Defendant No.1 entered her name in the



records of the suit schedule properties and claiming that she is the absolute owner of the suit properties.

3. It is further stated that Defendant No.1, during the pendency of the present suit, sold one of the suit properties i.e., CTC No.479 to one Mohd. Ismail S/o Abdul Raheem Byahatti 31-05-2024 registered on 03.06.2024, behind the back of the plaintiffs and with malafide intent to defeat their rights. Further he deposed that this action of the defendant No.1 is unlawful and the defendant No.1 has sold the on of the suit properties to others without obtaining the permission of the plaintiffs. Therefore they are apprehended that the defendant No.1 is likely to alienate the suit properties. Hence they have filed this present interim application to restrain the Defendant No.1 and 2 by way of temporary injunction from alienating the suit properties till the disposal of the suit and prayed to allow the application.

4. In response to the application, the defendant No.1 and 2 has filed detailed objections to the said I.A.No.45 and it is as follows;

a) The defendant no.1 has contended that the plaintiffs have no legal right or ownership over the suit properties. The title and ownership of suit properties vest with the defendant no.1. The defendant no.1 is the absolute owner of the suit properties.



b) The defendant no.1 has contended earlier the suit properties were under the superintendence of the Court of Wards, Dharwad. The ownership of defendant no.1 is expressly declared in O.S.No.171/1984 which was confirmed by the Hon'ble High Court of Karnataka in R.S.A.No.130/1999 and R.S.A.No. 277/1999. Pursuant to the said decree, the competent government authority has sanctioned the withdrawal of superintendence over the suit properties from the Court of Wards, Dharwad as per Ex.D-30. In pursuance of the said order, the Deputy Commissioner, Dharwad issued a Gazette Notification dated 22-4-2006 in accordance with Section 42 of Bombay Court of Wards Act. In pursuance of the government order dated 21-5-2004 withdrawing with effect from the date of said notification, their superintendence over the estate of Nawazkhatu in favour of defendant no.1 as per Ex.D-17. In compliance of said order, the Deputy Commissioner, Dharwad, by order dated 21-2-2007 transferred possession of the suit properties to defendant no.1 as per Ex.D.18.

c) The defendant no.1 has contended, in pursuance of the same, the defendant no.1 is in exclusive possession and enjoyment of the suit properties. The plaintiff neither challenged the gazette notification nor the transfer order dated 21-2-2007. The plaintiffs previously filed Writ Petition No.82835/2013 and



Writ Appeal No.100371/2014 before the Hon'ble High Court of Karnataka, Dharwad Bench, Dharwad, seeking a directions to DC Dharwad, to take steps for recovering the possession of the suit properties handed over to the defendant no.1. However both the Writ Petition and Writ Appeal were dismissed which are marked as Ex.D-32 and Ex.D-33. While dismissing the Writ Petition, the Hon'ble High Court of Karnataka, Dharwad Bench, Dharwad, in paragraph 9 of its order, made the following observations regarding the transfer of possession and Defendant No.1's lawful possession of the suit properties:-

“In the meanwhile, Deputy Commissioner, Dharwad, respondent No.2 herein passed an order on 22.04.2006 in accordance with provisions of Section 42 of the Bombay Court of Wards Act, 1905 and in pursuance to the Government Order R.D. 39 LGD 2001: 12: dated 21.05.2004 withdrawing with effect from the date of said notice his superintendence over the estate of late Smt. Nawajkhatu W/o. Dilerkhan, Nawab of Savanur, except one item. In order to give effect to said order, 2nd respondent by order dated 21.02.2007 has transferred possession of the properties vide Annexures - R7 and R8 to 5th respondent, as per endorsement issued by Tahasildar, Savanur vide Annexure R9. Thus,



5th respondent has - continued in possession of the properties.”

d) Furthermore, in para 11 of its Order, the Hon'ble High court has observed as follows:-

“As such, by order dated 22.04.2006 Annexure – R6, appropriate government has withdrawn its superintendence over the estate of deceased Nawajkhata and pursuant to to the same, possession has been delivered to 5th respondent vide Annexures - R7 & R8. At this stage, no infirmity can be found in the said order and as such, I am of the considered view, no direction can be issued to 2nd respondent Deputy Commissioner to handover or to take over possession of properties which has been delivered to 5th respondent.”

e) The defendant no.1 has contended already the Hon'ble High Court has already upheld the transfer of title and possession of the suit properties by the Deputy Commissioner in accordance with the decree passed in O.S.No.171/1984. Since the Defendant No.1 holds absolute title and possession of the suit properties, the plaintiffs, having no legal right or title thereto, and they cannot seek an injunction restraining defendant No.1 from dealing with her own properties.



f). The defendant no.1 further contended that an injunction cannot be granted in a mere declaratory suit for heirship without challenging the Gazette notification and the transfer of title and possession of properties. When there is no prayer for possession, an injunction is not maintainable, particularly when the person seeking such a relief is neither in possession of the suit properties nor has made a claim for possession in the suit. As the plaintiffs lack a prima-facie case and the balance of convenience is not in their favor, the present interlocutory application is liable to be dismissed with exemplary costs.

g). Further the defendant no.1 has contended that one of the present plaintiffs had previously instituted O.S.No.249/2014 before this Hon'ble Court, seeking a relief of permanent injunction restraining Defendant No.1 from alienating the suit properties, which is identical to the relief sought in the present interim application. In the said suit, the plaintiffs herein filed interim application restraining the defendant no.1 from alienating the suit properties to others. Upon hearing both the parties, this court had rejected the interim application. During the pendency of the said suit, Defendant No.1 filed an application under Order VII Rule 11 of CPC, seeking for rejection of the plaint. Subsequently, the plaintiff therein, who is Plaintiff No.8 in the present suit,



voluntarily withdrew the said suit by filing an application dated 19-10-2022, which is marked as Ex-D-29.

h) The defendant no.1 has contended that the present application is nothing but a deliberate attempt to prolong the proceedings, thereby causing unwarranted delays in the adjudication of the suit. Therefore they prayed to dismiss the application with exemplary costs, in the interest of justice and equity.

5. Heard both side and perused the materials on record.

6. The points that arise for my consideration are:-

- 1). Whether the plaintiffs have made out prima-facie case ?
- 2). Whether the balance of convenience lies in favour of the plaintiffs?
- 3). Whether the plaintiffs will be put to irreparable loss and hardship if IA-45 is not allowed as prayed for?
- 4). What order?

7. My findings 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 the final order for the following,



REASONS

8. POINT No.1: The plaintiffs have filed this suit seeking for the relief to declare that the plaintiffs are legal heirs of deceased Nawazkhatu, declare the Judgement obtained by defendant No.1 in OS No.171/1984 on 30-10-1994 through fraud and restrain the defendant No.1 from claiming her as legal heir of deceased Nawazkhatu and for other reliefs.

9. Sri.M.S.B Advocate appearing for the plaintiffs argued that the Defendant No.1 and 2 had obtained a decree in O.S. No.171/1984 by committing fraud upon the court and based on that decree, defendant No.1 got her name entered in the revenue records. Now the defendant no.1 has alienated one of the suit property to one Mohd. Ismail on 03-06-2024. Further argued that one of the plaintiffs in the present suit, had filed suit against the defendant No.1 and 2 seeking for permanent injunction in O.S.No.249/2014 on the file of this court and later the plaintiff has withdrawn the same by filing the application.

He quoted that “ಪ್ರತಿವಾದಿಗಳು ಒಂದು ಸುಳ್ಳನ್ನು ಸಾವಿರ ಬಾರಿ ಹೇಳುವುದರ ಮೂಲಕ ಅದನ್ನು

ಸತ್ಯ ಎಂದು ನಂಬಿಸಿದ್ದಾರೆ”.



10. Sri.M.S.B Advocate further argued that in the cross examination of DW-1, the DW-1 is denying certain facts and it is as follows;

ಜಿಲ್ಲಾಧಿಕಾರಿಗಳು ದಿ ಕೋರ್ಟ್ ಆಫ್ ವಾರ್ಡ್ಸ್ ಧಾರವಾಡ ರವರಿಗೆ ನೀವು ಒಂದು ಅರ್ಜಿಯನ್ನು ಬರೆದಿದ್ದೀರಿ ಎಂದರೆ ಸರಿ. ಸದರಿ ಅರ್ಜಿಯನ್ನು ನಿಪಿ-132 ಎಂದು ಗುರುತಿಸಲಾಯಿತು ಮತ್ತು ಸಾಕ್ಷಿಯನ್ನು ಸಹಿಯನ್ನು 132 ಎ ಎಂದು ಗುರುತಿಸಲಾಯಿತು. ಸದರಿ ಅರ್ಜಿಯು ಅತೀಕ್ರಮಣ ತೆರವು ಗೊಳಿಸುವ ಸಲುವಾಗಿ ನೀಡಿರುತ್ತೇನೆ ಎಂದು ಸಾಕ್ಷಿಯು ನುಡಿಯುತ್ತಾರೆ. ಸದರಿ ಅರ್ಜಿಯಲ್ಲಿ ಕೆಲವರು ಅನಧಿಕೃತವಾಗಿ ಸಾಗುವಳಿ ಮಾಡುತ್ತಿದ್ದಾರೆ ಎಂದು ಬರೆದಿರುತ್ತೀರಿ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಅರ್ಜಿಯನ್ನು ಪರಿಶೀಲಿಸಿ, ಬರೆದಿರುತ್ತೇನೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ.

ನಿಡಿ-18 ರಲ್ಲಿ ತೋರಿಸತಕ್ಕಂತಹ ಆಸ್ತಿಗಳ ಕಬ್ಜಾವನ್ನು ಕೇಳಿ ನೀವು ಈ ಅರ್ಜಿಯನ್ನು ಸಲ್ಲಿಸಿರುತ್ತೀರಿ ಎಂದರೆ ನಾವು ಯಾವುದರಲ್ಲಿ ಕಬ್ಜಾ ಇರಲಿಲ್ಲವೋ ಆ ಆಸ್ತಿಗಳನ್ನು ಮಾತ್ರ ಅರ್ಜಿಯಲ್ಲಿ ನಮೂದಿಸಿದ್ದೇನೆ. ನಾನು ಕಬ್ಜಾ ತೆಗೆದುಕೊಂಡಿದ್ದೇನೆ ಎಂದು ಹೇಳಲಾದ ಆಸ್ತಿಗಳನ್ನು 2007 ರಿಂದ 2015 ರ ವರೆಗೆ ಉಪ ವಿಭಾಗಾಧಿಕಾರಿಗಳು ಮತ್ತು ಕೋರ್ಟ್ ಆಫ್ ವಾರ್ಡ್ಸ್ ರವರು ಹರಾಜು ಮಾಡುತ್ತಾ ಬಂದಿರುತ್ತಾರೆ ಎಂದರೆ ಸುಳ್ಳು ಇರುತ್ತದೆ. ಹರಾಜು ಪ್ರಕ್ರಿಯೆಯಲ್ಲಿ ಹರಾಜಿನಿಂದ ಪಡೆದ ಮೊತ್ತವನ್ನು ಸರ್ಕಾರದವರು ಪಡೆದುಕೊಂಡಿರುತ್ತಾರೆ ಎಂದರೆ ಸುಳ್ಳು.

ದಿ: 26-06-2013 ಕೆ ಡಿ ಸಿ ರವರಿಗೆ ಒಂದು ಅರ್ಜಿಯನ್ನು ಸಲ್ಲಿಸಿರುತ್ತೀರಿ ಎಂದರೆ ಸರಿ. ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಆದೇಶದ ಪ್ರಕಾರ ಸರ್ಕಾರವು ಕೆಲವು ಆಸ್ತಿಗಳ ಕಬ್ಜಾವನ್ನು ಕೊಟ್ಟಿರುತ್ತಾರೆ, ಇನ್ನೂಳಿದ ಆಸ್ತಿಗಳ ಕಬ್ಜಾವನ್ನು ಕೇಳಿ ಅರ್ಜಿಯನ್ನು ಸಲ್ಲಿಸಿರುತ್ತೀರಿ ಎಂದರೆ ಸರಿ. ಸದರಿ ಅರ್ಜಿಯಲ್ಲಿ ಹರಾಜಿನ ಮೊತ್ತವನ್ನು ಸಹ ಕೇಳಿರುತ್ತೀರಿ ಎಂದರೆ, ಸಾಕ್ಷಿಯು ದಾಖಲೆಯನ್ನು ಪರಿಶೀಲಿಸಿ ಆಸ್ತಿಗಳನ್ನು ಹರಾಜು ಮಾಡಿ ಮೊತ್ತವನ್ನು ಕೋರ್ಟ್ ಆಫ್ ವಾರ್ಡ್ಸ್ ಖಾತೆಗೆ ಜಮಾ ಮಾಡಿ ಎಂದು ಕೇಳಿರುತ್ತೇನೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಸದರಿ ಅರ್ಜಿಯನ್ನು ಸಾಕ್ಷಿಗೆ ತೋರಿಸಿದ್ದು ಸಾಕ್ಷಿಯು ನೋಡಿ ಪರಿಶೀಲಿಸಿ ಸರಿ ಎಂದು ನುಡಿದಿದ್ದು ಸದರಿ ಅರ್ಜಿಯನ್ನು



ನಿಷಿ-133 ಎಂದು, ಸಾಕ್ಷಿ ಸಹಿಯನ್ನು 133(ಎ) ಎಂದು ಗುರುತಿಸಲಾಯಿತು.

ನಿಡಿ-18 ರ ಪ್ರಕಾರ ಯಾವುದೇ ಆಸ್ತಿಗಳ ಕಬ್ಬೆ ನಿಮಗೆ ಸಿಕ್ಕಿರುವುದಿಲ್ಲ ಆದ ಕಾರಣ ಪತ್ರಗಳ ಮುಖಾಂತರ ನೀವು ಡಿಸಿ ರವರಿಗೆ ಅರ್ಜಿ ಸಲ್ಲಿಸಿರುತ್ತೀರಿ ಎಂದರೆ ಸುಳ್ಳು. ಗುಂಡೂರ ಗ್ರಾಮದಲ್ಲಿ ಇರುವ ಸರ್ವೆ ನಂ. 102 ಮತ್ತು 116 ಜಮೀನನ್ನು ಈಗಲೂ ಹರಾಜು ಮಾಡುತ್ತಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ. ನಿಡಿ-18 ರ ಪ್ರಕಾರ ನೀವು ಡಿಸಿ ರವರ ಮುಖಾಂತರ ಕಬಾವನ್ನು ಪಡೆದುಕೊಂಡಿದ್ದೇನೆ ಎಂದು ಆಧರಿಸುತ್ತಿದ್ದೀರಿ ಎಂದರೆ ಸರಿ.

11. Sri.M.S.B Advocate further argued that as per Ex.P.132 and Ex.P.133, the actual possession of suit properties mentioned in Ex.P.18 is not transferred to defendant No.1. He also argued that if the defendant No.1 had taken possession of the suit properties, why she made Ex.P.133 application to the Deputy commissioner. The rights of the parties has to be adjudicated, therefore it is necessary to the keep the properties in tact. As per Ex.P.132 and 133, the ownership and possession of the suit properties is in dispute.

12. The counsel appearing for the plaintiffs further argued that the Defendant No.1 has sold one of the suit properties to one Mohd. Ismail on 03.06.2024, without notice to the plaintiffs and with an intent to defeat their rights. The plaintiffs apprehend that Defendant Nos.1 and 2 may further alienate other suit properties and they claim that they are the legal heirs of Nawazkhatu, and



that their rights are at stake. Therefore it is necessary to the keep the suit properties in tact.

13. Sri.M.S.B Advocate further argued that the essential elements for granting the temporary injunction i.e., prima-facie case, balance of convenience and irreparable loss. And they contended that they have established the prima-facie case and other elements to grant temporary injunction in favour of plaintiffs by restraining the defendant No.1 and 2 from alienating the suit properties to others during the pendency of the suit.

14. Sri.S.K, Advocate appearing for the defendant No.1 and 2 argued that the plaintiffs have no legal right, title, or interest in the suit properties. He argued that earlier the plaintiffs filed application in the present suit in I.A.No.II under order 39 rule 1 and 2 restraining the defendants No.3 and 4 from delivering and handing over the suit schedule A properties to defendant No.1, till disposal of the suit. Firstly this court granted status quo order. After hearing both the sides, this court has allowed the said application on 28-01-2011. The plaintiffs filed Misc.App.No.3/2014 before this court against the defendants for disobedience of the status quo order and same is dismissed on 08-



12-2022. At that time the plaintiffs have not filed any interim application against the defendant No.1.

15. The counsel appearing for the defendant No.1 and 2 further argued that the genealogy of the plaintiff is contrary to themselves only. While granting temporary injunction, it has to show that the said case requires the trial, but in this case already the trail has been commenced. Defendant No.1 is the absolute and rightful owner of the suit properties. Her title was conferred by a valid decree in O.S. No.171/1984, upheld in RSA Nos.130/1999 and 277/1999 by the Hon'ble High Court of Karnataka. The Court of Wards superintendence was lawfully withdrawn by Government Order dated 21-05-2004 which is marked as Ex.D.30. In pursuance of the said order, the Deputy Commissioner, Dharwad issued a Gazette Notification dated 22-04-2006 in accordance with Section 42 of Bombay Court of Wards Act. The Gazette Notification dated 22-04-2006 and Deputy Commissioner's order dated 21-02-2007 validly transferred possession to Defendant No.1 as per Ex.D.18. The plaintiffs never challenged the Gazette Notification or the transfer order.

16. The counsel appearing for the defendant No.1 and 2 further argued that the Plaintiffs had earlier filed W.P. No.82835/2013



and W.A. No.100371/2014, before the Hon'ble High Court of Karnataka, Dharwad Bench, Dharwad, both of which were dismissed. The High Court confirmed that possession was rightfully delivered to Defendant No.1.

17. He further argued that the plaintiffs herein filed one suit in O.S.No.249/2014 before this court, seeking for permanent injunction against the present defendants. In the said suit also, A similar interim relief was also sought in O.S. No.249/2014, which was withdrawn by the plaintiff after the IA for injunction was rejected. The counsel argued that res judicata applies to interim application also. Hence it is not maintainable in the eye of law.

18. He also argued that the plaintiffs have not sought for declaration and possession. Therefore they cannot vacate the defendants without due process of law. Further argued that the plaintiffs have not taken paper publication before filing of this suit. Further argued that the plaintiffs have not sought for the possession in their prayer and they have not filed this suit within limitation.

19. The present application is a repeated attempt to delay proceedings and harass the defendant No.1 and 2. There is no prima facie case, no balance of convenience, and no irreparable



loss to the plaintiffs. An injunction cannot be granted in a declaratory suit for heirship without a claim for possession. The application is therefore liable to be dismissed with exemplary costs.

20. Upon careful observation of the pleadings, submissions and the documents placed on record, this Court has observed that the ownership and possession of the suit properties by Defendant No.1 is based on a decree in O.S.No.171/1984, which was upheld by Hon'ble High Court of Karnataka in R.S.A.No.130/1999 and R.S.A.No.277/1999. The suit properties were previously under superintendence of the Court of Wards, Dharwad, and the Government withdrew its superintendence over the estate of late Nawajkhatu through Government order dated 21-05-2004 as per Ex.D-30. The Deputy Commissioner, Dharwad, issued a Gazette Notification dated 22-04-2006 i.e.,Ex.D-17 under Section 42 of the Bombay Court of Wards Act, followed by an order dated 21-02-2007 transferring possession of the suit properties to Defendant No.1 as per Ex.D-18.

21. The plaintiffs had earlier approached the Hon'ble High Court of Karnataka, Dharwad Bench, in W.P. No.82835/2013 and W.A. No.100371/2014 seeking directions to recover possession of the



suit properties. Both petitions were dismissed. The Hon'ble High Court of Karnataka, clearly upheld the validity of the Government Order, Gazette Notification, and the possession transfer order in favor of Defendant No.1 in Ex.D-32 and Ex.D-33 and found that Defendant No.1 was in lawful possession.

22. One of the present plaintiffs (Plaintiff No.8) had earlier instituted O.S.No.249/2014 before this court seeking for permanent injunction restraining Defendant No.1 and 2 herein from alienating the suit properties. An interim injunction was rejected. Subsequently, the said suit was voluntarily withdrawn by the plaintiffs as per Ex.D-29.

23. The suit is primarily for declaratory relief of heirship without any prayer for possession. The relief sought is ex facie not maintainable in a mere suit for declaration of heirship without seeking possession. Without seeking possession, an injunction against the person in actual, lawful possession is generally not maintainable. The law is well-settled that in the absence of title or possession, injunction cannot be granted against a lawful owner. The plaintiffs have failed to produce any document demonstrating their ownership, title, or possession over the suit properties. The conduct of the plaintiffs reveals a clear intention to delay the



proceedings and to harass the defendants No.1 and 2. The plaintiffs have failed to establish prima-facie case against the defendant No.1 and 2. Hence, in view of all these observations, the plaintiffs have not made out prima-facie case at this stage to grant temporary injunction. Therefore, this Court has answered **point No.1 in the Negative.**

24. Point No.2 and 3 :- Since the plaintiffs have failed to establish a prima-facie case, as discussed above and in light of the finding on Point No.1, these points do not survive for consideration. The balance of convenience lies clearly in favor of Defendant No.1, who is in lawful and exclusive possession of the suit properties pursuant to court orders and government orders. The plaintiffs, on the other hand, have not sought possession and are not in possession of the suit schedule properties. Granting an injunction would cause greater hardship to the defendant No.1, hence balance of convenience is not in favor of plaintiffs. The suit is filed in the year 2010 and the plaintiffs have filed this application restraining the defendant No.1 and 2 in 2025 at the final stage of completion of evidence. Therefore, no irreparable loss or hardship would be caused to the plaintiffs if the application is dismissed.



25. Before granting of the temporary injunction, the following considerations are required to be satisfied:

- (i) There is a prima-facie case in favour of the plaintiff and against the defendant.
- (ii) That irreparable injury is likely to be caused to the plaintiff which cannot be compensated for in terms of money.
- (iii) That the balance of convenience lies in favour of the plaintiff and against the defendant.

26. The counsel for defendant No.1 and 2 argued that the interim relief has to be in connection with the main relief. An interim relief has to be ancillary to the main relief. In support of this view, this court has relied on the decision of Hon'ble Apex Court in **C.C.I. Ltd. v/s. Industrial Bank Ltd. (AIR 1983 SC 1272)** laid down the law, in this respect, as follows:-

“...An interim relief can be granted only in aid of, and a ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceedings. If this be the purpose to achieve which power to grant temporary relief is conferred, it is inconceivable that where the final relief cannot be granted in the terms sought for because the statute bars granting such a relief ipso facto the temporary relief of the same nature cannot be granted...”



27. In support of this view this Court is relied on the decision of our **Hon'ble High Court of Karnataka reported in ILR 1989 Kar. Page No.1701 (Shri Gowrishankara Swamigalu VS Sri Siddhaganga Mutt), held at para No. 25 which is extracted as under:-**

“25. I need hardly add the existence of a prima facie case in these matters 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 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.

28. At this stage, the plaintiffs have failed to establish the prima facie case in favour of them. Therefore, this Court has answered point No.2 & 3 in the Negative.



29. Point No.4:- For the foregoing reasons, I proceed to pass the following;

ORDER

The I.A. No.XLV (IA NO.45) filed under Order 39 Rule 1 and 2 r/w Section 151 of Code of Civil Procedure, by the plaintiffs is hereby dismissed.

Civil Judge & JMFC.,
Savanur,