

**IN THE COURT OF V ADDL. CIVIL JUDGE & JMFC,
SHIVAMOGGA**

Dated this the 9th day of JULY, 2024.

Present: Smt. Anusha V.R, B.A., L.L.B.,
V Addl. Civil Judge & JMFC.,
Shivamogga.

O.S.NO.423/2024

Plaintiff : Sri. Syed Noor S/o Syed Peer Sab
Aged about 48 years, R/o 4th
Cross. Tippunagara Left side,
Shivamogga. Represented by his
GPA Holder Manjunatha P S/o
Panduranga, Aged about 52
years "Gajamukha" 5th cross, 2nd
stage Vinobanagara, Shivamogga

(By Sri.S.D.V. Adv.,)

V/S

Defendants: 1. Sri.C.Jayanna S/o Chandrappa,
Major, R/o Malavagoppa.
Shivamogga

2.Smt.A. Rajashree W/o Basavaraj.B.
Major, R/o Gopala badavane.
Shivamogga.

3.Sri.B.G.Manjunatha S/o Gundappa
Sheety, Major, R/o
Samppakatte.village, Hosanagara
taluk, Shivamogga dist.

4.Sri. S.B. Satishachandra
S/o S.K. Purashotamma Rao,

Major, Samppakatte village,
Hosanagara taluk, Shivamogga
dist.

5. Smt. Chethana G.S.
W/o Ajaya A.P, Major,
R/o Ajjampur at post,
Tarikere taluk, Chikamanglore

(By Sri. S.S.H Advocate)

PARTIES TO I.A.No.I

Applicant/Plaintiff : 1. Sri. Syed Noor S/o Syed Peer Sab

V/s

Opponents/Defendants : Sri.C.Jayanna and others.

1. Provision under which the application is filed	U/o. XXXIX Rule 1 and 2 of CPC.
2. Relief sought for	Interim temporary Injunction
3. The date on which the application is filed	26.06.2024
4. Number of the application	IA.No.I
5. The date on which the objections are filed by different opponents	29.06.2024

6. The date on which the orders were passed on the said application	09.07.2024
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ORDERS ON I.A.NO.I

The plaintiff/applicant has filed an I.A.No.I Under Order XXXIX Rule 1 and 2 of C.P.C., seeking temporary injunction to restrain the defendant No.1 to 5, their men in any way from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property.

2. In the affidavit the plaintiff has stated that, the open plot property measuring 35.35+10.05+31.34/3x74.14 mtr=20415.9 Municipal Khata No.2568/456, PID No 185338, situated at Ward No.26, Gopala, Shivamogga, has been purchased by the Sri. Syed Noor S/o Syed Peer Sab from Sri. Shek khaddar Valli @ Shoka khaddar @ A. Khadar Basha S/o Abdul Sattar Sab through registered sale deed dated:16-09-2020 bearing SR No.6683/2020-21.

3. It is further submitted that, later Sri. Syed Noor S/o Syed Peer Sab gave the general power of attorney to Manjunatha P S/o Panduranga i.e., plaintiff appointed as his attorney through registered GPA dated: 03-07-2023 bearing SR

No.123/2023-24. In recognition of the acquisition of the title of the suit schedule property the Shivamogga Corporation has mutated khata in the name of Sri. Syed Noor and the same Khata of the suit schedule property is standing in the name of Sri. Syed Noor. Plaintiff also paying tax to the Shivamogga Corporation regularly. later, he had borrowed the hand loans and intendeds to put the fencing for the suit schedule property. It is further submitted that, the plaintiff is the absolute owner of Suit Schedule property. From the date of purchase he and his family members have been in peaceful possession and enjoyment of suit schedule property, without interference from anybody till today and he also paying Tax to the concerned authority regularly.

4. It is further submitted that, due to revenge against him the defendant No.1 to 5 along with some rowdy elements by using their muscle, money and political power of against him without any reasons all the defendants by colluding each other's they all are forcefully trying to interfere in the peace full possession of plaintiff property. Though they are not having any right, interest, title and or much less possession over the suit property. By creating some documents, the defendants are

trying to interfere with the peaceful possession and enjoyment of the Suit Schedule property on 22-06-2024 defendants are with the help of its servants, employees and supporters, henchmen, friends, neighbors and relatives which has been resisted by him with great difficulty. The defendants are power full person in the locality with men and money power. He enjoy the suit schedule property without the assistance of this Court. The defendant No.1 to 5 threaten, or intends, to remove or dispose him from suit property and may cause injury to him in relation to suit property, the court may by order grant a temporary injunction to restrain the defendants and their agents, servants, henchman. The balance of convenience lies in his favor, if the temporary injunction is not granted great injustices and irreparable loss would be caused to him. If temporary injunction is granted no injustice would be caused to opponents. Hence, this suit.

5. The learned counsel for the defendant No.3 has filed objection to the said application and filed an adoption memo to treat the objection of defendant No.3 as an objection of defendant No.1, 2, 4 and 5, the same is considered.

6. In the objection defendants have stated that, the defendant No.1 is the absolute owner and in possession of the

property measuring to an extent of 40X60 feet, totally measuring 2400 Sq. feet, Site No.02 of layout carved in Sy.No.31/13 of Gopala Village and its municipal Khatha No.3355/2417/1-9091/1, PID No.42949, situated at Ward No.26, Gopala, Shivamogga, within the Jurisdiction of Shivamogga, Municipal Corporation, purchased the same from his vendor Sri Shekh Khadar Valli Saheb @ A Khadar Bhasha S/o Sattar Saheb, under a registered sale deed vide document No.SMG-1 01962/2007-08 dated 04.07.2007 for valid sale consideration. The said sale deed was registered before the office of the Sub Registrar, Shivamogga Since then, the defendant No.1 put to exclusive possession and enjoyment of the said property from his vendor Sri Shekh Khadar Valk Sare A Khadar Bhasha S/p Sattar Saheb. Based on the said registered sale deed the Katha has been transferred in the name of defendant No.1 at the records of Municipal Corporation, Shivamogga and paid up to date tax without any due.

7. It is further submitted that, the defendant No.2 and her son Sri Harsha B are the absolute joint owners and in possession of the property measuring to an extent of 30x54 feet, totally measuring 1620 Sq.feet. Site No.11 of layout carved in

Sy.No.31/13 of Gopala Village and its municipal Khata No.2417/3-9699/3, PID No.41141 situated at Ward No.26, Gopala, Shivamogga, within the jurisdiction of Shivamogga Municipal Corporation have purchased the same from their vendor Smt. S. Sumana W/o Late S. P Udayachandra and her children Smt. S. U. Manasa W/o Kiran K. D/o Late S. P. Udayachandra, under a registered sale deed vide document No.SMG-1-00474/2024-25 dated 10.04.2024 for valid sale consideration. The said sale deed was registered before the office of the Sub Registrar, Shivamogga. Since then, both have been put to exclusive possession and enjoyment of the suit schedule property from their vendors. Based on the said registered sale deed Khatha of the said property transferred in their name and they paid up to date tax without any due.

8. The defendant No.3 is the absolute owner and in possession of the property measuring to an extent of 53 X 30 feet, totally measuring 1590 Sq. feet, Site No.10 of layout carved in Sy.No.31/13 of Gopala Village and its municipal Khatha No.2417/10, PID No.41187 situated at Ward No.26, Gopala, Shivamogga, within the jurisdiction of Shivamogga Municipal Corporation, purchased the same from his vendor Sri Shekh

Khadar Vaill Saheb @ A Khadar Bhasha S/o Sattar Saheb, under a registered sale deed vide document No.SMG-1-05492/2006-07 dated 07.12.2006 for valid sale consideration. The said sale deed was registered before the office of the Sub Registrar, Shivamogga. Since then, the defendant No.3 put to exclusive possession and enjoyment of the suit schedule property from his vendor Sri Shekh Khadar Valli Saheb A Khadar Bhasha S/o Sattar Saheb. Based on the said registered sale deed the Katha has been transferred in his name at the records of Municipal Corporation Shivamogga and paid up to date tax without any due.

9. The defendant No.4 is absolute owner and in possession of the property measuring to an extent of 40x60 feet, totally measuring 2400 Sq. feet, Site No.03 of layout carved in Sy.No.31/13 of Gopala Village and its municipal Khatha No.2417/2-9699/2, PID No.411.30 situated at Ward No.26, Gopala, Shivamogga, within the jurisdiction of Shivamogga, Municipal Corporation, purchased the same from his vendor Sri Shekh Khadar Valli Saheb @ A Khadar Bhasha S/o Sattar Saheb, under registered sale deed vide document No.SMG-1-04487/2006-07 dated 25.10.2006 for valid sale consideration.

The said sale deed was registered before the office of the Sub Registrar, Shivamogga. Since then, the defendant No.4 put to exclusive possession and enjoyment of the suit schedule property from his vendor Sri Shekh Khadar Valli Saheb A Khadar Bhasha S/o Sattar Saheb. Based on the said registered sale deed the Katha has been transferred in his name at the records of Municipal Corporation Shivamogga and paid up to date tax without any due.

10. It is further submitted that, the defendant No.5 is the absolute owner and in possession of the property measuring to an extent of 40X60 feet, totally measuring 2400 Sq. feet, Site No.01 of layout carved in Sy.No.31/1J of Gopala Village and its municipal Khatha No.24/7/1. PID No.41180 situated at Ward No.26, Gopala, Shivamogga, within the jurisdiction of Shivamogga Municipal Corporation, purchased the same from his vendor Sri Somashekhar S/o Ayya Shetty, under a registered sale deed vide document No.SMG-1-11635/2023-24 dated 09.11.2023 for valid sale consideration. The said sale deed was registered before the office of the Sub-Registrar, Shivamogga. Since then, defendant No.5 has been put to exclusive possession and enjoyment of the said property from her vendors. Based on

the said registered sale deed she applied for change of Khatha in to her name before the authority of Municipal Corporation Shivamogga, and same is pending and she paid up to date tax without any due.

11. It is submitted that, defendants properties was part and parcel of residential layout carved in lands totally measuring 01 acre 02½ guntas of Sy.No.31/13 of Gopala Village, Kasaba Hobli, Shivamogga Taluk. In fact, one Sri Shekh Khadar Valli Saheb @ A Khadar Bhasha S/o Sattar Saheb was the actual owner of the said land and he applied for alienation of the same before Deputy Commissioner, Shivamogga for non-agricultural purpose. As such the Deputy commissioner, Shivamogga pleased to pass an order of alienation of the said lands by the order vide No.ALN SR:475/1993-94, 354/1994-95 dated 01.03.1995 and the said lands have been converted for non-agricultural purpose. Thereafter said Sri Shekh Khadar Valli Saheb @ A Khadar Bhasha S/o Sattar Saheb developed the said lands into residential layout by obtaining approved layout plan from SUDA Shivamogga. after development of residential layout the municipal authority mutated the Khatha of the said sites in the name of Sri Shekh Khadar Valli Saheb @ A Khadar Bhasha

S/o Sattar Saheb. Thereafter, Sri Shekh Khadar Valli Saheb A Khadar Bhasha S/o Sattar Saheb has executed the registered sale deed in favour of several persons. On the basis of the said registered sale deeds, buyers of the said sites are put to exclusive possession and enjoyment of their respective properties.

12. But the plaintiff and his GPA holder are having no manner of right title or interest over the defendants property the plaintiffs and their henchmen are repeatedly trying to trespass over the defendants properties illegally and thereby trying to interfere with the peaceful possession and enjoyment of the defendants sites and other neighbor site owners. Furthermore plaintiff and his GPA holders trying to take forcible possession of the properties under the ownership and possession of the defendants and others and on 21-06-2024 the plaintiff and his GPA holder all of a sudden came near the defendants property along with their men and trespassed the same and the boundary stones of the defendants properties have been torn down and started to put in stone pillars it is proposed to put up wire fence by the defendants and thereby disturbed the lawful possession

and enjoyment of the defendants over their respective site property and tried to take forcible possession of the same.

13. It is further submitted that, as such as a last resort the defendants have filed suit for permanent injunction against the Plaintiff and his GPA holder in OS.No.413/2024, 418/2024, 419/2024, 420/2024, 422/2024 pending file of Hon'ble III Addl. Civil Judge & JMFC at Shivamogga and on considering interim application under order 39 rule 1&2 of C.P.C, the Hon'ble court pleased to grant exparte interim order in favour of the defendants and against the plaintiff and his GPA holder. But these facts are suppressed by the plaintiff to get the wrongful order from the hands of this Hon'ble court. The application filed by the plaintiff is factually untenable and legally unsustainable. The plaintiff is miserably failed to prove a prima-facie case. There is no question of balance of convenience lying in favour of the plaintiff. It is axiomatic that the plaintiff has not approached this Court with clean hands. Knowing full well that there is no such alleged suit schedule property is available in the locality, the plaintiff has come forward to knock off the properties under the ownership and enjoyment of the defendants and several

other site owners under guise that it is his property. That itself is enough to reject the application.

14. Heard both the parties, perused the I.A.No.I with affidavit and also objections filed to the I.A I.

15. Based on the materials placed before me, the following points would arise for my consideration:

1. *Whether the plaintiff has made out prima facie case in his favour to urge for an injunction order?*
2. *Whether the plaintiff has made out that the balance of convenience lies in his favour?*
3. *Whether the plaintiff established that, if temporary injunction is not granted, he will be put to great loss or hardship?*
4. *If so, What Order?*

16. My findings on the above points are hereunder:

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

17. Point No.1: It is the case of the plaintiffs that, he is an absolute owner of the suit schedule property through registered sale deed dated 16.09.2020 bearing SR.No.6683/2020-21.

Thereafter on 03.07.2021 the plaintiff has executed the General Power of Attorney infavour of Sri. Manjunatha P, the katha of the suit schedule property stands in the name of plaintiff. The plaintiff is also paying taxes regularly. The defendant No.1 to 5 trying to interfere with the peaceful possession and enjoyment of the property with the help of their servants, employees etc., on 22.06.2023.

18. In order to support the contention of the plaintiff, he has produced the copy of the registered sale deed dated 15.09.2020, RTC extract for the period of 2023-24, Copy of the Deputy Commissioner order dated 24-02-1996, copy of the GPA dated 28.06.2023, photographs along with C.D.

19. Defendant No.1 is the absolute owner and in possession of the property measuring to an extent of 40X60 feet, totally measuring 2400 Sq. feet, Site No.02 of layout carved in Sy.No.31/13 of Gopala Village and its municipal Khatha No.3355/2417/1-9091/1, PID No.42949, situated at Ward No.26, Gopala, Shivamogga. the defendant No.2 and her son Sri Harshs B are the absolute joint owners and in possession of the property measuring to an extent of 30x54 feet, totally measuring 1620 Sq. feet. Site No.11 of layout carved in Sy.No.31/13 of

Gopala Village and its municipal Khata No.2417/3-9699/3, PID No.41141 situated at Ward No.26, Gopala, Shivamogga. The defendant No.3 is the absolute owner and in possession of the property measuring to an extent of 53X30 feet, totally measuring 1590 Sq. feet, Site No.10 of layout carved in Sy.No.31/13 of Gopala Village and its municipal Khatha No.2417/10, PID No.41187 situated at Ward No.26, Gopala, Shivamogga, The defendant No.4 is absolute owner and in possession of the property measuring to an extent of 40x60 feet, totally measuring 2400 Sq. feet, Site No.03 of layout carved in Sy.No.31/13 of Gopala Village and its municipal Khatha No.2417/2-9699/2, PID No.411.30 situated at Ward No.26, Gopala, Shivamogga, the defendant No.5 is the absolute owner and in possession of the property measuring to an extent of 40X60 feet, totally measuring 2400 Sq. feet, Site No.01 of layout carved in Sy.No.31/1J of Gopala Village and its municipal Khatha No.24/7/1. PID No.41180 situated at Ward No.26, Gopala, Shivamogga. defendants have filed suit for permanent injunction against the Plaintiff and his GPA holder in OS.No.413/2024, 418/2024, 419/2024, 420/2024, 422/2024, pending file of Hon'ble III Addl. Civil Judge & JMFC at Shivamogga and on considering interim

application under order 39 rule 1&2 of C.P.C, the Hon'ble court pleased to grant exparte interim order in favour of the defendants and against the plaintiff and his GPA holder. But these facts are suppressed by the plaintiff to get the wrongful order from the hands of this Hon'ble court. The application filed by the plaintiff is factually untenable and legally unsustainable. The plaintiff is miserably failed to prove a prima-facie case. There is no question of balance of convenience lying in favour of the plaintiff. It is axiomatic that the plaintiff has not approached this Court with clean hands. Hence, prayed for dismissal of the IA No.I with exemplary cost.

20. In order to support of the contention of the defendant, they have produced Photostat copy of the order sheet and I.A No.1 of OS. No.413/2024 on the file of Hon'ble III Addl. Civil Judge & JMFC at Shivamogga. Photostat copy of the order sheet and I.A No.1 of OS. No.419/2024 on the file of Hon'ble III Addl. Civil Judge & JMFC at Shivamogga. Photostat copy of the order sheet and I.A No.1 of OS. No.418/2024 on the file of Hon'ble III Addl. Civil Judge & JMFC at Shivamogga. Photostat copy of the order sheet and I.A No. 1 of CS. No. 422/2024 on the file of Hon'ble III Addl. Civil Judge & JMFC at Shivamogga. Photostat

copy of the order sheet and I.A No.1 of OS. No.420/2024 on the file of Hon'ble III Addl. Civil Judge & JMFC at Shivamogga. Photostat copy of the Katha extract for the year 2024-25 issued by the CMC Shivamogga. Photostat copy of the registered Sale deed 04.07.2007. Photostat copy of the Katha extract for the year 2024-25 & transfer order of property tax dated 13.06.2024 issued by the CMC Shivamogga. Photostat copies of the registered Sale deed 10.04.2024 & 25.10.2006. Photostat copy of the Katha extract for the year 2023-24 issued by the CMC Shivamogga. Photostat copy of the registered Sale deed 07.12.2006, Photostat copy of the alienation order passed by the D.C, Shivamogga dated 15.03.1995, Photostat copy of the alienation sketch, photostat copy of the approved layout plan issued by the SUDA, Shivamogga, Photostat copy of the FIR and complaint dated 21.06.2024.

21. At this stage, without going into merits of the case and prima facie title, it is clear that, while passing orders on temporary injunction court should not go into prima facie title and court should consider only that, plaintiffs have made out prima facie case for granting interim relief. Prima-facie case

means, plaintiff must establish that, there is strong case for trial which needs trial and decision on merits.

22. On perusal of the materials on record produced by the defendant, it prima facie reveals that, defendant No.1 to 5 have approached the Hon'ble III Addl. Civil Judge & JMFC, Shivamogga seeking exparte temporary injunction against the present plaintiff with respect to the properties as stated in their written statement. The Hon'ble court has granted exparte Temporary Injunction on 27.06.2024.

23. On careful perusal of the records produced on behalf of the plaintiff, it prima facie reveals that, registered sale deed has been executed infavour of the plaintiff for the land bearing Sy.No.31/4 measuring 20 guntas situated at Gopala village, Kasaba I Hobli, Shivamoga taluk. The schedule in the sale deed dated 15.09.2020 is as follows;

SCHEDULE

East	:	Sy.No.26/1 land
West	:	The vacant Karabu land in Sy.No.31, Block No.3.
South	:	Land belonging to Abdul Razaak
North	:	The private property.

24. As per the schedule mentioned in the plaint as follows;

SCHEDULE

East	:	Sy.No.26/1 land
West	:	The vacant Karabu land in Sy.No.31, Block No.3.
South	:	Main Road.
North	:	The private property.

25. On careful perusal of the schedule mentioned in the sale deed dated 15.09.2020 and plaint suit schedule property, it prima facie goes to show that, plaintiff has mentioned boundary of the South as “main road” in the plaint schedule property. But in the sale deed dated 15.09.2020 boundary with respect to the South is mentioned as land of Abdul Razak Ahammed. This clearly shows, there is discrepancy in the boundaries. Further on perusal of the copy of the conversion order, it merely shows the conversion of property. In the present case the defendants are disputing the existence of the suit schedule property. But the plaintiff has not produced clear documents to show the existence of suit schedule property as mentioned in the plaint schedule property.

26. Now it is pertinent to refer to the decision of the Hon'ble High Court of Karnataka **B.C. MANJUNATH vs. Y. JAYARAMA REDDY in WP No. 63885 OF 2016 (GM-CPC)**,

Wherein the Hon'ble High Court of Karnataka made an observation as follows.

“18.....The discretionary relief for temporary injunction cannot be granted when the property in dispute itself is not identified. Under such circumstance, it cannot be said that prima facie case is made out. When the schedule property, its measurement and boundaries are all in serious dispute and when there is already an order of temporary injunction operating against the plaintiff herein, I am of the opinion that, the plaintiff has not made out a prima facie case for grant to temporary injunction. Ignoring all these facts and circumstances, the temporary injunction cannot be granted in favour of the plaintiff as the same would undo the effect of the order passed by the Civil Court in OS No.86 of 2016. The unconditional undertaking given by the plaintiffs cannot be a ground for granting temporary injunction when the location of the schedule property itself is in serious dispute. Such orders cannot be passed only on such undertakings. When the 1st appellant Court not satisfied with the identity of the property and observed that it is for the trial Court to find out whether the construction was on pipeline road or not during trial, it could not have proceeded to grant the interim order only on the basis of the undertaking given by the respondent/plaintiffs. Therefore, I am of the opinion that the plaintiff is not entitled for temporary

injunction. The order passed by the First Appellate Court suffers from perversity and illegality. Hence, the same is liable to be set aside.”

27. As per the above decision, it is made clear that when the measurement and boundaries are all in dispute and the property in dispute is not identified properly, the court cannot grant the temporary injunction. As discussed above, the plaintiff has not made out proper reasons for mentioning the different boundaries in the suit schedule property which is not in consonance with the boundaries mentioned in the Sale Deed dated 15.09.2020. Further the identity of the property boundaries and place where this particular site is situated itself is not satisfactorily established by the plaintiff. With these observation **this court answers point No.1 in the Negative.**

28. POINT NO.2 and 3: Since these two points inter connected. Hence, to avoid repetition two points are taken together for discussion.

29. Plaintiffs have failed to establish that, prima facie case –in their favour that being the case. This court need not discuss the other points i.e., balance of convenience and irreparable loss and injury. This view is held by the Hon'ble High Court of

Karnataka in **Sri. Gowrishankara Swamigalu Vs Siddaganga Mutt reported in AIR 1989 KAR 1701**, Wherein Hon'ble High Court of karnataka made an observation as follows.

"The existence of a Prima facie case in the matter of granting injunction is really the harbinger of the all-clear sign to go ahead in investigating other aspects of the question governing the grant of 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 questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself. But if there was a prima facie case then other considerations governing the grant of injunction would come into play and will also have to be evaluated before granting or refusing the injunction. In other words, the existence of a prima facie case or even a very strong prima facie case does not permit leap frogging by the plaintiff directly to an injunction without crossing the other hurdles in between."

Therefore, in view of the above discussion plaintiffs have failed to establish prima facie case in their favour. Hence, points No.2 and 3 does not survive for consideration. **Hence, I answered point No.2 and 3 in the Negative.**

30. Point No.4: On foregoing reasons assigned while answering Points No.1 to 3 and findings thereon, I proceed to pass the following:

ORDER

I.A.No.I filed by the plaintiff under Order XXXIX Rule 1 and 2 R/w/sec.151 of C.P.C. is hereby dismissed.

No order as to costs.

(Dictated to the stenographer directly on computer, printout then revised, corrected, signed and pronounced by me in Open Court on this 09th day of July 2024.)

**(Anusha V.R)
V Addl. Civil Judge & JMFC.,
Shivamogga**