

**KAVP310058802024**



**Presented on : 15-10-2024**  
**Registered on : 21-10-2024**  
**Decided on : 29-01-2026**

**IN THE COURT OF THE I ADDL. CIVIL JUDGE AND**  
**JMFC, INDI.**

**-PRESENT-**  
**SHREE VIKAS DALAWAI.**

***B.A., LL.B.***

**I Additional Civil Judge & JMFC, Indi.**

**Dated this the 29<sup>th</sup> Day of January, 2026**

**Original Suit No.468/2024**

**PLAINTIFF/S:**

**1. Shri. Saipansab S/o. Rajaksab Makandar.**

**-V/s-**

**DEFENDANT/S**

**1. Shri. Basavaraj S/o. Mallappa Kanni.**

**I.A.NO.I**

**Applicant/s/Plaintiff:**

**1. Shri. Saipansab S/o. Rajaksab Makandar**

**Age: 37 years, Occ: Business,**

**R/o. Indi, Tq: Indi, Dist: Vijayapur**

**-V/s-**

**Opponent/Defendant:**

- 1. Shri. Basavaraj S/o.Mallappa Kanni,**  
Age : 60 Yrs., Occ : Business,  
R/o. Indi, Tq:Indi, Dist. Vijayapur.

**( By Sri. SAC. Adv. for Plaintiff)**  
**(By Sri. BBB(I). Adv. for Defendant)**

|                                             |                                      |
|---------------------------------------------|--------------------------------------|
| In which provision the application is filed | Application U/O.39 Rule 1 & 2 of CPC |
| The relief sought to be claimed             | An order of temporary injunction     |
| Date of application                         | 15.10.2024                           |
| Number of application                       | I                                    |
| Date of Objection                           | 17.02.2025                           |
| Date of order.                              | 29.01.2026                           |

**ORDERS ON I.A.NO.I**

The plaintiff has filed IA No.I U/O.39 Rule 1 & 2 of CPC seeking ad-interim exparte temporary injunction against the defendant restraining him from causing obstructions to the plaintiff's peaceful possession and enjoyment of suit property in any manner, till the disposal of suit.

**2. The Brief facts of the plaintiff's and defendant's case are as follows:-**

The application is accompanied with an affidavit sworn by plaintiff. In the affidavit the plaintiff has stated that, he is the absolute owner and in lawful possession and peaceful enjoyment of an open site bearing Plot No. 101, out of N.A land Block No.608, measuring 125.419050 square meters, bearing TMC No. 7099059668, situated at Indi Town, Taluka Indi. The plaintiff further stated that he has purchased the said property from its previous owner Smt. Shahajabi @ Shahajanabi, W/o Maliksa @ Malangasha Makandar, for a valuable consideration of Rs.3,95,000/- under a registered sale deed dated 20.01.2020, registered as Document No. IND-1-12457-2019-20 in the office of the Sub-Registrar, Indi. Since the date of purchase, the plaintiff is in actual possession and enjoyment of the suit property as its absolute owner. The plaintiff further stated that the defendant has no manner of right, title, or interest over the suit property and is illegally attempting to trespass into the open site and causing obstructions to the plaintiff's peaceful possession

and enjoyment. Though the plaintiff requested the defendant not to interfere, the defendant did not heed the request and continued his illegal acts. Hence, the plaintiff has filed the present application.

**3.** Per contra, the defendant has filed objections by adopting the contents of the written statement and contended that original Block No. 608 of Indi Town was under the ownership of Indi Town Municipal Council (TMC). The said TMC, Indi, had allotted Plot No. 101 out of Block No.608, measuring 00 acre 01 guntas 03 annas, to one Vilas S/o Shankar Kolekar, and Hakku Patra was issued in his favour. The said Vilas Shankar Kolekar got the Hakku Patra entered in the revenue and municipal records, as evidenced by M.E.No.3571 of Indi. Upon allotment, the TMC, Indi, handed over exclusive possession of the said open site to Vilas Shankar Kolekar. It is further contended that Vilas Shankar Kolekar sold the said plot to Sadashiv S/o Peerappa Goudanoor for a valuable consideration of Rs. 1,77,000/-, under a

registered sale deed executed in the office of the Sub-Registrar, Indi. Thereafter, Sadashiv Peerappa Goudanoor sold the said property to Sameer Kalisab Bagawan of Indi for a valuable consideration of Rs. 1,49,500/-. Further, it is submitted that in the month of August 2012, the said Sameer Kalisab Bagawan sold the suit property, i.e., Plot No. 101 out of Block No. 608, measuring 00 acre 01 guntas, situated in Ward No. 20 of Indi TMC, bearing TMC Property No. 4143, to the present defendant for a valuable consideration of Rs. 2,05,000/-, and also handed over physical possession of the said property to the defendant. It is further submitted that the said sale deed was duly registered in the office of the Sub-Registrar, Indi, under Document No. 4076/2012 dated 25-08-2012. Since the date of purchase, the defendant has been in peaceful possession and enjoyment of the suit property.

**4.** The defendant further contended that in the year 2008, one Smt. Gouravva M. Samagar obstructed the possession of Vilas Shankar Kolekar, and therefore Vilas

Shankar Kolekar filed a declaration suit in OS No. 287/2008 against her before the Civil Judge, Indi. Subsequently, the matter was compromised in OS No. 270/2011 between the same parties, and a compromise decree was passed by the Civil Judge Court, Indi. Hence, the defendant contended that the present suit is false and vexatious, and prayed for dismissal of the I.A.

5. Heard both sides, perused the materials available on record.

6. The following points that arise for consideration of this Court is as under:

1. **Whether the plaintiff has made out *prima-facie* case?**
2. **Whether the balance of convenience lies in favour of the plaintiff?**
3. **Whether the plaintiff will be put to great hardship and irreparable loss if temporary injunction is not granted, as prayed?**
4. **What Order?**

7. My answer to the above 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 final order for the following:-**

**REASONS**

**8. Point No 1:-** It is the specific case of the plaintiff that, he is the absolute owner and in lawful possession and peaceful enjoyment of an open site bearing Plot No. 101, out of N.A land Block No.608, measuring 125.419050 square meters, bearing TMC No. 7099059668, situated at Indi Town, Taluka Indi. The plaintiff further stated that he has purchased the said property from its previous owner Smt. Shahajabi @ Shahajanabi, W/o Maliksa @ Malangasha Makandar, for a valuable consideration of Rs.3,95,000/- under a registered sale deed dated 20.01.2020, registered as Document No. IND-1-12457-2019-20 in the office of the Sub-Registrar, Indi. Since the date of purchase, the plaintiff is in actual possession and enjoyment of the suit property as its absolute owner. The plaintiff further stated that the defendant has no manner of right, title, or interest over the suit property and is

illegally attempting to trespass into the open site and causing obstructions to the plaintiff's peaceful possession and enjoyment. Though the plaintiff requested the defendant not to interfere, the defendant did not heed the request and continued his illegal acts.

**9.** The defendants in their objections contended that, the original Block No. 608 of Indi Town was under the ownership of Indi Town Municipal Council (TMC). The said TMC, Indi, had allotted Plot No. 101 out of Block No.608, measuring 00 acre 01 guntas 03 annas, to one Vilas S/o Shankar Kolekar, and Hakku Patra was issued in his favour. The said Vilas Shankar Kolekar got the Hakku Patra entered in the revenue and municipal records, as evidenced by M.E.No.3571 of Indi. Upon allotment, the TMC, Indi, handed over exclusive possession of the said open site to Vilas Shankar Kolekar. It is further contended that Vilas Shankar Kolekar sold the said plot to Sadashiv S/o Peerappa Goudanoor for a valuable consideration of Rs. 1,77,000/-, under a registered sale deed executed in



the office of the Sub-Registrar, Indi. Thereafter, Sadashiv Peerappa Goudanoor sold the said property to Sameer Kalisab Bagawan of Indi for a valuable consideration of Rs. 1,49,500/-. Further, it is submitted that in the month of August 2012, the said Sameer Kalisab Bagawan sold the suit property, i.e., Plot No. 101 out of Block No. 608, measuring 00 acre 01 guntas, situated in Ward No. 20 of Indi TMC, bearing TMC Property No. 4143, to the present defendant for a valuable consideration of Rs. 2,05,000/-, and also handed over physical possession of the said property to the defendant. It is further submitted that the said sale deed was duly registered in the office of the Sub-Registrar, Indi, under Document No. 4076/2012 dated 25-08-2012. Since the date of purchase, the defendant has been in peaceful possession and enjoyment of the suit property.

**10.** The defendant further contended that in the year 2008, one Smt. Gouravva M. Samagar obstructed the possession of Vilas Shankar Kolekar, and therefore Vilas

Shankar Kolekar filed a declaration suit in OS No. 287/2008 against her before the Civil Judge, Indi. Subsequently, the matter was compromised in OS No. 270/2011 between the same parties, and a compromise decree was passed by the Civil Judge Court, Indi. Hence, the defendant contended that the present suit is false and vexatious, and prayed for dismissal of the I.A.

**11.** In the present case, the plaintiff has produced hakku patra, registered sale deed and other documents to substantiate his claim. Similarly, the defendant has also produced hakku patra, registered sale deed and other supporting documents asserting possession and title over the suit property. Thus, both parties relied upon competing documentary evidence of equal strength, and the question as to which documents prevail can be decided only after full pledged trail by hearing oral and documentary evidence. **The Hon'ble Supreme Court in Dalapath Kumar and another V/s. Pralhad Singh and others (1992) 1 SCC, 719** has clearly held that, “for

**grant of temporary injunction the plaintiff must establish a strong prima-facie case, and the court should not grant injunction merely because there is a triable issue. The prima-facie case must show a probability of entitlement and not a case resting on disputed facts requiring detailed examination”.**

**12.** In the present case, the plaintiff has produced hakku patra, registered sale deed and other documents in support of his claim, likewise the defendant has also produced hakku patra, registered sale deed and other supporting documents asserting his possession and right over the suit schedule properties. When both parties relied upon competing documents of equal evidentiary value, the court cannot, at the interlocutory stage, assess their comparative validity without entering into the merits of the case.

**13.** At this stage, this court would place reliance on the decision of supreme court in the decision reported in

***The Pepsi Cola and The Cola Cola- Gujarat Botting Co. Ltd vs Coca cola co..1985(5) SCC 545.***

***“The grant of interim injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court”.***

***“The decision whether or not to grant an interim injunction has to be taken at 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 that uncertainty could be resolved.”***

**14.** In the present case, the possession and rights over the suit property are thus seriously disputed. Granting temporary injunction in favour of the plaintiff at this stage would disturb the existing state of affairs and would amount to placing on party in an advantageous position, thereby causing a greater hardship to the defendant.

**15.** Hence, this court is of view that no prima-facie case is made out without expressing finding upon the merits of the case which has to be decided at the time of final adjudication. Hence, I am of the opinion that, plaintiffs have not made out prima-facie case. Hence, I hold Point No.1 in the **Negative**.

**16. Issue No.2 & 3:-** These two points are interconnected to each other. Hence, they are taken up together for common discussion to avoid repetition of facts.

**17.** As already discussed supra, at this stage plaintiff fails to prove prima-case, when the plaintiff fails to prove the prima-case, for grant of temporary injunction, considering the question of balance of convenience and irreparable injury to the plaintiff does not arise at all. It is relevant to note here, decision reported in **ILR 1989 KAR 1701** (between **Gowrishankara Swamigalu .v. Siddaganga Math**) wherein our Hon'ble High Court of Karnataka has held that;

***“The existence of prima facie case in the matter of granting injunction is really harbinger or the all clear sign to go ahead in investigating of other aspect of the question of governing the grant or refusal of injunction if there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the court, further question of balance of inconvenience and irreparable loss need not be considered.”***

**18.** Applying the above principle to this case it appears that the granting temporary injunction in favour of either party would amount to prejudicing the disputed rights, and therefore the plaintiff is not entitled to the discretionary relief of temporary injunction.

**19.** It is made clear that, observations made herein are only for the purpose of disposal of I.A, and shall not influence the merits of the case at the time of final adjudication. The rival contentions raised by the parties, can be fully adjudicated upon only up to the conclusion of trial. Hence, plaintiff has not made out any prima-facie ground to allow the application. No finding are expressed

on them in this regard. Since those findings might have direct learning on the decision of suit. On these observations I answer on point No.2 & 3 in the **Negative.**

**20. Point No.4:** That for the above reasons, I proceed to pass the following;

**ORDER**

***I.A.No.I filed by the plaintiff under Order 39 Rule 1 and 2 of CPC against the defendant is hereby rejected with costs.***

(Dictated to Stenographer directly on computer, typed by her, corrected and then pronounced by me, in the open Court on this the **29<sup>th</sup> day of January, 2025**)

**(Vikas Dalawai )  
I Addl Civil Judge and J.M.F.C Indi**