

KABK210009782023



Presented on : 03-08-2023
Registered on : 03-08-2023
Decided on : 16-06-2026
Duration : 2 years, 10 months, 13 days

IN THE COURT OF PRL. CIVIL JUDGE AND JMFC.,MUDHOL

AT: MUDHOL

**PRESENT: SRI. LAGAMA S. HUKKERI,
B.A.,LLB(Spl).**

DATED THIS 16TH DAY OF JUNE-2026

ORIGINAL SUIT NO.151/2023

PLAINTIFF:

1. Mahadevappa S/o Mallappa Kali.
Age: 67 years, Occ: Agriculture,
R/o: Gaddankeri, Tq & Dist: Bagalkote.

(By Sri.BCH, Adv.)

V/s

DEFENDANT:

1. Bhimappa S/o Mallappa Kali.
Age: 63 years, Occ: Agriculture,
R/o: Hodlur (Farm house),
Tq & Dist: Bagalkote.

(By Sri.ASD, Adv.)

Date of institution of the suit : 03.08.2023
Nature of the Suit : For Permanent injunction.
Date of the commencement : 01.03.2024
of recording of the evidence.
Judgment pronounced on : 16.06.2026
: Year/s Month/s Day/s
Total Duration : 02 10 13

:: JUDGMENT ::

The plaintiff has filed present suit against the defendant for the relief of permanent injunction restraining the defendant from alienating or transferring the suit lands in favour of third person.

2. Description of the suit properties are as under:

R.S.No.	Area (A-Gs)	Asst (Rs-Ps)	Village
65/3	03-06	08-37	Badnur, Tq: Mudhol.
67/3	04-04	13-45	--Do--

3. The Brief facts of the plaintiff's case is as follows:

It is the case of the plaintiff that originally suit lands are the ancestral joint family properties of plaintiff and defendant and in the year 2011, plaintiff has filed suit bearing O.S.No.65/2012 against his brothers, including the present defendant and sisters for partition and separate possession with respect to their ancestral joint family properties. Further it is the case of the plaintiff that prior to the aforesaid suit, another suit bearing O.S.No.86/2011 filed by his own brother by name Sangappa S/o Mallappa Kali against the present defendant only in respect of

R.S.No.66/3 of Badnur village for the relief of partition and separate possession. Then both suits were clubbed and tried by the Hon'ble Prl. Senior Civil Judge and JMFC, Mudhol and judgment was pronounced as O.S.No.65/2012 filed by the plaintiff was decreed and in that suit present suit lands bearing R.S.No.65/3 and 67/3 of Badnur village were included with other properties and O.S.No.66/2011 came to be dismissed on 22-04-2019.

4. Further it is the case of the plaintiff that at the time of filing of O.S.No.65/2012, the suit land bearing R.S.No.65/3 was shown as old R.S.No.65/2B measuring 6 acres 12 guntas and later sub divisions were made with respect to said property between the plaintiff and his brother Sangappa S/o Mallappa Kali and subsequently, new R.S.No.65/3 and 65/4 are given and accordingly R.S.No.65/3 is standing in the name of defendant. As per the decree passed in O.S.No.65/2012 all the co-sharers are entitled to their respective shares in the suit properties including the present suit lands. Then R.A.No.170/2019

clubbed with R.A.No.171/2019 was preferred before I Additional District and Sessions Judge Bagalkot sitting at Jamakhandi and said Court modified the trial court judgment with respect to allotment of shares only. According to said judgment and decree plaintiff, defendant No.1, 4 to 6, 8 to 11 of O.S.No.65/2012 are entitled to 1/10th share in the landed properties at schedule 'B' of item No.1 to 3 and defendant No.2 and 3 are collectively entitled for 1/10th share in the suit lands.

5. Further it is the case of the plaintiff that plaintiff, defendant and other brothers and sisters are having legal shares in the present suit lands as per judgment and decree passed in R.A.No.170/2019 and R.A.No.171/2019 and till today no final decree proceedings was initiated. Further it is the case of the plaintiff that name of the defendant is appearing in the revenue records of the suit lands and now plaintiff has heard that defendant is trying to sell the suit land to the strangers and also obtained copy of agreement of sale entered with respect to R.S.No.65/3 and came to know

that as per the said agreement of sale, sale deed has to be executed within 3 years from 09-09-2020 to 08-09-2023. Then immediately plaintiff approached the defendant and enquired about the said agreement of sale and share of himself and others and defendant did not heeded his request. Now the defendant by taking undue advantage of his name appearing in the revenue records of the suit property is in hurry to sale the suit lands as per agreement of sale in order to defeat the right of the plaintiff and other co-sharers. Therefore plaintiff has filed present suit against the defendant for the relief of permanent injunction restraining the defendant from alienating or transferring the suit lands in favour of third person.

6. In response to the suit summons, defendant has put his appearance before the court through his counsel, but failed to file written statement and hence written statement of defendant taken as not filed.

7. In order to prove his case, plaintiff got examined himself as PW.1 and produced 8 documents as per Ex.P.1 to 8 and closed his side evidence.

8. Now the following points arise for my consideration:

:: P O I N T S ::

1. Whether the plaintiff is entitled for the relief of permanent injunction as sought for in the suit?

2. What decree or order?

9. Heard the arguments of learned counsel for plaintiff and perused the pleadings and other materials placed on record.

10. My answer the above points as follows:

Point No.1: In the Negative,

Point No.2: As per final order,

for the following:

:: R E A S O N S ::

11.Point No.1: In order to prove his case, plaintiff got examined himself as PW.1 and filed affidavit in lieu of his examination-in-chief and reiterated the plaint averments. In addition to oral evidence, plaintiff has produced 8

documents as per Ex.P.1 to 8. **Ex.P.1 and 2** are the RTC extract of R.S.No.65/3 and 67/3 for the year 2022-23 standing in the name of defendant. **Ex.P.3** is the certified copy of judgment passed in R.A.No.170/2019 clubbed with 171/2019. **Ex.P.4 and 5** are the certified copies of judgment and decree passed in O.S.No.86/2011 clubbed with O.S.No.65/2012. **Ex.P.6** is the certified copy of M.R.No.T-4/2024-25. **Ex.P.7** is the RTC extract of R.S.No.65/3 measuring 25 guntas for the year 2024-25 standing in the name of defendant and **Ex.P.8** is the RTC extract of R.S.No.65/6 measuring 1 acre 33 guntas for the year 2024-25 standing in the name of defendant.

12. It is the specific case of the plaintiff that originally suit lands are the ancestral joint family properties of plaintiff and defendant and as per the judgment passed in R.A.No.170/2019 clubbed with RA.No.171/2019, plaintiff, defendant No.1, 4 to 6 and 8 to 11 are entitled to 1/10th share and defendant No.2 and 3 are together entitled to 1/10th share in the item No.1 to 3 of suit schedule 'B'

properties and hence plaintiff, defendant and other brothers and sisters have legal sharers in the suit schedule lands and defendant by taking undue advantage of his name appearing in the suit lands and in order to defeat the valuable right of the plaintiff and other co-sharers in the suit lands is trying to alienate the suit lands in favour of third person. In order to prove that plaintiff, defendant and other co-sharers are having legal shares in the suit lands, plaintiff has produced certified copy of judgment passed in R.A.No.170/2019 clubbed with R.A.No.171/2019 as per Ex.P.3. On careful perusal of the said judgment, it reveals that present plaintiff was respondent No.1 and present defendant was respondent No.3 in the aforesaid regular appeal and it was held that present plaintiff was entitled to 1/10th share and present defendant and one Shivappa Mallappa Kali together entitled to 1/10th share in the item No.1 to 3 of suit schedule 'B' properties. Further on careful perusal of the judgment and decree passed in O.S.No.86/2011 clubbed with O.S.No.65/2012

R.S.No.65/2B, 67 and other properties were the suit properties. Further the plaintiff has contended that in O.S.No.65/2012 suit land bearing R.S.No.65/3 was shown as old R.S.No.65/2B measuring 6 acres 12 guntas and later sub divisions were effected with respect to said land between plaintiff and his brother Sangappa Mallappa Kali and new R.S.No.65/3 and 65/4 were given and accordingly R.S.No.65/3 is standing in the name of defendant. In order to show that sub divisions were effected between plaintiff and defendant with respect to old R.S.No.65/B, plaintiff has not produced certified copy of mutation dairy witnessing sub divisions in respect of R.S.No.65/B and allotment of new R.S.No.65/3 and 65/4.

13. From the averments of the plaintiff and Ex.P.3 to 5 documents, it reveals that present plaintiff is entitled to 1/10th share and defendant and one Shivappa Mallappa Kali are together entitled to 1/10th share in the suit lands. Therefore it becomes very clear that present plaintiff and defendant are the co-owners of the suit lands. It is well

settled principle of law that no injunction can be granted against the co-owner. Therefore plaintiff cannot claim relief of permanent injunction against the defendant, who is co-owner of the suit lands, restraining him from alienating or transferring the suit lands in favour of third person. Further as per the plaint averments, till today no final decree proceedings was filed as per judgment and decree passed in RA.No.170/2019 clubbed with RA.No.171/2019 and plaintiff instead of filing of present suit, he would have filed final decree proceedings with respect to the present suit lands as well as other properties and in that proceedings he can seek allotment of his share by metes and bonds in the suit lands. Therefore it becomes very clear that alternative efficacious remedy is available to the plaintiff and instead of utilizing the available efficacious remedy, plaintiff has filed present suit against the defendant with respect to suit lands for the relief of permanent injunction. Hence plaintiff is not entitled for the relief of permanent injunction with respect to

the suit lands. **Hence this court answers Point No.1 in the Negative.**

14. Point No.2: For the following reasons, I proceed to pass the following...

::ORDER::

The suit filed by the plaintiff is hereby dismissed.

Looking into the nature of the suit and relationship between the parties, no orders as to cost.

Draw decree accordingly.

(Dictated to the Stenographer directly on the computer, typed by her, corrected & signed by me & then pronounced in open Court on this **16th Day of June-2026**).

(LAGAMA S. HUKKERI)
Prl. Civil Judge & JMFC,,
Mudhol.

A N N E X U R E

I. LIST OF WITNESSES EXAMINED ON BEHALF OF PLAINTIFF:

PW.1: Mahadevappa Mallappa Kali.

II. LIST OF DOCUMENTS MARKED ON BEHALF OF PLAINTIFF:

Ex.P.1 & 2: RTC extracts of R.S.No.65/3 and 67/3. .
Ex.P.3 : Certified copy of judgment passed in RA
No.170/2019 clubbed with
RA.No.171/2019.

Ex.P.4 & 5: Certified copies of judgment and decree passed in O.S.No.86/2011 clubbed with O.S.No.65/2012.

Ex.P.6 : Certified copy of MR No.T-4/2024-25.

Ex.P.7 : RTC extract of R.S.No.65/3.

Ex.P.8 : RTC extract of R.S.No.65/6.

III. LIST OF WITNESSES EXAMINED ON BEHALF OF DEFENDANT:

-- Nil --

IV. LIST OF DOCUMENTS MARKED ON BEHALF OF DEFENDANT:

-- Nil --

(LAGAMA S. HUKKERI)
Prl. Civil Judge & JMFC,,
Mudhol.

