

**IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC., AT
SORABA**

Present: Sri.Raju K Shedbalkar,
(B.Com.,LL.B.),
Prl. Civil Judge & JMFC., Soraba.

Dated this the 09th day of June , 2026

O.S.No.27/2026

Plaintiff : Smt. Girija

V/s

Defendant : Shivakumaragowda

ORDER ON I.A.No. I

Applicant : Smt. Girija W/o Vishwanathagowda
Aged about 64 years,
Occ:Household work and Agriculturist,
R/o Hirale Village, Ulavi Hobli,
Soraba Taluk, Shivamogga District.

(By Sri.R.S., Adv.)

V/s.

Opponent : Shivakumaragowda S/o Boodyappa
Aged about 50 years,Occ: Agriculturist,
R/o Mundagodu Village, Ulavi Hobli,
Soraba Taluk, Shivamogga District.

(By Sri.T.R.R/R.K., Adv.)

**ORDER ON I.A.NO.I FILED BY THE PLAINTIFF UNDER
ORDER XXXIX RULE 1 AND 2 OF CPC**

The present application filed by the plaintiff seeking relief of permanent injunction against the defendant restraining him from encroaching and interfering his peaceful possession and enjoyment over the suit schedule property.

2. This application is annexed with the affidavit sworn by the plaintiff wherein it is stated that, she is absolute owner in possession of suit schedule property and she inherited the said property from his father and it is ancestral property of her. The plaintiff is the exclusive owner in possession of the schedule property and no other persons is having right title interest over the suit schedule property.

3. Further it is averred that, the defendant is the owner of property situated at northern side of the schedule property and he does not have right title interest over the suit schedule property and trying to interfered and her peaceful possession and enjoyment over the suit schedule property. Further, the defendant in the month of January 2025 destroying the boundaries and interfered and encroaching 0.06 guntas by creating forged documents. Further it is averred that, in the month of November 2025 suddenly the defendant trying to encroached the schedule property and harassed the plaintiff in filthy language and plaintiff with the help of the villagers and other well wishers restrained act of the defendant. Further, the

plaintiff submits that, the plaintiff has made out prima facie case in her favour and balance of convenience is also lies in her favour, if the present application is not allowed then the plaintiff will be put to irreparable loss and injury which will not compensated in terms of money. Hence, the plaintiff prays to allow the application.

4. In pursuance of the suit summons, the defendant appeared through the counsel and resisted the claim of the plaintiff and it is contended that, the plaintiff filed the present suit for the relief of possession and injunction in respect of the schedule property. Further it is denied by the defendant that, the plaintiff is the owner in possession of the suit schedule property and she inherited the same from her father. Further it is denied by the defendant that, he is property situated at northern side of the property. The property bearing Sy.No.1/15 measuring 00.23.08 guntas of land is in possession of the defendant which is situated at northern side of the property. Further it is denied by the defendant that, he is interfering with the plaintiff's peaceful possession and enjoyment over the suit schedule property. Further it is averred that, the plaintiff clearly 00.06 guntas of land in schedule item No.1 property is not in her possession and identified by her such being the case granting injunction without possession is not maintainable. The plaintiff has made out prima facie case against the her and balance of convenience is allowed then the defendant will be put

to grater hardship, irreparable loss and injury. Hence, on these grounds to defendant prays to dismiss the application.

5. Heard the argument of both sides.

6. The following points arise for the consideration of the court:-

POINTS

1. Whether the Plaintiff has made out a prima-facie in her favour?
 2. Whether the balance of convenience lies in favour of plaintiff ?
 3. Whether the irreparable loss, injury and hardship, it would be caused to the plaintiff, if the application is rejected ?
 4. What order?
7. The findings on 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 order for the following:

REASONS

8. **Point No.1:-** It is needless to stated that, in order to entitled the temporary injunction and establishing the prima facie case pre-requisite condition, while considering the prima

facie case, the court cannot go into merits of the case and to be considered whether the plaintiff had made out a triable case for granting temporary injunction or not. The phraseology the prima facie case is to be distinguished from the prima facie title. The prima facie case does not mean that the plaintiff should have cent present case which will all probability succeed in trial. The prima facie case means that the contention which the plaintiff raising, required consideration in merit or not liable to be rejected summarily. At that time of granting the temporary injunction, the court cannot considered the prima facie title.

9. In order to establish the prima facie case and to substantiate her affidavit averments, the plaintiff has produced RTC extract to pertain item No.1 of schedule property which is stands in the name of plaintiff. Further, perusal the RTC extract in respect of the item No.2 of schedule property which is stands in the name of plaintiff. Further perusal the application submitted by the plaintiff to fix the boundaries. Further, perusal the documents produced by the plaintiff Hadbast map which clearly discloses that, 0.06 guntas of land encroached by the ad-joining owner i.e., defendant. Admittedly, the defendant counsel argued and contended that, the present suit filed by the plaintiff for the relief of possession of 0.06 guntas of land otherwise he filed the interim application seeking the relief of temporary injunction restraining the defendant interfered his

peaceful possession and enjoyment over the suit schedule property. Hence, the documents produced by the plaintiff and pleading of the plaintiff clearly discloses that, as on the date of the suit, the plaintiff is not in possession of schedule property. Hence, the present application filed by the plaintiff is not at all maintainable and the plaintiff is not entitled the relief as sought for.

10. Further, on perusal the entire materials available on record which clearly discloses that, the suit schedule property as on the date of suit, this being the case at this juncture, the plaintiff failed to prove the lawful possession over the suit schedule property. Hence, the plaintiff is not entitled to the any equitable relief of injunction. With all these observations, this court answered Point No.1 in the Negative.

11. **Point No.2 and 3:-** These two points are inter connected with each other, hence taken together for common discussion in order to avoid repetition of facts. The plaintiff has filed to establish the prima facie case. In the absence of prima facie, can the plaintiff get injunctive relief on the basis of balance of inconvenience, irreparable loss and hardship. At this juncture, I feel it would be proper for alive upon the decision reported in **ILR1989 KAR 1701 Between the Sri Gowrishankara Swamigalu V/s Sri Siddhaganga Mutt others wherein Hon'ble High Court of Karnataka wherein it has been held that:**

“The existence of a prima facie case in the matter of granting injunction is really the harbinger or the all 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”.

12. So as for the discussion, when the plaintiff has filed to establish the prima facie case considering balance of convenience, irreparable loss and hardship does not arise for consideration. Even in the case on hand, the plaintiff has utterly failed to establish the prima facie case. Therefore, considering the balance of convenience, irreparable loss and harbinger does not arise for consideration. **As such these observations, this court answered point No.2 and 3 are in the Negatives.**

13. Point No. 4 :- In view of above discussion made above under point No.1 to 3, I proceed to pass the following;

ORDER

I.A. No. I filed by the plaintiff U/o
XXXIX Rule 1 and 2 of CPC is hereby
rejected.

Under the facts and circumstances of
this case. there shall be no order as to
costs.

(Dictated to the Stenographer, typed and print out taken by him,
corrected and pronounced by me in the open court on this the 09th day of
June 2026)

(RAJU K SHEDBALKAR)
Prl. Civil Judge & JMFC.,
Soraba.

(Order pronounced open Court vide
separate order)

ORDER

I.A. No. I filed by the plaintiff
U/o XXXIX Rule 1 and 2 of CPC is
hereby rejected.

Under the facts and
circumstances of this case. There
shall be no order as to costs.

For compliance U/Sec.89 of
C.P.C.

Call on 23.07.2026

**Prl.Civil Judge & JMFC.,
Soraba.**