

**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC**  
**AT JEWARGI**

PRESENT: Sri. Sandeep A. Naik B.A., LL.B.,(Spl.)  
Senior Civil Judge & J.M.F.C.,  
Jewargi.

Dated This the 20<sup>th</sup> Day of February-2025

**ORIGINAL SUIT NO.201/2023**

**PLAINTIFFS** : 1. Smt. Laxmibai  
W/o Sanganna Bhairi,  
Age: 40 years, Occ: Household.

2. Smt. Mallawa  
W/o Gundappa Bhairi,  
Age: 75 years, Occ: Household,

Both are R/o Konasirasagi, Tq: Yedrami,  
Dist: Kalaburagi.

.....(By. Sri.B.H.K., Advocate)

**V/s.**

**DEFENDANTS:** 1. Smt. Mahantamma  
W/o Kantappa Malghan,  
D/o Gundappa Bhairi,  
Age: 53 years, Occ: Household,  
R/o Budhihal (PH), Tq: Sindagi,  
Dist: Vijayapura,

2. Vaijanath  
S/o Yashwantraya Biradar,  
Age: 30 years, Occ: Agriculture,  
R/o Konasirasagi, Tq: Yedrami,  
Dist: Kalaburagi.

3. Manjunath  
S/o Mahadevappa Biradar,  
Age: 30 years, Occ: Agriculture,  
R/o Konasirasagi, Tq: Yedrami,  
Dist: Kalaburagi.  
Now resident at Gongdivasati,  
Near Ullagaddi Dall Mill,  
Sholapur (Maharashtra).

.....(D-2 and D-3 By. Sri.K.S.B., Advocate)  
(D-1 by exparte)

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**PARTIES TO I.A. NO.1**

**APPLICANT/**  
**PLAINTIFFS** : Smt. Laxmibai and Another  
  
V/S

**OPPONENT/**  
**DEFENDANTS** : Smt. Mahantamma and Others

i.	Provision under which the application is filed	U/o 39 Rule 1 and 2 of CPC
ii.	Relief sought for	Temporary Injunction
iii.	The date on which the application is filed	08-09-2023
iv.	Number of the application	IA No.1
v.	The date of which the objections are filed by different opponents	12-09-2024
vi.	The date on which the orders were passed on the said application	20-02-2025

**ORDER ON I.A No.I FILED BY PLAINTIFFS**

**U/O 39 RULE 1 & 2 OF C.P.C.**

1. The plaintiffs have filed this I.A No.I under Order 39 Rule 1 & 2 of C.P.C., to grant an ex-parte temporary injunction against defendants restraining them from interfering into the peaceful possession and enjoyment of plaintiff No.1 over land bearing Sy.No.114 measuring 3 acres 3 guntas consisting of farmhouse, bore-well and pipeline and also from interfering into the peaceful possession of plaintiff No.2 over suit land bearing Sy.No.114/E measuring 3 acres 3 guntas situated at Konasirasagi village, till pending disposal of the suit.

2. The plaintiff No.1 sworn to the affidavit stating that contents of plaint para's may be read as part and parcel of the affidavit. According to the plaintiffs, they are owners and possessors of agricultural land bearing Sy.No.114 and Sy.No.114/E. The said lands were previously standing in the name of Gundappa Bhairi and Sharanappa Bhairi both were brothers' inter-se.

3. The said Gundappa Bhairi was working in the Kirana Shop of father of Ashok Patwari namely Shamrao Kulkarni. The said Shamrao Kulkarni and Gundappa Bhairi have jointly purchased land bearing Sy.No.114 and Sy.No.115 to the extent of 28 acres in the name of Ashok Patwari and Gundappa Bhairi from one Sharanappa Anjutagi. Thereafter, Ashok Patwari sold his portion of land in favour of one Shakhappa Machgundali. The said

Gundappa and Sharanappa have purchased land bearing Sy.No.114 and Sy.No.115 measuring 3 acres from said Shakhappa Machgundali. Thereafter, said Gundappa Bhairi and Shanappa Bhairi used to jointly cultivate the suit property to the extent of 17 acres. Thereafter, properties were divided in between said Gundappa and Sharanappa as per family settlement.

4. Under said family arrangement property bearing Sy.No.115/A measuring 5 acres 30 guntas was allotted to Sharanappa Bhairi, whereas land bearing Sy.No.115/Aa measuring 5 acres 31 was allotted to Gundappa Bhairi. The remaining land measuring 6 Acres 6 guntas was standing in the of Mallawwa W/o Gundappa Bhairi and land measuring 3 Acres 3 guntas was standing in the name of Laxmibai W/o Sanganna Bhairi i.e. daughter-in-law of Sharanappa Bhairi. The plaintiffs are in peaceful possession and enjoyment of suit properties. In the year 2008 said Sharanappa Bhairi constructed a farmhouse and dig a bore-well and laid pipeline in his portion of land measuring 3 Acres 3 guntas and used to grow cotton crop in their respective lands.

5. Defendant No.1 is the daughter of Gundappa Bhairi through his wife Bhagawwa. The first wife of Gundappa Bhairi and defendant No.1 had filed suit bearing O.S.No.324/2001 before the I Addl. Civil Judge Sr. Division at Kalaburagi against said Gundappa Bhairi and others seeking the relief declaration and injunction. The said suit was compromised and compromise decree was passed and thereafter defendant No.1 and her mother have become owner and possessor of land bearing Sy.No.115/Aa

measuring 5 Acres 31 guntas and after death of her mother defendant No.1 got mutated her name to the entire property and she alienated 2 acres 31 guntas and 3 Acres of land in favour of defendant No.2 and 3 through two different sale deeds document No.4448/2011-12 and No.4449/2011-12. Due to less extent of 1 Acre land defendant No.2 & 3 did not paid consideration amount to the defendant No.1 as per agreement of sale.

6. The defendant No.1 colluding with defendant No.2 and 3 hatched a plan to encroach upon lands of plaintiffs since suit property is adjacent to the land of defendant No.2 and 3. They hatched a plan and defendant No.1 filed a suit bearing OS No.36/2022 before this court for declaration and injunction. The parties to OS No.36/2022 colluding with each other entered into compromise behind the back of plaintiffs and obtained compromise decree on 07-08-2023 without the knowledge of plaintiffs. In OS No.36/2022 the boundaries of property was mentioned as towards East: Land of Eranna Adgal, towards West : Land of Basappa Mallappa, towards North: Telagabal road and South: Yedrami road, whereas in the sale deed the boundaries of Sy.No.115/Aa were mentioned as towards East: Land of Shakappa Machgundali, towards West: Yedrami - Aralgundagi road, towards North: Remaining land sold to Manjunath and towards South: Land of Basavaraj Sharanappa, whereas in the sale deed document No.4448/2011-12 the boundaries were mentioned as towards East: Land of Shakappa Machgundali, towards West: Yedrami Aralgundgi road, towards North: Land of Mallikarjun Sharannappa Heroor and towards South: Remaining land sold to Vaijnath,

whereas in the compromise decree passed in O.S.No.324/2001 boundaries mentioned as towards East: Land & Shaikappa, towards West: Government road, towards North: Land of Malakamma and towards South: Land of Chidananda.

7. Due to 1 acre less in measurement in Sy.No.115/Aa and it did not tallied with the measurement of ROR therefore defendants hatched a plan and filed illegal suit before this Hon'ble court bearing O.S.No.36/2022 and behind the back of plaintiffs they compromised the said suit stating that, after disposal of O.S.No.11/2012 on the file of Civil Judge Jewargi they created a false and concocted story stating that after disposal of O.S.No.36/2022 they have constructed a farm house and dig a borewell. Originally farm house was constructed by Sharanappa Bhairi in the year 2008 and even GESCOM authority given electricity supply to the house and meter is standing in the name of Sharanappa Bhairi. After death of Sharanappa Bhairi now bills are issued in the name of Late Sharanappa Bhairi,

8. The defendants are no way concerned to the suit properties but on the guise of Compromise decree passed in O.S.No.36/2022 they are trying to dispossess plaintiffs from suit land and are illegally trying to occupy farm house and bore-well and if they succeeded in their malafide intentions the plaintiffs will be put to heavy loss and will face multiplicity of litigations.

9. The plaintiffs have no other alternative remedy except to approach this Hon'ble court to declare plaintiff No.1 as owner

and possessor of agricultural land bearing Sy.No.114 to the extent of 3 acres 3 guntas consisting of farm house, bore-well and pipeline and to declare plaintiff No.2 as owner and possessor of agricultural land bearing Sy.No.114/e to the extent of 3 acres 3 guntas situated at Konasirasgi village, Tq. Yedrami. The plaintiffs requested defendants not to interfere with their peaceful possession over their respective properties, farm house, bore-well and pipeline but defendants are not ready to heed to the request of plaintiffs, they are trying to interfere into the peaceful possession of plaintiffs and also trying to dispossess plaintiffs from suit property. Therefore, plaintiffs are constrained to file this suit & I.A.No.I.

10. The plaintiff No.1 in her affidavit further stated that they have made out a prima-facie case, balance of convenience lies in their favour and if temporary injunction order is not granted they will be put to irreparable loss and injury which cannot be compensated in terms of money. Therefore, he prayed to allow I.A.No.I.

11. In pursuance of suit summons, defendant no.2 & 3 appeared through their counsel and resisted the claim of plaintiffs by filing written statement and even filed objection to I.A.No.I. The defendants contended that application filed and prayer put forth is not proper and correct in the eyes of law. The application is not sustainable either in law or facts and same is liable to be dismissed with costs. The contents of affidavit are false baseless and self-serving one. The applicants had not made any proper,

justifiable and genuine grounds to allow the application. The facts stated in the affidavit are not sufficient and satisfactory inspiring the confidence of the Hon'ble court about bonafide need of allowing the application. The applicants have no prime face case in their favor. There is no balance of convenience in their favor. The applicants will not be put to loss and injury in case of dismissal the application. On the other hand defendants will be put to more hardship and there is every chance of abuse of process of law.

12. The defendants specifically contended that present suit is filed in respect of agricultural lands bearing Sy.No.114 and 114/2 each measuring 03 Acres 03 Guntas of Konasirasagi Village. Defendant No. 2 and 3 had purchased land bearing Sy.No.115/A of Konasirasagi with clear boundaries identifying purchased portion. Under such situation suit in respect of lands bearing Sy.No.114 and 114/2 which is no way related to properties acquired by these Defendants under registered sale deeds. Defendant No. 2 and 3 are in actual peaceful and lawful possession and enjoyment of their purchased landed properties as true owners. In view of admitted situation and coupled with principal of law that injunction could be granted against whole world except true owner. Applying settled principal of law the applicants are not entitled to any kind of injunctive relief as against these Defendants. The attitude, attempt and intention of Applicants are not fair and honest in admitting the lawful owners and their lawful deeds is endeavoring to have wrongful gain of situation at the costs of wrongful loss to Applicant. On these grounds defendants prayed to dismiss the Application.

13. On considering I.A.No.1, affidavit, plaint and objection, the points that would arise for my consideration are as under:

**POINTS**

1. Whether the plaintiffs/applicants have made out prima facie case for grant of temporary injunction?
2. Whether the balance of convenience is lies in favour of plaintiffs/applicants?
3. Whether the irreparable loss and injury would be caused to the plaintiffs/applicants if the temporary injunction is refused?
4. What order?

14. Plaintiffs counsel filed record of rights, copy of sale deeds, MR extract, compromise decree passed in OS No.324/2001, OS No.36/2022, Electricity connection letter, bills, photographs of the suit house and vehemently argued that plaintiffs have made out a prima facie case. The balance of convenience lies in their favour and if the temporary injunction order is not granted, it is the plaintiffs who will be put to irreparable loss and injury. Therefore, balance of convenience lies in favour of plaintiffs and if the temporary injunction order is not granted plaintiffs will be put to heavy and irreparable loss which cannot be compensated in any manner. Therefore, plaintiffs prayed to allow the application.

15. Per-contra, defendants counsel filed copies of sale deeds, crop certificate, Lavani Patrika, Rough sketch, record of rights, 11E sketch, form No.10 and copy of judgment and decree passed in OS No.11/2012 and argued that plaintiffs have not made out prima facie case. The plaintiffs did not come to the Court with clean hands. The balance of convenience does not lie in favour of plaintiffs. Further defendants are in settled possession of properties as such plaintiffs cannot seek temporary injunction against true owner. The suit itself is not maintainable as such plaintiffs are not entitled for any reliefs as sought for.

16. My answer to the above points are 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**

17. **Point No.1**:- It is well established and settled position of law that following propositions are to be established in order to invoke the jurisdiction of the court to grant an interlocutory order of injunction U/O 39 Rule 1 and 2 of C.P.C. (1) plaintiff has to establish a prima facie case, (2) the balance of convenience is in favour of the party seeking the relief and (3) that the party seeking the relief will suffer irreparable injury if injunction is refused. The ingredients have to be established by the party who seeks

injunction in his favour. The grant of injunction being a discretionary relief, the party should come to the court with clean hands and place all the materials before the court so that, the court will be satisfied about the prima facie case in favour of the party seeking the order. At the same time, the court cannot conduct a mini trial nor can court express its opinion regarding merits of the case while dealing with the applications of this nature. Only function of the court at this interlocutory stage is to see does the applicant has made out a prima-facie case and balance of convenience is in whose favour and in case of refusal of granting temporary injunction loss of hardship would be caused to which side. It is useful to refer decision of **Kashinath Sansthan v. Srimad Sudhindra Thirtha Swamy**, reported in **AIR 2010 SC 296** the court prescribed the criteria for temporary injunction as follows:

*"In order to grant an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well-settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that 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 being in his favour and would suffer irreparable loss and injury if no injunction is granted.*

18. It is also necessary to mention here that “Prima facie case” not to be confused with “prima facie title” which has to be established on evidence at the trial. Prima facie case is a substantial question raises bona fide which needs investigation and a decision on merits.

19. I have considered the documents produced by both sides. At this interlocutory stage parties have produced revenue documents like record of rights, mutation extracts, copy of sale deeds, survey documents and copies of compromise decree passed in OS No.36/2022, OS No.324/2001, judgment and decree passed in OS No.11/2022 and other related documents. On perusal of said documents and pleadings one Ningappa seems to be the ancestor of plaintiffs and defendant No.1. He had two sons namely Gundappa and Sharanappa. The plaintiff No.2 and defendant No.1 represents the branch of Gundappa, whereas plaintiff No.1 represents the branch of Sharanappa. The defendant No.2 and 3 are purchasers and are strangers to the family.

20. As per the pleadings and documents available on record it appears that said Gundappa had two wives namely Mallawwa i.e., plaintiff No.2 herein and Bhagawwa. The said Gundappa had a son by name Shivanand through his wife Mallawwa. The said Gundappa had a daughter namely Mahantamma i.e., defendant No.1 through another wife Bhagawwa. The documents produced by parties disclose that defendant No.1 and her mother Bhagawwa filed OS No.324/2001 against said Gundappa, Mallawwa and Shivanand. The said suit came to be compromised and plaintiffs were allotted land bearing

Sy.No.115/Aa measuring 5 acres 31 guntas and half share in old house bearing panchayat No.32/1 at Konasirasagi village. As per said compromise petition Mallawwa, Gundappa and Shivanand became the absolute owner of remaining properties and said Bhagawwa and Mahantamma had no rights in the remaining suit properties. Thus it is clear that defendant No.1 and her mother acquired land bearing Sy.No.115/Aa measuring 5 acres 31 guntas only with specific boundaries.

21. The parties have also produced two sale deeds dated 31-12-2011 which discloses that defendant No.1 has alienated 3 acre of land in favour of defendant No.3 Manjunath and also alienated 2 acres 31 guntas of land in favour of defendant No.2 Vaijanath in Sy.No.115/Aa. As such as per sale deeds defendant No.1 alienated entire 5 acres 31 guntas of land in Sy.No.115/Aa. But it appears that defendant No.1 filed suit bearing OS No.36/2022 against defendant No.2 and 3 which was came to be compromised and in the said compromise decree the parties agreed that out of land bearing Sy.No.115/Aa measuring 5 acres 31 guntas land measuring 1 acre, farmhouse and bore-well constructed therein belongs to Mahantamma herein and she received an amount of Rs.15,00,000/- from defendant No.1 and given consent to sale deeds dated 31-12-2011.

22. The defendants have produced judgment and decree passed in OS No.11/2012 which disclose that one Chidanand S/o Sharanappa Bhairi and Devindra S/o Sharanappa Bhairi filed suit for declaration and injunction against present defendant No.1 to 3 in respect of land bearing Sy.No.115/E measuring 7 acres 8 guntas

but said suit came to be dismissed. However, plaintiff No.2 was only party to OS No.324/2001 but neither the plaintiff No.2 nor plaintiff No.1 were parties to OS No.11/2012 or to OS No.36/2022. At this stage it is necessary to mention here that as per the compromise decree passed in OS No.324/2001 the plaintiff No.2, her husband Gundappa and son Shivanand had become the owners of remaining properties. Since defendant No.1 and her mother Bhagawwa were given 5 acres 31 guntas in Sy.No.115/Aa and defendant No.1 already alienated the said 5 acres 31 guntas of land as such no land remains to defendant No.1. When such being the case present defendant No.1 to 3 got compromised the matter in OS No.36/2022 and even in the sale deeds dated 31-12-2011 there is nothing mention regarding remaining 1 acre of land, farmhouse, bore-well, pipeline as such it is clear that all these aspects exists in the remaining land in Sy.No.115/Aa.

23. The documents and pleadings discloses that said Gundappa and Ashok Patwari have purchased in total 28 acres of land in Sy.No.114 and Sy.No.115 and said Ashok Patwari alienated his half share in favour of Shakhappa Machgundali and said Gundappa and Sharanappa have purchased 3 acres of land as such they were in possession of 17 acres of land. Further it appears that land bearing Sy.No.115 was divided into two portions in Sy.No.115/A measuring 5 acres 30 guntas which was allotted to the share of Sharanappa, whereas land bearing Sy.No.115/Aa measuring 5 acres 31 guntas was allotted to the share of Gundappa. As such 11 acres 21 guntas was partitioned but remaining land out of 17 acres which will comes 6 acres 6 guntas

and seems to be standing in the name of plaintiffs measuring 3 acres 3 guntas each. Even the documents placed on record probablise the pleadings of plaintiffs as such, I am of the view that plaintiffs have placed materials worth investigating. As above stated the court cannot conduct a mini trial and try to resolve the difficult question of facts and law. The aspect regarding ownership, possession, interference, maintainability of suit and binding effect of compromise decree are all the questions to be adjudicated in the present case but on perusal of documents placed at this stage, I am of the considered opinion that plaintiffs have placed materials worth investigating into the matter and which are sufficient to hold that plaintiffs have made out an arguable case as such when plaintiffs have made out an arguable case under such an event it can be said that plaintiffs have made out a prima facie case. Therefore, considering the materials produced before the court at this stage of the proceedings it can be opined that plaintiffs have made out an arguable case and therefore whenever there is an arguable case is made out then it can be said that plaintiffs have made out a prima-facie case. In this sense, I answer Point No.1 in the Affirmative.

24. **Point No. 2 & 3** :- Both these points are taken up together for common discussion to avoid repetition of facts. The court has to see that plaintiffs will sustain such irreparable loss or hardship which cannot be possibly and adequately be remedied by way of damage in case of refusal to grant temporary injunction in favour of plaintiffs. The said damage would be in adequate in case of success of plaintiffs/applicants. Considering question of balance

of convenience court has to see the mischief or inconvenience of either parties or otherwise it is necessary or proper to maintain status quo till the adjudication of dispute finally decided. The ingredients are to be established by the party who seeks injunction in his favour.

25. The grant of injunction being discretionary relief the party who seek such relief should come to the court with clean hands and place all the materials before the court so that court will satisfy about case in favour of party seeking the order. It is averred in the application that defendants are trying to interfere and to dispossess plaintiffs from suit properties consisting of farmhouse, bore-well, pipeline. The question as to whether plaintiffs are owners and in possession or not is a matter to be adjudicated which requires a full-fledged trial. However, apprehension of plaintiffs can be meted out restraining defendants from committing any act of waste or damage to the suit properties thus suit properties and existing features like bore-well, pipeline farmhouse will be protected from being wasted and being damaged. Further if in case defendants are not restrained from committing any acts of waste or damage to the suit properties it is the plaintiffs who will suffer irreparable loss and injury which cannot be compensated by way of damage. Hence, I am of the opinion that balance of convenience lies in favour of plaintiffs. Therefore, in order to avoid multiplicity of proceedings and to keep properties intact and to protect the legitimate rights of the parties, it is appropriate to restrain defendants from committing any acts of waste or damage to the suit schedule properties and not to oust

the plaintiffs from suit schedule properties till the disposal of the suit. Hence, for all these reasons, I am of the opinion that ***balance of convenience lies in favour of the plaintiffs and loss and injury will be caused to the plaintiffs. Hence, I answered point no.2 and 3 in the 'affirmative'.***

26. **Point No.4** :- In view of my findings on Points No.1 to 3, the plaintiffs are entitle to the relief of temporary injunction which they have sought for. Hence, I proceed to pass the following:

**ORDER**

I.A.No.1 filed by the plaintiffs under Order 39 Rule 1 & 2 of C.P.C., is hereby allowed.

The defendants, their agents, or anybody acting on their behalf are hereby restrained by an order of temporary injunction from illegally ousting plaintiffs from suit properties and also restrained from committing any act of waste or damage to the suit schedule properties pending disposal of the suit.

Cost of this application will follow the result of this suit.

Call on for issues by 20-03-2025.

(Dictated to the Stenographer directly on the computer, typed by him, corrected and then pronounced by me in the Open Court on this 20<sup>th</sup> Day of February-2025).

**(Sri. SANDEEP A. NAIK)**  
Senior Civil Judge & J.M.F.C.,  
**Jewargi.**