

KAUK310001672024



**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE  
AND JMFC BHATKAL**

**PRESENT**

Smt.Dhanavathi. B.A.(law) LL.B.,  
Addl. Civil Judge and J.M.F.C, Bhatkal

**O.S.No.4/2024**

**Dated this the 28<sup>th</sup> day of August, 2024**

**PLAINTIFF** : Manjunath Chowda Devadiga,  
Aged about: 81 years,  
R/o: Shyanbog Hitlu, Kodsulu,  
Kaikini, Bhatkal Taluk, (U.K.)

**(By Sri.S.K.N/K.R.N, Advocates)**

**// Versus //**

**DEFENDANTS** :

1. Shridhar S/o Jatta Naik,  
Aged about: 36 years,  
R/o: Kodsulu, Kaikini,  
Bhatkal Taluk, (U.K.)
2. Shridhar S/o Venktramana Naik,  
Aged about: 42 years,  
R/o: Kodsulu, Kaikini,  
Bhatkal Taluk, (U.K.)

3. Ishwar S/o Honnappa Naik,  
Aged about: 38 years,  
R/o: Kodsulu, Kaikini,  
Bhatkal Taluk, (U.K.)

**(By Sri.N.G.G., Advocate)**

**Parties to I.A.No.II**

**APPLICANT/ PLAINTIFF :**

Manjunath Chowda Devadiga,

**// Versus //**

**RESPONDENT/DEFENDANT :**

Shridhar S/o Jatta Naik and others

**ORDER ON I.A.No.II AND III FILED UNDER ORDER  
XXXIX RULE 1 AND 2 R/W. SEC. 151 OF CIVIL  
PROCEDURE CODE.**

I	Provision under which the applications are filed	U/o XXXIX Rule 1 and 2 R/w 151 of C.P.C
II	Relief sought for	IA-II : To grant temporary injunction against the defendants and their men.
III	The date on which the application filed.	IA-II : 06.01.2024
IV	Number of application.	I.A.No.II
V	The date on which the objection filed by opponent.	27-07-2024
VI	The date of which the order passed on the application.	28.09.2024

This suit is instituted for the relief of permanent injunction against the defendants

1. In I.A.No.II it is prayed to grant temporary injunction against the defendants, their men, restraining them not to interfere the peaceful possession and enjoyment of the suit schedule property and to Devi Pooja by illegally entering into the suit property till the disposal of the suit in the interest of justice and equity.

2. **Briefly, the plaintiffs case is as follows:-**

**Description of Suit properties:-**

ದಾವಾ ಪರಿಶಿಷ್ಟ

ಭಟ್ಕಳ ತಾಲೂಕಾ ಮಾವಳ್ಳಿ-2 ನೇ ಗ್ರಾಮದ ಆಸ್ತಿಯ ವರ್ಣನೆ

ಸ.ನಂ .	ಹಿಸ್ಸಾನಂ.	ಕ್ಷೇತ್ರ	ಆಕಾರ	ಚತುರ್ಗಡಿ
722	22	0-5-8 ಖರಾಬ 0-0-8 ಉಳಿದಿದ್ದು 0-5-0	1.51	ಪೂರ್ವಃ ಲಾಗು ಹಳ್ಳಿ ಪಶ್ಚಿಮಃ ಸ.ನಂ. 722 ಹಿಸ್ಸಾ 2 ರ ಪೈಕಿ ಉತ್ತರಃ ಸ. ನಂ. 722 ಹಿಸ್ಸಾ 2 ರ ಪೈಕಿ ಕ್ಷೇತ್ರ ದಕ್ಷಿಣಃ ಸ.ನಂ. 722 ಹಿಸ್ಸಾ 2 ರ ಪೈಕಿ

3. In the annexed affidavit to I.A.No.II it is stated that, the schedule property is the family property of the plaintiff and he is in the possession and enjoyment of the said property. Originally the entire extent of the schedule property measuring 3-39-0(A-G-A) Kharaba 0-6-0 remaining 3-33-0 property is granted by the Bhatkal Land Tribunal, as per mutation entry

No 127/2021-2022. Thereafter on 03-07-2023, the plaintiff has acquired the right over the schedule property as per registered document No. 593/2023-2024, and same was entered in the mutation entry No. H-8/2023-2024. In the suit schedule property, there is Sri. Katte Devatha Gudi which has been worshiped since time immemorial and since they have been doing pooja works of the said Sri. Katte Devath Devi together by the family members, they have kept said property in the joint possession. The said Sri. Katte Devatha Deavara Gudi is worshiped by the ancestors of the plaintiff and now the plaintiff is doing pooja work of the said Gudi as per the customs of their family. Accordingly, every Tuesday and Friday, Devi darshana comes to their family members and it has been going on till today as per the order of the Goddess. The worship of Sri Devi is only done by his family members and during sankranti season they were doing special pooja to said Goddess. When such being the case, the defendants were coming to the said Devi temple and threatened that, they also do the pooja. Hence, in order to restrain the defendants the plaintiff has filed Original suit No. 97/2021. But in the said suit there was irreparable defects, hence the said suit has been withdrawn on 04-01-2024 and filed this suit. As such the defendants on 31-12-2023 have again interfered the pooja work of the Goddess and threatened that they will also do the pooja to the Goddess and thereby causing interference into the pooja work of the plaintiff by using political influence and

money power. Hence filed this suit to restrain the defendants from causing interference in the pooja work of the Goddess and the Devi darshana on every Tuesday and Friday in the above said Gudi. If the defendants are succeeded in their words it will cause problem for the pooja of above said Goddess which is performed for time immemorial. Therefore it is prayed to grant injunction order against the defendants as sought in the application.

4. Per contra, the defendant No.3 has filed written statement and objection to this application. In his objection, the defendant No.3 has denied the averments made in plaint at para No. 2 to 10 and further contended that, the schedule property was originally belong to one Sakarde Bibi Fatima Kom Mohiddin Saheb and then same was given to the father of the plaintiff by name Chowda S/o Munna @ Manjappa for agricultural purpose on the basis of moolageni. After commencement of The Land Reforms Act, the father of the plaintiff has applied to the Land Tribunal for the grant of said land. Accordingly, said land was granted to the plaintiff's father. In the schedule property there is Devara Katte temple since from ancient period. Since the original owners of the schedule property are belong to another community, the said temple was worshiped by the neighbouring villagers since prior to grant of the said land. But after grant of the said land, the family of the plaintiff have been claiming the right over the

said temple and filed false suit. The said property was granted to the plaintiff's family for cultivation and they cannot obstruct the public right or easement over the said property. They have not filed application for grant of land by including the temple in dispute and the Land Tribunal has not made any order of grant including the temple. In form No.10 it is clearly mentioned that, the public right, easement were reserved in the granted land. But the plaintiff's family have clearly violated the conditions mentioned in the form No.10 and deliberately they have disturbing the worship performed by the villagers. Even though the plaintiff has no right over the temple, he has filed false suit in order to gain right over the said temple.

5. Further it is contended that, the plaintiff has not shown the disputed temple in the schedule property. The plaintiff has not made the family members of his family as party to the suit. Hence, the suit is not maintainable for non joinder of necessary parties. The schedule property and the temple are in the possession of the defendants and the other devotees of the village. But all the devotees are not made party in the suit. The plaintiff never had the possession of the temple in dispute,. The said temple existed since from 200 year ago and since then the villagers were taking care of the day to day activities of the said temple. The defendants, have

easement right over the temple in the schedule property since from ancient period.

6. Further, the plaintiff had filed original suit No. 97/2021 with respect to the temple and schedule property. In the said suit, the plaintiff has stated in his plaint that, on 21-03-2017 the trust was registered with respect to the temple. But in the trust deed the plaintiff has no position in the said trust. Hence, the plaintiff cannot file suit with respect to the temple. On the other hand, the plaintiff has not made members of the trust to this suit. In the said suit the plaintiff has sought for injunction against the defendants. But same was rejected by the court as per the order dated 23-06-2022. Hence, the plaintiff has withdrawn the said suit and filed this suit and sought for injunction order. Since, the injunction order was rejected by the court, now on the same grounds, same application cannot be filed. The temple has valuable gold ornaments and other valuable items. The said properties are not valued and sufficient court fee is not paid by the plaintiff. The temple is not shown in the suit schedule property, and building of the temple is not valued in the present suit. In order to grab the valuable movable properties of the temple and to get money which is offered by the devotees of the temple, the plaintiff has filed this false suit. There is no document to show that, the temple is belong to the plaintiff. The said temple is a public temple and this court

has no jurisdiction to decide the right over the public temple. Hence, prays to dismiss the suit.

7. Heard arguments, perused the pleadings and the documents available on record.

8. In view of above the following points that would arise for my consideration are as follows:-

1. Whether, at this stage the plaintiff has made out *prima facie* case in his favour?
2. Whether the plaintiff proves the balance of convenience lies in his favour?
3. Whether the plaintiff proves that in event of not allowing I.A.No.II, he will be put to irreparable loss and injury?
4. What Order?

9. My answers to the above points for I.A.No.II is as follows:-

Point No.1	:	In the <b>Negative</b> ,
Point No.2	:	In the <b>Negative</b> ,
Point No.3	:	In the <b>Negative</b> ,
Point No.4	:	As per final order for the following:-

### **REASONS**

10. **Points No.1:** It is the specific case of the plaintiff is that, the schedule property is the family property of the plaintiff and he is in the possession and enjoyment of the said property. Further it is stated that, in the schedule property

there is Gudi by name Shri. Katte Devatha Devi and same is worshiped by the plaintiff's family since from time immemorial. But the defendants are interfering the pooja activities of the said Gudi and claiming right over said Gudi. In support of the arguments, the learned counsel for the plaintiff has produced the hand written RTC of the schedule property from 1965 to 2001-02, Mutation entry, photographs of the above said Gudi and prays to grant injunction order.

11. Per contra, the defendants have denied the allegations of the plaintiff made in the application and submitted that in the schedule property there is public temple since from ancient period and same is worshiped by the villagers. The defendants are in the possession and enjoyment of the said temple. The plaintiff has filed this false suit in order to disturb the public right over the said temple. There is trust with respect to the said temple. The disputed temple is not shown in the schedule property and the trust members are not made has party to this suit. Hence prays to reject the application. In support of the arguments, the learned counsel for the defendants has produced certified copy of Land Tribunal order, Form No.10, mutation extract of the schedule property, certified copy of the order dated 23-06-2022 in OS No. 97/2021, certified copy of hand written RTC, certified copy of plaint and written statement in OS No. 97/2021, certified copy of order dated: 14-11-2022 in OS No. 97/2021, copy of trust deed.

12. At the time of deciding the application filed U/o XXXIX the court has to decide that who is in the possession of the property and to whom hardship will be caused if the temporary injunction is not granted. In the present case, there is no dispute with regard to the ownership of the schedule property. It is only the contention of the plaintiff is that the defendants are interfering the pooja activities of the Shri.Devatha Katte situated in the schedule property. In order to prove the pooja activities of the said Shri.Devatha Katte the plaintiff has produced photographs. On the other hand the defendants have denied the entire case of the plaintiff and taken a contention that, the said Shri.Devatha Katte is a public temple and it has trust and same is worshiped by the public since from time immemorial. To support this contention, the learned counsel for the defendants has produced the photographs and copy of trust deed etc. On perusal of the documents and considering the arguments canvassed by the both parties, in the present case, both parties claims that, they are in the possession of the Devatha Katte which is situated in the suit schedule property. On perusal of the plaint in OS No. 97/2021, the plaintiff has stated that, there is trust was registered on 13-02-2020 with respect to the above said Devatha Katte and the family members of the plaintiff are the members of the said trust and other community members are not the members in the said trust. These aspects are not stated in present plaint herein.

Further the disputed Shri. Devatha Katte is not shown in the schedule property. On perusal of photographs produced by the plaintiff, at this stage this court cannot come to the conclusion that, the plaintiff is in the possession and performing pooja in the disputed Shri. Devatha Katte in the schedule property. All the contentions taken by the both parties requires detailed trial. Therefore, considering the above aspects and documents produced before the court and also taking into consideration of the arguments canvassed by both counsels, at this stage the plaintiff has not been able to adduce any cogent and reliable materials to show prima-facie case and therefore at this stage, it is not enough to believe the contention taken by the plaintiff in his pleadings. The contention of the plaintiff made in the application will be considered at the time of appreciation of evidence. Therefore, this court is of the opinion that the plaintiff has not made out prima-facie case seeking the relief of temporary injunction against the defendants. Hence, this court answer point No.1 in the **Negative**.

13. **Point No.2 and 3:** These points are taken up together for common discussion in order to avoid repetition of facts. As already stated while discussing point No.1 if the temporary injunction is not granted no loss will be caused to the plaintiff. The plaintiff has not made out any ground to show that he will suffer great hardship and loss if the temporary injunction is not granted. The plaintiff has failed to

show the balance of convenience lies in his favour rather than the defendants. When there is no prima-faice case and balance of convenience, the question of irreparable loss does not arise. In view of above findings this court answer point No.2 and 3 in the **Negative**.

14. **Point No.4**:- In view of the findings on points No.1 to 3, I proceed to pass the following:-

**ORDER**

The I.A No.II filed U/o XXXIX Rule 1 and 2 R/w Section 151 of CPC is hereby rejected.

No order as to costs.

It is made clear that whatever discussion made by this court that opinion found are only for the purpose of disposal of this application and they are on the basis of the materials on the record. Therefore, the parties shall not take the benefit from said observations during the final disposal of this case.

(Dictated to the stenographer directly on computer, corrected by me and then pronounced in the open court this the 28<sup>th</sup> day of August, 2024)

**Sd/-**  
**(Smt.Dhanavathi)**  
Addl. Civil Judge & JMFC,  
Bhatkal.