



**IN THE COURT OF THE CIVIL JUDGE & JMFC,  
AT SIDDAPURA**

**PRESENT : Sri. UMESHA M.P., B.A.L., LL.B.  
CIVIL JUDGE & JMFC,  
SIDDAPURA**

**DATED ON THIS THE 15<sup>th</sup> DAY OF SEPTEMBER - 2025**

**O S No. 143 / 2024**

**PLAINTIFFS** : 1. **SMT.GIRIJAMMA W/o** Chandrashekhhar Gowdar,  
Aged about 60 years, Occ:Agriculturist,  
  
2. **SHRI HARSH CHANDRASHEKHAR GOWDAR,**  
Aged about 37 years, Occ: Agriculturist,  
Both are R/o Malavatthi, Post: Avaraguppa,  
Siddapura Taluk, Uttara Kannada District,  
(BY PLEADER Sri.SKG)  
-V/s-

**DEFENDANTS** : 1. **NARAYANA GOURYA NAIK,**  
Aged about 45 years, Occ:Agriculturist,  
R/o Vadnikoppa, Post:Sovinakoppa,  
Siddapura Taluk, Uttara Kannada District,  
  
2. **BALAKRISHNA GOURYA NAIK,**  
Aged about 47 years, Occ:Agriculturist,  
R/o Channamav, Post:Avaraguppa,  
Siddapura Taluk, Uttara Kannada District,  
(BY PLEADERS Sri.GSH/MNH FOR DEFENDANT NO.1)  
(DEFENDANT NO.2 PLACED EXPARTE)

**PARTIES TO I A No. II**

**APPLICANTS/PLAINTIFFS:** 1. **SMT.GIRIJAMMA W/o** Chandrashekhhar Gowdar,  
Aged about 60 years, Occ:Agriculturist,  
  
2. **SHRI HARSH CHANDRASHEKHAR GOWDAR,**



Aged about 37 years, Occ: Agriculturist,  
Both are R/o Malavatthi, Post: Avaraguppa,  
Siddapura Taluk, Uttara Kannada District,  
(BY PLEADER Sri.SKG)  
-V/s-

**OPPONENTS/DEFENDANTS :** **1. NARAYANA GOURYA NAIK,**  
Aged about 45 years, Occ:Agriculturist,  
R/o Vadnikoppa, Post:Sovinakoppa,  
Siddapura Taluk, Uttara Kannada District,

**2. BALAKRISHNA GOURYA NAIK,**  
Aged about 47 years, Occ:Agriculturist,  
R/o Channamay, Post:Avaraguppa,  
Siddapura Taluk, Uttara Kannada District,  
(BY PLEADERS Sri.GSH/MNH FOR DEFENDANT NO.1)  
(DEFENDANT NO.2 PLACED EXPARTE)  
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**ORDERS ON I A NO. II**

The Applicants / plaintiffs have filed IA No.II under order XXXIX Rule 1 and 2 of Civil Procedure Code praying to grant Temporary Injunction Order against the defendants, their men, agents and workers etc., from constructing building/shed in the suit schedule betta land and also from blocking the road connecting to Sirsi -Siddapur road which was in existing in the suit betta land and also from interfering with the common enjoyment of the plaintiffs' over the suit schedule betta land along with other Privilege holders over the suit schedule properties,in any manner pending disposal of suit by allowing this application in the interest of justice.



2. According to the plaintiff No.1, in the accompanying affidavit it is sworn that, they have filed this suit against the defendants for the relief of permanent injunction with respect to the suit property. It is further stated that, the plaintiffs are the possession of the suit schedule properties. It is further stated that, the suit schedule properties are Betta privilege lands, which are left for the common enjoyment and benefit of several Bhagayat landholders. It is further stated that, the defendants also possess lands for which the privilege is granted over the suit schedule Betta land. In this context, the plaintiffs, defendants, and other Bhagayat landowners have equal rights over the suit schedule Betta land. However, the defendants are interfering with the plaintiffs' enjoyment of the suit schedule Betta land. Hence, this application.

3. Per contra, the defendant has opposed the same by filing objections to IA No.2 contending that, the present application is not maintainable in law and on facts and circumstances of the case. It is further contended that, there was a partition taken place in the family of the defendants on 25.11.2023. It is further stated that, the defendant No.2 had constructed a shop No.190, measuring 30 feet x 12 feet in the suit property in the year 1989-90 from the joint family fund. It is further stated that, the defendants are paying the tax to the concerned authority. It is further contended that, the said shop is standing in the name of the defendant No.2 and he is running the same. It is further



stated that, in the said partition, the said shop was allotted to the defendants. It is further contended that, the defendant No.1 is in possession of his share over the suit property. It is further contended that, the plaintiffs have not made out prima-facie case and the balance of convenience not lies in their favour. It is further contended that, the plaintiffs have not come to the court with clean hands. It is further contended that, they have no prima-facie case and no balance of convenience in their favour. Hence, if the application is allowed great loss and injustice will be caused to the defendant. Hence, he prayed to dismiss the IA No.2 with costs.

4. I have heard the arguments of learned counsel for the plaintiffs and defendants on IA No.2. Perused the documents on record.

5. Upon hearing arguments and on perusal of materials placed on record the following points that would arises for my consideration:

1. *Whether the plaintiffs have established prima-facie case?*
2. *Whether the balance of convenience lies in favour of plaintiffs?*
3. *Whether irreparable loss or hardship will be caused to the plaintiffs if injunction is not granted?*
5. *What order?*

6. My answer for the above points are as under because of my below-discussed reasons:

Point No.1 - In the AFFIRMATIVE.



Point No.2 - In the AFFIRMATIVE.

Point No.3 - In the AFFIRMATIVE.

Point No.4 - As per order for the following:-

**REASONS**

**POINT NO.1:**

7. The plaintiffs have filed the suit against the defendants seeking relief of permanent injunction with respect to the suit properties.

8. The Applicants / plaintiffs have filed IA No.II under order XXXIX Rule 1 and 2 of Civil Procedure Code praying to grant Temporary Injunction Order against the defendants, their men, agents and workers etc., from constructing building/shed in the suit schedule betta land and also from blocking the road connecting to Sirsi -Siddapur road which was in existing in the suit betta land and also from interfering with the common enjoyment of the plaintiffs' over the suit schedule betta land along with other Privilege holders over the suit schedule properties,in any manner pending disposal of suit by allowing this application in the interest of justice.

9. As per the provisions of Order 39 Rule 1 of CPC, 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 a 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 be 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.

10. Admittedly, granting or refusing injunction is a discretionary in nature. It is well settled position of law that the following preposition are to be established in order to invoke the jurisdiction of the Court to get an order of injunction under the provisions of Order 39 Rule 1 and 2 of CPC. (1) the plaintiff has to establish the prima-facie case, (2) the balance of inconvenience is in favour of the plaintiff and (3) that the plaintiff will suffer irreparable loss and injury if injunction is refused.

11. Therefore the ingredients are to be established by the party who seeks injunction in his favour. The grant of injunction being a discretionary relief, the party should come with clean hands and place all the materials before the Court so that the Court will be satisfied about the prima-facie case in favour of the party seeking order. It is no part of Court's duty or function at



this stage of litigation to try to resolve difficult questions of facts and law which require elaborate evaluation of the evidence to be recorded at the trial. Now keeping the above said provisions of law and also principles in mind, let us consider as to whether the plaintiff could able to establish prima-facie case for grant of temporary injunction.

12. It is specific case of the plaintiffs that, they have filed this suit against the defendant for the relief of permanent injunction with respect to the suit properties. It is further stated that, the plaintiffs are the possession of the suit schedule properties. It is further stated that, the suit schedule properties are Betta privilege lands, which are left for the common enjoyment and benefit of several Bhagayat landholders. It is further stated that, the defendants also possess lands for which the privilege is granted over the suit schedule Betta land. In this context, the plaintiffs, defendants, and other Bhagayat landowners have equal rights over the suit schedule Betta land. However, the defendants are interfering with the plaintiffs' enjoyment of the suit schedule Betta land. Hence, these plaintiffs have approaching this Hon'ble court for the relief of permanent injunction with respect to the suit properties. If the application is not allowed, the plaintiffs will put into great loss and injustice. On the other hand, no loss or hardship caused to the other side. Hence he prayed to allow the application.



13. In the supporting affidavit, they have filed this suit against the defendant for the relief of permanent injunction with respect to the suit properties. It is further stated that, the plaintiffs are the possession of the suit schedule properties. It is further stated that, the suit schedule properties are Betta privilege lands, which are left for the common enjoyment and benefit of several Bhagayat landholders. It is further stated that, the defendants also possess lands for which the privilege is granted over the suit schedule Betta land. In this context, the plaintiffs, defendants, and other Bhagayat landowners have equal rights over the suit schedule Betta land. However, the defendants are interfering with the plaintiffs' enjoyment of the suit schedule Betta land. Hence, these plaintiffs have approaching this Hon'ble court for the relief of permanent injunction with respect to the suit properties. If the application is not allowed, the plaintiffs will put into great loss and injustice. On the other hand, no loss or hardship caused to the other side. Hence he prayed to allow the application.

14. The Plaintiffs have placed the copy of RTC extract with respect to land bearing Sy.No.23/B1 of Avaraguppa Village, Kodkani Hobli, Siddapura Tq, for the year 2024-2025 which is standing in the name of Government Betta, copy of RTC extract with respect to land bearing Sy.No.1 of Avaraguppa Village, Kodkani Hobli, Siddapura Tq, for the year 2024-2025 which is standing in the name of plaintiff, copy of RTC extract with respect to



land bearing Sy.No.1 of Avaraguppa Village, Kodkani Hobli, Siddapura Tq, for the year 2024-2025, Copy of MR No.H5/2019-2020 with respect to land bearing Sy.No.1 of Avaraguppa Village, Kodkani Hobli, Siddapura Tq, Attested copy revenue sketch with respect to the suit property, photographs.

15. It is specific case of the defendant No.1 that, the plaintiff has filed this false suit by suppressing true and material facts of this case. It is further contended that, the present application is not maintainable in law and on facts and circumstances of the case. It is further contended that, there was a partition taken place in the family of the defendants on 25.11.2023. It is further stated that, the defendant No.2 had constructed a shop No.190, measuring 30 feet x 12 feet in the suit property in the year 1989-90 from the joint family fund. It is further stated that, the defendants are paying the tax to the concerned authority. It is further contended that, the said shop is standing in the name of the defendant No.2 and he is running the same. It is further stated that, in the said partition, the said shop was allotted to the defendants. It is further contended that, the defendant No.1 is in possession of his share over the suit property. It is further contended that, the plaintiffs have not made out prima-facie case and the balance of convenience not lies in their favour. It is further contended that, the plaintiffs have not come to the court with clean hands. It is further contended that, they have no prima-facie case and no



balance of convenience in their favour. Hence, if the application is allowed great loss and injustice will be caused to the defendant. Hence, he prayed to dismiss the IA No.2 with costs.

16. The defendant No.1 placed a copy of partition deed dated: 25.11.2023 with respect to the suit property, copy of information dated: 10.02.2025 issued by the office of the Grama Panchayath, Kolasirsi with respect to House No.190, copy of receipt Form No.3 with respect to House No.190, copy of application dated:30.11.2024 given to the PDO, Grama Panchayath, Kolasirsi with respect to Shop No.190, copy of application dated:12.12.2024 given to the PDO, Grama Panchayath, Kolasirsi with respect to Shop No.190, photograph.

**17. *In this connection it is relevant to extract the provisions of Sec.41 of Specific Relief Act, 1963 – Injunction when refused:-***

“An injunction cannot be granted:-

- (a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
- (b) to restrain any person from instituting or prosecuting any proceeding in a Court not sub-ordinate to that from which the injunction is sought;



- (c) to restrain any person from applying to any legislative body;
- (d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;
- (e) to prevent the breach of a contract the performance of which would not be specifically enforced;
- (f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- (g) to prevent a continuing breach in which the plaintiff has acquiesced;
- (h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
- (ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.
- (i) when the conduct of the plaintiff or his agent has been such as to dis-entitle him to be the assistance of the Court;
- (j) when the plaintiff has no personal interest in the matter.

18. Admittedly, the plaintiffs have filed the suit against the defendant seeking relief of permanent injunction with respect to the suit properties.

19. It is to be noted that, the right of parties in suit properties is to be decided after conclusion of trial.



20. Admittedly, the person who sought the relief of permanent injunction has to prove the possession and enjoyment of the plaint schedule property on the date of filing of the suit with correct measurement, description including boundaries.

21. It is undisputed that the suit schedule properties are Betta lands, and that privilege over these lands is granted to various survey numbers, including those belonging to the plaintiffs and the defendant.

22. Admittedly, the plaintiffs are the joint owners in possession of the suit land bearing Sy.No.1 situated at Avaraguppa Village, Kodkani Hobli, Siddapura Tq.

23. It is not in dispute that the plaintiffs are the joint owners of the property bearing Sy.No.1. It is also not in dispute that, in column No. 11 of the RTCs pertaining to the suit schedule Betta lands shows that, these lands are designated for the common enjoyment of the properties bearing Sy.Nos. 1, 242, 252 and 275.

24. It is not disputed that all documents indicate that Sy. No.1 is granted the privilege over the suit schedule Betta lands. As such, the Plaintiffs, as the owners, have the right to utilize the benefits of the suit Betta lands. The Defendants are not the owners of the suit Betta land, nor is the Plaintiffs; both



are merely privilege holders. One privilege holder cannot prevent another from benefiting from the Betta land to develop their own lands. The primary objective of granting privilege is to allow landholders to develop their lands by obtaining benefits from the Betta lands. The Betta lands are typically extensive and provide ample opportunity for all privilege holders to reap the benefits, when used as intended, rather than claiming independent ownership over the land. The Betta lands are government properties, and no one else holds ownership over them.

25. Furthermore, as this is an interim application, the court will not make a final decision, but is confined to determining whether the plaintiffs have made a prima-facie case. Based on the above discussions, it is clear that the plaintiff holds privilege over the suit Betta lands. However, whether Sy. No.1 is classified as Tari land (Paddy land) or Bhagayat land (Garden land) is a matter to be decided during the trial. Therefore, the Plaintiffs have made out a prima-facie case. If the application is not granted, the Plaintiffs will be prevented from exercising their lawful right to obtain benefits from the suit Betta lands, as they are also the privilege holders. As such, the balance of convenience favors the Plaintiffs, and if the application is denied, they will suffer irreparable loss.



26. The defendants have not placed any materials at this stage of litigation to establish the title or possession over the plaint schedule property. The plaint averments, affidavit annexed to I.A No. 2 are very much consistent and in conformity with documents placed on record. There are no reasons to disbelieve or to doubt the documents produced by the plaintiffs at this stage of litigation. Therefore based on these documents, it can be safely held that, the plaintiffs have got prima-facie case for grant of temporary injunction. Hence I answer point No.1 in the affirmative.

**POINTS NO.2 & 3:**

27. These two points are taken up together for common discussion, for the sake of convenience, clarity and also to avoid repetition of facts. In considering the question of balance of convenience, the Court has to consider the comparative mischief or inconvenience of both the parties or otherwise it is necessary or proper to maintain the status quo until the disputes are finally decided. Further, in considering the question of irreparable loss and injury, the Court has to see that the plaintiffs will sustain such injury which cannot possibly and adequately be remedied by way of damage and the damage would be inadequate in case of success of plaintiffs.



28. The defendants have not placed any materials at this stage of litigations, to prove of their title or possession over the plaint schedule properties. Under these circumstance, the balance of convenience is lies in favour of the plaintiffs and not in favour of the defendants. Under these circumstances, the very apprehension of plaintiffs that, the defendants begun to cause obstruction to the plaintiffs' peaceful possession and enjoyment of the suit property is quite probable and there are no reasons to disbelieve the apprehension of the plaintiffs at this stage of the litigations. Under these circumstance, there is every likely would of causing injury to the plaintiffs in relation to the properties in question. In weighing the risk of injustice which granting or refusing injunction would entitled there appearance to me that there is justification in granting order of temporary injunction now sought by the plaintiffs. Therefore if the injunction is refused, it is who the plaintiffs would be put to irreparable loss and injury and not the defendant. Therefore for the reasons discussed above, this Court is of the considered view that the balance of convenience also lies in favour of the plaintiffs and irreparable loss and injury would be caused to the plaintiffs if a temporary injunction is refused. Hence I answer points No.2 & 3 in the affirmative.



**POINT NO. 4:**

29. In view of my findings on Points No.1 to 3, I proceed to pass the following order:

**ORDER**

I.A.No.2 filed by the plaintiffs under the provisions of Order 39 Rule 1 and 2 of CPC is hereby allowed.

The Defendants, their henchmen, assignees, agents or any persons claiming under them, are hereby temporarily restrained from constructing building/shed in the suit schedule betta land and also from blocking the road connecting to Sirsi -Siddapur road which was in existing in the suit betta land and also from interfering with the common enjoyment of the Plaintiffs' over the suit schedule betta land along with other Privilege holders, till the pending disposal of the suit.

The cost of this application shall follow the result of the suit.

(Directly dictated to Stenographer on computer, typed by her, corrected by me, signed and then pronounced in open court on the 15<sup>th</sup> day of SEPTEMBER - 2025)

(UMESHA M.P)  
Civil Judge,  
Siddapura

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