



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

:-Present:-

Sri. Shrinivasa.K.R B.A.L., LL.M.,
Prl. Civil Judge & JMFC.,
Magadi.

Dated this the 15th day of September, 2025

O. S. No.240/2024

PLAINTIFF : Sri.Mohan Kumar.R.H S/o
Honnappa.B.R.

:Vs:

DEFENDANT : Sri.Honnappa.B.R S/o Revanna.

I.A. No.I

**APPLICANT/
PLAINTIFF** : Sri.Mohan Kumar.R.H,
S/o Honnappa.B.R,
Aged about 53 years,
Residing at
Revannasiddeshwara Krupa,
12th Cross, Srinagara,
Devaraya Pattana Po,
Tumkur-572104.

(By Sri. M.N., Advocate)

:Vs:



**OPPONENTS/
DEFENDANTS :**

1. Sri.Honnapp.B.R,
S/o Revanna,
Aged about 75 years,
R/at, Shivakrupa,
S.S.Mutt, Main road,
Bandepalya Devaraya Pattana.
Tumkur-57219.
2. Sri.Chetankumar.N.S,
S/o Late Shivarudraiah,
Aged about 35 years,
3. Smt.Jayamma,
W/o Late Shivarudriaiah,
Aged about 60 years,

Defendant No. 2 and 3.
Both are R/at, Naganahalli,
Marasandra Post,
Kudur Hobli, Magadi Taluk.

(By Sri.B.S.S., Advocate)

**(Sri. Shrinivasa.K.R)
Prl. Civil Judge & J.M.F.C.,
Magadi.**

ORDER ON IA.NO.I FILED U/O 39 RULE 1 AND 2 OF CPC

The applicant/plaintiff has filed application U/O. 39 rule
1 & 2 CPC, with a prayer to restrain the defendants, their



agents, servants, followers or anybody from fencing, bar bard wire over the suit schedule property and putting up any gate over the suit schedule property. The application filed with respect to land bearing old Sy.No.2 new survey No.2/2 measuring 1 acre 38 guntas, situated at Naganahalli Village, Kudur Hobli, Magadi Taluk, Ramanagara District bounded by;

East by : Land of Ganganna.

West by : Land of Rajashekariah.

North by : Land of Ganganna,

South by : Shivrudriah with tomb of Gowramma.

2. The application is supported with an affidavit sworn to by the applicant/plaintiff stating that, Ravanna S/o Chikka Honnappa is grandfather of the plaintiff. The defendant No.1 is the father of the plaintiff and grandfather of defendant No.2 and father in law of defendant No.3. Revanna S/o Chika Honnappa had 6 children, namely Revanna Siddappa, Honnappa (defendant No.1), Siddagangaiah, Gangadharaiah, Veerabhadriah, and Shivarudriah. After the death of Revanna



the schedule property was devolved to all sons of Revanna. Gangadharaiah, Siddagangiah and Veerabhadraiah died without marriage. The plaintiff has one brother namely Jagadeesh Kumar and by sister Kusumakshi.

Further contended that, the suit schedule property is the ancestral and joint family property of plaintiff and defendants. The plaintiff's grandfather Revanna S/o Chikka Honnappa purchased the same through registered sale deed dated 30.05.1960 from Narasaiah S/o Vasanthiah. There is no division of the schedule property among the sons of Revanna. The plaintiff father was in possession and enjoyment of the schedule property till his death. The defendants 2 and 3 are the son and wife of Shivarudirah. After the death of Revanna, Katha was mutated in the name of Shivarudriaiah behind the back of plaintiff and other sons of the defendant No.1 without any registered document. The defendant No.3 has executed Gift deed in favour of the defendant No.2. The defendants are not in exclusive owner or possession of the schedule property



and illegally obstructed the plaintiff to perform annual pooja and conduct pooja. Hence, prays to allow the applications.

3. In pursuance to suit summons, the defendant No.2 and 3 appeared and defendant No.2 and 3 not filed objections on I.A.No.1. Hence objection taken as not filed.

4. Even though sufficient opportunity plaintiff counsel not addressed arguments on application. Hence, argument taken as nil.

5. Upon materials placed on record, following points that arise for my consideration:

1. Whether plaintiff has made out a prima-facie case?
2. Whether balance of convenience lies in favour of plaintiff ?
3. Whether irreparable injury and hardship would cause to the plaintiff, if temporary injunction is not granted ?
4. What order?



6. My answer to the above points are as under.

Point No. 1 to 3 : In the **Negative**.

Point No. 4 : As per order
for the following;

REASONS

7. **POINT No.1**: Law relating to grant or refusal to grant temporary injunction has been culled out by the Hon'ble Supreme Court of India in **AIR 1999 SUPREME COURT 3105** (Colgate Palmolive (India) Ltd., v. Hindustan Lever Ltd.,) it is held as under:

“Civil P.C. (5 of 1908), O. 39,R.1:

Certain specific considerations to be noted in the matter of grant of interlocutory injunction, the basic being non-expression of opinion as to the merits of the matter by the Court, since the issue of grant of injunction usually, is at the earliest possible stage so far as the time frame is concerned. The other considerations which ought to weigh with the court hearing the application or petition for the grant of injunctions are as below:- (i) Extent of damages being an adequate remedy; (ii) Protect the plaintiff's



interest for violation of his rights though, however, having regard to the injury that may be suffered by the defendants by reason therefor; (iii) The Court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others; (iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case-the relief being kept flexible; (v) The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties case; (vi) Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant; (vii) Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise."

8. Keeping in mind the well settled legal principles regarding granting or refusal for granting Temporary Injunction enunciated in the above cited decision, let me



advert to consider the case of the parties. The plaintiff has filed suit for the relief of permanent injunction.

9. The contention of the plaintiff is that, originally the suit schedule property belongs to his grandfather by name Revanna and he purchased the suit schedule property through registered sale deed dated 30.05.1960. After the death of Revanna there was no partition between children of Revanna. The father of plaintiff was in possession over the suit schedule property. The Katha mutated in the name of Shivarudraiah behind the back of plaintiff and other children of Revanna. The defendant No.2 and 3 without having any right, title and interest over the suit schedule property causing interference.

10. The plaintiff in support of his contention has produced the copy of sale deed dated 30.05.1960, certified copy of mutation M.R.No.4/1960-61, RTC extracts, mutation extracts, copy of Gift deed dated 29.10.2020 executed by defendant No.3 in favour of defendant No.2.



11. As per contention of plaintiff, the suit schedule property purchased by his grandfather through registered sale deed dated 30.05.1960. Hence, the suit schedule property is the self-acquired property of Revanna. After the death of Revanna the suit schedule property devolved to his children and the children of Revanna i.e., Honnappa and Revanna Siddaiah have given statement to mutate the name of Shivarudraiah and accordingly mutation effected in the name of husband of defendant No.3 and after the death of husband of defendant No.3, the Katha mutated in the name of defendant No.3. Whether mutation effected in the name of Shivarudraiah is illegal or not has to be adjudicate with proper evidence. Therefore on perusal of records the plaintiff has not established prima-facie case by placing prima-facie materials. The prima-facie case is totally different from prima-facie title. Under the circumstances, I am of the opinion that, plaintiff has not made out prima-facie case in his favour. Accordingly, I answer point No.1 “in the ***Negative***”.



12. **POINT No.2 and 3:-** These points are taken up together for discussion for the sake of convenience. The person who approaches the court for equitable remedy of temporary injunction, besides making out strong prima-facie and must necessarily show that balance of convenience lies in his/her favour and shall also satisfy that irreparable loss and hardship would be caused to him/her, which can not be compensated in terms of money. Therefore, it is incumbent upon the plaintiff to show that the balance of convenience lies in his favour.

13. In considering the question of balance of convenience the court has to consider to whom more hardship or inconvenience would be caused. As already stated above the plaintiff fails to establish prima-facie in his favour. Therefore, if temporary injunction is granted the defendants would be put to loss and hardship, has discussed supra plaintiff has not established prima-facie. Accordingly, I answer points 2 and 3 in the ***Negative***.



14. **POINT No. 4:** In view of my findings to points No.1 to 3, I am of the considered opinion that, plaintiff has not made out prima-facie case. Besides this the plaintiff has not established that balance of convenience lies in his favour and irreparable injury would be caused to him, if an order of temporary injunction is denied. Therefore, the plaintiff is certainly not entitled for the relief of temporary injunction. Accordingly, I proceed to pass the following;

ORDER

I.A. No.I filed by the plaintiff under
Order XXXIX Rule 1 & 2 R/w Section
151 of CPC, is hereby rejected.

No order as to cost.

(Directly dictated to Stenographer directly on the Computer, typed by him, then corrected and pronounced by me in the open Court on this the **15th day of September 2025.**)

(SRI.SHRINIVASA K.R.)
Prl. Civil Judge & J.M.F.C.,
Magadi.

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