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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 06th day of February-2026**O.S. No. 71/2024**

- PLAINTIFFS:**
1. Sharabanu W/o Maheboob Sab,
Age: 36years, Occ: Agriculture,
 2. Gori Bee W/o Maheboob Sab Mullan,
Age: 28 years, Occ: Agriculture,
Both R/o Yadrami, tq: Kalaburagi.

(By. Sri. S.C.P., Advocate)**V/s.**

DEFENDANTS: Ibrahim S/o Kale Sab Talikoti,
Age: 55years, Occ: Agricultural,
R/o Yadrami, tq: Jewargi.

(By Sri. B.G., Advocate)

PARTIES TO I.A. NO.I

APPLICANT/S : 1. Sharabanu W/o Maheboob Sab, &
PLAINTIFF another
V/S

OPPONENT/ : Ibrahim S/o Kale Sab Talikoti,
DEFENDANTS

PARTIES TO I.A. NO.II

APPLICANT/S : Ibrahim S/o Kale Sab Talikoti,
PLAINTIFF

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V/S

OPPONENT/ : 1. Sharabanu W/o Maheboob Sab, &
DEFENDANTS another

1	Provision under which the application is filed	I.A.No.1 filed by the plaintiff U/O.39 Rule 1 and 2 I.A.No.2 filed by the defendant U/O 39 rule 4 of CPC.
2	Relief sought for	I.A.No.1 sought to relief that, not to encroach the suit property. I.A.No.2 vacant the T.I.
3	The date on which the application is filed	I.A.No.1 filed along with suit. I.A.No.4 filed on 15-03-2025
4	Number of application	I.A.No.1 and 2
5	The date which the objection are filed by different opponents	26-06-2025
6	The date on which the orders were passed on the said application	06-02-2026

**COMMON ORDERS ON I.A.No.1 FILED BY PLAINTIFF
U/O 39 RULE 1 AND 2 OF CPC AND I.A.NO.2 FILED BY
DEFENDANT FILED U/O 39 RULE 4 OF CPC.**

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 for encroaching the into the plaintiffs possession and enjoyment over the suit schedule property pending disposal of the suit.

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2. The defendant has filed IA No.2 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 plaintiff sworn to the affidavit annexed to the IA No.1 and stated that, the grand mother of plaintiff by name Hamida Bee was owner in possession of land Sy.No.447/4 totally measuring 02 acre 01 guntas, out of it she allotted 03 guntas to the defendant vide registered partition deed No.250/2023-24, and the 03 guntas is situated on the norther side of the portion of the suit land and southern side of the suit land there is a Well beaten road thus in between the defendants 03 guntas land. The grand mother of Hamida bee having love and affection towards the plaintiff she gifted the suit land to the plaintiff through registered gift deed dated 14-09-2023 and the said Hamida bee deliver the possession of the suit land to the plaintiff on the date of said gift. By virtue of gift deed plaintiff is owner and possessor of the suit land. The defendant has no way concerned to the suit land. The defendant have intention that, to encroach the road situated at southern side of the suit property. With these grounds plaintiff filed a suit for declaration and injunction.

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4. Defendant appeared through counsel and filed a written statement and filed a memo stating that, contents of written statement may be considered as objection to IA No.1. Wherein he stated that, he denied the entire plaint averments in toto. The defendant taken specific contention that, the grand mother of plaintiff by name Hamida bee was the owner in possession of the land bearing Sy.No.447/4, measuring 02 acre 01 guntas, due to her family and legal necessity she sold the 14 guntas in the land Sy.No.447/4 to the defendant and she received the entire sale consideration amount from the defendant and she execute registered sale deed along with her grand son Md. Yusuf, who is non other than plaintiffs brothers vide dated 16-11-2022 in favour of the defendant. The possession of the 14 guntas with the specific boundary the possession of the land handover to the defendant. The defendant is the lawful possession and enjoyment of the 14 guntas in the land Sy.No.447/4 of Yadrami, by virtue of registered sale-deed. The name of defendant got effected in the revenue records. The defendant is approached to the Deputy Commissioner, Gulbaraga for converted into non-agriculture for the commercial purpose to the extent of 03 guntas, out of 14

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guntas. The deputy commissioner converted the 03 guntas land from the 14 guntas vide order dated 06-12-2023. The cousin brother of the plaintiff Md. Shafi was the village accountant, with the active assistance of Md. Shafi and the said owner Hamida bee fraudulently and misrepresentation and got created registered alleged partition deed dated 10-04-2023. The defendant is not a blood relative of Hamida bee. The alleged partition deed out come of fraud and misrepresentation. The said Hamida bee already sold the to the extent of 14 guntas, to the defendant. The said Hamida bee had no authority to the execute the alleged gift deed in favour of plaintiff. Because she already sold the portion of suit property to the extent of 14 guntas to the defendant by registered deed dated 16-11-2022. The defendant is a lawful possession over the to the extent of 14 guntas. With these grounds defendant prays to reject the I.A.No.1.

5. The defendant sworn to the affidavit of I.A.No.2 stating that, the defendant filed the written statement in the above suit denied the entire averments made in the plaint and claim of the plaintiff in the suit for seeking dismissal of the suit. That, the contents of the written

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statement paras to be read this affidavit and to avoiding the repetition of the facts. The hon'ble court to issue the temporary injunction as prayed in the I.A.U/O 39 rule 1 and 2 of CPC, till the further orders, the temporary injunction same is in force the suit itself is not maintainable, the plaintiff is not entitled to any interim relief in the suit, therefore, the ex-parte temporary injunction granted by this hon'ble court please to vacate by rejecting the I.A.U/O 39 rule 1 and 2 of CPC. The plaintiff is not made out prima-facie case to grant the temporary injunction. If the temporary injunction will be extended the defendant will be put to irreparable loss on the other hand. The plaintiff will not cause of any prejudice the same by vacating the temporary injunction, hence it is just and proper the hon'ble court please to vacating the temporary injunction by rejecting the I.A. U/O 39 Rule 1 and 2 of CPC, in the interest of justice.

6. The defendant filed a objection to I.A.No.2 that, the defendant has not at all submitted his defense to the case of plaintiffs in his petition without which he cannot filed petition for the injunction order, his petition itself is not at all maintainable hence it is deserves to be dismissed. It is

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submitted that the defendant is never claiming to be the owner in possession of the suit land nor there is any record to prove that he is in possession of the suit land. That, the suit land is owned and possessed by the plaintiff by virtue of the registered gift deed executed by their maternal grand mother Hamida Bee admittedly Hamida Bee was exclusive owner and possessor of the suit property. The said Hamida Bee allotted 03 guntas in Sy.No.447/4, towards defendants here by registered partition deed and said 03 guntas is situated on the northern side of the suit land and he has no landed property abutting the road which is situated on the south of suit property as shown in the plaint sketch. That the plaintiff have made out the prima-facie case and balance of convenience is in their favour moreover the defendant has not at all made out any ground for vacating the injunction order.

7. On considering I.A No.1 & 2, affidavit and objections, the points that would arise for my consideration are as under:

POINTS

1. Whether the plaintiff/applicant has made out prima-facie case for

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grant of temporary injunction?

2. Whether the balance of convenience is lies in favour of plaintiff/applicant?

3. Whether the irreparable loss and injury would be caused to the plaintiff/applicant if the temporary injunction is refused?

4. Whether the defendant has made out grounds to vacate the temporary injunction order?

5. What order?

8. 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 : In the **Negative.**

Point No.5 : As per final order for the following:

REASONS

9. **Point No.1 to 3:-** Since these points are inter-linked and interconnected and finding on one point will have bearing on the other therefore all theses points are taken

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up together for common discussion to avoid repetition of facts.

10. 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

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temporary injunction loss of hardship would be caused to which side.

11. Now keeping in mind the aforesaid aspects let us consider the present application in hand. Plaintiff has filed this suit for declaration and perpetual injunction against the defendant in respect of suit schedule property. As per the pleadings and materials available on record the grand-mother of plaintiff by name Hamida Bee is the owner of land bearing Sy.No.447/4 measuring 02 acre 01 gunta, out of 03 guntas defendant name appear through vide registered partition deed 250/2023-24, which is situated at Northern side of the suit schedule property. Plaintiff further contended that, her grand-mother has executed gift-deed document bearing No.5220/2023-24, and as per gift-deed plaintiffs became a owner and lawful possession over the suit schedule property and defendant is trying to encroach the suit property. Per contra, defendant take a contention that, the said Hamida Bee her family legal necessity she sold the 14 guntas in land bearing Sy.No.447/4 for valid consideration and the possession also hand over to the defendant. The defendant has made a non-commercial land out of 03 guntas land bearing Sy.No.447/4. The said Hamida bee without having

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rights she execute the registered gift-deed in favour of plaintiff in respect of suit schedule property.

12. Perused the records produced by the plaintiff and defendant. Plaintiff produced the RTC of land bearing Sy.No.447/4 measuring 01 acre 25 guntas, which is standing in the name of plaintiffs. Plaintiffs produced the RTC's of land bearing Sy.No.447/6 measuring 03 guntas which is standing in the name of defendant. Plaintiff further produced the RTC's of land bearing Sy.No.447/7 measuring 11 guntas, which is standing in the name of Hamida bee W/o Bawasab Mulla. Plaintiff produced the registered partition-deed which disclose that, the defendant and the said Hamida bee have divide the land bearing Sy.No.447/6. The 03 guntas allotted to the defendants and 14 guntas allotted to the Hamida bee. Plaintiff registered gift-deed document bearing No.5220/2023-24. Which shows that, the said Hamida bee has executed the gift-deed in respect of land bearing Sy.No.447/4, measuring 01 acre 27 guntas in favour of plaintiffs. Defendant produced the RTC of land bearing Sy.No.447/6 measuring 03 guntas. Plaintiff further produced the RTC's of land bearing Sy.No.447/6

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measuring 14 guntas which is standing in the name of defendant for the year 2022-23. Defendant produced the order of District Collector. Defendant further produced the family-tree. Defendant further produced the registered sale document bearing No.6756 dated 16-11-2022. The said document disclose that, one Mohammed Yusuf and Hamida bee has executed the registered sale-deed in respect of land bearing Sy.No.447/4 measuring 02 acre 01 gunta out of 14 guntas, the registered-deed executed for consideration amount of Rs.1,00,000/-.

13. On considering the document produced by the both the parties this court is opinion that, the ownership of defendant in respect of 14 guntas is not disputed. This application filed by the defendant with an intention to not to encroach the suit schedule property. The defendant has disputed the relation with him to the said Hamida bee. The plaintiff and defendants both are produced the title documents. The plaintiff filed the suit for declaration and injunction in respect of land bearing Sy.No.447/4 measuring 01 acre 27 guntas. The registered partition deed document bearing No.250/2023-24 itself disclose that, the defendant and the Hamida bee W/o Bavasab

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Mulla they partitioned the land bearing Sy.No.447/6, measuring 14 guntas, out of 03 guntas, is allotted to the defendant and remaining 11 guntas allotted to the Hamida bee W/o Bavasab Mulla. The documents produced by the plaintiff itself shows that, defendant is owner of only 03 guntas in land bearing Sy.No.447/6. Hence, at this stage, plaintiff have made out a prima-facie case. The contention taken by the defendant it required full-fledged trial. But at this stage it is necessary to observe here that court cannot conduct a mini trail at the time of adjudicating the applications of this nature. The ownership and possession and right of the parties to decide it required full pledge trial. But at this stage court cannot express its opinion regarding merits of the case at this interlocutory stage. While dealing with applications of this nature the only function of the court is to see does the applicant has made out a prima-facie case and balance of convenience lies in whose favour and in case of refusal of granting temporary injunction loss or hardship would be caused to which side.

14. Plaintiff sought a relief not to encroach the suit schedule property. The plaintiff produced the title

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documents and prima-facie materials, to show his ownership and possession. If injunction is granted then no harm will cause to the defendant. But if injunction is not granted it will cause heavy damage to the plaintiff. Therefore, this court is opinion that, the irreparable loss and balance of convenience lies in favour of the plaintiff. Hence, I answer Point No.1 to 3 in the Affirmative.

15. **Point No.4**:- The defendants have 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:

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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.

16. The provisions mentioned in the order 39 Rule 4 of 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. The defendant in the affidavit accompanied with I.A.No.II has not mentioned any such circumstances which insist change in the circumstances. When provisions of the Order 39 Rule 4 makes it clear, an order cannot be discharged or varied or set aside except change in circumstances and whether the court satisfies with the order has caused undue hardship to the aggrieved party.

17. The plaintiff produced the relevant title documents. The objection raised by the in interim application it is not

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a proper ground for vacant the T.I. order. This suit is initial stage, the rights of parties decided only after after giving opportunity to lead evidence of both the parties. At this stage, this court is opinion that, defendant is not a made out a sufficient ground to vacant the T.I. Order. Hence, I answer the Point No.4 in the '**Negative**'.

18. **Point No.5:-** In view of my findings on Points No.1 to 4, 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 allowed.

I.A.No.2 filed by the defendants U/O.39 Rule 4 of C.P.C. is hereby dismissed.

The defendant is hereby restrained by an order of temporary injunction from encroaching in to the suit schedule property, pending disposal of the suit.

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

(Dictated to the Stenographer typed by him revised and

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corrected by me and then pronounced by me in the open court on this 06th day of February-2026)

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

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