



**IN THE COURT OF THE HONOURABLE ADDITIONAL CIVIL
JUDGE & JMFC, AT KRISHNARAJANAGAR.**

PRESENT: SMT.ASRINA.,B.A, LLB.
ADDL. CIVIL JUDGE AND JMFC, KRISHNARAJANAGAR.

DATED THIS 25TH DAY OF APRIL, 2025
O.S.No.226/2024

BETWEEN

PLAINTIFF	Shri.Lokesh D.N, S/o Nagaraju D.K Aged 37 years. GPA holder of Shri.Jagadish R/at:Dammanahalli village, Chunchanakatte Hobli, Saligrama Taluk. (By Shri.K.B.G. Advocate)
DEFENDANTS	1. Shri.Basavaraju D.K S/o Late.Karigowda, Aged 56 years. 2. Shri.Puttaraju D.K S/o Late Karigowda, Aged 60 years. R/at:Both are Dammanahalli village, Chunchanakatte Hobli, Saligrama Taluk. 3. Bhagyamma, W/o Late.Jayadeva, S/o Ningegowda,

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	Aged 50 years, R/at: Karthalu Village, Chunchanakatte Hobli, Saligrama Taluk, Mysuru District. (By Sri.P.N Adv)
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IA NO.I & II**BETWEEN**

APPLICANT/ PLAINTIFF	Shri.Jagadish Represented by his GPA holder
OPPONENTS/ DEFENDANTS	Shri.Basavaraju D.K and others

Provision of law	Order 39 rule 1 and 2 of CPC.
Relief sought in the applications	For a temporary injunction order to restrain the defendants from causing interference to the peaceful possession and enjoyment of the plaintiff over the suit property till the disposal of the above suit.
Date of filing the IA No.1	16/04/2024
Date of filing the IA No.2	28/02/2025
Date of filing the objection to IA No.1	24/07/2024

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Date of filing the objection to IA No.2	28/03/2025
Date of order	25/04/2025.

(SMT. ASRINA)
ADDL. CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR.

COMMON ORDERS ON IA.NO.1 & 2 FILED BY THE PLAINTIFF
UNDER ORDER 39 RULE 1 AND 2 OF CPC

Plaintiff has filed the present suit as against the defendants for the relief of perpetual injunction. Along with the suit the plaintiff had filed IA.No.1 under order 39 rule 1 and 2 of CPC praying to restrain the defendants from interfering with the peaceful possession and enjoyment of the plaintiff over the suit property till the disposal of the above suit. Subsequently when the case was at the stage of plaintiff side evidence, the plaintiff has filed IA.No.2 under Order 39 Rule 1 and 2 of CPC with very same prayer.

2. In the affidavits accompanying the IA.No.1 and 2, the GPA holder of the plaintiff has inter-alia reiterated the plaint averments. It is averred that the plaintiff is a owner and possessor of the suit property. It is averred that the plaintiff has acquired the

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suit property under the registered partition deed dated 08/12/2022. It is averred that ever since from the date of acquiring the suit property, the plaintiff is in peaceful possession and enjoyment of the suit property as its absolute owner. It is averred that the defendant No.1 is a real brother of the plaintiff. It is averred that ever since from the date of acquiring the suit property under the aforesaid partition deed, the plaintiff is in peaceful possession and enjoyment of the suit property as its absolute owner without any interference from any one. It is the grievance of the plaintiff that without having any right, title and interest over the suit property, the defendants are causing illegal interference to the peaceful possession and enjoyment of the plaintiff over the suit property. It is averred that though a panchaythi was held in the presence of the elders of the village and though the elders of the village have advised the defendants not to cause any illegal interference to the peaceful possession of the plaintiff over the suit property, but the defendants did not mend their ways. Rather, the defendants have continued their illegal acts of causing interference to the peaceful possession of the plaintiff over the suit property. Therefore, ultimately on 03/04/2024 the plaintiff has submitted a complaint as against the defendants before the jurisdictional police. It is averred that in pursuance to the said complaint, the police has issued an

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endorsement stating that since the dispute involved is civil in nature, the police have directed the plaintiff to work out his remedy before the court of law. It is the grievance of the plaintiff that in spite of it the defendants did not stop their illegal acts of causing interference to the peaceful possession of the plaintiff over the suit property. Therefore the plaintiff has averred that the acts of the defendants is highly illegal and high handed and the same is against the law. Therefore, the illegal acts of the defendants has to be checked by this court by granting the reliefs as sought for in the instant application. If not the plaintiff will suffer irreparable loss which cannot be compensated in terms of money. Therefore, having no other efficacious remedy, the plaintiff was constrained to file the above suit through his GPA holder. Apprehending the possibilities of further interference on the part of the defendants over the peaceful possession of the suit property, the plaintiff has filed the present suit and by filing the instant application the plaintiff has prayed to restrain the defendants from causing any sorts of interference to his peaceful possession and enjoyment over the suit property until the disposal of this suit. The plaintiff has averred that he has made out a prima facie case and the balance of convenience also lies in his favour. If the order of temporary injunction is not granted to the plaintiff as sought for in the instant application, then the plaintiff will be put to

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irreparable loss and injury which cannot be compensated in terms of money. Hence, on the above grounds the plaintiff has prayed to allow the application.

3. In pursuance to the summons issued by this court, the defendants have appeared before this court through their counsel. The defendants have filed their objections to IA No.1 and 2 by re-iterating the contention taken up by them in their written statement.

4. The defendants have seriously opposed the IA.No.1 and 2 by denying the claim of the plaintiff. The defendants have denied the possession of the plaintiff over the suit property and thereby the defendants have vested the possession of the suit property in themselves. The allegation of interference made against them by the plaintiff was also denied by the defendants. By denying rest of the plaint as well as application averments the defendants have categorically contended that the defendant No.1 has constructed his house in the portion of the property which had fallen to his share and as such the defendants have contended that the plaintiff has no right over the said house property of the defendant No.1. It is the contention of the defendants that for the purpose of his education and also to get settled in abroad, the plaintiff has borrowed a loan of Rs.9,00,000/- from the defendant No.1.

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Therefore, in order to repay the said loan amount to the defendant No.1 the plaintiff herein had executed the GPA dated 21/06/2001 in favour of the defendant No.1 in respect of the suit property. Therefore, the defendants have contended that on the basis of said GPA dated 21/06/2001 executed by the plaintiff in favour of the defendant No.1, the defendant No.1 along with other defendants are in actual possession of the suit property. Therefore, the defendants have contended that it is them who are in possession of the suit property. The defendants have contended that the aforesaid GPA dated 21/06/2001 executed by the plaintiff in favour of the defendant No.1 is not yet canceled and the is in force till today. It is the contention of the defendants that when the defendant No.1 tried to put up cattle shed in his vacant land situated adjacent to his house, at that point of time the GPA holder of the plaintiff namely Mr.Lokesh had caused obstruction of the construction of the cattle shed. It is only thereafter the plaintiff has filed the present false suit. Therefore the defendants have contended that with an malafide intention of obtaining the ex-parte injunction order, the plaintiff has filed the present false suit by suppressing all the above true facts. The defendants have contended that if at all the order of ex-parte temporary injunction is granted in favour of the plaintiff, then the defendants will suffer irreparable loss which cannot be compensated in terms of money.

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Therefore, with the above contentions the defendants have sought for dismissal of the applications.

5. Heard arguments from both the side.

6. Perused the records. After going through the application along with affidavit, objection statement and the relevant documents placed on record, the following points arises for my consideration:

Point No.1: Whether the plaintiff has made out a prima facie case against the defendants?

Point No.2: Whether the balance of convenience lies in favour of the plaintiff?

Point No.3: If the order of temporary Injunction is not granted in favour of the plaintiff, whether the plaintiff will suffer irreparable injury or hardship which cannot be compensated?

Point No.4: What order?

7. My answers to the above points are as hereunder:

Point No.1 : In the Affirmative.

Point No.2 : In the Affirmative.

Point No.3 : In the Affirmative.

Point No.4 : As per the final orders for the following:

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REASONS

8. POINT NO.1: Plaintiff has filed the present suit as against the defendants for the relief of perpetual injunction. By filing the instant application the plaintiff has prayed to restrain the defendants from causing any sorts of interference to the peaceful possession of the plaintiff over the suit property until the final adjudication of the above suit.

9. In an application filed under Order 39 Rule 1 and 2 of CPC the plaintiff must show that he has a prima facie case. “*Prima facie case*” means that the plaintiff must prove to the satisfaction of the court that there is a case to go for a trial and there is a arguable case and that the plaintiff also must prove to the satisfaction of the court the probability of the plaintiff obtaining the reliefs at the conclusion of the trial.

10. In the case on hand, it is the contention of the plaintiff that he is a owner and possessor of the suit property. Along with the plaint the plaintiff has produced the original GPA dated 15/06/2022 executed by the plaintiff namely Mr.Jagadish D.K. S/o Late.Karigowda in favour of Mr.D.N.Lokesh S/o Mr.D.K.Nagaraju. At para No.2 of page No.2 of the said GPA it is stated as under:

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I am intended to file original suit against my brother by name Sri.Basavaraju D.K. S/o Late. Karigowda in respect of land bearing Sy.No. 42/3, measuring 1 acre, Sy.No.42/11, measuring 17 guntas, Sy.No.42/13, measuring 6 guntas and Sy.No.43/1, measuring 9 guntas, situated at Dammanahalli Village, Chunchanakatte Hobli, K. R. Nagar Taluk, Mysuru District.

11. Hence, the above aspect prima-facie establishes that for the purpose of filing of this suit in respect of the present suit property as against the defendant No.1, the plaintiff herein has executed the GPA in favour of Mr.D.N.Lokesh S/o Mr.D.K.Nagaraju authorizing him to file this suit.

12. Further, the plaintiff has also produced the registered partition deed dated 08/12/2022 registered as a document No.KRN-1-04287/2022-23 in respect of the suit property. The present suit property is mentioned at item No.2 of 'B' schedule of the said partition deed and the same prima-facie discloses that the plaintiff has acquired the suit property under the aforesaid partition deed. Further, the aforesaid partition deed dated 08/12/2022 also prima-facie discloses that even in the said partition deed also the plaintiff was represented by his very same GPA holder namely Mr.D.N.Lokesh S/o Mr.D.K.Nagaraju, who has

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filed this suit on behalf of him.

13. Further, along with the plaint the plaintiff has also produced the RTC of the suit property for the year 2023-24 as well as the Patta and receipt book in respect of the suit property and the same prima-facie discloses the name of the plaintiff as a owner and possessor of the suit property.

14. Further, the plaintiff has also produced the tax paid receipt and the same prima-facie establishes that the plaintiff is also paying necessary tax in respect of the suit property.

15. The documents produced by the plaintiff along with the plaint prima-facie depicts that the plaintiff has some semblance of right over the suit property. When the plaintiff has a semblance of right over the suit property, the plaintiff is very much entitled to protect the suit property by filing a suit. Therefore I conclude that the plaintiff has made out a prima facie case to go for a trial. Since the materials placed on record prima facie shows that the plaintiff has semblance of right over the suit property, after the trial, if at all the plaintiff succeeds in establishing his case, then the plaintiff will surely obtain the reliefs at the conclusion of the trial. Whether the defendants have caused illegal interference to the peaceful possession of the plaintiff over the suit property or not, the same

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has to be decided by holding a full fledged trial. Hence the present *lis* needs a complete trial. But the trial in this case is not yet commenced. There is a arguable case in the present *lis*. Therefore I conclude that the plaintiff has made out a *prima facie* case to go for trial and that there is a arguable case. Thereby I conclude that the plaintiff has made out a *prima facie* case as against the defendants. **Accordingly, Point No.1 is answered in the Affirmative.**

16. POINTS NO.2 & 3: Since the discussion on these two points are interconnected, in order to avoid repetition, the above points are taken up together for a common discussion.

17. In an application filed under Order 39 Rule 1 and 2 of CPC, apart from proving the *prima facie* case, the plaintiff also must invariably prove that the balance of convenience lies in his favour and so also it is incumbent on the part of the plaintiff to prove that if an order of temporary injunction is not granted then the plaintiff will suffer irreparable loss and injury.

18. The present suit is at the very initial stage and therefore, in the absence of the evidence, the present application has to be decided based on the averments made by the parties to the suit in their respective pleadings and the material placed before the

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court. In the case on hand, the plaintiff has claimed himself to be the owner in possession of the suit property. As held above, the registered partition deed dated 08/12/2022 in respect of the suit property prima-facie discloses that the plaintiff has acquired the suit property under the aforesaid registered partition deed. Further, the RTC's of the suit property for the year 2023-24 as well as the Patta and receipt book of the suit property which are produced along with the plaint also prima-facie discloses the name of the plaintiff as a owner and possessor of the suit property. The documents produced by the plaintiff along with the plaint prima-facie depicts that the plaintiff has some semblance of right over the suit property.

19. On the other hand, the defendants have contested the suit by contending that the defendant No.1 being a GPA holder of the plaintiff, he along with other defendants is in possession of the suit property. It is the contention of the defendant No.1 that on the basis of the GPA dated 21/06/2001 executed by the plaintiff in respect of the suit property, he is in actual possession and enjoyment of the suit property along with other defendants. During the course of submitting his arugments on present applications, learned counsel for the defendants has produced the copy of the GPA dated 21/06/2001. Execution of said the GPA dated 21/06/2001 by the plaintiff in favour of the defendant No.1

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is not in dispute. Be that as it may. The defendants are claiming to be in possession of the suit property on the basis of the aforesaid GPA dated 21/06/2001. I have carefully gone through the aforesaid GPA. The same prima-facie depicts that the said the GPA dated 21/06/2001 was executed by the plaintiff only in respect of his half share in 1 acre 17 guntas of land in Sy.No.42/1 and 9 guntas of land in Sy.No.43 of Dammanahalli village. The present suit property is not the subject matter of aforesaid GPA dated 21/06/2001. Hence, the same prima-facie establishes that the plaintiff herein has not executed the aforesaid GPA dated 21/06/2001 in respect of the present suit property. Hence, on this count alone the claim of the defendants to be in possession of the suit property is liable to be ignored.

20. Furthermore, the defendant No.1 is claiming to be in possession of the suit property as a GPA holder of the plaintiff. As held above, the GPA dated 21/06/2001 relied on by the defendants itself prima-facie establishes that the plaintiff herein has not executed the aforesaid GPA dated 21/06/2001 in respect of the present suit property. Furthermore, even if it is assumed that the plaintiff herein had executed the GPA dated 21/06/2001 in favour of the defendant No.1 in respect of the present suit property, he cannot claim his exclusive possession over the suit property and rather he will only be a agent. The possession of

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agent will never confer any possessory right unto him over the property. Hence, even on this count also the claim of the defendants to be in possession of the suit property is liable to be ignored.

21. Adding further, on 05/04/2025 learned counsel for the plaintiff had submitted the news paper publication dated 30/03/2022 published in Andolana Daily news paper for having canceled the GPA dated 21/06/2001 which was given in favour of the defendant No.1. Hence, even the said paper publications also establishes that almost 3 years ago itself the plaintiff herein has canceled the GPA dated 21/06/2001. Therefore, when the GPA dated 21/06/2001 relied on by the defendants itself is canceled by the plaintiff, the claim of the defendants to be in possession of the suit property on the basis of the said GPA dated 21/06/2001 is un-acceptable and the same is liable to be ignored.

22. As held above, the materials placed before the court *prima facie* establishes the possession of the plaintiff over the suit property. Along with the plaint the plaintiff has also produced the acknowledgment issued by the jurisdictional police for having received the complaint as against the defendants. The same *prima-facie* establishes the invasion and interference on the part of the defendants.

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23. The materials placed on record *prima facie* depicts that the plaintiff has a semblance of right over the suit property. Hence, preventing the defendants from interfering in the peaceful possession of the plaintiff over the suit property will not cause any hardship to them. Since the materials placed on record *prima facie* discloses that the plaintiff has a semblance of right over the suit property, the plaintiff is entitled to prevent the defendants from causing any sorts of obstruction to his peaceful possession over the suit property. As apprehended by the plaintiff, if the defendants causes any illegal interference to his peaceful possession over the suit property, the plaintiff may not be able to conveniently and peacefully possess and enjoy the suit property. The acknowledgment issued by the police *prima-facie* establishes the factum of interference on the part of the defendants. Hence, such being the case future invasion on the part of the defendants to the peaceful possession of the plaintiff over the suit property cannot be ruled out. Accordingly I hold that the balance of convenience and element of hardship tilts more in favour of the plaintiff. Hence, I conclude that the balance of convenience lies in favour of the plaintiff in granting the order of temporary injunction. If not the plaintiff will suffer hardship. **Accordingly points No.2 and 3 are answered in the Affirmative.**

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24. POINT NO.4: In view of my foregoing discussions on points No.1 to 3, I proceed to pass the following:

ORDER

IA.No.1 & 2 filed by the plaintiff Under Order 39 Rule 1 and 2 of CPC are hereby allowed.

By an order of temporary injunction, the defendants, their men, servants, agents, anybody claiming through or under them are hereby restrained from interfering in the peaceful possession and enjoyment of the plaintiff over the suit property in any manner till the disposal of the above suit.

It is further made it clear that the observations made in this order is only restricted to decide the IA.No.1 & 2 and the same will not come in the way during the final disposal of the above suit.

Considering the facts and circumstances of the case there is no order as to costs.

(Dictated to the Stenographer, typed by her, and the transcript revised and corrected by me and then pronounced in the open court on this **25th day of April-2025**)

(SMT. ASRINA)
ADDL. CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR.