

KABG410000062005



**IN THE COURT OF THE I ADDL. CIVIL JUDGE & JMFC,
CHIKODI, AT: CHIKODI.**

Present: SRI. ZAHEER ATANUR
B.Sc, LL.B.,
I Addl.C.J. & JMFC, Chikodi.

Dated this the 22nd Day of June, 2026

ORIGINAL SUIT No.44/2005

Plaintiffs. **Shri. Ravasab Adappa Mane,**
Since deceased by his L.Rs.
1A. Shri.Santosh Ravasab Mane
and others.

Vs

Defendants. **Shri. Balasaheb Makabul Mujawar,**
Since deceased by his L.Rs.
1A. Smt. Fatima W/o Balasaheb Mujawar
and others.

Parties To I.A.No.XXXI

Applicants/Ori. Defendants No.2 & 3.

Shri. Omannna Laxman Kumar
and another.
(By Sri.K.R.T. Advocate)

Vs

Opponent/Ori. Plaintiffs.

Shri. Ravasab Adappa Mane,
 Since deceased by his L.Rs.
 1A. Shri.Santosh Ravasab Mane
 and others.
(By Sri.V.P.S. Advocate)

i	Nature & number of the I.As	I.A No.XXXI U/O XXXIX rule 1 and 2 sec 151 of CPC
ii	The IA No.XXXI filed on:	22-07-2025
iii	Objections to IA No.XXXI filed on:	Nil
iv	Order passed on:	22-06-2026
v	Duration :	00 Year 11 Months 00 Days

(Zaheer Atanur)
 I ADDL. CIVIL JUDGE & JMFC,
 CHIKODI.

ORDERS ON IA NO.XXXI

IA No.XXXI is filed by the defendants No.2 and 3 under Order XXXIX Rule 1 and 2 r/w section 151 of CPC seeking ad-interim injunction against the plaintiffs restraining them from alienating the suit schedule

property bearing TPC No.2110 (Now TMC No.2110) situated at Sadalga Village.

2. In the accompanying affidavit, the defendant No.2 has contended that the plaintiffs have filed this suit against the defendants for relief of declaration and permanent injunction. It is further contained that originally the suit property belonged to one Maruti Adappa Koli who has during his lifetime executed Badige Karar Patra in respect of portion of suit property measuring East-West 20 feet and North South 30 feet in favor of defendant No.2 who was in possession of the same as tenant till 2007. Thereafter, again another rent deed was executed by legal representative of deceased Maruti i.e Smt Hirabai Adappa Koli. Accordingly the defendant No.2 and 3 have applied for permission for erecting a shed in the said property and they were granted permission. Defendant No.2 and 3 have put the sheds as Tailoring shop and Kirana shop respectively. Since then they have got their name entered in the

property extract as Vahivatdar and till today they are paying the electric bills, panchayat tax, etc. Subsequently, a new number is allotted to TPC No.2110 as TPC No.2110/A. Such being the facts and circumstances, the plaintiffs have colluded with the Lrs of defendant No.1 and intending to alienate the suit property to third person who is trying to dispossess the defendant No.2 and 3 without any lawful authority. It is also further contended that the plaintiffs have no right, title and interest over the suit properties, but suppressing all these material facts they are trying to alienate the suit property by dispossessing the defendant No.2 and 3. Therefore, the defendant No.2 and 3 have made out *prima facie* case and as such balance of convenience lies in their favour. Thus, before the plaintiffs alienate the suit property bearing TPC No.2110A, the defendant No.2 and 3 intends to seek injunction at the hands of this Court. Otherwise, the

same would cause irreparable loss and injury to the defendant. Thus, this IA.

3. *Per contra* the counsel for plaintiffs have not filed any objections to IA No.XXXI

4. Heard the arguments for counsel for plaintiff and defendants.

5. The points that arise for consideration of this Court are as under:

POINTS

1. Whether the defendant No.2 and 3 have made out prima-facie case to grant temporary injunction as claimed in the IA No.XXXI?

2. Whether the defendant No.2 and 3 establishes that, the balance of convenience lies in their favour?

3. Whether the defendant No.2 and 3 further establishes that, they will be put to irreparable loss and hardship if the

temporary injunction is not granted?

4. What Order?

6. The findings of this on above Points are as under:

POINT NO. 1 TO 3: In the ***Negative***

POINT NO.4 : As per final order,
for the following

:: REASONS ::

7. POINT No.1 TO 3 :- Since these points are interrelated to each other, hence in order to avoid repetition they are taken up together for consideration. It is specific contention of defendant No.2 and 3 are in possession of portion of suit property bearing TPC No.2110 (renumbered as 2110A) as tenants on the basis of Badige Karar Patra executed by deceased Maruti Adappa Koli and thereafter by Smt.Hirabai Adappa Koli in favour of defendant No.2 and 3. Since then the defendant No.2 and 3 are in possession of said portion of suit property. It is also contended that the plaintiffs and Lrs of defendant No.1 colluding with each other are

trying to alienate the suit property in favor of third person who is intending to dispossess the defendant No.2 and 3.

8. Though the plaintiffs have not filed any objections, but it is pertinent to note that that the suit is filed for declaration and permanent injunction and such being the facts of this case, the title itself is under cloud and whether the plaintiffs are owner of the suit properties or the defendant No.1 is the owner of the suit properties is yet to be ascertained. It is settled principle of law that the person who has no better title cannot convey the title to any person, in this regard the allegations of defendant No.2 and 3 that the plaintiffs and defendant No.1 are intending to alienate the suit property in favor of third person cannot be considered at this stage. Moreover, the defendant No.2 and 3 have filed the bills and receipts showing that they are in possession of portion of suit property bearing TPC No.2110 as wahivatdar, but at this stage this court cannot go into merits of the case to hold

mini trial whether the plaintiffs are owners of suit properties or not.

9. Furthermore, the defendant No.2 and 3 have not produced anything on record to show that the plaintiffs and defendant No.1 are trying to alienate the suit properties in favor of third parties and they are trying to dispossess the defendant No.2 and 3. Hence *prima facie* case is not made out by the defendant No.2 and 3.

10. However, it is only contended that defendant No.2 and 3 are in possession on the basis of rent deed executed originally by Maruti Adapa koli and thereafter by Smt Hirabai Adappa Koli which is continued till today. There is no absolute bar for the owners of the property to alienate even if the tenant is in possession. The tenant remains as a tenant even after the alienation, provided that such person shall be in lawful possession and at this stage it is also pertinent to note that the defendant No.2 and 3 yet to have to prove their lawful possession in the portion of the suit property as claimed

by them. Therefore, this Court is of considered view that the defendant No.2 and 3 have failed to demonstrate that the balance of convenience lies in their favor.

11. Further, the allegations of defendant No.2 and 3 that the plaintiffs and legal representatives of defendant No.1 have colluded with each other and trying to alienate the suit properties and dispossess the defendant No.2 and 3 are taken to be true, then during pendency of suit, alienation is absolutely and clearly hit by *lis pendens* under section 52 of TP Act. Vendee steps into the shoes of Vendor who is bound by the decree. Even if the properties are alienated, then the vendee cannot straight away dispossess the person who is in lawful possession of the property without due procedure. Therefore, under this umbrella, as of now the defendant No.2 and 3 are very well protected. Thus, yet it is to be determined that the suit property is belonging to plaintiffs or defendant No.1 and further it is also necessary to determine whether the defendant No.2 and 3 are in lawful

possession of portion of suit property. Considering all these aspects, this Court is of considered view that no irreparable loss or injury will be caused to defendants No.2 and 3, thus without discussing about the merits of the case, this Court is not inclined to exercise discretionary power in favour of defendant No.2 and 3. Therefore, the IA No.XXXI filed by the defendant No.2 and 3 is liable to be dismissed. Accordingly, this Court answered point No.1 to 3 in the ***Negative***.

12. POINT NO.4:- In view of the aforesaid discussion.

This court proceeds to pass the following:

ORDER

***IA No.XXXI U/O XXXIX Rule 1
and 2 filed by the defendant No.2
and 3 is hereby dismissed on cost
of Rs.500/-.***

*(Dictated to the Stenographer directly on computer, typed by him, corrected by me
and then pronounced in the Open court on this 22th of June, 2026).*

(Zaheer Atanur)
I ADDL. CIVIL JUDGE & JMFC,
CHIKODI.