

KARN420017452020



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

**Smt.Ranjitha G.B** B.B.A, LL.B. (Hons)

**II Addl.Civil Judge & JMFC,  
Magadi**

Dated this 6<sup>th</sup> day of August, 2025

**OS No.427/2024**

**PLAINTIFF** : Smt.Padmavathi V  
W/o Anand K,  
Aged about 40 years,  
R/at No.47,  
Kunigal Bypass Road,  
Nelamangala Town,  
Bengaluru Rural District.

**-V/s-**

**DEFENDANT** : Sri.Channakeshava Murthy  
S/o Late.Narasimhaiah,  
Aged about 49 years,  
R/at Midichaiahnapalya Village,  
Hamlet of Gangenahalli,  
Tavarekere Hobli,  
Bengaluru South Taluk.

**IA No.I****APPLICANT /**  
**PLAINTIFF**

:

Smt.Padmavathi

**-V/s-****OPPONENT /**  
**DEFENDANT**

Sri.Channakeshava Murthy

|     |                                                                          |                                                          |
|-----|--------------------------------------------------------------------------|----------------------------------------------------------|
| i   | <i>Provision under which the application is filed</i>                    | <i>Order XXXIX Rule 1 and 2 read with Sec.151 of CPC</i> |
| ii  | <i>Relief sought for</i>                                                 | <i>Temporary Injunction</i>                              |
| iii | <i>The date on which the application is filed</i>                        | <i>27.11.2024</i>                                        |
| iv  | <i>Number of the application</i>                                         | <i>IA No.I</i>                                           |
| v   | <i>The date on which the objections are filed by different opponents</i> | <i>27.02.2025</i>                                        |
|     | <i>The date on which the orders were passed on the said application</i>  | <i>06.08.2025</i>                                        |

**II Addl.Civil Judge & JMFC,  
Magadi**



**ORDER ON IA No.I FILED BY THE PLAINTIFF**  
**UNDER ORDER XXXIX RULE 1 AND 2 READ WITH**  
**SEC.151 OF CPC**

This Application filed at the time of filing the suit. The Plaintiff has filed this application under Order XXXIX, Rule 1 and 2 read with Sec.151 of CPC, seeking for the relief of temporary injunction by restraining the Defendant from not to put-up any sort of construction over the eastern side of the suit schedule property.

2. The Plaintiff has filed the present suit as against the Defendant seeking for the relief of Permanent Injunction. In support of IA No.1, the Plaintiff had filed affidavit and stated that, the Plaintiff is an absolute owner of the property bearing khameshumari No.519/178/11, Site No.11 in Sy.No.178, measuring to an extent of east-west 45 feet and north-south 35 feet, situated at Kurubarahalli Village, Tavarekere Hobli, Magadi Taluk, which is morefully described as the suit schedule property. The Plaintiff had purchased the suit schedule property vide registered Sale Deed dated 16.01.2019. From the date of purchase, the Plaintiff is in possession of the suit schedule property as an

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absolute owner. Based on the said Sale Deed, the revenue officials have mutated the khata extract in the name of the Plaintiff. Subsequently, the Plaintiff had started to put- up construction in the suit schedule property.

3. The Defendant is having the property towards the side of the suit schedule property i.e., after the main road. The Defendant is having no manner of right, title or interest over the suit schedule property. When such being the situation, on 24.11.2022, the Defendant came near the suit schedule property and made a hectic attempt to interfere with the possession of the Plaintiff over the suit schedule property and also made hasty arrangements to put-up construction towards the eastern side of the suit schedule property. The said act of the Defendant was resisted by the Plaintiff with the help of neighbours. In this regard, the Plaintiff has lodged a complaint before the jurisdictional police. In-turn, the jurisdictional police gave endorsement stating to seek remedy by way of filing the suit before the jurisdictional Civil Court. With no other alternatives, the Plaintiff has approached this Court seeking for temporary injunction by restraining the Defendant from not to put-up

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any sort of construction over the eastern side of the suit schedule property. If this application is not allowed, the Plaintiff will be put to great hardship and on the other hand, no hardship will be caused to the Defendant, as he can always contest the matter on merits. Hence, prayed to allow the application.

4. The Defendant had filed objection and contended that, the Defendant is an absolute owner of property bearing Site No.3 & 4 and the same was purchased by him vide registered Sale Deed dated 23.09.2021 from Smt.Sunanda Kannan. The Defendant is in possession of the said properties by way of paying taxes to the concerned authority. Thereafter, on 04.07.2024, the Defendant had sold the site No.3 in favour of one Smt.Indrani M. After purchasing the said site, Smt.Indrani M had constructed the shops and the Defendant had built a small shed in Site No.4 for the purpose of keeping materials to construct the building in Site No.4. When the Defendant was cleaning the Site No.4, at that time, the Plaintiff came to the said property and try to dispossess the Defendant from the said property.

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5. The Site No.11 is situated in Sy.No.178, measuring to an extent of 1 acre 15 guntas and Site No.4 is situated in Sy.No.179, measuring to an extent of 5 acres 9 guntas. The vendor of the Plaintiff had sold the suit schedule property in favour of the Plaintiff by saying that, there is a road towards the eastern side of the suit schedule property. The suit schedule property and the Site No.4 are adjacent land and there is no road towards the eastern side of the suit schedule property. The Plaintiff and her vendor have colluded each other and created the documents. The Plaintiff had suppressed the true facts and filed this false suit. If this application is allowed, the Defendant will be put to great hardship and the same cannot be compensated in terms of money. Hence, prayed to reject the application.

6. Heard both sides. Perused the material on record.

7. This Court arises the following points for consideration:

1. Whether the Plaintiff has made out prima-facie case?



2. Whether the balance of convenience lies in favor of the Plaintiff ?
3. Whether irreparable loss and injury would be caused to the Plaintiff, if an order of temporary injunction is not granted?
4. What order?
8. The findings to the above Points are as follows:
  - 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 order, for the following:

### **REASONS**

9. **POINT No.1**: The Plaintiff has filed the present suit seeking for Permanent Injunction as against the Defendant, along with an application under Order XXXIX Rule 1 & 2 read with Section 151 of CPC, seeking for the relief of temporary injunction by restraining the Defendant from not to put-up any sort of construction over the eastern side of the suit schedule property.

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10. The case of the Plaintiff is that, the Plaintiff is an absolute owner of the suit schedule property and the same was purchased by him vide registered Sale Deed dated 16.01.2019. Based on the said Sale Deed, the revenue officials have mutated the khata extract in the name of the Plaintiff. Subsequently, the Plaintiff had started to put-up construction in the suit schedule property. The Defendant is having the property towards the side of the suit schedule property i.e., after the main road. On 24.11.2022, the Defendant came near the suit schedule property and made a hectic attempt to interfere with the possession of the Plaintiff over the suit schedule property and also made hasty arrangements to put-up construction towards the eastern side of the suit schedule property. The said act of the Defendant was resisted by the Plaintiff with the help of neighbours. In order to prove the case of the Plaintiff, she has produced the documents such as Sale Deed dated 16.01.2019, demand register extract, tax assessment extract, tax paid receipt, layout plan, letter dated 17.03.2015 issued by Deputy Commissioner, relinquishment letter, letter dated 19.07.2007 issued by Magadi planning authority, photographs & CD.

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11. On the other hand, the Defendant had contended that, the Defendant is an absolute owner of property bearing Site No.3 & 4 and the same was purchased by him vide registered Sale Deed dated 23.09.2021. The Defendant had built a small shed in Site No.4 for the purpose of keeping materials to construct the building in Site No.4. When the Defendant was cleaning the Site No.4, at that time, the Plaintiff came to the said property and try to dispossess the Defendant from the said property.

12. The Site No.11 is situated in Sy.No.178, measuring to an extent of 1 acre 15 guntas and Site No.4 is situated in Sy.No.179, measuring to an extent of 5 acres 9 guntas. The vendor of the Plaintiff had sold the suit schedule property in favour of the Plaintiff by saying that, there is a road towards the eastern side of the suit schedule property. The suit schedule property and the Site No.4 are adjacent land and there is no road towards the eastern side of the suit schedule property. The Plaintiff and her vendor have colluded each other and created the documents. To prove the contentions of the Defendant, he has produced the documents such as Sale Deeds dated 16.09.2021 &

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04.07.2024, demand register, tax assessment extract, copy of petition in Caveat Pet.No.153/2024, photographs & CD.

13. An order dated 17.03.2025 passed by the Deputy Commissioner in Case No.ALN(ST) SR/87/14-15 reflects that, the property bearing Sy.No.178, measuring to an extent of 1 acre 15 guntas was converted for non-agricultural purpose. On perusal of Sale Deed dated 16.01.2019, it reveals that, the Plaintiff had purchased the suit schedule property from Sri.S.K Venkatesh. Based on the said Sale Deed, the demand register and tax assessment extract demonstrates that, the suit schedule property is standing in the name of the Plaintiff. Accordingly, the Plaintiff had paid taxes to the concerned authority. The learned Counsel for Defendant had argued that, he is an owner of Site No.3 & 4. At this juncture, it is important to refer to Sale Deed dated 16.09.2021 and on perusal of the same, it reveals that, the Defendant had purchased the property bearing Site No.3 & 4 from Smt.Sunanda Kannan. As per Sale Deed dated 04.07.2024, the Defendant had sold the Site No.3 in favour of Smt.Indrani M. Further, the

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demand register and tax assessment extract reflects that, the Site No.4 is standing in the name of the Defendant.

14. The learned Counsel for Plaintiff had argued that, the Defendant is trying to the put-up construction over the eastern side of the suit schedule property which is reserved for road. At this juncture, it is relevant to refer to letter dated 19.07.2007 addressed by the Magadi Planning Authority to Sub-registrar and on perusal of the same, it is noticed that, 100 sites which were formed in 5 acres 38.83 guntas in Sy.No.172/1, 173/1 and 179 was approved for registration. On perusal of layout plan, it reveals that, there is a road towards the eastern side of the suit schedule property. No doubt, the documents produced by the Plaintiff clearly establishes that, the suit schedule property belongs to the Plaintiff. But, at the same time, it is relevant to state that, only by relying on the photographs, this Court cannot opine that, the Defendant is trying to put-up construction towards the eastern side of the suit schedule property. The dispute with regard to the existence of road towards the eastern side of the suit schedule property is a matter of trial and the same cannot be adjudicated at this stage. Therefore,

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without conducting full-fledge trial, this Court cannot come to the conclusion that, the Defendant had put-up construction towards the eastern side of the suit schedule property. By considering the above reasons, this Court is of the opinion that, the Plaintiff has prima-facie failed to prove her case. Hence, this Court proceeds to answer Point No.1 in the “**Negative**”.

15. **POINT No.2 & 3**: These two points are interrelated, hence, taken up together for discussion with regard to balance of convenience and irreparable loss is concerned, this Court is relying upon the decision passed by the **Hon'ble High Court of Karnataka in Gowrishankar Swamigalu V/s Siddaganga Mutt & others, reported in ILR 1989 KAR 1701**, the relevant portion of the decision is extracted below for reference:

*“...The existence of a prima facie case in the matter of granting injunction is really the harbinger or all the clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of*



*convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself...”.*

Thus, when the prima facie case itself is not proved by the Plaintiff, then it is clear that balance of convenience is not in favour of the Plaintiff and no loss will be caused to them. Hence, this Court proceeds to answer Point No.2 & 3 in the “**Negative**”.

16. **POINT No.4:** In view of the aforesaid reasons, this Court proceeds to pass the following :

**ORDER**

IA No.I filed by the Plaintiff under  
Order XXXIX Rule 1 and 2 read with  
Section 151 of CPC, is hereby rejected.

No order as to cost.

(Dictated to the stenographer directly on computer, corrected, signed and then pronounced by me in Open Court on this 6<sup>th</sup> day of August, 2025.)

**(Smt.Ranjitha G.B)**  
**II Addl.Civil Judge & JMFC,**  
**Magadi**