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**IN THE COURT OF THE CIVIL JUDGE & JMFC., JEWARGI*****Present*****Sri. Kashinath V. Uppar****B.Sc. LL.B.****Civil Judge & JMFC., Jewargi.****Dated on this the 16th day of June-2026****O.S. No. 89/2021****PLAINTIFF:** Saherabee W/o Mahiboob Patel.***V/s.*****DEFENDANTS:** Panchayat Development Officer of Gram Panchayat,
Ranjanagi village, tq: Jewargi, dist: Kalaburagi.***********PARTIES TO I.A. NO.I****APPLICANT/S** : Saherabee W/o Mahiboob Patel.
PLAINTIFF***V/S*****OPPONENT/** : Panchayat Development Officer
DEFENDANTS**PARTIES TO I.A. NO.III and IV****APPLICANT/S** : Panchayat Development Officer
DEFENDANT***V/S*****OPPONENT/ PLAINTIFF** : Saherabee W/o Mahiboob Patel.**COMMON ORDERS ON I.A.No.1 FILED BY PLAINTIFF U/O 39**
RULE 1 AND 2 OF CPC AND I.A.NO.3 FILED BY DEFENDANT
FILED U/O 39 RULE 4 OF CPC AND I.A.NO.IV FILED BY THE
DEFENDANT U/O 39 RULE 1 AND 2 OF CPC.

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1. The plaintiff has filed I.A No.1 under Order 39 Rule 1 & 2 of C.P.C., praying to pass an ad-interim order of temporary injunction restraining defendant from interfering into possession of the plaintiff over the suit schedule property till disposal of I.A.No.1.
2. The defendant has filed IA No.3 U/o 39 Rule 4 of CPC, to vacate and set aside the ex-parte temporary injunction order passed as against them to meet the ends of justice.
3. The defendant has filed I.A No.4 under Order 39 Rule 1 & 2 of C.P.C., praying to pass an ad-interim order of temporary injunction restraining plaintiff from making any kind of developments, laying fencing, bund etc., in the northern 13 guntas of Gramthana land of Ranjanagi village, till disposal of this suit.
4. The plaintiff sworn to the affidavit annexed to the IA No.1 and stated that, the plaintiff is the absolute owner and in possession of the suit property. The suit property is inherited by the plaintiff from her mother by name Khasimbee W/o Chand Patel. The name of the plaintiff is mutated and corresponding entries have been taken place after following due procedures of law and the plaintiff is in continuously in possession and enjoyment of the suit property. The Form No. 10 was also prepared in

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the name of plaintiff and other owners of land Sy. No. 77 on 30/08/2018. The plaintiff has laid bunds made out of mud and stones towards West and South and there is Govt. Road towards East and North side of suit property. Since the date of inheritance of suit property by the plaintiff i.e., for more than 20-25 years and before that the mother and father of plaintiff were the owners of land Sy. No. 77 measuring 25 acres 24 guntas including the suit property. After their death the 5 daughters of Chand Patel and Khasimbi by name 1) Goribee, 2) Badebee, 3) Sainabee, 4) Maheboobee, 5) Plaintiff, divided the land Sy. No. 77 into 5 portions and suit property is allotted to the share of plaintiff and her name is entered in the ROR as of the owner and possessor. The defendant is not at all concerned to the family and suit property of plaintiff in any manner what so ever. The defendant with out having any right title or interest has given notice to the plaintiff on 23/08/2021 stating that the plaintiff has encroached and in possession of 13 guntas of gaonthana and ADLR has prepared the survey on 5/10/2019 and Taluka Executive officer has given oral order on 14/06/2021 and further the Gram Panchayat has passed the resolution to vacate the 13 guntas of land in possession of plaintiff within 7 days from the date of service of notice. The said

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proceedings said to have been conducted by the defendant is behind the back without the knowledge, without the notice and without following any due procedures of law. The defendant, ADLR, Executive officer of Taluka panchayat have no rights and power to dispossess the plaintiff from the suit property. The plaintiff is in settled possession of the suit property. The plaintiff has currently sown cotton crop in the suit property by using water from KBJNL canal, the three positive photos are filed to show the standing crop of cotton in the suit property. The plaintiff has filed an application to the concerned ADLR Authority to conduct the survey, which is in pending consideration. That the defendant is hurriedly trying to dispossess the plaintiff from suit property, this act of the defendant is illegal and against the law and amounts interference into possession and enjoyment of plaintiff over the suit property. Hence the plaintiff is constrained to file this suit for perpetual injunction.

5. The sworn affidavit of I.A.No.3 and 4 defendant is stated that, the plaintiff has filed the suit for the relief of perpetual injunction seeking restraining the defendant from interfering in the suit property and not to dispossess

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defendant. That the plaintiff has suppressed the true facts and without having sufficient cause of action to file the suit only by taking undue advantage of notice issued by defendant, the present suit is filed which is not admissible in law. The plaintiff has illegally encroached to the extent of 13 guntas towards Northern side in this regard the ADLR has already issued report and on that basis only the notice is issued to the plaintiff instant of replying the same and producing their documents before the panchayat has filed the present suit on false grounds and succeeded in getting temporary ex-parte injunction order. The Hon'ble court without hearing both side the temporary injunction order has granted, now the plaintiff by taking undue advantage of the interim order is trying to fence the suit property including gramthana land to the extent of 13 guntas which is liable to be prevented. If the interim order is continued the plaintiff will succeed in his illegal attempts and she succeeds in encroaching and there is every chance of alienating the same to the intending purchasers. If the interim ex-parte order is set aside no loss or harm will be caused to the other side, if not the defendant will be put to great hardship and involved into multiplicity of litigation. A separate application U/o 39 Rule 1 and 2 is filed.

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6. The defendant appeared before the court and filed a written statement and counter claim and filed memo that, the contents of written statement and counter claim is treated as objections to I.A.No.3 and 4.

7. The defendant denied the entire plaint averments in toto, defendants denied that the, plaintiff is absolute owner and in lawful possession over suit schedule property. Defendant further denied that, the plaintiff has laid down the bunds towards west and south and there is government road towards east and north side of the suit property. Defendant denied that, the defendant without having right, title or interest has given a notice to the plaintiff on 23-08-2021. It is the contention of the defendant that, plaintiff is noway concerned to the suit land to the extent of 13 guntas is gaonthana which belongs to defendant panchayat. Therefore, the panchayat has issued legal notice to the plaintiff. The plaintiff suppressing the true facts about the gaonthana land and obtained temporary injunction order from this hon'ble court. Defendant further submitted that, the plaintiff is not a owner and possessor of the 13 guntas portion, which is encroach by the defendant. The said property belongs to the gram-panchayat.

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8. Plaintiff filed a rejoinder to the counter claim as under:

Plaintiff denied the entire counter claim in toto. It is the contention of the plaintiff that, the defendant has not shown the date of encroachment made by plaintiff. Hence, counter claim is not maintainable. The plaintiff and her parents were owner of Sy.No.77 measuring 25 acres 24 guntas including the suit property and the same has been divided among the five sister of plaintiff. The plaintiff and all her sisters are in possession to the extent of 13 guntas of gaonthana since 1963-64 till today. The plaintiff has perfect her right of ownership over the 13 guntas of gaonthana by adverse possession and defendant have lost their right of ownership by lapse of time and they have not entitled for the relief of declaration and possession. The plaintiff is in continue possession over the said 13 guntas of gaonthana and it has been demarcated by laying government road towards north of suit property, after said 13 guntas which has been formed some 55 to 60 years back and said portion is a part and parcel of Sy.No.77 of plaintiff. The relief of declaration of ownership of the suit property of counter claim is barred by law of limitation. The plaintiff and her

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sisters are in possession of 13 guntas of gaonthana land owned by defendant for more than 30 years. And the defendant or any other government officials have not exercise their rights of ownership and possession and allowed to the plaintiff to be in possession peacefully and without any objections from anybody who are interested.

9. On considering I.A No.1, 3 & 4, affidavit and objections, the points that would arise for my consideration are as under:

P O I N T S

1. Whether the plaintiff/applicant has made out a sufficient ground allow to the I.A.No.1 ?
 2. Whether the defendant/applicant has made out a sufficient ground allow to the I.A.No.3 and 4 ?
 3. What order?
10. Heard the arguments on both side.
11. My answer to the above points are as under:
- Point No.1 : In the Negative.
- Point No.2 : In the Affirmative.
- Point No.3 : As per final order for the following:

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REASONS

12. **Point No.1:-** It is well established and settled position of law that the 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 are 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 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/s. 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.

13. 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 bonafide which needs investigation and a decision on merits.

14. Now keeping in mind the aforesaid aspects let us consider the present application in hand. Admittedly,

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plaintiff has filed this suit for perpetual injunction against defendants in respect of suit schedule property. As per the pleadings and materials available on record that, plaintiff is owner and possessor of land bearing Sy.No.77 measuring 05 acre 20 guntas. The defendant without having any right, title or interest has given notice to the plaintiff on 23-08-2021 stating that, the plaintiff has encroached and in possession of 13 guntas of gaonthana and ADLR has prepared the survey on 05-10-2019 and taluka executed officer has give a oral order on 14-06-2021 and further the gram panchayat has passed the resolution to vacate the 13 guntas of land in possession of plaintiff within 07 days from the date of service of notice. The said proceedings said to have been conducted by the defendant is behind the back without knowledge of notice and not following due procedure of law. Per contra, defendant take a contention that, the plaintiff has encroached the 13 guntas land and the defendants are lawful authority for the said land. The plaintiff have no ownership on the suit schedule property. The defendant filed a counter claim that, the encroached area to the extent of 13 guntas for declaration of ownership. In counter plaintiff has filed a rejoinder to the counter claim and she take a

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contention that, she have the better title of adverse possession. The plaintiff is in possession of suit schedule property since last 30 years. The defendant have not exercise their right since last 30 years. The defendant has lost the his ownership.

15. I have gone through the documents of plaintiff. Plaintiff produced the hand written RTC of 1968-89, wherein initially suit property standing in the name of Chand Patel S/o Rukum Patel. Thereafter, suit property divide among the daughters of Chand Patel. Plaintiff further produced the RTC from 2003 to 2022, wherein the land bearing Sy.No.77/1, measuring 29 acres 34 guntas, out of 05 acres 24 guntas, standing in the name of plaintiff. Plaintiff further produced the sketch map and legal notice issued by the plaintiff. The said document disclose that, plaintiff is owner of land bearing Sy.No.77/1, measuring 05 acre 24 guntas. Defendant has produced the documents of resolution passed by the gram-panchayat Ranjanagi. Defendant further produced the survey reports and sketch map in respect of land bearing Sy.No.47. The said documents are disclosed that, plaintiff has encroached the land bearing Sy.No.47 to the extent of 13 guntas.

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16. The plaintiff filed a rejoinder for counter claim filed by the defendant. Plaintiff is admitted that, the 13 guntas of gaonthana area has been possession. But it is a claim of plaintiff that, she has been good title of adverse possession. Defendant has keep quite last 30 years. The defendant has his title over the 13 guntas, of land which has been possession of the plaintiff. At this stage, this court is opinion that, even though plaintiff is in possession of 13 guntas which belongs to gaonthana land of defendant. But defendant has the statutory power to recover the encroached area to the extent of 13 guntas which is in possession of plaintiff. Plaintiff has produced the relevant document to show that, she is in possession of 13 guntas of gaonthana Sy.No.47. At this stage, this court is opinion that, plaintiff is not made out a prima-facie case. To adjudicate the rights of the parties required full pledged trial. Moreover plaintiff sought a injunction against true owner. If injunction is granted then it will cause to the defendant irreparable loss because the said 13 guntas land is belongs to government, The balance of convenience and irreparable loss lies in favour of defendant. Hence, I answer Point No.1 in the Negative.

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17. **Point No.2** :- The defendant has prayed to vacate the temporary injunction order therefore it is necessary to refer the relevant provisions applicable to the present aspect is order 39 rule 4 of CPC. The said provisions states thus:

Order for injunction may be discharged, varied or set aside:- Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order:

Provided that if in an application for Temporary Injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice:

Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused undue hardship to that party.

18. The provisions mentioned in the order 39 Rule 4 of

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CPC makes it very clear that where an order of injunction has been passed after giving to a party an opportunity of being heard, but order was not be discharged, varied or set aside has been necessitated by the change in the circumstances or unless this court has satisfied as with the order has caused undue hardship to that party. Under such circumstances temporary injunction can be vacated. This court is already answered the point No.1 in the Negative that, plaintiff is not entitled temporary injunction as sought in I.A.No.1. Hence, I.A.No.3 of the defendant has made out a sufficient ground to allow the I.A.No.3.

19. The defendant has filed I.A.No.4 U/O 39 Rule 1 and 2 of CPC, plaintiff is restraining from making development, laying fencing, bund in the northern side of 13 guntas of gaonthana land of Ranjanagi village. In the present case plaintiff admitted that, she is in possession of 13 guntas of land gaonthana of Ranjanagi village. Plaintiff further claim that, she have a better title of adverse possession of 13 guntas land gaonthana Ranajanagi village. At this stage, this court is opinion that, the ownership and rights of the parties to adjudicate required full pledged trial. If plaintiff has made out any improvements, it will cause heavy loss to the plaintiff.

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Therefore, this court is opinion that, defendant made out a prima-facie case and balance of convenience and irreparable loss lies in favour of defendant. Hence, I answer Point No.2 in Affirmative.

20. **Point No.3:-** In view of my findings on Points No.1 and 2, the plaintiff is entitle to the relief of temporary injunction which she has sought for. Hence, I proceed to pass the following:

ORDER

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

I.A.No.3 filed by the defendant U/O.39 Rule 4 of C.P.C. is hereby Allowed.

I.A.No.4 filed by the defendant U/O.39 Rule 1 and 2 of C.P.C. is hereby Allowed.

The plaintiff is hereby restrained by an order of temporary injunction restraining from making any kind of developments, laying fencing, bund etc., in the northern 13 guntas of Gramthana land of Ranjanagi village, till disposal of this suit.

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Cost of these applications will follow
the result of this suit.

(Dictated to the Stenographer, typed by him revised and corrected by me and then pronounced by me in the Open Court on this 16th Day of June-2026).

(Kashinath V. Uppar)
Civil Judge & JMFC,
Jewargi.

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