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**IN THE COURT OF THE ADDL.CIVIL JUDGE & JMFC, AT  
MAGADI**

**PRESENT: SMT.DHANALAKSHMI.M. B.A.L., LL.B.,  
Addl.Civil Judge & JMFC,  
Magadi, Ramangara District.**

**Dated: This 05<sup>th</sup> day of August, 2023**

**O.S.NO.123/2022**

**PLAINTIFF/APPLICANT**

**:** Sri.Venkatesh  
S/o Rajanna,  
Aged about 43 years,  
Residing at No.54, 5<sup>th</sup> Cross,  
12<sup>th</sup> Main Road, Raghavendara  
Block, Srinagara, Bengaluru-  
560050.

**(By Sri.T.R.K Advocate)**

**-Vs-**

**DEFENDANT/OPPONENT :**

Sri.E.Balakrishna  
S/o Late Eraiah,  
Aged about 61 years,  
Residing at No.153,  
2<sup>nd</sup> Block,  
Jooganahalli,  
Rajajinagar,  
Bengaluru-560010.

**(By Sri.R.K.R. Advocate)**

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**ORDER ON I.A No.I UNDER ORDER XXXIX RULE 1 and 2**  
**R/w Sec.151 CODE OF CIVIL PROCEDURE**

This application is filed by Plaintiff under Order 39 Rule 1 & 2 read with Section 151 of Code of Civil Procedure, 1908 praying to pass an Order of temporary injunction to restraining the Defendant, his henchmen, agents, servants, representatives, power of attorney holders or anybody acting on his behalf from in any way interfering or meddling the suit schedule property or dispossessing the Plaintiff from the suit schedule property pending disposal of the above suit, in the interest of justice and equity and at present the case is at the stage of Defendant evidence.

2. The plaintiff has filed an application along with an affidavit stating that he has filed a suit for Permanent Injunction. The Plaintiff in the Plaint stated that the he is the absolute owner in physical possession and enjoyment of the southern portion of the property bearing site No.3, katha No.24/1D, Gramatana katha serial No.27, situated at

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Channenahalli Village, Tavarekere Grama Panchayathi, Tavarekere Hobli, Bengaluru South Taluk, measuring east to west 30 feet and north to south 20 feet in all 600 sq. feet. He has acquired the schedule property through the Registered Sale Deed executed by Smt.Nagarathna D/o Sanjeevamma and her children on 27.03.2013.

It is further contended that, originally the land bearing Sy.No.24/1D, measuring 0.17 guntas, situated at Channehalli Village belongs to Anjinappa and his family members. The said Anjinappa acquired the said land along with other lands through his ancestors and the said Anjinappa and his family member have partitioned the joint family properties amongst themselves under the Partition Deed dated 15.09.2003 and in the said partition A.Hombegowda and Chikkarajamma acquired 'B' schedule property and the land bearing Sy.No.24/1D, measuring 0.23 guntas out of 2 acres at Channenahalli Village has fallen to their share as item No.2 of the partition deed dated 15.09.2003 and thereafter a Rectification deed also executed by the parties dated 18.11.2005. Therefore the mutation was effected in respect of their names allotted in the said partition.

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It is further contended that, after the execution of the Registered Partition Deed the said Hombegowda and Chikkarajamma sold an extent east to west 30 feet and north to south 40 feet site property bearing No.3 in favour of Smt.Nagarathna through Registered Sale Deed dated 03.02.2005. Thereafter the revenue records transferred in her name in respect of the said property.

It is further contended that, in turn the said Smt.Nagarathna sold an extent of east to west 30 feet and north to south 20 feet in all 600 sq feet in Plaintiff favour under Registered Sale Deed dated 27.03.2013.

It is further contended that, from the date of purchase of the Schedule Property Plaintiff is in peaceful physical possession and enjoyment of the said property without any hindrance or interference from anybody till this day.

It is further contended that, the said Hombegowda and Chikkarajamma sold an extent of 0-15 guntas out of 0-17 guntas as per mutation effected in respect of the land bearing Sy. No.24/1D in favour of Defendant under the Registered Sale

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Deed dated 21.9.2005, since then Defendant is in possession and enjoyment of the said property.

It is further contended that, the defendant who is an utter stranger to the Schedule Property and who has no manner of right, title and interest or possession over the Schedule Property and who is none other than the bajudar of the Suit Schedule Property is making hectic arrangements to interfere with my possession and to encroach the Schedule Property illegally and one such attempt was made by the Defendant and his henchmen during second week of May 2022 and the same was resisted by Plaintiff and his family members at the timely intervention of the neighbors of the Schedule Property and they the spot by saying that they will come again with large number of people and interfere or meddle with my Suit Schedule Property and dispossess Plaintiff from the Suit Schedule Property. Hence, Plaintiff prays to allow the present application.

3. In response, the defendant, through their counsel, appeared and filed a written statement denying that the

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averment made in the Plaint are false, frivolous and vexatious. It is contended that, the defendant is absolute owner in possession and enjoyment of the land bearing Sy No 24/1D measuring to an extent of 15 guntas situated at Channenahalli village with the following boundaries towards East by land belongs to Smt.Susheelamma, West by land belongs to A.Chandrashekar, North by Road and land belongs to Hanumanthaiah and South by remaining property in same survey number measuring 2 guntas belongs to Hombegowda and Chikkarajamma. The defendant purchased the said property through Registered Sale Deed dated: 21.09.2005 from one Sri A.Hombegowda and his wife Smt.Chikkarajamma.

It is further contended that, the vendors of the defendant acquired the said property and other properties by way of registered partition deed dated 15.09.2003 entered among their family members Subsequent to the said partition the katha and other revenue documents got mutated in the name of the vendors of the defendant and also entered their names in all revenue records and they were in possession of the said land. The defendant after verifying all the documents has purchased

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the said land from his vendors for valuable sale consideration and after surveying of the said land in the presence of vendors of the defendant, other co-sharers of the said Sy.No.24/1D and boundary pillars also erected in respect of his 15 guntas of land in said Sy.No.24/1D. The defendant invested huge amount for purchase of the said land by raising loans from several persons. The plaintiff is not at all in possession of the suit schedule property since the suit schedule property is not at all in existence. The vendors of the plaintiff at no point of time has formed the sites in sy.no.24/1D of Channenahalli village and now the plaintiff is trying to locate the suit schedule property on the property of the defendant to knock-off his valuable property. The defendant is bonafide purchaser of the said land. The plaintiff is well aware that the defendant is in possession of his purchased said land and hence the question of interfering with his possession or trespass or encroach, dispossess in respect of the suit schedule property by the defendant does not arise.

It is further contended that, the documents referred to above substantially goes to show that the defendant has derived valid right, title and interest in respect the said property. The

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defendant out of the said property has sold portion of the property measuring 3300 sq feet through registered sale deed dated 21.02.2022 in favour of Sri.Uddandappa son of late Rudrahanumaiah out of 15 guntas of land in Sy.No.24/1D and also sold portion of the said property measuring 2630 sq feet through Registered Sale Deed dated 21.02.2022 in favour of Smt.Prathima wife of late Manjunatha out of 15 guntas of land in Sy.No.24/1D for valuable sale considerations and retained portion of the said land in Sy.24/1D of Channenahalli village and thus he is in actual possession and enjoyment of the portion of the said land as absolute owner thereof from the date of acquisition.

It is further contended that, plaintiff is an utter stranger to the defendant and his said property. The plaintiff has no manner of right, title or interest over the said property of the defendant. The plaintiff is powerful and influential person in the locality. The suit schedule property is not at all in existence and also he was not all in possession of the suit schedule property, he has filed above false suit against the defendant by attempting to encroach portion of the property belongs to the

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defendant. The Defendant has got every right over his property, the Plaintiff has no right to question the said legal right of the Defendant and the question of interference, trespass, encroach, dispossess over his own property by the defendant does not arise at all and hence the question of interfering with the possession the schedule property belongs to the plaintiff does not arise since the defendant not attempted to encroached any portion of alleged schedule property belongs to the plaintiff and the alleged suit schedule property is not at all in existence. Hence, Defendant prays to reject the present application.

4. Heard on both sides.

5. Now the points that arise for the consideration of this court are as follows:

**1. Whether the Plaintiff has made out prima-facie case for grant of Temporary Injunction as sought for?**

**2. Whether the balance of convenience leans in favour of the Plaintiff?**

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**3. Whether the Plaintiff will be put to irreparable loss and hardship, If IA is no allowed?**

**4. What order?**

6. The findings of this court on the above said 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** : As per the final order  
or the following:-

**REASONS**

7. **POINT NO.1** :- This application is filed by Plaintiff under Order 39 Rule 1 & 2 read with Section 151 of Code of Civil Procedure, 1908 praying to pass an Order of temporary injunction to restraining the Defendant, his henchmen, agents, servants, representatives, power of attorney holders or anybody acting on his behalf from in any way interfering or meddling the suit schedule property or dispossessing the Plaintiff form the suit schedule property pending disposal of the above suit, in the interest of justice and equity

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**SCHEDULE**

All the piece and parcel of the southern portion of the property bearing site No.3 katha No.24/1D, Gramatana katha serial No.27, situated at Channenahalli Village, Tavarekere Gramapanchayathi, Tavarekere Hobli, Bengaluru South Taluk, east to west 30 feet and north to south 20 feet in all 600 sq feet and bounded on:

- East by : Road  
West by : Private Property  
North by : Northern portion of same property No.3  
South by : Property No.4

8. In the light of the arguments canvassed by the learned counsels for the parties, this court has carefully perused the list of documents produced by the parties. The list of documents of plaintiff consists of Original Sale Deed dated 27.03.2013, which is with respect to suit schedule property which was executed by one Smt.Nagaratnamma in favour of the Plaintiff, original Tax Paid Receipt dated 05.01.2022, two khatha extracts of Sy.No. 24/1D which reflects the name of the Plaintiff, Original Sale Deed dated 03.02.2005, which is with respect to suit

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schedule property which was executed by one Sri.A.Hombbegowda and her wife Smt. Chikkarajamma in favour of one Smt. Nagaratnamma, khatha extracts of Sy.No. 24/1D which reflects the name of the one Smt.Nagarathnammma who is the vendor of the Plaintiff and 4 photographs of the suit schedule property.

9. The list of documents of the Defendants consists of xerox copies of the Sale Deed dated 21.09.2005 which was executed by one Sri.A.Hombbegowda and and her wife Smt. Chikkarajamma in favour of Defendant and encumbrance certificate from 01.04.2004 to 29.01.2022, Copies of Mutation and RTC extract of the Sy.No.24/1D of the year 2021-2022, Copy of the Registered Partition Deed dated 15.09.2003, Copy of the Registered Sale Deed dated 21.02.2022 executed by Defendant in favour of Sri.H.R.Uddandappa, Copy of the registered Sale Deed dated 21.02.2022 executed by Defendant in favour of Sri.H.R.Uddandappa.

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10. At this stage, without going in to the merits of the case and holding mini trial, this court has considered the aspect of Prima facie case. At this stage, this court makes it very clear that this court is looking towards prima facie case and not prima facie title. It is well-settled principles of law that at the time of disposing the Temporary Injunction application, the court cannot go into the prima facie title and only to consider whether the Plaintiff has made out a prima facie case for granting interim relief.

11. The primary purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and prejudice, likely to be caused to the Plaintiff if the relief is refused; and injury and prejudice likely to be caused to the

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Defendant if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.

12. The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.

13. The first rule is that the applicant must make out a prima facie case in support of the right claimed by him. The court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima

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facie right and infraction of such right is a condition precedent for grant of Temporary Injunction.

14. Perused the application, affidavit, objection and documents of the both parties, On perusal it appears that, the Plaintiff has produced Original Sale Deed dated 27.03.2013, which is with respect to suit schedule property which was executed by one Smt.Nagaratnamma in favour of the Plaintiff. He has also produced Original Sale Deed dated 03.02.2005, which is with respect to suit schedule property which was executed by one Sri.A.Hombbegowda and and his wife Smt. Chikkarajamma in favour of on Smt. Nagaratnamma. On the other hand Defendant produced xerox copy of Sale Deed dated 21.09.2005 which was executed by one Sri.A.Hombbegowda and and her wife Smt. Chikkarajamma in favour of Defendant. Both Plaintiff and Defendant have produced the Sale Deed executed by their vendors. In such an instance, the proper person entitled to the property can be determined only after full pledged trail. The Plaintiff and Defendant property are adjacent to each other the court cannot come to the conclusion without

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a trail. The Plaintiff and Defendant are the purchaser of Sy.No.24/1D which originally to an extent 2 acres which includes both Plaintiff and Defendant's property, to ascertain whether encroachment by the defendant or there is no land in existence of plaintiff as alleged by the defendant as the property are adjacent to each other the court cannot come to the conclusion without a trail. At this stage after considering the materials on record, this courts of the opinion that the apprehension of the Plaintiff cannot be ruled out that Defendant by taking advantage of the sale deed with respect to Sy.No.24/1D may encroach the suit schedule property and the interest of the parties will be prejudiced. Hence in order to protect the interest of the parties, this court is of the opinion that Plaintiff has made out prima facie case. **Accordingly I answer Point No.1 in the Affirmative.**

15. **Point No.2 and 3**: The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the court must be satisfied that the comparative mischief, hardship or

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inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

16. The existence of the prima facie case alone does not entitle the applicant for a temporary injunction. The applicant must further satisfy the court about the third condition by showing that he will suffer irreparable injury if the injunction as prayed is not granted and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury.

17. After considering the materials on record it appears to this Court that the Plaintiff have made out prima-facie case and this being the state of affairs if the equitable relief of Temporary Injunction is not granted infavour of the Plaintiff then more mischief and hardship will cause to the Plaintiff than the mischief and hardship will cause to the Defendant if Temporary Injunction is granted infavour of the Plaintiff. Further this Court

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is of the opinion that if the Defendant interfere the suit schedule property. Hence by considering all these facts and circumstances of the case this Court is of the opinion that the balance of convenience leans in favour of the Plaintiff and if the equitable relief of Temporary Injunction is not granted infavour of the Plaintiff, then the Plaintiff will be put irreparable loss and hardship and the same cannot be compensated in terms of money. **Accordingly I answer Point No.2 and Point No.3 in the Affirmative.**

18. **Point No.4:** For the aforesaid reasons this court proceed to pass the following ,

**ORDER**

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- I.A No.I filed by the plaintiff  
under Order 39 Rule 1 and 2 of  
C.P.C. is hereby Allowed.

(Dictated to the stenographer, typed directly on computer, script corrected, signed and then pronounced by me in the open court, this the 05<sup>th</sup> day of August, 2023)

**(Smt.Dhanalakshmi.M)**  
**Addl.Civil Judge & JMFC,**  
**Magadi.**