

KAUK310027142023



**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.102/2023**

**Dated this the 24<sup>th</sup> day of January, 2025**

**PLAINTIFF** :

1. Shrinivas S/o Bhatta Devadiga,  
Aged about: 45 years,  
R/o at: Kotadamakki, Mavalli-2  
Kaikini, Bhatkal.
2. Umesh S/o Annappa Devadiga,  
Aged about: 37 years,  
R/o at: Kotadamakki,  
Kaikini, Bhatkal.

**(By Sri.R.I.N., Advocate)**

**// Versus //**

**DEFENDANTS :**

1. Govindaray S/o Subray Devadiga,  
Aged about: 65 years,  
R/o at: Kotadamakki,  
Kaikini, Bhatkal.
2. Nagappa S/o Subray Devadiga,  
Aged about: 64 years,  
R/o at: Molinamane, Shirali, Bhatkal.
3. Ganapathi S/o Subray Devadiga,(Died)  
By his legal heirs
- 3.a. Nagaratna W/o Ganapathi Devadiga,  
Aged about: 49 years,
- 3b. Jagadish S/o Ganapathi Devadiga,  
Aged about: 23 years,
- 3c. Nayana D/o Ganapathi Devadiga,  
Aged about: 21 years,
- 3d. Rakshitha D/o Ganapathi Devadiga,  
Aged about: 20 years,  
All are R/o: Gonchanamane,  
Kotadamakki, Kaikini, Bhatkal.
4. Shivamma W/o Shankar Devadiga,  
Aged about: 52 years,  
R/o at: Talageri, Bengre-2, Bhatkal.
5. Masthi W/o Rama Devadiga,  
Aged about: 56 years,

- R/o at: Aglahole, Kotadamakki,  
Kaikini, Bhatkal.
6. Nagaratna W/o Jairama Devadiga,  
Aged about: 56 years,  
R/o at: Huvinahitlu, Jogimane, Bhatkal.
  7. Prema Bin Ganapathi Devadiga,  
W/o Madev Devadiga,  
Aged about: 38 years,  
R/o at: Shashihitlu, Bengre-1, Bhatkal.
  8. Bhaskar Bin Ganapathi Devadiga,  
Aged about: 31 years,  
R/o at: Halibadru, Kaikini, Bhatkal.
  9. Bharathi Bin Ganapathi Devadiga,  
Aged about: 35 years,  
R/o at: Halibadru, Kaikini, Bhatkal.
  10. Hanumantha Bin Chowda Devadiga,  
Aged about: 34 years,  
R/o at: Kotadamakki, Kaikini, Bhatkal.
  11. Mohan Bin Chowda Devadiga,  
Aged about: 38 years,  
R/o at: Kotadamakki, Kaikini, Bhatkal.
  12. Rekha W/o Sunil Devadiga,  
Aged about: 40 years,  
R/o at: Kotadamakki, Kaikini, Bhatkal.

13. Rukmini W/o Chowda Devadiga,  
Aged about: 54 years,  
R/o at: Kotadamakki, Kaikini, Bhatkal.
14. Vinutha Bin Chowda Devadiga,  
Aged about: 23 years,  
R/o at: Kotadamakki, Kaikini, Bhatkal.
15. Meghana Bin Chowda Devadiga,  
Aged about: 21 years,  
R/o at: Kotadamakki, Kaikini, Bhatkal.
16. Lohith Babayya Naik,  
Aged about: 25 years,  
R/o at: Kodsula, Mavalli-2, Bhatkal.

**(Defendant No. 1 to 3(a),(b),(d), 4, 5, 6, 8, 10, 11, 13, 14, 16 by Sri.M.G., Advocate, and D3(c), 7, 9, 12, 15-are Ex-parte)**

**Parties to I.A.No.III**

**APPLICANT/ PLAINTIFF :**

Shrinivasa S/o Bhatta Devadiga and another

**// Versus /**

**RESPONDENT/DEFENDANTS :**

Govindaray S/o Subray Devadiga and others

**ORDER ON I.A.No.III FILED UNDER ORDER XXXIX RULE**

**1 AND 2 CIVIL PROCEDURE CODE.**

I	Provision under which applications are filed	U/o XXXIX Rule 1 and 2 of the C.P.C
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II	Relief sought for	For grant of temporary injunction against the defendants restraining them their rock carving works in the constructing shed without permission and to loss of suit 'B' schedule property of plaintiffs and not to disturb the peaceful possession and enjoyment of the suit schedule property in the interest of justice and equity.
III	The date on which the application filed.	18-11-2024
IV	Number of application.	I.A.No.III
V	The date on which the objection filed by opponent.	Objection taken as nil
VI	The date of which the order passed on the application.	24-01-2025

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

ದಾವಾ ಅ ಪರಿಶಿಷ್ಟದ ಆಸ್ತಿಯ ವರ್ಣನೆ

ಉತ್ತರ ಕನ್ನಡ ಜಿಲ್ಲಾ, ಭಟ್ಕಳ ತಾಲೂಕು ಮಾವಳ್ಳಿ-1 ಗ್ರಾಮದ ಆಸ್ತಿಯ ವಿವರ

ಅ.ನಂ.	ಸರ್ವೆ ನಂ.	ಹಿಸ್ಸಾ	ಕ್ಷೇತ್ರ (ಎ.ಗು.ಅ)	ಆಕಾರ ರೂ. ಪೈ	ಗಡಿಗಳು
1.	677 ಡ	-	03-00-00	0.00	ಸರ್ವೆ ಗಡಿಗಳು

ದಾವಾ ಅ ಪರಿಶಿಷ್ಟದ ಆಸ್ತಿಯ ವರ್ಣನೆ

ಉತ್ತರ ಕನ್ನಡ ಜಿಲ್ಲಾ, ಭಟ್ಕಳ ತಾಲೂಕು ಮಾವಳ್ಳಿ-2 ಗ್ರಾಮದ ಆಸ್ತಿಯ ವಿವರ

ಅ.ನಂ.	ಸರ್ವೆ ನಂ.	ಹಿಸ್ಸಾ	ಕ್ಷೇತ್ರ (ಎ.ಗು.ಅ)	ಆಕಾರ ರೂ. ಪೈ	ಗಡಿಗಳು
1.	690	-	00-11-00	1.58	ಸರ್ವೆ ಗಡಿಗಳು

ಉತ್ತರ ಕನ್ನಡ ಜಿಲ್ಲಾ, ಭಟ್ಕಳ ತಾಲೂಕು ಕಾಯ್ಕಿಣಿ ಗ್ರಾಮದ ಆಸ್ತಿಯ ವಿವರ

ಅ.ನಂ.	ಸರ್ವೆ ನಂ.	ಹಿಸ್ಸಾ	ಕ್ಷೇತ್ರ (ಎ.ಗು.ಅ)	ಆಕಾರ ರೂ. ಪೈ	ಗಡಿಗಳು
1.	635	1	00-19-12	3.18	ಸರ್ವೆ ಗಡಿಗಳು

3. In the annexed affidavit to I.A.No.III, it is stated that, the suit A schedule property is the malki land of the defendant No.1 to 15 . The plaintiffs are joint owners of the

suit 'B' schedule property. Their land is adjacent to the land of the defendants. The land of the defendants is vacant land and they are cultivating jasmine, coconut, arecanut, banana tree betel etc in their land for livelihood.

In the suit 'A' schedule property of the defendant No.1 to 15, the defendant No.16 has built a shed for stone carving, by bringing big stones, machines, big generators for stone carving. When the plaintiffs and the villagers have questioned the same, they informed that they are constructing shed for stone carving and they have not taken permission from the concerned department. At that time, the plaintiffs and other villagers have requested them by saying that surrounding agricultural land are spoiled due to the dust generated by their stone carving work and also it will harm to the health of children and age old persons. But the defendants did not listen their words and threatened them by saying that they will built the shed and they have influence.

Further in this regard, on 06-09-2023 the plaintiffs and other villagers have requested the Tahashildar Bhatkal, the Assistant Executive Engineer Hescom, Bhatkal and panchayath Development Officers/ Chairman and Members of Grama Panchayat Mavalli-1 and Mavalli-2, and requested not to grant permission for the construction of the said shed by writing. But they have given an oral assurance that, they will not permit any stone carving shed construction in the 'A' suit schedule property. Similarly the plaintiffs have give written

request to the District Collector and other officials, but the authorities have not taken any action till today.

The defendants were doing the shed construction work as fast as possible, by seeing that the plaintiffs and the villagers again met the defendants on 02-10-2023 and explained the danger and trouble caused by the stone carving work in the 'A' suit property , but the defendants did not listen their words and threatened them by saying that ' ನಮಗೆ ಯಾರ ಅನುಮತಿಯು ಬೇಕಾಗಿಲ್ಲ, ನಾವು ಶೆಡ್ ನಿರ್ಮಿಸಿಯೇ ಸಿದ್ಧ, ನಿಮ್ಮಿಂದ ನಾವು ಶೆಡ್ ನಿರ್ಮಿಸುವುದನ್ನು ತಡೆಯ ಸಾಧ್ಯವೇ ಇಲ್ಲ, ಏನೂ ಬೇಕಾದರೂ ಮಾಡಿಕೊಳ್ಳಿ'. After that, the defendants have filed a caveat petition against the plaintiffs and some other villagers in the court on 10.10.2023 and completed the construction of the shed and are now in the process of starting the work of carving the stones. Hence, permanent injunction is sought against the defendants and their persons to prevent them from carrying out any stone carving work in the shed constructed in the suit 'A' schedule property and thereby damaging the agricultural produce of the plaintiffs properties in suit 'B' schedule property and disturbing peaceful possession and enjoyment of the suit schedule property. If the injunction is granted, the defendants will not suffer. Hence, prays to allow the application.

4. After service of summons, the defendants No.1 to 3(a), (b),(d), 4 to 6, 8,10,11,13,14 and 16 have appeared through their counsel. After service of summons, the defendants No.3(c),7,9,12 and 15 have not appeared before this court and

they placed ex-parte. In spite of sufficient opportunity the defendants who appeared before this court have not filed any written statement and objection to this application, hence same taken as not filed.

5. Heard arguments, perused the plaint and the documents available on record.

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

1. Whether, at this stage the plaintiffs have made out *prima facie* case in her favour?
2. Whether the plaintiffs prove the balance of convenience lies in their favour?
3. Whether the plaintiffs prove that in event of not allowing I.A.No.III, they will be put to irreparable loss and injury?
4. What Order?

7. My answers to the above points is 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:-

### **REASONS**

8. **Points No.1:** It is the specific case of the plaintiffs that, they are the joint owner of the 'B' schedule property and the 'A' schedule property is the malki land of the defendant

No.1 to 15. Further, the defendant No.16 has built a shed for stone carving, by bringing big stones, machines, big generators for stone carving in the 'A' schedule property. When the plaintiffs and other villagers have questioned the same, they informed that they are constructing shed for stone carving and they have not taken permission from the concerned department. At that time, the plaintiffs and the villagers have requested them by saying that surrounding agricultural land are spoiled due to the dust generated by their stone carving work and also it will harm to the health of children and age old persons. But the defendants did not listen their words and threatened them. Hence prays to grant temporary injunction against the defendants.

9. In support of the argument, the learned counsel for the plaintiffs have produced photographs of the stone carving work which is alleged to be doing in the 'A' schedule property. The learned counsel for the plaintiffs argued that, 'A' schedule property is the adjacent to the plaintiff's land and the defendants are carrying out the stone carving work in the shed built in the 'A' schedule property. Further from the said carving work, dust is spreading over the jasmine cultivation of the plaintiffs in the 'B' schedule property, if the defendants continue their work, it will cause irreparable lose to the plaintiffs and prays to allow the application.

10. The granting of injunction is the discretionary power of the court. It is important, on the part of the plaintiff to prove

and establish the prima facie case before the court to get order of the temporary injunction in his favour from the court. He also demonstrate before the court that the balance of convenience lies in his favour and if the order is not granted he will be put to irreparable loss. The primary intention of granting the temporary injunction is to preserve the subject matter of dispute till the right, title and dispute between the parties is adjudicated by the court. 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. It is only the contention of the plaintiffs that the defendants are carrying out the stone carving work in the 'A' schedule property without having permission from the concerned authority and dust coming out of the said work is causing damage to the jasmine cultivation. On perusal of record the defendants who appeared before this court have not filed any objection to this application. When such being the case, the question of stone carving work carrying in the 'A' schedule property without having licence from the concerned department and also the alleged damage from the said work cannot be decided at this stage and same required detailed trial.

11. On perusal of the documents and considering the arguments canvassed by the plaintiff, it is very clear that there is dispute with regard to the construction of shed and stone

carving work in the 'A' schedule property. To show the same, the plaintiffs have produced photographs and letters submitted to the different departments. But mere production of the photographs and letters, at this stage the court cannot come to the conclusion regarding the damage caused by the alleged stone carving work of the defendants in the 'A' schedule property to the plaintiff, it requires detail trial. Therefore, considering the above aspects and documents produced before the court and also taking into consideration of the arguments canvassed by the plaintiffs, at this stage the plaintiffs have not been able to show prima-facie case and therefore at this stage, it is not enough to believe the contention taken by the plaintiffs in their pleadings. The contention made in the application will be considered at the time of appreciation of evidence. Therefore, this court is of the opinion that the plaintiffs have 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**.

12. **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 and they have not made out any ground to show that they will suffer great hardship and loss if the temporary injunction is not granted. The plaintiffs failed to show the

balance of convenience lies in their favour rather than the defendants. On the other hand, 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**.

13. **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.III filed U/o XXXIX Rule 1 and 2 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 24<sup>th</sup> day of January, 2025)

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