

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
SEDAM

PRESENT:

Sri SAGAR GURUGOUDA PATIL
B.A., LL.B(Spl.)
Senior Civil Judge & JMFC, Sedam

Dated: 14-08-2025.

OS No.49/2024

Plaintiff/s :
Md. Gouse Khan & Another.
(Smt/Sri S.S.K. Advocate)

VS

Defendant/s :
Md. Khan
(Smt/Sri.S.B.M.Advocate)

RANK IN IA 3

Md. Khan : Applicant/s/Deft.

VS

Md.Gouse Khan & Another : Opponent/s/Pltfs.

i.	Provision under which the application is filed	U/O 39 Rule 1 & 2 of CPC
ii	Relief sought for	Suit for declaration and injunction
iii	The date on which the application is	27-06-2025

	filed	
iv	Number of application	One
v	The date on which the objections are filed by different opponents	07-07-2025
vi	The date on which the orders were passed on the said application	14-08-2025

ORDERS ON IA 3
Under Order 39 Rule 1 & 2 of CPC

The defendant/applicant has filed this application under Order 39 Rule 1 & 2 of CPC and sought to restrain the plaintiffs by way of temporary injunction from interfering into defendant's peaceful possession and enjoyment of suit land measuring 04 acres 32 tunas in Sy.No.67/1 and land measuring 01 acre 32 guntas Sy.No.71/1 of Kodtal village Tq: Sedam till disposal of the suit.

2) The defendant has sworn to an affidavit in support of IA and stated that he is owner and in possession of land measuring 04 acres 32 guntas in Sy.No.67/1 and land measuring 01 acre 32 guntas in Sy.No.71/1 and he acquired the said properties through registered sale deed dated: 4-6-1976. Accordingly, his name was mutated in revenue records. Since then he is cultivating both the lands. The plaintiffs are brothers of the defendant and they were cultivating the suit properties for 3-4 years on batai basis and taking advantage of absence of defendant got entered their

names in the revenue records of the said properties. Without any mutation they got entered their names. The defendant challenged the same before the Asst. Commissioner Sedam and the appeal was allowed the name of defendant was restored.

3) He has further stated that under the Muslim law there is no concept of joint possession. The plaintiffs under the guise of this suit are trying to interfere with defendants peaceful possession and enjoyment of the suit property. Hence, prays to allow the IA.

4) The plaintiffs have filed objections to IA and contended that the application is not maintainable either in law or on facts. The defendant is not in possession of the suit property since 1988. Since then the plaintiffs are cultivating the suit properties. The plaintiffs and defendants are brothers. The father of the plaintiffs and defendant purchased the said properties in the name of the defendant in the year 1976-77 when defendant was 14 years old. The father of the plaintiffs and defendant orally got divided the suit properties and non suited properties and in the said partition the suit properties were allotted to the share of the plaintiffs and the non suited properties i.e., land in Sy.No.66 and one flour mill was allotted to the share of the defendant. Accordingly mutation was effected in the year 1988 since then the

plaintiffs are enjoying the suit properties. The AC Sedam without considering the case of the plaintiffs has condoned the delay and allowed appeal filed by the defendant on 29.02.2024. The revenue entries standing in the name of defendant are illegal. Hence, prays to dismiss the IA.

5) On the basis of the above facts the following points arise for my consideration:

- 1) Whether the defendant/applicant has made out prima facie case?
- 2) Whether the balance of convenience lies in favour of the defendant/applicant?
- 3) What order?

6) Perused the records. Heard arguments.

7) My answer to the above points are as under:

- 1) IN THE NEGATIVE
- 2) IN THE NEGATIVE
- 3) AS PER THE FINAL ORDER
for the following:

REASONS

8) **POINT No.1 & 2:** Since both these points are interconnected the same are taken together for common discussion.

9) Before touching the factual matrix of the case this court find it just and proper to consider the legal issue i.e., whether the defendant in a suit can maintain an application U/O 39 Rule 1 and 2 of CPC seeking to restrain the plaintiffs from interfering with his possession over the suit property. In this regard it is worth to refer the decision of the High Court of Karnataka in the case of Smt.Shakuntamma and others V/s Kantamma and others reported in AIR 2015 Kant.13, wherein Hon'ble High Court held as under:

A careful reading of the aforesaid provisions discloses that the court is empowered to grant three types of orders under three different and distinct situations. Firstly when the property is in dispute is in danger of being wasted, damaged or alienated or wrongfully sold in execution of a decree, temporary injunction to prevent the same can be granted. The second situation arises when the disputed property is under the threat of being removed or disposed off by the defendant with the intention of defrauding his creditors who include the plaintiff also. The third situation is when the defendant threatens to dispossess the plaintiff or otherwise causes injury to the plaintiff in respect of disputed property.

Clause (a) of Order XXXIX rule 1 of CPC provides that where any suit it is proved by affidavit

or otherwise, that any property in dispute in a suit is in danger or being wasted, damaged or alienated "by any party" to the suit, or wrongfully sold in execution of a decree, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property. The reason is obvious. After institution of the suit, the plaintiff may act detrimental to the interest of the defendant in the subject matter of the suit by allowing it to be wasted or damaged or alienated and in such an event, the defendant can take recourse to making application U/O XXXIX Rule 1(a) CPC.

What Clause (b) of Order XXXIx Rule 1 of CPC envisages is that a plaintiff can seek temporary injunction when there is a threat by the defendant to dispose of the property with a view to render the decree that may be passed in the suit unless or infructuous. Similarly, under Clause (c) of Order XXXIx rule 1 Cpc whenever the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may restrain dispossession of the plaintiff until the disposal of the suit or until further

orders.

The Legislature has consciously used the words “any party to the suit” in Rule 1(a) of Order XXXIX CPC but the same is conspicuously missing in Clauses (b) and (c). However, the words “the defendant threatens” appearing in Clauses (b) and (c) of rule 1 of Order XXXIX Cpc make it clear that the court can grant an order of temporary injunction only in favour of the plaintiff because the Legislature has expressly not included the words “plaintiff threatens” and also not used the words “any party to the suit” in these clauses.

10) In view of the above principle of law laid down by the Hon'ble High Court the defendant cannot maintain an application seeking temporary injunction against the plaintiffs restraining the plaintiffs from interfering with possession of the defendant. Therefore, it can be held that the present application filed by the defendant is not maintainable. When once the application itself is not maintainable the question of establishing prima facie case does not arise. Therefore, the balance of convenience do not lie in favour of the defendant. Hence, I answer points 1 and 2 in the Negative.

11) **POINT No.3:** For the foregoing reasons, the following:

ORDER

The application i.e., IA No.3 filed by the defendant under Order 39 Rule 1 & 2 of CPC is hereby dismissed.

(Dictated to the Stenographer directly on computer, the same revised, corrected and pronounced in the open court on this the 14th day of August 2025)

(SAGAR GURUGOUDA PATIL)
Senior Civil Judge & JMFC, Sedam.