

**IN THE COURT OF THE SENIOR CIVIL JUDGE BHATKAL, AT BHATKAL**

PRESENT: KANT KURANE [SRI. KURANI KANT DHAKU]

*B.Com.,LL.B.(Spl.)*

SENIOR CIVIL JUDGE, BHATKAL.

**ORIGINAL SUIT NO. 03/2024.**

**DATED THIS 22<sup>nd</sup> DAY OF SEPTEMBER-2025.**

**BETWEEN:**

1. SMT. POORNIMA NAIK

-----PLAINTIFF.

[BY SRI. N.S.R.B., ADVOCATE FOR PLAINTIFF]

**AND:**

1. SRI. RAMAKRISHANA NAIK AND OTHERS.

-----DEFENDANTS.

[BY SRI. V. F GOMES ADVOCATE FOR DEFENDANT No.1 & 2]

[ BY SRI. SURESH V. ADI ADVOCATE FOR DEFENDANT No.3]

**PARTIES TO THE I.A No.II**

**BETWEEN:**

1. SMT. POORNIMA NAIK

-----APPLICANT.

[ ORIGINAL PLAINTIFF ]

**AND:**

1.SRI. RAMAKRISHANA NAIK AND OTHERS.

-----OPPONENTS.

[ ORIGINAL DEFENDANTS ]

**DETAILS OF INTERLOCUTORY APPLICATION AS PER CIRCULAR NO. R.J.163/2023 DATED 24.08.2023 AND WP NO. 201865/2023.**

Provision under which application is filed	U/O. XXXIX RULE 1 & 2 R/W SEC. 151 OF CPC
Relief sought for	ORDER OF TEMPORARY INJUNCTION.
The date on which the application is filed	09/001/2024.

No. of application	I A No.II.
Date on which the objections are filed by different opponents	06/04/2024.
The date of order.	22/09/2025.

Sd/-

KANT KURANE [SRI. KURANI KANT DHAKU]  
SENIOR CIVIL JUDGE, BHATKAL.

**ORDER ON I.A No.II UNDER ORDER XXXIX RULE 1 AND 2 R/W SEC. 151 OF CPC**

The I.A No. II is one under Order XXXIX Rule 1 and 2 R/w Sec. 151 of CPC, filed by the plaintiff/applicant for the relief of order of temporary injunction, restraining the opponent/defendant No.3 from alienating or creating any charge, mortgage and restraining the defendant No.3/opponent from causing disturbance or interference with the peaceful possession and enjoyment of plaintiff's suit-scheduled property and also not to commit any nuisance or causing any waste or damages over the plaintiff's suit-scheduled 'A' property, till the disposal of the suit for the interest of equity and justice.

2. In the affidavit of IA No. II and as well as plaint, it is stated that the defendant No.1 and 2 are direct brothers and they are the children of one Sri. Mahadev Naik. The plaintiff is the wife of defendant No.2. The defendant No.1 and 2 have jointly purchased the suit schedule 'A' property bearing its Sy.No. 911/1 measuring 0-26-0 situated at Mavalli village under Registered Sale Deed dated

19.08.1996 from one Smt. Goidu Kom. Jattappa Naik from contributing their respective funds in ratio of 10:90 respectively. Further, after the purchase of above said suit schedule property, the defendant No.1 got converted portion of 00-10-00 for non-agricultural purpose to run the petrol/diesel retail outlet from I.B.P. The defendant No.1 had been started running retail outlet unit over the converted portion of land with the inclusion of defendant No.2 by executing Registered Lease Deed. The defendant No.1 has leased out the said entire land for the period of 20 years commencing from 12.04.2004, which the said I.B.P. Company has put up building over the said converted portion of the land for and on behalf of dealer. The dealership of petrol, diesel, retail outlet was obtained in the name of defendant No.1 even the said dealership was obtained by defendant No.1 and 2 jointly by investing their funds in the ratio of 10:90%. The defendant No.1 has invested only 10% investment and that of defendant No.2 has invested 90% investment for purchase of suit land and to run the dealership of petrol, diesel, retail outlet in it. The management and administration work of the dealership company was looked by defendant No.2 only. The I.B.P. Co. has sanctioned the dealership in the name of defendant No.1 and that of defendant No.2 was managing and looking after the business of the dealership. In the meantime, the defendant No.1 has offered to sell his share in the aforesaid land, thus, purchase in his name along with his share in the dealership and this business, thus, held in his name to defendant No.2, who was holding 90% share in both said land as well as dealership and his business, in July 2017 as per which, it was decided between

defendant No.1 and 2 that the defendant No.1 should sell the dealership of I.O.C. along with land thus, held in his name though he was having only 10% share. But, as the said whole land was subjected to lease by defendant No.1 in favour of I.B.P Co., it was decided that defendant No.1 should execute as GPA in favour of defendant No.2 to look after all affairs in respect of the aforesaid property of 0-26-0 of land including the power to sell and alienate this land and also to move an application with I.O.C., for transfer of the dealership along the name of defendant No.1 to the name of defendant No.2. Accordingly, the defendant No.1 has got prepared and executed GPA in favour of defendant No.2 in respect of entire 0-26-0 of land duly attested and notarized GPA dated 5.10.2017, which was attested by Sri. N.M. Hegde, Notary, Bhatkal with the inclusion of all the power including the power to sell and alienate or transfer the said land on the strength of said GPA which contents one correction duly signed by Notary, though in fact, such correction was not necessary. That even apart of this even defendant No.1 has also move an application with I.O.C. along with necessary paper for transfer of dealership from his name to in the name of defendant No.2 as per the mutual settlement. In the year 2019, the I.O.C., has directed the defendant No.1 to move an online application seeking transfer of such dealership in the name of defendant No.2. The defendant No.1 and 2 were mutually agreed and decided that the defendant No.1 should transfer the dealership in the name of defendant No.2 along with aforementioned immovable property measuring 0-26-0 of land for mutual agreed amount of Rs.85,50,000/- which was agreed to be paid upon the transfer of

such dealership in the name of defendant No.2. Accordingly, the said dealership was directed to be transferred by said I.O.C. in the name of defendant No.2 from the name of defendant No.1 vide its sanctioned order dated 23.8.2022. That as such though defendant No.1 having 10% share and defendant No.2 was having 90% share over the aforesaid land, as the sale deed was executed in the name of defendant No.1 only, its RTC also stood mutated in the name of defendant No.1 only. After the conversion of suit land with extent to 0-10-0 of land and out of the 0-26-0 of land, 0-8-4 area of land acquired for widening NH-66 road. On account of acquisition only 0-17-12 area of land remained in the name of defendant No.1 and as such the said conversion and said converted portion of 0-10-0 of land after such acquisition of 0-8-4 area of land was entered in the RTC as Sy.No.901/5 of Mavalli village with property is hereinafter referred as suit schedule property. Further, it is stated that the plaintiff has decided to purchase the converted portion of land over which the said retail outlet was installed along with building situated thereon and has offered to purchase the 'A' suit schedule property for sale consideration amount of Rs.28,44,000/- from the defendants as the defendant No.1 was having 10% Stake and defendant No.2 was having 90% stake over the 'A' suit schedule property. The defendant No.1 and 2 were agreed to execute the registered sale deed in favour of plaintiff and sale deed was prepared on 23.01.2023 and even the stamp duty for registration for the sale deed was also paid on 17.01.2023 and accordingly, defendant No.2 for self and also as a GPA holder of defendant No.1 has executed sale deed in the name of plaintiff by

subscribing his signature to the sale deed. But, as the stamp duty was paid for registration of the sale deed was found to be deficit, the S.R.O. Bhatkal has directed the plaintiff to pay deficit stamp duty. Further, it is stated that when the plaintiff again presented the sale deed thus duly executed by defendant No.1 and 2 dated 25.01.2023 for registration, the S.R.O. Bhatkal informed the plaintiff that the defendant No.1 has executed registered gift deed in favour of his wife, who is defendant No.3 in the suit dated 24.01.2023 in respect of suit schedule property. Hence, the sale deed executed by defendant No.1 and 2 was not registered and hence, the sale deed was returned without registration. The defendant No.1 has executed notarized GPA in favour of defendant No.2 on the strength of which, defendant No.2 for self and also as GPA holder of defendant No.1 has executed sale deed dated 23.01.2023 and handed over the possession of 'A' suit schedule property to the plaintiff on 23.01.2023 itself, the plaintiff obtained the possession of the property and even, she has already paid entire sale consideration amount by transferring the amount in two installments through remitting the amount in the bank account of defendant No.2. The execution of sale deed was completed on 23.01.2023 but only the formalities of registration remained pending on that day. But, when this sale deed was presented for registration on 25.02.2023, the same could not be registered as defendant No.1 with the intention to defraud the plaintiff and thereby to cheat and dupe the plaintiff and by coming to know presentation of sale deed for registration and his returns as hurriedly and fraudulently created the documents

styled gift deed dated 24.01.2023 in the name of defendant No.3. Further, it is stated that the defendant No.1 and 2 have executed valid sale deed in the name of plaintiff on 23.01.2023 by receiving entire sale consideration amount and on very same day, the defendants have handed over the possession of suit schedule property in favour of the plaintiff and now, the plaintiff is in peaceful possession and enjoyment of 'A' suit schedule property. Further, in the meantime, the defendant No.1 has lodged false criminal case against the plaintiff and defendant No.2 alleging that correction made in GPA in its last page by deleting the word 'out of which' and inserted the word 'including which' was registered in Bhatkal Town PS. The said corrections were done initially at the time of execution of GPA and it was endorsed by notary also. Further, it is contended that currently there is threat from the defendants that they will transfer the suit schedule property to any third person and it is stated that in view of gift deed dated 24.01.2023 the name of the defendant No.3 was entered in the revenue records and taking undue advantage of the same, the defendant No.3 is likelihood to create charge or encumbering the property or may alienate the suit schedule property and likely to raise a loan by mortgaging the suit schedule property. So, if the suit schedule property is sold then, huge loss will be caused to the plaintiff. The plaintiff was having prima-facie case, balance of convenience and there is fair chance of succeed in the suit. Hence, prays to grant temporary injunction, restraining the defendant No.3 from alienating, creating charge and raising the loan by mortgaging the suit schedule

property and also restraining the defendant No.3 from interfering and disturbing the peaceful possession and enjoyment of suit schedule property by the plaintiff .

3. On the other hand, the defendant No.1 and 3 have filed their objections and denied the entire case of the plaintiff and contended that I.A.No.II is not maintainable either in law or facts. Further, it is contended that the contents of affidavit are all false and requested to treat the written statement as objections to I.A.No.II. Further, it is contended that the plaintiff is not at all possession of the suit schedule property and hence, the plaintiff has no prima-facie case and balance of convenience lies in her favour and there is no irreparable losses would be caused if TI order is refused. Hence, prays to dismiss the I.A.No.II with costs in the ends of the justice. In the written statement, the defendants have admitted that this defendants are absolute owners of the suit schedule property and admitted that they have purchased the suit schedule property from one Smt. Goidu W/o. Jatta Naik and her family members by virtue of sale deed. Further, the defendants have admitted that they have converted 0-10-0 of land in to non-agricultural purpose and running dealership of Petrol/Diesel in it outlet unit. Further, it is admitted that defendant has executed registered gift deed in favour of defendant No.3 and contended that he had executed gift deed in favour of defendant No.3 in order to save his property from the fraudulent and cheater as he is the absolute owner of the suit schedule property. Further, it is contended that the third relief of plaintiff for the relief of mandatory

injunction is misconceived and plaintiff ought to have filed relief of specific performance of contract. Hence, prays to dismiss the I.A.

4. On careful perusal of material records, the points would arise for considerations are:

**P O I N T S:**

1. **Whether the plaintiff/applicant has proves that there is prima-facie case?**
2. **Whether the plaintiff/applicant proves that there is balance of convenience lie in her favour?**
3. **Whether the plaintiff/applicant further proves that there is irreparable losses or injuries, if granting of order of TI is refused?**
4. **What order.?**

5. I have heard the arguments of plaintiffs' side, perused material records.

6. On careful perusal of entire material records, my findings to the above points are as follows:

**F I N D I N G S:**

**Point No.1 :** In the **Negative**

**Point No.2 :** In the **Negative**

**Point No.3 :** In the **Negative**

**Point No.4 :** As per the final order for the following:

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

**7. POINT NO.1 to 3 :** These three points are inter connected with each others. Hence, to avoid the repetition of facts and to save the precious time of the Court, these three points are taken together for common discussion.

8. Admittedly, the present suit is one for the relief of cancellation of gift deed and mandatory injunction, directing the defendant No.2 to execute sale deed in favour of plaintiff and consequential relief of prohibitory injunction against the defendant No.3.

9. I have carefully gone through the entire material records.

10. Admittedly, the plaintiff has filed I.A.No.II Under Order XXXIX Rule 1 and 2, seeking relief of interim temporary injunction against the defendant No.3, restraining her from alienating or creating any charge over the suit schedule property and also restraining from interfering and disturbing the peaceful possession and enjoyment of suit schedule property, till the disposal of suit. Order XXXIX Rule 1 & 2 of CPC, dealt with under which circumstances the T.I. order is to be granted. The parties who sought the relief of TI order shall fulfill three main ingredients, such as prima-facie case, balance of convenience lies in his favour and irreparable losses or injury, if the TI order is refused. The granting of TI order is purely discretionary power of Court and it is settled law that even it is the discretionary power, the Court should not grant T.I order, if the opposite party suffers more irreparable injury than the applicant. Further, while granting or refusing the TI order, Court has to see firstly the prima-facie case, balance of convenience lies in whose favour and irreparable losses if TI order refused. The prima-facie case includes the maintainability of the suit also. Further, while granting Temporary injunction Court must first see the three main principles, such as prima-facie case, balance of convenience lies in favour of the

parties and irreparable losses, if the granting of Temporary injunction refused. So, before touching to the merits of the I.A., it is better to know the meaning of prima-facie case, balance of convenience and irreparable losses. The word prima-facie means **'at first sight' or 'at first face' or 'first information'**. The Balance of convenience" means the comparative mischief or inconvenience to the parties. The irreparable losses or injury refers, it is deemed irreparable if there is no clear monetary standard by which damages may be determined.

11. The main allegation of the plaintiff is that the defendant No.1 and 2 are the owners of suit schedule property and out of the suit schedule property, the defendant No.1 and 2 have converted 0-10-0 of land as non-agricultural purpose to run the petrol/diesel outlet dealership. Further, it is alleged that the defendant No.1 has executed notarized GPA in favour of defendant No.2 relating to management of suit schedule property and hence, on 23.01.2023 the very defendant No.1 has executed sale deed in favour of plaintiff by receiving consideration amount. There was deficit stamp duty for registration of sale deed. Hence, on the said date, the sale deed was not executed. On 25.01.2023 the plaintiff has paid the deficit stamp duty and presented the sale deed before the S.R.O. Bhatkal for registration. But, it was noticed that the defendant No.1 has executed gift deed in favour of defendant No.3 on 24.01.2023 in order to defraud and to cheat the plaintiff. Further, it is stated that the defendant No.1 has also lodged criminal case against the plaintiff before the police. Further, it is stated that presently, the suit schedule property is standing in the name

of defendant No.3 by virtue of registered gift deed and now, the defendant No.3 is under process to alienate or create charge over the suit schedule property and also under process to dispossess the plaintiff from the suit schedule property. On the other hand, the defendant No.1 and 2 have admitted that the defendant No.1 and 2 are absolute owners and they were running retail petrol/diesel outlet unit and admitted that the defendant No. 2 has executed gift deed in favour of defendant No.3.

12. On close reading of pleadings and on careful scrutiny of entire material records, it is noticed that there is no dispute in respect of ownership of the suit schedule property.

13. Admittedly, the present suit is filed for cancellation of gift deed dated 24.01.2023, consequential relief of permanent injunction and mandatory injunction, directing the defendant No.2 to execute regular sale deed in favour of the plaintiff.

14. In the instant case, the plaintiff has made several allegations against the defendants and that of defendants have denied the allegations made by the plaintiff. admittedly, present I.A.No.II is filed Under Order XXXIX Rule 1 and 2 of CPC, seeking relief to restrain the defendant No.3 from interference and disturbance to the peaceful possession and enjoyment of plaintiff's suit schedule property and also sought for restrain the defendant No.3 from alienating, creating charge and committing any nuisance to the 'A' suit schedule property till the disposal of suit. Hence, this Court does not want to touch the merit of the case as presently, the question before the Court is only to adjudicate the I.A.No.II.

15. The plaintiff has stated that the defendant No.2 has executed sale deed in her favour by receiving consideration amount on the basis of the notarized GPA and contended that by virtue of sale deed, the plaintiff is in peaceful possession and enjoyment over the suit schedule property. Further, it is contended that in order to defraud and cheat the plaintiff, the defendant No.2 has executed gift deed in favour of defendant No.3. Further, it is also stated that the defendant No.1 has lodged the Criminal case against the plaintiff and defendant No.2 in respect of falsely made a correction in GPA. On the other hand, the defendants have denied the above said allegations of the plaintiff. So, on careful perusal of above facts, it is noticed that to grant the order of T I, the full fledged trial is required. Hence, at first sight and from the face of the records, it appears that the plaintiff has not made out prima-facie case, balance of convenience lies in her favour. The plaintiff has also sought relief to restrain the defendant No.3 from alienating, creating any charge and creating nuisance and damages to the suit schedule property. Section 52 of Transfer of Property Act, prevents the transfer of property while suit is pending. So, suit schedule property and plaintiff is protected U/sec. 52 of Transfer of Property Act. Hence, the plaintiff has not proved the irreparable losses, if granting of order of temporary injunction is refused. Hence, considering the above facts and circumstances of the case, I am of considered view that I.A.II is to be dismissed. Hence, I answer Point No.1 to 3 in the **Negative**.

**16. POINT NO.4 :-** In view of reasons discussed supra, I proceed to pass the following:

**ORDER**

**The I.A. No. II Under Order XXXIX  
Rule 1 and 2 under Section 151 of CPC  
filed by the plaintiff/applicant is hereby  
DISMISSED.**

(Dictated to Stenographer directly on computer, typed by her, revised and corrected by me and then pronounced in the Open Court on this 22<sup>nd</sup> day of September, 2025)

Sd/-

KANT KURANE (SRI KURANI KANT DHAKU)  
SENIOR CIVIL JUDGE, BHATKAL