



**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 12TH DAY OF FEBRUARY, 2025
O.S.No.264/2024

PLAINTIFF	Shri.Nanjundegowda, S/o Devegowda, Aged:51 years, R/at: Pashupathi Koppalu Village, Saligrama Hobli & Taluk, Mysore District. (By Sri.C.L.M. Advocate)
DEFENDANTS	1. Smt.Vishalamma, W/o Lokesh, Aged 53 years. R/at: Subbegowdana Koppalu Village, Shigavalu Post, Saligrama Taluk, Mysuru District. 2. Smt.Javaramma, W/o Late.Javaregowda, Aged 72 years. 3. Shri. Kempegowda, S/o Late.Javaregowda, Aged 50 years.

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4. Shri.Yogesh,
S/o Late.Javaregowda,
Aged 48 years.

Defendants No.2 to 4 are R/at:
Pashupathi Koppalu Village,
Saligrama Hobli & Taluk,
Mysore District.

5. Smt.Manjula,
W/o Ravi,
Aged 46 years,
R/at: Neelangaala Village,
Ravanduru Post,
Bettadapura Hobli,
Periyapatna Taluk,
Mysuru District.

6. Smt.Sheela,
W/o Mahesha,
Aged 44 years,
R/at: Chikkanayakana Hosally Village,
Manajoor Post,
Shirangala Hobli,
Somavarapet Taluk,
Kodagu District.

(Defendants No.1, 5, 6 By Shri.K.V.M.Adv)

(Defendants No.2 to 4 are placed Ex-parte)

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**IA NO.1****BETWEEN**

APPLICANT/ PLAINTIFF	Shri.Nanjundegowda,
OPPONENTS/ DEFENDANTS	Smt.Vishalamma and others.

Provision of law	Order 39 rule 1 and 2 of CPC.
Relief sought in the application	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 application	29/05/2024.
Date of filing the objection to the application	23/09/2024.
Date of order	12/02/2025.

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

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**ORDERS ON IA.NO.1 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 has also 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.

2. In the affidavit accompanying the IA.No.1, 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 purchased the suit property from one Mr.Javaregowda and defendants No.2 to 4 herein under the registered sale deed dated 29/06/2013. 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 by regularly paying the tax to the concerned authority. It is averred that the defendant No.1 had filed a suit for partition in respect of the present suit property along with other non suit properties before the Hon'ble Senior Civil Judge Court, K.R.Nagar in O.S.No.42/2021. It is averred that on 14/02/2024 the said suit in O.S.No.42/2021 was decreed. It is averred that as against the said judgment and decree passed in O.S.No.42/2021,

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the present plaintiff has preferred an appeal in R.A.No.5014/2024 before the Hon'ble 8th Additional District and Sessions Judge, Mysore, sitting at Hunsur. It is averred that the said appeal in R.A.No.5014/2024 is pending for adjudication. It is averred that in R.A.No.5014/2024 the Hon'ble appellate court has stayed the operation of judgment and decree passed in O.S.No.42/2021. It is averred that granting of stay order by the Hon'ble appellate court is well within the knowledge of the defendants. In spite of it on 24/05/2023 the defendants have illegally trespassed into the suit property and destroyed the tobacco crops grown in the suit property. Though the plaintiff has lodged the complaint before the police, the police did not come to the protection of the plaintiff. It is the grievance of the plaintiff that by using the money and muscle power, the defendants are trying to interfere with 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. Apprehending the possibilities of further interference

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on the part of the defendants over the peaceful possession of the suit property, the plaintiff has filed the instant application praying 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 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 No.1, 5 and 6 have appeared before this court through their counsel. The defendants No.1, 5 and 6 have filed their written statement and by filing the memo the defendants No.1, 5 and 6 have adopted their written statement as a counter to IA.No.1. In spite of service of summons, the defendants No.2 to 4 did not appear before this court. Hence the defendants No.2 to 4 were placed Ex-parte.

4. The defendants No.1, 5 and 6 have seriously opposed the IA.No.1 by denying the claim of the plaintiff. The allegation of interference made against them by the plaintiff was also denied by

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the defendants No.1, 5 and 6. Decreeing of suit in O.S.No.42/2021 and staying of operation of judgment and decree dated 14/02/2024 passed in O.S.No.42/2021 by the Honb'le appellate court in R.A.No.5014/2024 was admitted by the above defendants. By denying rest of the plaint as well as application averments the above defendants have categorically contended that without the knowledge and behind the back of the defendant No.1, the defendants No.2 to 4 along with Mr.Javaregowda had sold the suit property to the plaintiff herein. Therefore, since the said sale deed was not binding on the share of above defendants, the defendant No.1 herein had filed partition suit in respect of the present suit property along with other non suit properties as against the present plaintiff and the defendants No.2 to 6 herein. It is contended that the said suit in O.S.No.42/2021 was came to be decreed. It is contended that as against the said judgment and decree dated 14/02/2024, the plaintiff herein has preferred an regular appeal in R.A.No.5014/2024 before the Hon'ble 8th Additional District and Sessions Judge, Mysuru, sitting at Hunsur and the same is pending for adjudication. It is contended that inspite of pendency of the said appeal, the plaintiff herein has filed the present false suit with a malafide intention making of wrongful gain. Therefore, the above defendants have contended that the present suit itself is not maintainable. The above defendants have

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further contended that since the suit itself is not maintainable no interim relief of temporary injunction can be granted in favour of the plaintiff. Therefore the above 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 above 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. Therefore, with the above contentions the defendants No.1, 5 and 6 have sought for dismissal of the application.

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

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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 Negative.

Point No.2 : In the Negative.

Point No.3 : In the Negative.

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

REASONS

8. POINTS NO.1 TO 3: Since the discussion on these points are inter-connected, in order to avoid repetition, the above points are taken up together for a common discussion.

9. 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.

10. It is undisputed fact that the defendant No.1 herein had filed the partition suit in O.S.No.42/2021 as against the present plaintiff and defendants No.2 to 6 in respect of the present suit

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property. It is also not in dispute that the said suit in O.S.No.42/2021 came to be decreed on 14/02/2024 by upholding the share of the present defendant No.1 in the suit property. So also it is not in dispute that as against the said judgment and decree passed in O.S.No.42/2021, the plaintiff herein has preferred an appeal in R.A.No.5014/2024 before the Hon'ble 8th Additional District and Sessions Judge, Mysore, sitting at Hunsur. So also it is undisputed fact that by an order dated 14/03/2024, the Hon'ble appellate court has stayed the execution and operation of the judgment and decree passed in O.S.No.42/2021. Hence, from the above it becomes very clear that the dispute in respect of the present suit property is already seized before the Hon'ble appellate court in R.A.No.5014/2024.

11. The rights of the parties to this suit over the present suit property is pending for consideration in R.A.No.5014/2024. Therefore, since the present suit property is a subject matter in R.A.No.5014/2024 and since the rights of the parties to this suit over the present suit property is pending for consideration in R.A.No.5014/2024, it is not proper for this court to express any opinion regarding the rights of the parties over the suit property in this suit including the factum of possession. During the course of hearing on present application, learned counsel for the plaintiff has submitted the copy of deposition of the present defendant

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No.1 given by her in O.S.No.42/2021 to support his arguments that the plaintiff is in possession of the suit property. But, the correctness and truthfulness of the evidence led in O.S.No.42/2021 is pending for examination in R.A.No.5014/2024. Moreover, since the present suit property is *Res-subjudiced* before the Hon'ble appellate court, recourse is also available to the plaintiff to obtain the relief sought in the present application from the Hon'ble appellate court in R.A.No.5014/2024. The plaintiff can also file the application of present nature before the Hon'ble appellate court in R.A.No.5014/2024, before whom the dispute is pending for consideration in respect of the present suit property. Hence it was not necessary for the plaintiff to file the separate suit in the present form and to file the present application. Therefore, since the dispute pertaining to the present suit property is already seized before the Hon'ble appellate court in R.A.No.5014/2024, it is not proper for this court to express any opinion regarding the subject matter and dispute involved in this suit pending appeal. Accordingly, this application does not merit any consideration. Accordingly for what has been discussed above, **Points No.1 to 3 are answered in the Negative.**

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

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**ORDER**

IA.No.1 filed by the plaintiff under order 39 rule 1 and 2 of CPC is hereby dismissed.

Parties shall bare their own 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 **12th day of February-2025**)

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