



**IN THE COURT OF THE ADDL CIVIL JUDGE AND JMFC  
AT GUBBI**

**Present :** **Smt. Medha P.M. B.A. LL.B.,(Hons.)**  
Addl Civil Judge and J.M.F.C.,  
Gubbi

**Dated this 02<sup>nd</sup> day of August 2025**

**O.S.No.440/2022**

|                    |                                                                                                                                                                                                          |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>PLAINTIFF :</b> | Vrushabendraiah<br>S/o Late Siddalingappa,<br>Aged about 68 years,<br><br>R/o Kallanahalli, Nittur Hobli,<br>Gubbi Taluk, Tumkur District.<br><br><b>(By Sri. B.R. Prabhulingamurthy.,<br/>Advocate)</b> |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**V/s**

|                    |    |                                                                |
|--------------------|----|----------------------------------------------------------------|
| <b>DEFENDANTS:</b> | 1. | Smt. Ganganamma<br>W/o Late Renukappa,<br>Aged about 65 years, |
|                    | 2. | Dayananda S/o Late Renukappa,<br>Aged about 48 years,          |



|  |    |                                                                                                                                                                                                                  |
|--|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | 3. | Devaraju S/o Late Renukappa,<br>Aged about 46 years,<br><br>1 to 3 are R/o Kallanahalli Village,<br>Nittur Hobli, Gubbi Taluk.                                                                                   |
|  | 4. | Renuka S/o Siddalingamurthy,<br>Aged about 40 years,<br>R/o Bettadahalli Village,<br>Hagalavadi Hobli, Gubbi Taluk.                                                                                              |
|  | 5. | Sadashivaiah<br>S/o Late Revanasiddaiah,<br>Aged about 42 years,<br><br>R/o Kallanahalli, Nittur Hobli,<br>Gubbi Taluk.<br><br><b>(Sri. N. Sadashivaiah., Advocate for<br/>D1 to 3 &amp; 5 and D-4 Ex-parte)</b> |

**Applicant** : Vrushabendraiah

**V/s**

**Opponent** : Smt. Ganganamma & others



|                           |                                                                                                                                                                                                                                                                         |
|---------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Provision of Application  | Order 39 Rules 1 & 2 CPC                                                                                                                                                                                                                                                |
| Relief Sought             | Order of ad-interim temporary injunction restraining the defendants, their men, agents, servants or anybody acting on their behalf from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property pending disposal of this suit. |
| Date of Application       | 07.07.2022                                                                                                                                                                                                                                                              |
| Number of the Application | 1                                                                                                                                                                                                                                                                       |
| Date of Objections        | 08.11.2022                                                                                                                                                                                                                                                              |
| Date of Order             | 02.08.2025                                                                                                                                                                                                                                                              |

**ORDERS ON I.A. NO. 1 FILED UNDER ORDER 39**

**RULES 1 AND 2 CPC**

1. The plaintiff has filed this application U/o XXXIX Rule 1 and 2 CPC seeking an Order of ad-interim temporary injunction restraining the defendants, their men, agents,



servants or anybody acting on their behalf from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property pending disposal of this suit.

**2.** The suit schedule property was granted to the father of plaintiff Late Siddalingaiah by the Government on 16-04-1983. After the death of Siddalingaiah the plaintiff and his brothers and sisters had filed a suit for partition for separate possession including the suit schedule property in O.S.No.2/2018 before Addl. Senior Civil Judge Gubbi, wherein the parties of compromised of the suit schedule property has fallen to the share of plaintiff. The katha and pahani of the suit schedule property were not mutated to the name of plaintiff due to the dispute between plaintiff in the defendants. Taking advantage of this the defendants are attempting to interfere with plaintiff possession over the suit property. Hence the suit.

**3.** After service of summons, the defendants No.1, 3 & 4 have appeared through their counsel filed written statement and date of consideration of same as objection to I.A. No.1. The defendant No.4 has remained Ex-parte. The defendants



contended that the plaintiff's father had filed a suit for declaration and permanent injunction in O.S.No.92/1980 before Munsif Court Gubbi with respect to the suit schedule property herein against the father of defendants Late Revannasiddaiah which was dismissed. Further plaintiff's father filed another suit against father of defendants seeking declaration and permanent injunction in O.S. No.329/1988 which was again dismissed. Further the plaintiff's father filed an appeal against said judgment in R.A. No.100/2006 which was dismissed. Further the father of plaintiff and filed Appeal before Assistant Commissioner Tumakuru against the father of the defendant which was dismissed and the Appeal filed against the said order before court of Deputy commissioner, Tumakuru has been remanded to Tahshildhar Gubbi. The Revision petition filed by the father of defendants before Karnataka Appellant Tribunal has been allowed. The defendants contend that the plaintiff was never in possession of the suit schedule property and has filed this application to harass to defendants. Hence, defendants prayed to dismiss the application with costs.



**4.** Heard the learned Counsel for the plaintiffs and the defendants. Perused the application, affidavit, objection, pleadings of the parties and documents produced by them.

**5.** The following points arise for this court's consideration.

- 1) Whether the plaintiff has made out a prima facie case?
- 2) Whether the balance of convenience lies in favour of the plaintiff?
- 3) Whether the irreparable loss will be caused to the plaintiff if temporary injunction is not granted?
- 4) What order?

**6.** This court answers the above aforesaid 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 final order for the following: |



**::R E A S O N S::**

**7. Point No.1 to 3:** To substantiate his case the plaintiff has filed documents such as RTC & M.R of suit schedule property grant certificate and copy of final decree in O.S.No.2/2018. Whereas the defendants have filed copies of orders and judgments in various suits and appeals as mentioned in the written statement.

**8.** The plaintiff has moved the present application under Order XXXIX Rule 1 & 2 CPC seeking an ad-interim temporary injunction restraining the defendants, their agents and representatives from interfering with his alleged possession over the suit schedule property pending disposal of the suit.

**9.** The primary contention of the plaintiff is that the suit schedule property was originally granted to his father late Siddalingaiah under grant certificate dated 16-04-1983, and after his demise, the plaintiff and his siblings filed a suit for partition in O.S. No.2/2018, wherein under a compromise decree, the suit property is allotted to his share. The plaintiff further contends that although the mutation has not been



effected in his favour due to dispute, he is in peaceful possession and defendants are now attempting to interfere.

**10.** On the other hand, defendants Nos.1, 3 & 4 submit that the plaintiff has no possession over the property. They place reliance on earlier rounds of litigation between the parties and their predecessors-in-title. It is contended that the plaintiff's father had earlier instituted O.S. No.92/1980 and O.S. No.329/1988 against the father of defendants Revannasiddaiah seeking declaration and injunction, both of which were dismissed. The appeals in R.A. No.100/2006 and proceedings before revenue authorities, Assistant Commissioner, Deputy Commissioner and the Karnataka Appellate Tribunal have also culminated against the plaintiff's side. Therefore, they contend that the plaintiff has suppressed all these earlier proceedings and has not approached the court with clean hands.

**11.** The scope of consideration at this stage is confined to whether the plaintiff has established the three essential ingredients for grant of temporary injunction, namely (i) prima facie case, (ii) balance of convenience, and (iii) irreparable



injury. On the aspect of *prima facie case*, the plaintiff has sought to establish his right by producing the grant certificate in favour of his father and the final decree in O.S. No.2/2018. It is not in dispute that the property was once granted to plaintiff's father. However, the materials produced by the defendants indicate that plaintiff's father had repeatedly approached civil courts as well as revenue authorities seeking declaration of title and possession over the same property and failed in all such attempts. Particularly, the dismissal of O.S. No.92/1980, O.S. No.329/1988 and the subsequent appeal R.A. No.100/2006, coupled with adverse orders of revenue courts, *prima facie* show that possession was not established in favour of plaintiff's father.

**12.** It is trite law that a plaintiff who comes to court for equitable relief of injunction must disclose all previous litigations relating to the suit property. In the present case, the plaint as well as I.A. affidavit is completely silent about the dismissal of earlier suits and appeals. Such suppression goes to the root of the matter and disentitles the plaintiff from discretionary relief.



**13.** Even assuming that the plaintiff has obtained a compromise decree in O.S. No.2/2018 for partition, the same by itself cannot establish his possession. The decree itself only apportions the property inter se between co-sharers. When the the defendants are disputing possession and have produced judgments showing consistent rejection of plaintiff's father's claims, the mere existence of partition decree is insufficient to show *prima facie* possession as on the date of suit.

**14.** On the contrary, the documents produced by the defendants disclose that the issue of possession has been a matter of dispute for decades between the parties and the findings in earlier litigations weigh against the claim of the plaintiff. Hence, the plaintiff has failed to demonstrate a *prima facie* case.

**15.** Coming to the question of *balance of convenience*, it is well settled that where there is a cloud on plaintiff's title and possession, and when the matter is still pending adjudication, the balance cannot tilt in favour of plaintiff who has suppressed earlier adverse proceedings. Granting injunction in such circumstances would virtually amount to granting the



main relief itself, which is impermissible. On the contrary, the balance of convenience is in favour of the defendants who are resisting repeated attempts of litigation. Restraining them by interim order without the plaintiff establishing a strong prima facie case would cause prejudice to their rights.

**16.** On the aspect of *irreparable injury*, the plaintiff has failed to demonstrate any injury which cannot be compensated in terms of law. If ultimately the plaintiff establishes his lawful right and possession at the trial, the law provides adequate remedy for restoration of possession or declaration of rights. Therefore, irreparable injury is not made out.

**17.** Thus, all the three essential requirements for grant of temporary injunction are absent in the present case. The plaintiff neither establishes prima facie case nor shows that balance of convenience and irreparable injury are in his favour.

**18.** Further, the plaintiff's deliberate suppression of earlier litigation between the parties disentitles him from the discretionary and equitable relief. A party who approaches



court must do so with clean hands. Suppression of material facts alone is sufficient ground to reject an application for temporary injunction. The Hon'ble Supreme Court has consistently held that injunction is an equitable relief and a litigant who conceals or suppresses material facts is not entitled for such indulgence. In the case on hand, the plaintiff's silence about previous civil suits and revenue proceedings is fatal to his application.

Hon'ble Supreme court of India in **M/S Gujarat Bottling Co. Ltd. & Ors vs The Coca Cola Co. & Ors reported in 1995 AIR 2372**

***“The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests - (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or***



***not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence.”***

**19.** As per the above discussion, the plaintiff has not established a prima facie case, which is the harbinger to grant an order of temporary injunction. Balance of convenience does not lie in the favour of plaintiffs and more loss will be caused to the defendants who are carrying out public service. The other contentions taken by both parties can be only decided upon a full-fledged trial. **Hence, this court answers point No.1 to 3 in the Negative.**

**20. Point No.4:** For the above reasons, this court proceeds to pass the following:

### **O R D E R**

**The IA No. 1 filed U/o XXXIX Rule 1 and 2 CPC filed by the plaintiff is hereby rejected on cost of Rs.400/-.**



(Dictated to the Stenographer transcribed, typed and print out taken by her, corrected by me and then order pronounced in the open court on this 02<sup>nd</sup> day of August 2025.

Sd/-

**Addl. Civil Judge and JMFC.,  
Gubbi.**