

KASM310033892024



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

Present: **Sri. RAVI KUMARA. V.** BA.L.,L.L.B.,
Prl. Civil Judge & JMFC.,
Bhadravathi.

DATED THIS THE 17th DAY OF MARCH-2024.

O.S.No.287/2024

Plaintiff : Smt.B.S.Jayamma

V/s

Defendant : Smt.Bhavani Bai

I.A.No.I

Applicant : Smt.B.S.Jayamma W/o lae
Maheshwaraiah, 66 years, R/o #125,
Vinobhanagara, Shivamogga.

(Rept. by Sri. S.G.Mallikarjuna Swamy, Adv.)

V/s

Opponent : Smt. Bhavani Bai W/o late Krishnoji
Rao, 50 years, R/o Old

Kachagondanahalli Village, Kudligere
Hobli, Antaragange Post, Bhadravathi
Taluk.

(Rept. By Sri.N.Devendrappa, Adv)

Provision Under which the application Is filed	Order 39 Rule 1 and 2 of CPC
Relief sought for	Temporary injunction
Date of application	14.06.2024
Number of application	I.A.No.I
Date of objection	20.08.2024
Order date	17.03.2025

ORDER ON I.A.NO.I

The plaintiff filed this IA under Order 39 Rule 1 and 2 of CPC., praying to restrain the defendant from trespassing into the suit property and thereby interfering with her peaceful possession thereof, till pending disposal of the suit.

2. In the affidavit accompanying to the IA, the plaintiff has stated that, suit schedule property was originally granted to her husband Maheshwaraiah. That, after the death of said Maheshwaraiah, the revenue entries of the suit property mutated into the name of the plaintiff and she continued to be in peaceful

possession and enjoyment of the suit property till date. She alleged that, the defendant has no manner of right whatsoever in the suit property. That, the defendant is trying to dispossess her from the suit property with malafide intention. That, the defendant is interfering with her possession and enjoyment in the suit property regularly. That, the plaintiff being a woman is not in a position to further resist the illegal activity of the defendant. Thus, the plaintiff claims to have filed this suit and the present IA. Accordingly, she prays to issue an order of temporary injunction by restraining the illegal act of the defendant in the suit property.

3. In response to the suit summons and notice, the defendant appeared through her counsel and filed her objection to this IA.

3.1. It is contended by the defendant in her objection that, the plaintiff is neither the owner nor in possession of the suit property. The defendant contending that, no documents available in the name of the plaintiff to show her ownership and possession of the suit property. That, the plaintiff has no right, title or interest in the suit property and despite of that, she filed this suit to have wrongful gain. The defendant contending that, she is in possession of the suit

property and the same has been succeeded by her through her husband Krishnoji Rao. The defendant contending that, she converted the suit land into areca nut garden and the plaintiff is trying to knock of the same and also trying to dispossess her by filing this false suit. The defendant contending that, since the plaintiff is not in possession of the suit property, balance of convenience does not lie in her favour and accordingly, she prays to dismiss the I.A.

4. In view of the rival contentions of both the parties, the following points are arise for my consideration;

- 1. Whether plaintiff establishes that, there exists a prima facie case in her favour ?**
- 2. Whether plaintiff establishes that, the balance of convenience also exists in her favour?**
- 3. Whether the plaintiff will be put to irreparable loss and injury if temporary injunction order is not granted ?**
- 4. What order?**

5. I have heard both the sides on the I.A.

6. Carefully perused the entire materials available before this court.

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

Point No.1 : **In the Affirmative.**

Point No.2 : **In the Affirmative.**

Point No.3 : **In the Affirmative**

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

REASONS

8. **Point No.1 to 3** : These points are inter connected to each other and are based on common set of facts. Hence, they are taken together for my common consideration in order to avoid the repetition of facts and for the purpose of brevity.

9. Three ingredients that are to be considered while granting or rejecting the application for temporary injunction order are that:

(1) Prima facie case

(2) Balance of convenience

(3) The party who will be put to irreparable loss and injury in the event of non granting of temporary injunction.

10. The Prima facie case means, a case of plaintiff is such that it needs adjudication on merits and that there is a triable issue. Plaintiff's case should not be such that it is liable to be rejected

summarily. However, prima facie case does not mean cent percent case. Suffice to satisfy the case about the existence of the triable issue.

11. The balance of convenience means a comparative hardship or inconvenience i.e. likely to be caused from withholding the order of temporary injunction or by granting it. In other words, if it is the plaintiff who will be put to greater inconvenience if temporary injunction is not granted, then the balance of convenience lies in her favour. If the greater inconvenience is caused to the defendant on granting such injunction, then the balance of convenience lies in favour of the defendant.

12. Needless to reiterate that, the plaintiff claims to be in exclusive possession of the suit property as on the date of filing this suit and having succeeded it through her husband late Maheshwaraiah. To establish her possession in the suit property as on this day, the plaintiff has produced the revenue documents such as RTC, mutation, copy of grant certificate, encumbrance certificate and tax paid receipts pertains to suit property.

13. The documents produced by the plaintiff at this stage would reveal that, the plaintiff has inherited the suit property from her husband Maheshwaraiah and the revenue records of the said property have been mutated into her name in the year 2008 itself. The said documents would further indicate that, the name of the plaintiff remained in the revenue documents for more than 15 years by now. The said documents prima facie establish the possession of the plaintiff in the suit property.

14. On the other hand, the defendant is contending that, she is in exclusive possession of the suit property and has converted the said property into the areca nut garden. But, she has not produced single piece of paper at this stage to believe her claim. There is absolutely nothing contrary material available at this stage of the suit to disbelieve the contents of the revenue records of suit property standing in the name of the plaintiff. Therefore, the documents available at this stage of the suit prima facie establishes the possession of the plaintiff in the suit property.

15. The claim of the defendant that, she is in exclusive possession of the suit property and since she has not produced any

document to believe the same at this stage of the suit, the alleged interference of her to the possession of the plaintiff cannot be ruled out. Therefore, not only the prima facie case lies in favour of the plaintiff, but also a balance of convenience lies in her favour. Under the said circumstances, non granting the relief of temporary injunction order will put the plaintiff under irreparable loss and injury.

16. For the above said reasons, this Court is of the considered opinion that, this is a fit case to grant the relief of temporary injunction order in favour of the plaintiff. Accordingly, Point No.1 to 3 are answered in the **Affirmative**.

17. Point No.4: Resultantly, I proceed to pass the following;

ORDER

I.A. No.I filed by the plaintiff under Order 39 Rule 1 and 2 of CPC is hereby allowed.

Consequently, the defendant, her men, agents, servants, etc. are restrained from interfering with the peaceful possession and enjoyment of the plaintiff in the suit property,

in any manner, till pending disposal of the suit.

No order as to cost.

(Dictated to the Stenographer, translated, computerized by her, corrected and then pronounced by me in open court this 17th day of March-2025)

(Ravi Kumara V.)
Prl. Civil Judge & JMFC.,
Bhadravathi.