

**IN THE COURT OF THE ADDL. CIVIL JUDGE AND J.M.F.C.
AT CHINCHOLI**

PRESENT

Sri. Dattakumar Jawalkar, B.B.A. LL.B. (Hons.) LL.M.
Addl. Civil Judge and J.M.F.C.,
Chincholi

Dated: 16th day of February 2024

O.S. No.27/2023

Plaintiffs:

1.Nagamma W/o Vijaykumar Chatnalli
Age: 53 Years, Occ: Agriculture, R/o:
Revayya Mandir Dhummanasar, Tq:
Humnabad, Dist: Bidar.

2. Kapilavati W/o Somashekar Age:45
Years, Occ: Agriculture R/o: H-No. 1-
191 Main Road Near Jumma Masjid
Kalagi, Tq: Kalagi, Dist: Kalaburagi

(By Sri.S.S.M Advocate)

V/s

Defendants:

1. Shivanand S/o Shamrao Age: 48
Years, Occ: Agriculture,

2. Udayakumar S/o Shamrao Age: 46
Years, Occ: Agriculture,

3. Rachamma W/o Shankar Age: 44
Years, Occ: Agriculture,

4. Padmavati W/o Rajshekhar Age: 42
Years, Occ: Agriculture,

5. Preeti W/o Basavraj Age: 40 Years,
Occ: Agriculture,

6. Hemavati W/o Chandrakanth Age:
38 Years, Occ: Agriculture,

7. Gundappa S/o Shamrao Age: 52
Years, Occ: Agriculture,

8. Gouramma W/o Shamrao Age: 72
Years, Occ: Agriculture,
All R/o: Kotag, Tq: Chincholi, Dist:
Kalaburagi.

(By Sri. B.Sudarshan Advocate)

i.	Provision under which the application is filed	Order XXXIX Rule 1 and 2
ii.	Relief sought for	Temporary Injunction
iii.	The date on which the application is filed	14.03.2023
iv.	Number of the Application	I.A. I
v.	The date on which the objections are filed by the different opponents	31.10.2023
vi.	The date on which the orders were passed on the said application	16.02.2024

ORDER ON I.A. No. I

The Plaintiff has filed the present Application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 along with the Plaint seeking Temporary Injunction restraining the Defendants from interfering with peaceful possession of Plaintiffs over the Suit Property pending disposal of the suit.

2. **Brief facts:** The Plaintiffs have filed the present suit against the Defendants for perpetual injunction restraining the Defendants from interfering with the peaceful possession of the Plaintiffs over the Suit Property. It is the case of the Plaintiffs that they are owners in possession of the Suit Property. They have purchased the Suit Property from one Vaijanath S/o Revappa on 16.11.2021 through registered sale deed. After purchasing the same, the Plaintiffs became owners in possession of the Suit Property. The Defendants who are not having any right, title or interest over the Suit Property are trying to interfere with the peaceful possession of Plaintiffs over the Suit Property. Hence the Plaintiffs prayed to allow the application.
3. The Defendant No.1 has filed Written Statement along with the memo adopting the Written Statement as objection to the IA.No.1. It is stated in the written Statement that the Plaintiffs and Defendants are closed relatives and the suit properties were allotted to the share of Defendants and nominally the Plaintiffs have purchased the Suit Property. The Defendants have already filed suit for declaration and injunction against the said Vaijanath which is pending before the Hon'ble Senior Civil Judge, Chincholi in O.S.No. 1/2021. The Defendants are owners in possession of the Suit Property. Hence, prayed to dismiss the Application.
4. Heard both the sides.

5. That upon perusal of the materials placed on record the following points arise for the consideration of this Court:

POINTS FOR CONSIDERATION

1. Whether the Plaintiff has made out prima-facie case in his favour for the grant of Temporary Injunction?
 2. Whether the Balance of Convenience lies in the favour of Plaintiff?
 3. Whether any irreparable injury/loss will be caused to the Plaintiff if the Temporary Injunction is not granted?
 4. What Order?
6. The findings of the Court to the above points are as under:

Point No. 1: Negative

Point No. 2: Negative

Point No. 3: Negative

Point No. 4: As per the Order for the following:

REASONS

7. **Point No. 1:** It is the contention of the Plaintiff that he is the owner in possession of the Suit Property and Defendants are trying to interfere with the peaceful possession of Plaintiff over the Suit Property. Whereas the Defendants have pleaded that the suit properties were allotted to them in family partition and the Defendants are in possession of the Suit Property.

8. The Plaintiffs have produced the original sale deed and RTC of the Suit Property in support of their contention. Whereas the Defendants have produced the Order sheet of the Hon'ble Senior Civil Judge in O.S.No.1/2021, amended plaint in O.S.No.1/2021, Written Statement in O.S.No.1/2021.
9. The original sale deed as produced by the Plaintiff shows that they have purchased the Suit Property from Vaijanath. Further the RTC of the Suit Property is in the name of Plaintiffs. Whereas the Certified Copy of the Order sheet in O.S.No.1/2021 shows that the Defendants have failed suit for declaration and perpetual injunction against Vaijanath and others. The Certified Copy of amended plaint shows that the Plaintiffs herein were impleaded in the said O.S.No.1/2021. Hence the Plaintiffs have got alternative and efficacious remedy to asked for temporary injunction against the Defendants herein in O.S.No.1/2021. Further, if this Court passes temporary injunction then the Plaintiffs may misuse the same and the suit which was filed earlier i.e., O.S.No.1/2021 would not be fruit full. Since the Plaintiffs have alternative to ask for the same relief before the Hon'ble Senior Civil Judge Chincholi in O.S.No.1/2021, Hence this Court is of the opinion that the Plaintiffs have not established the prima-facie case in their favour. Hence Point No.1 is answered in negative.

10. **Point No. 2:** The Plaintiffs have further contended that the balance of convenience lies in their favour. It is the case of Plaintiffs that if the present application is allowed they would be caused irreparable loss or injury. Since the suit for declaration and injunction between the same parties is already pending before the Hon'ble Senior Civil Judge, Chincholi. Hence this Court is of the opinion that the balance of convenience does not lie in the favour of Plaintiff. Hence, Point No. 2 is answered in negative.
11. **Point No. 3:** As already stated in the reasoning to Point No.1 and Point No.2 the Plaintiff has not established the prima-facie case in his favour and balance of convenience does not lie in his favour. Further, if the Defendants are restrained then the suit in O.S.No.1/2021 which was filed earlier would not be fruit full. Hence this Court is of the opinion that if the present application is not allowed, Plaintiff will not suffer any irreparable loss or injury. Hence Point No.3 is answered in negative.
12. **Point No.4:** In view of the findings of this Court to the Point Nos. 1 to 3, this Court proceeds to pass the following:

ORDER

**I.A. No. I filed by the
Plaintiff under Order XXXIX
Rules 1 and 2 of the Code of**

**Civil Procedure, 1908 is
hereby dismissed.**

(Dictated to the stenographer, directly on the computer, then corrected and pronounced by me in the Open Court on this the 16th day of February 2024)

*(Dattakumar Jawalkar)
Addl. Civil Judge & J.M.F.C
Chincholi*