



**IN THE COURT OF THE CIVIL JUDGE AND JMFC AT
SIDDAPUR.**

Dated this 06th day of April, 2026.

**Present : SRI. HARISHKUMAR.M, B.Com., LL.B.,
Civil Judge and JMFC, Siddapur.**

O.S.No. 47 / 2025

PLAINTIFF:-

Sri. Anwar Khan Hassan Khan
Aged about 63 years,
Occ: Coolie,
R/at. Kavanchur Village,
Kavanchur Post,
Siddapur Taluk.
(By Sri. N.Y.A., Advocate)

V/s.

DEFENDANTS:-

1. Sri. Rahamath Khan Hassan Khan,
Aged about 65 years,
R/at. Haladhakatta,
Kondli Post,
Siddapur Taluk,
Uttara Kannada District,
2. Sri. Ahammed Khan Hassan Khan
Aged about 67 years,
R/at. Konkeri, Padavagoda Village,
Talaguppa Post,
Sagara Taluk, Shivamogga District,
3. Sri. Haranon Khan Hassan Khan,
Aged about 61 years,
R/at. Vidyanagara,
Hubballi Taluk,
Dharwad District,



4. Sri. Naseer Khan Hassan Khan,
Since dead by his LRS,
- 4(a). Smt. Mamtaz W/o Nazeer Khan,
Aged about 65 years,
R/at. Haladhakatta,
Kondli Post,
Siddapur Taluk,
Uttara Kannada District,
- 4(b). Sri. Akbar Khan S/o Nazeer Khan,
Aged about 30 years,
R/at. Haladhakatta,
Kondli Post,
Siddapur Taluk,
Uttara Kannada District,
- 4(c). Sri. Shamsad Khan S/o Nazeer Khan,
Aged about 40 years,
R/at. C/o Mamtaz Khan Nazeer Khan,
Haladhakatta,
Siddapur Taluk,
Uttara Kannada District,
- 4(d). Sri. Sirin S/o Nazeer Khan,
Aged about 37 years,
R/at. C/o Mamtaz Khan Nazeer Khan,
Haladhakatta,
Siddapur Taluk,
Uttara Kannada District,
- 4(e). Smt. Shabana D/o Nazeer Khan,
Aged about 35 years,
C/o Mamtaz Khan Nazeer Khan,
Haladhakatta,
Siddapur Taluk,
Uttara Kannada District,



5. Sri. Khadhar Khan Gouse Khan,
Aged about 61 years,
R/at. Haladhakatta,
Kondli Post,
Siddapur Taluk,
Uttara Kannada District,
6. Smt.Havabi W/o Suleman Khan,
Aged about 68 years,
R/at. Haladhakatta,
Kondli Post,
Siddapur Taluk,
Uttara Kannada District,
**(Defendant No.1, 4(a) to D4(c), D5 & D6 rep.
by Sri. G.S.H, Advocate)
(Defendant No.2, D4(e) & D3 are placed ex-parte)**

IA.NO.1 CAUSE TITLE

Applicant/Plaintiff:-

Sri. Anwar Khan Hassan Khan
Aged about 63 years,
Occ: Coolie,
R/at. Kavanchur Village,
Kavanchur Post,
Siddapur Taluk.
(By Sri. N.Y.A., Advocate)

V/s.

Opponents/Defendants:-

Sri. Rahamath Khan Hassan Khan,
Aged about 65 years,
R/at. Haladhakatta,
Kondli Post,
Siddapur Taluk,
Uttara Kannada District,

And others...

1	Provision under which the application is filed	Under Order XXXIX Rule 1 and 2 of CPC.
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2	Relief sought for	S Seeking to grant temporary injunction against the defendants restraining them from interfering in the peaceful possession and enjoyment of the schedule property till the disposal of the suit.
3	The date on which the application is filed	19.06.2025
4	Number of the application	02
5	The date on which the objections are filed by different opponents	Memo of adoption to IA No. 1 filed on 10.02.2026
6	The date on which the orders were passed on the said application.	06.04.2026

ORDER ON INTERLOCUTORY APPLICATION NO.2 UNDER ORDER XXXIX RULE 1 AND 2 OF CODE OF CIVIL PROCEDURE FILED BY THE PLAINTIFF.

1. The plaintiff herein filed interlocutory application under Order XXXIX Rule 1 and 2 of Civil Procedure Code as per IA.No.2, seeking to grant temporary injunction against the defendants restraining them from interfering in the peaceful possession and enjoyment of the schedule property till the disposal of the suit.



2. The plaintiff herein filed this suit for the relief of permanent injunction restraining the defendant No.1 from construction of new building and interfering in the peaceful possession and enjoyment of the suit schedule property and such other reliefs.
3. On the other hand, the defendant No.1, defendant No. 4(a) to (c), defendant No.5 & defendant No.6 have appeared before the Court and the defendant No.1 has filed his written statement, the defendant No.4(a) to (c), defendant No.5 and defendant No.6 have adopted the written statement filed by the defendant No.1. The defendant No.1, defendant No. 4(a) to (c), defendant No.5 & defendant No.6 have filed memo of adoption to IA.No.2. The other defendants have not chosen to appear before the Court.
4. Heard arguments of learned counsels appearing for the parties, and this Court perused the material available records.
5. This Court has framed the following points for consideration;
 1. **Whether plaintiff has made out prima-facie case for grant of temporary injunction in his favour?**
 2. **Does the balance of convenience lies?**
 3. **Whether the plaintiff would suffer irreparable loss or injury, if temporary injunction is refused?**
 4. **What order?**



6. Findings of this Court on these points are 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 the final order for the following;**

REASONS

7. **POINT NO.1:-** It is a matter of record that the plaintiff herein filed this suit for the relief of permanent injunction and such other reliefs against the defendants based on the grounds that, the defendant No.1 to 3 are the brothers of the plaintiff. Originally the suit schedule property belongs to Sri. Hassan Khan Rahamath Khan who is the father of the plaintiff and it is his self acquired property and he was in peaceful possession and enjoyment of the same. Thereafter, he has executed one registered WILL Deed dated 05.03.1998. After his death his legal heirs one succeeded to the suit schedule property. The said Sri. Hassan Khan Rahamath Khan is the father of the plaintiff and defendant No.1 to 3.
8. This being the fact, the defendant No.1 herein interfering in the peaceful possession and enjoyment of the suit schedule property. That on 16.06.2025 the defendant No.1 herein illegally entered into the suit schedule property and trying to construct a new building in the suit schedule property. Left with no other option, the plaintiff herein filed this suit.



9. The plaintiff also has filed interlocutory application under Order XXXIX Rule 1 and 2 of Civil Procedure Code as per IA.No.2, seeking to restraining the defendants from interfering in the peaceful possession and enjoyment of the schedule property till the disposal of the suit.
10. On the other hand, the defendant No. 1 has filed written statement and he has denied the case of the plaintiff as well as plaint averments and further contended that, the plaintiff, defendant No.1 and 2 have filed a suit in OS.No.56/2021 against the defendant No.1 and others for the relief of partition and separate possession and said suit is still pending for consideration.
11. The defendant No.1 herein further contended that, the plaintiff has not right as well as possession over the suit schedule property since he has sold his right in favour of the deceased Sri. Hassan Khan Rahamath Khan. Hence, the suit of the plaintiff is not maintainable. On these grounds, the defendant No.1 herein prays to dismiss the suit with costs.
12. The defendant No. 4(a) to (c), defendant No.5 & defendant No.6 have adopted the written statement filed by the defendant No.1. The defendant No.1, defendant No. 4(a) to (c), defendant No.5 & defendant No.6 have also filed adoption memo of IA No.1 and seeking consider their written



statement as their objection to IA No.1 and prays to dismiss the IA No.2.

13. The plaintiff has produced the RTC extract, Mutation register extract, Certified copy of WILL deed dated 05.03.1998 and Aadhar card of the plaintiff in support of his case. On the other hand, the defendants have not produced any documents in support of their defense.
14. Both the counsels have addressed their arguments on IA.No.2 and they have reiterated the facts mentioned in their respective pleadings.
15. At this stage, it is pertinent to note that, to grant or not to grant the interim injunction has to be taken, a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interim injunction is granted to mitigate the risk of injustice to the plaintiff during the period before the uncertainty could be resolved. The object of interim injunction is to protect plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighted against the corresponding need of the defendant to be protected against



injury resulting from preventing him exercising legal right for which he could not adequately be compensated.

16. The primary purpose of granting interim relief is the preservation of the property in dispute till legal rights and conflicting claims of the parties before the court are adjudicated.
17. At this stage, it is profitable to refer the provisions of order XXXIX Rule 1 of CPC as hereunder;

Rule 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) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,**
- (c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,**

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court



thinks fit, until the disposal of the suit or until further orders.

An injunction is a judicial process whereby a party is required to do, or to refrain from doing, any particular act. It is a remedy in the form of an order of the court addressed to a particular person that either prohibits him from doing or continuing to do a particular act or orders him to carry out a certain act.

18. Order XXXIX Rule 1 of C.P.C., enumerates the circumstances in which temporary injunctions could be granted. Where in any suit it is proved by affidavit or otherwise. A Plaintiff could seek an ex-parte temporary injunction where he is able to convince the court that one or the more of the circumstances enumerated in Order XXXIX Rule 1 of CPC exists and delay would defeat the claim. On being satisfied that the claim of the plaintiff is probable ex-parte injunction could be granted by the court after recording the existence of the circumstances referred to in Order XXXIX Rule 1 of CPC.

19. At this stage it is profitable to refer the provisions of Section 37 of Specific Relief Act as hereunder;

Section 37. Temporary and perpetual injunctions.—

(1) Temporary injunctions are such as are to continue until a specific time, or until the further order of the court, and they maybe granted at any stage of a suit, and are regulated by the Code of Civil Procedure, 1908 (5 of 1908).



(2) A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

20. By applying the above principles, in the instant case, the plaintiffs herein claiming temporary injunction against the defendants based on the fact that, the defendants herein interfering in the peaceful possession and enjoyment of the suit schedule property. The plaintiff herein averred that, the suit schedule property has been succeeded from his father and he further averred that, the suit schedule property has been succeeded by the legal heirs of Sri. Hassan Khan Rahamath Khan, who is the father of the plaintiff. In support of his case he has produced the RTC extract and mutation register extract, the RTC extracts reveals that, the property bearing Sy.No.414/2 and Sy.No.429 situated at Kondli Village are jointly standing in the name of plaintiff and defendant No.1 to 3 and others and the said property has been mutated in their favour by way of Pouthi Katha.
21. On the other hand, the defendants herein denied the case of the plaintiff and they have denied the execution of the Will Deed executed by the father of the plaintiff and contended that, the plaintiff, defendant No.1 and 2 have filed a suit against the defendant No.1 and others for the relief of partition and separate possession in OS.No.56/2021 and



the said suit is still pending for adjudication. The said fact has been suppressed by the plaintiff and further contended that, the plaintiff has no right over the suit schedule property and as well as the possession and prays to dismiss of the suit as well as IA No.1.

22. In the present case, the main issue is that, whether the plaintiff has succeeded the suit schedule property from his father and there in an alleged interference by the defendant No.1 as alleged in the plaint? In order to suffice the same, the plaintiff has produced the RTC extract and mutation register extract etc., admittedly, the plaintiff herein averred that, the suit schedule property has been succeeded by the legal heirs of Sri. Hassan Khan Rahamath Khan, the RTC extract also reveals that, it is standing in the joint names of plaintiff, defendant No.1 to 3 and others jointly and the RTC further reveals that, they are in joint possession of the same. When the joint possessor also in possession of the suit schedule property and the question of grating of Temporary injunction against the co possessor of the suit schedule property does not arise.
23. Moreover, the plaintiff and defendant No.1 and 2 have filed a suit in OS.No.56/2021 for the relief of partition and separate possession and the said suit is pending for adjudication and the said fact has been suppressed by the plaintiff. Nothing is prevented by the plaintiff to reveal the



same in the present suit. These facts would be fatal to the case of the plaintiff while adjudication of the IA No.2.

24. On careful perusal of affidavit accompanying of IA No.2, the plaintiff nowhere stated that, the defendant No.2 to 6 are interfering in the peaceful possession and enjoyment of the suit schedule property. The affidavit further reveals that, the defendant No.1 herein interfering in the peaceful possession and enjoyment of the suit schedule property. But the RTC extract and mutation register extract are not sufficient to hold the fact that, there is an alleged interference by the defendants as alleged in the IA and as well plaintiff. As already stated above, the injunction cannot be granted against the co-possessor since the said fact admitted by the plaintiff. If the plaintiff herein succeeded to prove his case, obviously he is entitled for the relief as prayed for, if not the suit may be dismissed. Under such circumstances, the court has to apply judicious mind while adjudication of IA No. 2. It is the duty of the Court to protect the rights of both the parties.
25. Based on the above observation, the plaintiff has not made out grounds to grant temporary injunction as prayed for and hence this Court answers this Point No.1 in the Negative.
26. **POINTS NO.2 AND 3:-** The second condition for granting interim injunction is that the balance of convenience must



be in favour of the applicant. In other words, the Court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

27. The existence of the prima facie case alone does not entitle the applicant for a temporary injunction. The applicant must further satisfy the Court about the third condition by showing that he will suffer irreparable injury if the injunction as prayed is not granted and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury.
28. By applying the above principles, in order to ascertain the balance of convenience and irreparable loss and injury, this Court has carefully perused the materials on record. Based on the materials available on record and based on the above observations as well as observation made in point No. 1, this Court is of the opinion that if the temporary injunction is not granted, no hardship will be caused to the plaintiff, but if the injunction is granted it would leads to multiplicity of proceedings and it is necessary to protect the rights of both parties to the suit, with these observations this Court answers Points No.2 and 3 in the Negative.



29. **POINT NO.4:-** For the aforesaid discussions as mentioned in the Points No.1 to 3, this Court proceed to pass the following order;

ORDER

Interlocutory Application No.2 filed by the plaintiff under Order XXXIX Rules 1 and 2 of Code of Civil Procedure is hereby dismissed.

Considering the facts and circumstances of the case parties shall bear their own cost.

(Dictated to the stenographer directly on the computer, transcript corrected by me, initialed by me and then pronounced in the open Court on this 6th day of April, 2026).

**Civil Judge & JMFC,
Siddapura.**



(Order pronounced in open Court vide separate order)

O R D E R

Interlocutory Application No.2 filed by the plaintiff under Order XXXIX Rules 1 and 2 of Code of Civil Procedure is hereby dismissed.

Considering the facts and circumstances of the case parties shall bear their own cost.

**Civil Judge & JMFC,
Siddapura.**

In view of adjudication of IA No. 2, this case is posted for appearance of both parties and compliance under Section 89 of CPC and order X of CPC call on 15.04.2026.

**Civil Judge & JMFC,
Siddapura.**