

**IN THE COURT OF I ADDL. SENIOR CIVIL JUDGE AND
J.M.F.C., AT MADHUGIRI**

PRESENT	:		RAGHAVENDRA VAIJANATH B.A., LL.B. (NEW) I Addl. Senior Civil Judge and J.M.F.C., Madhugiri
DATED	:		21st DAY OF JULY, 2026
<u>O. S. No.</u>	:		<u>406/2024</u>
<u>BETWEEN</u>	:	01.	A. HANUMANTHARAYA S/O LATE NARASIMHAIAH , Age: About 70 years.
		02.	SMT. CHOWDAMMA W/O LATE BHIMANNA , Age: About 65 years.
		03.	B. SOMASHEKAR S/O LATE BHIMANNA , Age: About 65 years.
		04.	SHIVARAJU B. S/O LATE BHIMANNA , Age: About 42 years.
		05.	CHETHAN KUMAR S/O LATE BHIMANNA , Age: About 38 years.
			All are R/o: Byadarahalli, I.D. Halli Hobli, Madhugiri Taluk, Tumakuru District.
			 Plaintiffs
			(Reptd. by Shri. M. Mahesh, Advocate.)

AND	:	01.	SRI. CHOWDAIAH S/O LATE RAMANNA, Age: About 60 years.
		02.	SMT. SHARADAMMA W/O LATE NAGARAJU, Age: About 56 years.
		03.	SMT. RADHA D/O LATE NAGARAJU, Age: About 30 years.
		04.	SMT. SUMA D/O NAGARAJU, Age: About 28 years.
			All are R/o: Byadarahalli, I. D. Halli Hobli, Madhugiri Taluk.
		05.	CHIRANTHAN C. S/O N. V. CHETHANRAYA, Age: About 33 years, R/o: No.29, Nanjappa Circle, Venkataswamappa Layout, Bengaluru North District, Bengaluru – 560 097.
			 Defendants
			(Reptd. by Shri. Dr. B. Manjunath & Associates, Advocate.)
		<u>I.A. No.V</u>	
APPLICANT/ DEFENDANT NO.5	:	01.	CHIRANTHAN C. S/O N. V. CHETHANRAYA.
			(Reptd. by Shri. Dr. B. Manjunath & Associates, Advocate.)
OPPONENTS/ PLAINTIFF NOS.1 TO 5	:	01.	A. HANUMANTHARAYA S/O LATE NARASIMHAIAH AND FOUR OTHERS.
			(Reptd. by Shri. M. Mahesh, Advocate.)

i.	Provision under which the application is filed	U/O XXXIX Rule 1 and 2 R/W SEC. 151 C.P.C.
ii.	Relief sought for	An Order of Temporary Injunction against the plaintiffs to not to interfere
iii.	The date on which the application is filed	24-11-2025
iv.	Number of the application	I. A. No. V
v.	The date on which the objections are filed by different opponents	07-03-2026
vi.	The date on which the orders were passed on the said application	21-07-2026

**ORDER ON I. A. No. I FILED U/O XXXIX RULE 1 and 2 R/W
SECTION 151 OF C.P.C.**

The applicant/defendant No.5 has filed the instant application U/O XXXIX Rule 1 and 2 R/W Section 151 of C.P.C. for granting an ad interim order of injunction against the plaintiffs restraining them from causing any kind of interference in the defendant No.5's peacefully owned and possessed item No.1 (i.e., Sy. No.5/9 measuring 1 Acre 22 Guntas) and item No.3 (i.e., Sy. No.5/5 measuring 31 Guntas) of plaint schedule property till disposal of the suit in the interest of justice.

02. In support of the application the applicant/defendant No.5 has sworn to the affidavit stating that the plaint schedule properties being the ancestral properties of the defendant Nos.1 to 4, they were in possession of the same. The defendant Nos.1 to 4 had alienated item No.1 and item No.3 of the plaint schedule properties in favour of the defendant No.5. The defendant No.5 is in possession and enjoyment of item No.1 and item No.3 of the plaint schedule properties. The plaintiffs having no manner or right, title and interest in item No.1 and item No.3 of the plaint schedule properties are not only causing illegal interference in the possession of the defendant No.5, who is a resident of Bengaluru, but are also trying to dispossess him from the said plaint schedule properties against which the defendant No.5 lodged a complaint and Midigeshi Police issued N.C.R. Thereafter, the plaintiff by lodging complaint before the Rural S.P., Tumakuru is harassing the defendant No.5. It is furthermore stated that the defendant No.5 has no right, title and interest in respect of item No.2 and item No.4 of the plaint schedule properties. Since the plaintiffs did not heed to the request of the defendant No.5 to not to cause interference in his peaceful possession of item No.1 and item No.3 of the plaint schedule properties, therefore the defendant No.5 has filed the instant I.A. No.V. If I. A. No. V is allowed no harm or injury would be caused to the opponents/plaintiffs as otherwise the applicant/defendant No.5 will be put to heavy loss and hardship which cannot be compensated in terms of money. Hence the application.

03. The plaintiff nos.1 to 5 have resisted the instant application by filing their joint objection to I.A.No.V filed by the applicant/defendant No.5 inter alia contending that the plaint schedule properties are the ancestral properties of the plaintiffs as item No.1 of the plaint schedule property was purchased by Shri. B. S. Narasimhaiah S/o Sanjeevappa (i.e., the father of plaintiff No.1, father-in-law of plaintiff No.2 and grandfather of plaintiff Nos.3 to 5) through a registered sale deed dated 16.06.1947 and the remaining plaint schedule properties were acquired by him as per compromise decree dated 25.07.1998 passed in O. S. No. 258/1996 on the file of the Munsiff at Madhugiri and was in possession and enjoyment of the plaint schedule properties as lawful owner. Neither the defendant Nos.1 to 4 nor their ancestors have challenged the said compromise decree and it has attained finality. Due to oversight Shri. B. S. Narasimhaiah S/o Sanjeevappa, on the basis of registered sale deed and compromise decree, did not get khata and pahani of plaint schedule properties changed in his name. The Khata of item No.1 of the plaint schedule property stands in the name of Shri. Chowdaiah S/o Ramaiah and the name of father of plaintiff No.1 from 1966-67 to 2019-20 stood at column No.12(2) of the R.T.C. extract of item No.1 of the plaint schedule property. However, taking undue advantage of similarity of names and insertion of the name of grandfather of defendant No.1 namely Shri. Chowdaiah S/o Ramaiah at column No.12(2) of the R.T.C. extract of item No.1 of the plaint schedule property, the defendant No.1 to dupe the valuable rights of the plaintiffs over the item No.1 and item No.3 of the plaint schedule properties sold these properties to defendant

No.5 by executing a registered sale deed dated 20.01.2025 through gross fraud and impersonation. On the basis of created and concocted sale deed dated 20.01.2025, the defendant No.5 in collusion with revenue authorities got entered his name in respect of item No.1 and 3 of the plaint schedule properties and has filed the instant application without having any right, title and possession over the said properties seeking the relief of injunction against the plaintiffs. It is furthermore contended that the defendant No.5 has filed the instant application under Order XXXIX Rule 1 and 2 R/W Section 151 of C.P.C. instead of filing the same under Order XXXIX Rule 1(a) of C.P.C. therefore the instant application filed under wrong provision of law is not maintainable and is liable to be dismissed. Therefore, sought for the dismissal of the application.

04. I have heard both the sides and perused the written arguments submitted by the learned counsel for the plaintiffs, defendant No.5 and material on record. The following points arise for my consideration.

Point No.1 : Whether the defendant No.5 has made out a prima facie case?

Point No.2 : In whose favour the balance of convenience tilts?

Point No.3 : To whom the greater hardship will be caused in case the injunction is granted?

Point No.4 : What order ?

05. Having regards to the materials placed on record and arguments heard, my answer to the above points are,

Point No. 1 : IN THE NEGATIVE

Point No. 2 : IN FAVOUR OF PLAINTIFFS

Point No. 3 : TO THE PLAINTIFFS

Point No. 4 : AS PER FINAL ORDER, and for the following;

REASONS

06. **POINT NOS.1 to 3:-** As these points are interlinked, for the sake of convenience, I have taken up these points in common for discussion.

07. The learned counsel for the defendant No.5 has vehemently argued that item Nos. 1 and 3 of the plaint schedule properties were the ancestral properties of defendant Nos. 1 to 4, who were in lawful possession of the same. The defendant Nos. 1 to 4 subsequently alienated item Nos. 1 and 3 of the plaint schedule properties in favour of defendant No. 5 through a registered sale deed dated 20.01.2025. Consequent to the said sale deed, mutation was duly effected vide M.R. No. T12/2024-2025, and the name of defendant No. 5 stands recorded in the R.T.C. extracts for item

Nos. 1 and 3 of the plaint schedule properties. By virtue of the said sale deed the defendant No.5 has become the absolute owner and possessor of the item Nos. 1 and 3 of the plaint schedule properties and entries in R.T.C. extracts shows the name of the defendant No.5 and as such prima facie the defendant No.5's possession over item Nos. 1 and 3 of the plaint schedule properties is established which have got presumptive value. Defendant No. 5, who is a resident of Bengaluru, is in exclusive, lawful possession and enjoyment of the said properties. Defendant No. 5 claims no right, title, interest or possession regarding item Nos. 2 and 4 of the plaint schedule properties. The Plaintiffs have absolutely no manner of right, title, or interest in item Nos. 1 and 3 of the plaint schedule properties. Despite having no legal right, the plaintiffs are causing illegal interference and are actively attempting to dispossess defendant No.5 from item Nos. 1 and 3 of the plaint schedule properties, which actions are illegal, high-handed, and liable to be resisted.

- 08.** The defendant No.5 in support of his contention has produced **(i)** C. C. of Sale Deed dated 20.01.2025 executed by Shri. Chowdaiah S/o Late Ramanna and four others in favour of Shri. Chiranthan C. S/o N. V. Chethanraya, **(ii)** C. C. of R.O.R. of land Sy.No. 5/9 situated at Byadarahalli village of Madhugiri Taluk for the year 2025-26 standing in the name of defendant No.5, **(iii)** C. C. of R.O.R. of land Sy.No. 5/5 situated at Byadarahalli village of Madhugiri Taluk for the year 2025-26 standing in the name of defendant No.5 and **(iv)** C. C. of M. R.

No.T12 of land Sy. No.5/*/5 and 5/*/9 of Byadarahalli Village of Madhugiri Taluk.

09. The learned counsel for the plaintiffs has stoutly argued that the plaint schedule properties belong to the plaintiffs through their ancestor, Shri. B. S. Narasimhaiah, who acquired them via a 16.06.1947 sale deed (i.e., item 1 of the plaint schedule properties) and an unchallenged 25.07.1998 compromise decree (regarding remaining items of plaint schedule properties). Though revenue mutations were missed due to oversight, the ancestor's possession was noted in the R.T.C. from 1966-67 to 2019-20. Exploiting a similarity of names, Defendant No. 1 committed gross fraud and impersonation to execute a bogus sale deed dated 20.01.2025, for item Nos. 1 and 3 of the plaint schedule properties, in favour of defendant No. 5. It is also submitted that the sale in favour of the fifth defendant is hit by the principle of lis pendense as per Section 52 of the Transfer of Property Act and entries in revenue records cannot establish lawful possession, when such entries are not made by following due procedure of law. Defendant No. 5 has no right, title or possession over item Nos. 1 and 3 of the plaint schedule properties, and his temporary injunction application is legally not maintainable as it is preferred under wrong provisions of C.P.C. i.e., under Order XXXIX Rule 1 & 2 of C.P.C. instead of under Order XXXIX Rule 1(a) of C.P.C.

10. In support of their case the plaintiffs have produced **(i)** C.C. of R.T.C. extracts of Plaint schedule properties, **(ii)** C. C. of registered Sale deed dated 16.06.1947, **(iii)** G – tree of family of

plaintiffs, **(iv)** C. C. of E. C. for the period from 01.04.1945 to 31.03.2004, **(v)** Copy of order sheet, plaint, compromise petition and compromise decree of O.S.No.258/1996, **(vi)** photographs of Item nos.1 and 3 of plaint schedule properties with pendrive.

11. The Ld. Counsel for the plaintiffs placed his reliance on the following judgment;

(i) ILR 1993 KAR 161 (Veerabhadrapa Vs. Mayappa)

12. This is a suit for Declaration and Perpetual injunction. The Learned Counsel for the plaintiffs and defendant no.5 have argued at length touching the merits of the case, however, I restrict my discussion to the core facts and arguments advanced in so far as they are relevant to the disposal of present I.A. is concerned.

13. It is contended by the Ld. Counsel for the plaintiffs that the defendant No.5 has filed the instant application under Order XXXIX Rule 1 and 2 R/W Section 151 of C.P.C. instead of filing the same under Order XXXIX Rule 1(a) of C.P.C. therefore the application filed under wrong provision of law is not maintainable and is liable to be dismissed. In a suit filed by the plaintiff, it is open to the defendant to file an application only under Order XXXIX Rule 1(a) of C.P.C. seeking temporary injunction and the Court on being satisfied that a case is made out for grant of such injunction, can grant the same in its discretion. But, the defendant cannot maintain an application under Order XXXIX Rule 1(b) and (c) of CPC at all. In view of the same , In the humble opinion of

this Court, the said submission has no force, in as much as it is now well-known that non-mentioning or wrong mentioning of a provision of law would not take away the jurisdiction of the Court, if the Court has the requisite power/jurisdiction under any of the provisions mentioned therein.

14. Admittedly, the defendant No.5 has not filed a counter claim and is a lis pendense purchaser. Defendant No. 5 does not acquire an untainted independent right to the item Nos.1 and 3 of plaint schedule properties. He steps directly into the shoes of Defendant Nos. 1 to 4 and is bound by whatever claims or liabilities affect Defendant Nos. 1 to 4. A lis pendens purchaser cannot establish a strong, clean legal right to possession against the original plaintiffs when the very title of his vendors (Defendant Nos. 1 to 4) is under litigation. Injunction is an equitable, discretionary remedy. A person who buys a disputed property mid-lawsuit does so at his own risk and does not enjoy equitable favoritism over the original litigants.

15. Rule 1 of Order XXXIX, reads as under:

“1. Cases in which temporary injunction may be granted.—

Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) xxxxxxxxxxxxxxxxxxxx,

(c) xxxxxxxxxxxxxxxxxxxx.”

In clause (a) of Rule 1 of Order 39 the use of the expression ‘any party’ is certainly wide enough to cover the plaintiff as well as the defendant. But the right to maintain an application is confined to those cases where the property in dispute in the suit is in danger of being wasted, damaged or alienated or wrongfully sold in execution of a decree. In the instant case the defendant No.5 has not come with any of the grievances that the property in dispute is either being wasted, damaged or alienated or wrongfully sold in execution of a decree. The sole ground on which he has moved the application is that the plaintiffs are trying to interfere with his possession. Accordingly, neither his application can be regarded to be maintainable nor injunction could be granted under Rule 1 of Order XXXIX.

16. The decision cited supra relied upon by the learned counsel for the plaintiffs squarely applies to the present suit. Therefore, prima facie case is in favour of plaintiffs and having regard to the facts and circumstances of the case, grant of an injunction order at this stage will cause irreparable loss and injury to plaintiffs and if injunction is not granted on the other hand will cause no substantial injury to defendant No.5. Balance of convenience lies in favour of plaintiffs and refusing of injunction and accordingly, I answer point Nos.1 to 3.

17. However, it is made clear that the findings of this Court while considering the present temporary injunction application is tentative and mere prima facie in nature, and does not tantamount to judicial adjudication of an issue, and this will not have any

persuasive effect at the time of final disposal of the suit after full fledged trial.

- 18. Point No.4:-** In the result, I proceed to pass the following order.

ORDER

The I.A.No.V dated 24.11.2025 filed by the defendant
No.5 U/Order XXXIX Rule 1 and 2 R/w Section 151 of
C.P.C. is dismissed.

(Typed directly on computer by me, after corrections pronounced by me in the
Open Court on this the 21st day of July, 2026.)

**RAGHAVENDRA VAIJANATH
I ADDL. SENIOR CIVIL JUDGE AND
J.M.F.C., MADHUGIRI**