

KAKB210002782025



IN THE COURT OF SENIOR CIVIL JUDGE & JMFC.,

AT: ALAND

Present: Shri. **Abdul Rahaman Pathan,**
B.A. LL.M.,
II Additional Senior Civil Judge & JMFC.,
Kalaburagi

C/c Senior Civil Judge & JMFC., Aland

O.S. No. 93/2025

Dated this the 09th day of March 2026

PLAINTIFF: Somanna @ Somshaker S/o
Gurulingappa Akkalkot, Age: 69
years, Occ: V.K. Salgar, Tq: Aland,
Dist: Kalaburagi.

(By Shri. A.W.A. Adv.,)

//Versus//

DEFENDANT: Basawaraj S/o Parmeshwar Yegade,
Age: 50 years, Occ: Agriculture, R/o
V.K. Salgar, Tq:Aland, Dist:
Kalaburagi.

(By Shri. K.A.A. Adv.,)

PARTIES TO I.A. No. I

**Applicant/
Plaintiff:** Somanna @ Somshaker S/o
Gurulingappa Akkalkot.

//Versus//

**Opponent/
Defendant:** Basawaraj S/o Parmeshwar Yegade.

Provision under which instant application is filed	U/Order XXXIX rule 1 and 2 of Code of Civil Procedure
Relief sought for	Temporary injunction
Date of application	22.07.2025
Number	I. A. No. I
Date on which the objections are filed	09.01.2026
Date on which Order is pronounced	09.03.2026

ORDER ON I.A. NO. I

The plaintiff filed instant application U/Order XXXIX rule 1 and 2 of the Code of Civil Procedure seeking for an order of temporary injunction to restrain defendant from causing obstruction to his possession over Suit Schedule Property pending disposal of the suit.

2. The averments made in the affidavit annexed to the application in brief are as under:

It is averred in the affidavit annexed to the application that, originally land bearing Sy. No. 290/1 (New) and Old Sy. No. 290/2 measuring 04.32 acres, Situated at V.K. Salagar Village, Aland taluka (**Hereinafter referred as Suit Schedule Property**) belonged to one Digambar S/o Annarao Patil. He sold the same in favor of plaintiff vide registered Sale Deed dated, 21.03.1991. Based thereon, Khata of the same has been mutated and he has been in possession and enjoyment of the same. Recently, Suit Schedule Property has been surveyed by the concerned Officials and Suit Schedule Property is shown at serial No. 2 in Survey Sketch. This being the case, defendant though has no kind of right, title and interest over Suit Schedule Property is highhandedly trying to cause

obstruction to his possession over Suit Schedule Property. If application as prayed for is not allowed, defendant may dispossess him, which will cause insurmountable loss and hardship to him. There is prima facie case and balance of convenience lies in his favor. Thus, prayed to allow this application.

3. Pursuant to suit summons, defendant appeared through his counsel and filed Written Statement and also filed memo dated, 09.01.2026 adopting Written Statement as objection to instant application contending that, instant application is not maintainable either in law or on facts as such, liable to be rejected at the threshold. It is denied that, plaintiff being absolute owner has been in possession and enjoyment of the Suit Schedule Property. It is admitted that, recently the suit property is surveyed and same is shown at serial No. II of the survey sketch but extent therein is shown as 04.21 acres but not 04.32 acres as claimed in plaint. It is denied that, defendant with an intention to gulp suit property is highhandedly trying to cause obstruction to the possession of plaintiff over suit property.

4. It is specifically contended that, defendant filed O.S. No. 232/2016 on the file of the then Munsiff Court, Aland for a relief of Specific Performance of Contract with respect to land bearing Sy. No. 290/1 measuring 02.28 acres, situated at V.K. Salagar, Aland taluka. The said suit came to be decreed. Based thereon, defendant filed Execution Case No. 10/2016 seeking execution of said judgment and decree. Wherein registered sale deed relating to said landed property has been executed in his favor. Thus, he has been in possession and enjoyment of said landed property. The plaintiff is the owner of land bearing Sy. No. 290/2/4 measuring

04.21 acres but not of 04.32 acres. The Suit Schedule property and property of defendant are two distinct properties. Despite that, filed instant suit only with an intention to gulp land of defendant. The description of suit property mentioned in the plaint is not correct. There is no prima facie case and balance of convenience lies in his favor. Thus, prayed to reject this application with costs.

5. On the basis of plaint averments and documents produced at initially stage, following points arise for my consideration:

1. **Whether plaintiff has made out prima facie case for grant of temporary injunction as prayed?.**
2. **Whether the balance of convenience lies in favor of plaintiff?.**
3. **Whether plaintiff will be put to irreparable injury, if order of temporary injunction is not granted?.**
4. **What order?.**

6. Heard learned counsel for plaintiff and defendant. Perused material placed on record. My answer to above points is 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:** These points are interconnected as such, are taken together for common discussion to avoid repetition. At the outset, plaintiff filed instant suit for a relief of declaration to declare that, he is absolute owner in possession of the Suit Schedule Property and also for perpetual injunction to restrain defendant from causing obstruction to his possession over Suit Schedule

Property. In support of his case, plaintiff produced Certified Copy of Registered Sale Deed dated, 21.03.1991, RTC Extracts, M.E. No. 91 and Sketch. Per contra, defendant produced Hissa Tippanis, Form No. 10, Akarbandh and RTC Extract.

8. In view of above, this Court carefully perused material placed on record. It is undisputed plaintiff is the owner of Suit Schedule Property. It is also undisputed fact that, defendant is owner of land bearing Sy. No. 290/1 measuring 02.28 acres, Situated at V.K. Salagar Village. It is further undisputed fact that, both lands have been surveyed recently. It is specific defense of defendant that, plaintiff though is owner of an area of 04.21 acres but highhandedly claiming right over an area of 04.32 acres. With this, this Court carefully perused RTC Extract for the year 1988-1989. Wherein it appears that, one Digambar S/o Annarao Patil is owner of land bearing Sy. No. 290/2A measuring 04.32 acres, Situated at V. K. Salagar Village. This Court also perused Certified Copy of Registered Sale Deed dated, 21.03.1991. Wherein it appears that, said Digambar Patil sold land bearing Sy. No. 290/2A measuring 04.32 acres, which is Suit Schedule Property in favor of plaintiff. This Court further perused M.E. No. 92. Wherein it appears that, based on said sale deed, Khata of the suit property has been mutated in favor of plaintiff. Furthermore, this Court perused RTC Extract for the year 2025-2026. Wherein it appears that, Khata of the suit property stands in the name of plaintiff.

9. This Court also perused Hissa tippanis and Form No. 10 produced by defendant. Wherein it appears that, defendant is the owner of land bearing Sy. No. 290 measuring 02.28 acres and plaintiff is the owner of land bearing Sy. No. 04.31 acres. Thus, it appears that, the suit property and property claimed by

defendant are two distinct properties and defendant has not disputed possession of plaintiff over suit property. The defendant though claimed that, plaintiff is owner of an area of 04.21 acres but did not produce any material relating thereto. The material on record at this juncture shows possession of plaintiff over suit property as claimed in the plaint. In such eventuality, relief of ad-interim injunction as prayed for is not granted then defendant may cause obstruction to the possession of plaintiff over suit property, which will cause insurmountable and hardship to plaintiff but same alone does not authorize the plaintiff to encroach upon the land of defendant also. Thus, prima- facie case and balance of convenience lies in favor of plaintiff. **Accordingly, I answer Point No. 1 to 3 in the Affirmative.**

10. **POINT No. 4:** In view of discussion and conclusion arrived at Point No. 1 to 3, this Court proceeds to pass following:

ORDER

I.A. No. I filed by plaintiff U/Order XXXIX Rule 1 and 2 of the Code of Civil Procedure is hereby ALLOWED.

Consequently, defendant is hereby restrained from causing obstruction to the possession of plaintiff over Suit Schedule Property till disposal of this suit.

Parties to bear their own costs

(Dictated to the Stenographer directly on laptop, corrected by me and then pronounced in Open Court on this the 09th day of March 2026).

(Abdul Rahaman Pathan)
II Additional Senior Civil Judge
& JMFC., Kalaburagi &
C/C Senior Civil Judge & JMFC,
ALAND