

KAUK310030982024



**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.80/2024

Dated this the 7th day of April, 2025

PLAINTIFF :

Balachandra
S/o Purushothem Shanbagh
Aged about: 73 years,
R/o: Kayathayni Store,
Shop No.3, NH- 66,
Shirali, Bhatkal.
Mobile No. 997297530

(By Sri.V.F.G., Advocate)

// Versus //

DEFENDANTS :

Grama Panchayath Shirali,
Represented by its
Panchayath Development Officer,
Shirali, Bhatkal.

(Defendant by Sri.S.B.B., Advocate)

Parties to I.A.No.II

APPLICANT/ PLAINTIFF :

Balachandra S/o Purushothem Shanbagh

// Versus //

RESPONDENT/DEFENDANTS :

Grama Panchayath Shirali,
Represented by its
Panchayath Development Officer,
Shirali, Bhatkal.

**ORDER ON I.A.No. II FILED UNDER ORDER XXXIX
RULE 1 AND 2 R/W. SEC. 151 OF CIVIL
PROCEDURE CODE 1908 .**

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	To grant an ad-interim exparte order of temporary injunction against the defendant restraining the defendant, its successor and all persons claiming through it from evicting the plaintiff from the suit schedule shop illegally and highhandedly without the due process of law till the disposal of the suit in the interest of justice.
III	The date on which the application filed.	17.08.2024
IV	Number of application.	I.A.No.II
V	The date on which the objection filed by opponent.	12.02.2025
VI	The date of which the order passed on the application.	07.04.2025

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

SCHEDULE

Immovable property situated at Shirali-I Village, Bhatkal Taluk

Sl. No.	Sy.No.	Hissa No.	Extent (A-G-A)	Assessment Rs. Ps.
1.	540A	-	00-04-10	0=00
2.	540B	-	00-02-06	0=00
Along with a shop bearing Shirali Grama Panchayat Door No.3				

3. In the annexed affidavit to I.A.No.II it is stated that, the plaintiff is the monthly tenant under the defendant with respect to the schedule premises. He has filed a suit against the defendant with respect to the suit schedule premise before this court in O.S No.55/1995 and the said suit was compromised between him and the defendant before the Lok Adalat and the same was decreed as per the terms and condition of the comprise petition dated 25-03-2000. The defendant has been making hectic efforts by one or other illegal means to disposes me from the suit shop illegal and highhandedly without the due course of law and in utterly violation of terms and conditions of the compromise Decree passed by this court in the supra suit. The defendant has refused to accept the rent of the schedule shop, hence on 02-07-2024 he has given a written request to the defendant requesting to accept the rent, but instead of accepting the rent, on 15-07-2024 the defendant issued a replay stating that they wont receive the rent and held out a threat stating that

he has to vacate the schedule premises within 60 days failing, they shall forcibly evict him from the suit shop on a false premise stating that the suit building is in dilapidated condition. But in fact the suit schedule premise is not at all in dilapidated condition as alleged by the defendant. The defendant has no right to evict him illegally and highhandedly except by due process of law and in violation of the Lok Adalat decree passed on 25-03-2000 by this court. The attitude of the defendant shows that, they have no regards to law and the decree of the Court. On 09-08-2024 the defendant P.D.O has held out a threat of the dispossession him from the suit premises by illegal means, if the defendant puts its words in action, the plaintiff will be put to great injustice and irreparable loss. If the application is allowed no harm or injustice will cause to the defendant. The plaintiff has a prima facie case, balance of convenience is also in his favour, hence prays to allow the application.

4. On the other hand, the defendant has filed written statement and objection to the I.A. No.II. In the written statement the defendant has denied allegations made in the plaint and further contended that, the defendant is the absolute owner of the suit shop premises bearing No.3, plaintiff is the monthly tenant under the Shirali Village Panchayath for the period of 11 months period, as such plaintiff has executed lease agreement from time to time as

contemplated under law. The said lease period of the plaintiff is over long back. In the said agreement the plaintiff has agreed the terms and condition of the lease agreement, as such agreement clause No. 7 and 8 authorizes the defendants to take the possession of the suit shop premise in case they required, even then the defendants have issued two month notice on 22-03-2024 and given 60 days time to the plaintiff to make alternative arrangement. The plaintiff is bound by the terms of the agreement. The plaintiff ought to have vacate the suit premises and to hand over the suit premise to the defendants as per the terms of the agreement. The said building is very old and in dilapidated condition, that has to be renovated by reconstructing the building where it is situated. As such the defendant Panchayath have obtained the feasibility certificate from the Assistant Executive Engineer, Panchayath Engineering Division, Bhatkal Sub division, Bhatkal on 31-01-2024. They have specifically mentioned that 16 shop building situate in Sy.No.540A and Sy.No.540B of Shirali -I Village, Bhatkal Taluka is very old and not fit for use. So that issued prior notice as per the terms of the agreement, inspite of complying the terms of the notice the plaintiff has issued false reply without any sound reason. Before filing the suit, the defendant has issued notice to the plaintiff, so that bare suit for injunction is not maintainable, apart from that the plaintiffs has not sought the relief of declaration as to the validity of the said notice. The suit property is standing in the

name of president. But he has not made as party to the suit. The suit is bad for non joinder of necessary party. Hence the suit is not maintainable Hence, prays to dismiss the application.

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 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?

7. My answers to the above points is as follows:-

- Point No.1 : In the **Affirmative**
Point No.2 : In the **Affirmative**
Point No.3 : In the **Affirmative**
Point No.4 : As per final order

for the following

REASONS

8. **Points No.1 to 3:** Since these points are interconnected to each other and as such they have been

taken for common discussion and consideration. This application is filed at the stage of filing the suit. The plaintiff has filed this suit for permanent injunction against the defendants with respect to the suit schedule premise.

9. The learned counsel for the plaintiff argued that, the plaintiff is the monthly tenant under the defendant with respect to the schedule premises. He had filed a suit against the defendant with respect to the suit schedule premise before this court in O.S No.58/1995 and the said suit was compromised between him and the defendant before the Lok Adalat and the same was decreed as per the terms and condition of the comprise petition dated 25-03-2000. The defendant has been making hectic efforts by one or other illegal means to disposes me from the suit shop illegal and highhandedly without the due course of law and in utterly violation of terms and conditions of the compromise Decree passed by this court. The defendant has refused to accept the rent of the schedule shop, hence on 02-07-2024 he has given a written request to the defendant requesting to accept the rent, but instead of accepting the rent, on 15-07-2024 the defendant issued a replay stating that they wont receive the rent and held out a threat stating that he has to vacate the schedule premises within 60 days failing, they shall forcibly evict him from the suit shop on a false premise stating that the suit building is in dilapidated condition. But in fact the

suit schedule premise is not at all in dilapidated condition as alleged by the defendant. On 09-08-2024 the defendant P.D.O has held out a threat of the dispossession him from the suit premises by illegal means and prays to allow the application.

10. On the other hand, the learned counsel for the defendants argued that, the plaintiff is the monthly tenant under the defendants for the period of 11 months period, as per lease agreement. In the said agreement the plaintiff has agreed the terms and condition of the lease agreement, as such agreement clause No. 7 and 8 authorizes the defendant to take the possession of the suit shop premise in case they required, by issuing one moth prior notice to plaintiff, even then the defendants have issued two month notice on 22-03-2024 and given 60 days time to the plaintiff to make alternative arrangement. But the plaintiff has not complied the notice and filed this false case. The suit premise is in deterioration condition and it is necessary to demolish the same, for construction of new building. The suit property is standing in the name of president. But he has not made as party to the suit. The suit is bad for non joinder of necessary party and prays to dismiss the application. The defendant counsel during the arguments produced original lease agreement dated: 05-10-1994, copy of endorsement issued to the plaintiff dated 15.07.2024, letter issued by the Assistant Executive Engineer, Zilla Panchayath Sub-division dated: 31-

01-2024, notice dated: 22-03-2024, objection of the plaintiff dated: 12-04-2024, copy of Government circular dated: 23-11-2022.

11. At the time of deciding the application filed U/o XXXIX of C.P.C, the court has to prima-facie find out 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 regarding to the tenant and landlord relationship between the parties. Further it also not in dispute that the plaintiff is in the possession of the suit premise shop. The defendant have produced several documents relating to the suit premise shop. At the time of arguments, the counsel for the defendants argued that the defendants have sent notice and gave 60 days time to vacate the suit premise shop and to make alternative arrangement, hence prays to dismiss the application. Here I would like to rely the decision of R.V Bhupal Vs State of A.P and others, (1995) 5 SCC 698, Hon'ble Supreme Court has held that "8. Tenant at sufferance is one who comes into possession of land by lawful title, but who holds it by wrong after the termination of the term or expiry of the lease by efflux of time. The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of a lawful title. There is little difference between him and a trespasser." Now what constitutes 'due process' is now well settled in view of the

judgment of the Supreme Court in Maria Margarida case, reported in AIR 2012 Supreme Court 1727, wherein the Court has observed that due process of law means nobody ought to be condemned unheard. The due process of law means a person in settled possession will not be dispossessed except by due process of law. Due process means an opportunity for the defendant to file pleadings including written statement and documents before the Court of law. It does not mean the whole trial. Due process of law is satisfied moment rights of the parties are adjudicated by a competent Court. In the present case, the defendant taken a contention that the suit shop premise is in deteriorated condition and it may fall in any movement. At this stage, this court cannot presume on the basis of documents regarding the condition of suit premise, it requires detailed trial. The contentions taken by the defendants will be considered at the time of final disposal. Till then it is necessary to restrain the defendants from evicting plaintiff from the suit schedule premise without due process of law. Hence, at this stage the plaintiff has made out prima-facie case and balance of convenience lies in his favour. If the relief of temporary injunction is not granted in favour of the plaintiff, he will be caused irreparable loss and injustice. Accordingly, this Court answers point No.1 to 3 in the **Affirmative.**

12. **Point No.4:** In view of the findings to the point No.1

to 3, this Court proceed to pass the following:

ORDER

The I.A.No.II filed U/o XXXIX Rule 1 and 2 R/w Section 151 of C.P.C by the plaintiff is hereby allowed.

The defendant, its successor and all the persons claiming through it restrained from evicting the plaintiff from suit schedule shop illegally and highhandedly without due process of law till the disposal of the suit.

Any observations made above, will not be having bearing on the main matter.

(Dictated to the stenographer directly on computer, corrected by me and then pronounced in the open court this the 7th day of April, 2025)