

KABG600001402026



**IN THE COURT OF SENIOR CIVIL JUDGE, AT HUKKERI
ITINERARY COURT AT SANKESHWAR**

:PRESENT :

Present: RAJANNA SANKANNANAVAR,

B.A., LL.B.,(Spl.)

**Senior Civil Judge, Hukkeri,
Itinerary Court at Sankeshwar.**

O.S. No.66/2026

Dated this the 2nd day of July 2026

BETWEEN:

1. Shri Kempanna Samba Kankanwadi
Age : 61 years, Occ : Agriculture,
R/o Kesti, Tal : Hukkeri, Dist : Belagavi.
Belagavi – 591236
Adhar No. 7305 3358 3357

.....Plaintiff

(R/by Shri G.R.Patil Advocate)

AND:

1. Shri Appasaheb Samba Kankanwadi,
Age : 64 years, Occ : Agriculture,
R/o Kesti, Tal : Hukkeri, Dist : Belagavi-591236
and another

.... Respondents

(D1 - R/by Shri M.R. Sagare. Advocate)

(D2 - R/by Shri R.S.Chougala. Advocate)

Parties to I.A.No.II

1. Shri Kempanna Samba Kankanwadi
Age : 61 years, Occ : Agriculture,
R/o Kesti, Tal : Hukkeri, Dist : Belagavi.
Belagavi – 591236
Adhar No. 7305 3358 3357

.....Applicant/plaintiff

:AND:

1. Shri Appasaheb Samba Kankanwadi,
Age : 64 years, Occ : Agriculture,
R/o Kesti, Tal : Hukkeri, Dist : Belagavi-591236
2. Shri Mahantesh Kadappa Chougala,
Age : 50 years, Occ : Agriculture,
R/o Boragal, Tal : Hukkeri,
Dist : Belagavi-591236

....Opponents/Defendants

I.A. No.II filed U/O.XXXIX Rule 1 and 2**R/w Sec.151 of CPC**

The applicant/plaintiff has filed I.A.No.I U/O XXXIX Rule 1 and 2 of Civil Procedure Code and prays to restrain from the affect the name of the def.no.2 to the property extracts of the suit properties as per the sale deed dtd:19.01.2026.

2. The facts of the affidavit as follows :

(a) The plaintiff and the defendant No.1 are the sons of one Shri Samba Satteppa Kankanwadi. The plaintiff and the defendant No.1 and others are co-owner and co-sharer of suit schedule properties. The plaintiff and the defendant No.1 were for sake of cultivating the suit lands on 10.04.2002 got

executed unregistered family settlement partition deed. There was/is no legal partition effected in the family in respect of suit schedule properties. The suit schedule properties are ancestral and joint family properties.

(b) The defendant No.1 taking undue advantage of the family settlement unregistered partition deed and without knowledge and consent of the plaintiff and other co-sharers colluded with the ADLR, Hukkeri has made separate sheets in respect of the landed properties bearing R.S.No.412, 413 and 414 of Kesti village and effected the phodi. Now the defendant No.1 with intent to sell the suit schedule properties hurriedly without knowledge and consent of plaintiff and other family members, he got separated the suit properties. When came to know this fact then the plaintiff was approached the defendant No.1 and requested to sell the suit schedule properties. Then the defendant No.1 has replied it was not necessary to him to sell the suit schedule properties. Thereafter, in view of suspicious towards defendant No.1 that he would sell the suit schedule properties, then the plaintiff has filed suit in O.S.No.23/2026 on the file of Prl. Civil Judge, Sankeshwar and obtained temporary injunction. During TI order in force, the defendant No.1 was intentionally without knowledge and consent of the plaintiff, he sold the suit schedule properties under registered sale deed dated 20.01.2026 in favour of defendant No.2.

(c) The defendant No.2 is stranger to the plaintiff and the defendant No.1 family. The defendant No.2 is noway concerned to them. The plaintiff is having preferential right to purchase the suit schedule properties. The plaintiff is ready and willing to purchase the suit schedule properties for lawful consideration amount. The defendant No.2 is influenced person and hurriedly to effect his name in the records on the basis of sale deed. But the plaintiff is having preferential right to purchase the suit schedule properties and when he requested the defendants to sell the suit properties, but they were refused to execute the sale deed. After sale deed, the defendant No.2 is illegally and highhandedly disturbing the peaceful possession and enjoyment of the plaintiff over the suit schedule properties. The plaintiff has made out prima-facie case, balance of convenience lies in favour of him. If IA is allowed, no hardship will be caused to other side. Hence, prays to allow the I.A.No.II.

3. The defendant No.2 has filed written statement along with memo stating that said written statement kindly be considered as objection to I.A.No.I and II.

(a) In the WS, the defendant No.2 has specifically deny the entire case of the plaintiff and contended that there was a partition on 16.04.2002 between plaintiff and defendant No.1. The suit schedule properties were fallen to the share of the def.no.1. Thereby the suit schedule properties are not joint family properties of plaintiff and defendant No.1. From the

date of partition, the plaintiff and the defendant No.1 were are in possession and enjoyment in their respective shares. The suit schedule properties were fallen to the share of defendant No.1. The defendant No.1 in order to meet his family legal necessity and medical expenses, he has sold the suit schedule properties in favour of defendant No.2. Prior to purchase the suit schedule properties by the def.no.2, he was approached all the brothers of defendant No.1 and requested them to purchase the suit schedule properties. But, when the brothers of defendant No.1 not interested to purchase the suit schedule properties, then this defendant No.2 has purchased the suit schedule properties from defendant No.1 under registered sale deed dated 20.01.2026 and from the date of purchase, the defendant No.2 had took possession of suit schedule properties. Thereby the defendant No.2 is bonafide purchaser and he is in lawful possession and enjoyment of the suit schedule properties. Now in order to harass the defendant No.2, the plaintiff has filed present suit against the defendant No.2. Hence, prays to dismiss the I.A.No.I.

4. Heard the arguments of both sides. Perused available materials.

5. The following points that arise for my consideration as follows;

P O I N T S

- 1) Whether the plaintiff has made out a prima-facie case?

2) Whether the plaintiff has made out balance of convenience lies in favour of them ?

3) Whether the irreparable loss with caused to plaintiff if the application is not allowed?

4) What order?

6. My findings to the above points 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;

R E A S O N S

7. Point No.1 to 3: These points are interconnected with each other, thus, in order to avoid the repetition of facts, all these points are taken up for common discussion to each other. Herein the plaintiffs have filed present suit against the defendants for relief preferential right to purchase the suit property. Upon service of summons, the defendant No.1 & 2 have been appeared. The Def.no.2 has only filed written statement and a memo prays to treat said w.s. as objection I.A.No.1. Herein, the plaintiff has filed present application along with main suit for interim relief to restrain from the affect the name of the def.no.2 to the properties extracts of the suit properties as per the sale deed dtd 19.01.2026.

8. The documents produced by plaintiff as follows :

1. RTC Extract in R.S.No. 412/2, 2.RTC Extract in R.S.No. 413/2, 3.RTC Extract in R.S.No. 414/2, 4.RTC Extract in R.S.No. 412/2, 5.RTC Extract in R.S.No. 413/2, 6.RTC Extract in R.S.No. 414/2, 7. Xerox copy of partition deed. 8. M.R extractx(4 in no's) 9.C/c of sale deed. 10.ADLR notice,11. Copy of statement, 12 to 14. copy of written argument submitted by the plaintiff, the def.no.1 and the def.no.2 before ADLR. 15.Map. 16. copy of order of Tahasildr and intimation.

9. The documents produced by the def.no.2 as follows:

1. copy of sale deed. 2. Plaint, I.A.No.1 and objection to I.A.No.3 and memo in O.S.No.23/2025 and Map issued by survey department.

10. On looking to pleadings of both the parties and documents as stated above, it is undisputed fact that the plaintiff and the defendant No.1 are the sons of one Shri Samba Satteppa Kankanwadi. Further it is undisputed facts that the suit schedule properties are ancestral properties of the family of the plaintiff and the def.no.1. Further it is undisputed fact that the def.no.2 has purchased the suit properties.

11. Herein, the plaintiff has filed I.A.No.II U/o 39 rule 1 & 2 of CPC prays to restrain from the affect the name of the def.no.2 to the properties extracts of the suit properties as per

the sale deed dtd 19.01.2026. Now it is the case of the plaintiff that he and the defendant No.1 were for sake of cultivating the suit lands on 10.04.2002 got executed unregistered family settlement partition deed and there was/is no legal partition effected in the family in respect of suit schedule properties. The defendant No.1 taking undue advantage of the family settlement unregistered partition deed and without knowledge and consent of the plaintiff colluded with the ADLR, Hukkeri has made separate sheets in respect of the landed properties bearing R.S.No.412, 413 and 414 of Kesti village and effected the phodi. Thereafter, though the plaintiff has intended to purchase the suit schedule property and requested the def.no.1 to sell the suit properties to him, but, the def.no.1 had replied as not necessary to him to sell the suit schedule properties. Thereafter, in view of suspicious towards defendant No.1 that he would sell the suit schedule properties, then the plaintiff has filed suit in O.S.No.23/2026 on the file of Prl. Civil Judge, Sankeshwar and obtained temporary injunction. During TI order in force, the defendant No.1 was intentionally without knowledge and consent of the plaintiff, he sold the suit schedule properties under registered sale deed dated 20.01.2026 in favour of defendant No.2. After sale deed, the def.no.2 is trying to entered his name in the properties extracts. Herein on carefully scrutinized the pleadings and the documents of the both parties. It is admitted facts that the plaintiff is not in possession and enjoyment over the suit schedule properties. Secondly, it is not the case of the plaintiff

that all the joint family member are in joint possession over the suit schedule properties. Thirdly, admittedly the plaintiff has filed present suit against the defendants No.1 & 2 for relief of preferential right to purchase the suit schedule properties. So if the plaintiff is entitle to get such relief, then automatically he can get the Regd. Sale deed and on the basis of such sale deed, his name will entered.

12. Now admittedly the def.no.1 has sold the suit properties in favour of the def.no.2 and the def.no.1 has executed Regd. Sale deed in favour of the def.no.1. Further the def.no.2 is in possession and enjoyment over the suit schedule properties on the basis of sale deed. Therefore, it is right of the def.no.2 to get the katha in his name to the suit schedule properties on the basis of registered instrument and it can't be restrained. And it is due process of law that the revenue authority should be entered the name of the def.no.2 on the basis of Regd. Sale deed. Further if the plaintiff is entitle the relief as sought in the plaint after due trial, then he can obtained a Regd sale deed and on the strength such alleged sale deed, then automatically concerned authority will entered the name of the plaintiff in the properties extracts of the suit schedule properties. Further If the name of the def.no.2 entered on the basis of sale deed in respect of suit schedule properties, then there is no harm to the plaintiff. Moreover it is not case of the plaintiff that alleged sale deed is created document and fraudulent document. Further it is not the

case of the plaintiff that so sale deed is created by the def.no.1. Further it is not case of the plaintiff that the def.no.1 not executed the sale deed in favour of the def.no.1. Further it is admitted facts that the def.no.1 has sold the suit properties in favour of the def.no.2 and executed the sale deed in favour of the def.no.2 in respect of the suit schedule properties. Under these circumstances this court is of the opinion that, the plaintiff is not made out prima facie case and balance of convenience is lies in favour of him and there is no hardship to the plaintiff if application is reject. Therefore, the plaintiff is entitled the relief as claimed in the I.A.No.1. Hence, this court answered Point No.1 to 3 are **in the Negative**.

13. Point No.4 :- In view of the finding given by this court on the above points proceed to pass the following order:-

O R D E R

**The I.A.No.II U/Or.XXXIX Rule 1 & 2 of
CPC filed by plaintiff is hereby rejected.**

No order as to costs.

*(Dictated to the Stenographer, transcribed and typed by her, corrected and then pronounced by me in open court on **2nd day of July 2026**)*

Senior Civil Judge, Hukkeri,
Itinerary Court at Sankeshwar.