

KABR210000171996



**IN THE COURT OF THE II ADDL. SENIOR CIVIL JUDGE
AND JMFC, AT ANEKAL**

Dated this 10th day of April, 2026

PRESENT : SRI. MANJUNATHA M. B.A.(L), LL.B.
II Addl. Senior Civil Judge & JMFC,
Anekal.

O.S.No.534/2009

(Old OS.No.28/1996)

PLAINTIFF/S:

Sri. C.Manjunath
S/o Chowdappa,
Major,
R/at Kariyappanapalya,
Bannerghatta,
Anekal Taluk,
Bengaluru District.

(Rep. By Sri. R.S., Advocate)

V/s

DEFENDANT/S:

1. Sri. Muniyappa
S/o late Bavaji,
2. Sri Siddappa,

Since dead by LRs,

2(a). Smt. Munirathna
W/o late Siddappa,

2(b). Suguna
D/o late Siddappa,

2(c). Rasamma
D/o late Siddappa,
R/at Jangalapalya,
Bannerghatta Post,
Anekal Taluk.
3. Sri. Manjunath
S/o late K.P.Shankarappa,
Major,
R/at Kariyappanapalya,
Bannerghatta,
Anekal Taluk, Bengaluru District.
4. Eeramma
W/o Muniyappa,
Major,
5. Ramakka
W/o late Muniswamappa,
Major,

6. M.Rajesh
S/o late Muniswamappa,
Major,
7. Sri. Muniyappa
S/o late Muniswamappa,
Major,

Defendant No.4 to 7 are
R/at Jangalapalya,
Bannerghatta Post,
Anekal Taluk.

**(Rep. By Sri. N.C.R., Adv. For D1, 3 to 7,
Sri. V.S.K., Adv. For D2)**

PARTIES ON IA.NO.IX

**Applicant /
Defendant No.3**

Sri. Manjunath

V/s

**Opponent /
Plaintiff**

Sri. C.Manjunath

ORDERS ON I.A.NO.IX

I.A.No.IX filed by the defendant No.3 under Order XXXIX Rule 1(A) r/w Sec.151 of CPC, praying for Temporary Injunction, to restrain plaintiff from interfering with his possession, over written statement schedule property, till disposal of suit.

2. In support of application, defendant No.3 sworn to an affidavit and pleaded that defendant No.1, 4 to 7 for their legal necessities, sold written statement schedule property in his favour, through registered Sale Deed dated 21.07.2005. From date of purchase, he is in possession of suit schedule property as absolute owner without anybody interference and revenue records were also mutated in his name. Plaintiff tried to interfere with his possession, hence, he filed suit in OS.No.428/2007 for the relief of declaration and injunction. After contest said suit was decreed. On the created agreement, plaintiff filed false suit, to knock of suit schedule property. On 25.12.2025 plaintiff tried to interfere with his possession, hence, application. Defendant No.3 further pleaded as usual pleas of prima facia case, balance of convenience and injury.

3. Application resisted by filing written objection by denying the averments of affidavit sworn in support of application and contended that he acquired suit schedule property through Judgment and Decree dated 09.06.1997 passed in OS.No.28/1996. Suit schedule property was belonged to husband of defendant No.1, father of defendant No.2 and 3. They executed agreement in his favour on 23.08.1995, by agreeing to sell the suit schedule property and received advance consideration of Rs.75,000/-, later they

failed to execute Sale Deed, hence, OS.No.28/1996 was filed for the relief of Specific Performance of contract. During pendency of suit, suit was compromised. Judgment and Decree was challenged by Muniyappa in Miscellaneous Petition No.59/2007. During pendency of Miscellaneous petition, Muniyappa by colluding with others executed Sale Deed in favour of defendant No.3 on 21.07.2005. Sale Deed executed in favour of defendant No.3 during pendency of litigation, hence, defendant No.3 not acquired right over the suit schedule property. He is in possession of suit schedule property. Defendant No.3 filed OS.No.428/2007 before the Senior Civil Judge & JMFC, Anekal for the relief of declaration and injunction. On the basis of decree in OS.No.28/1996, he is in possession of suit schedule property, hence, prayed to dismiss application.

4. Heard both side and perused materials placed before the court.

5. Now the points that would arises for consideration are ;

POINTS

1. Does application filed by defendant No.3 seeking injunction to restrain plaintiff from interfering with his possession is maintainable ?
2. What order ?

6. Without considering the merits of case, court felt to consider maintainability of application.

7. By considering the notes of arguments of learned counsel for plaintiff and materials placed before the court, above points are answered as below ;

Point No.1 : In the Negative

Point No.2 : As per the final order
for the following ;

:- R E A S O N S :-

8. **Point No.1:-** Under Order XXXIX Rule 1(A) r/w Sec.151 of CPC,

Any party in dispute can make application, property is in dispute, is in danger of being wasted, damaged or alienated by any party to the suit,

Under Order XXXIX Rule 1(A) of CPC, any party to the suit can maintain application in the situation stated therein.

Under Order XXXIX Rule 1(b) of CPC, only plaintiff can make application, if defendants threaten or intends to remove or dispose the property. Under Order XXXIX Rule 1(c) of CPC, only plaintiff can file application, if defendants threaten to dispossess the plaintiff from plaint schedule property.

9. According to defendant No.3, plaintiff trying to interfere with his possession and trying to dispossess him from the suit schedule property. Prayer of defendant No.3, comes within the definition of Order XXXIX Rule 1(c) of CPC, under this provision plaintiff alone shall make application. In that situation, defendants cannot make application. If at all, defendants wanted injunction against plaintiff under Order XXXIX Rule 1(c), defendants shall file separate suit. As pleaded by defendant No.3, suit filed by him for declaration and injunction was already decreed. If defendant No.3 is having decree in OS.No.428/2007, then he can execute it, with due process of law, without that defendant No.3 cannot maintain instant application under Order XXXIX Rule 1(c) of CPC. In application defendant No.3 stated that they filed application under Order XXXIX Rule 1(A) of CPC, but prayer sought false within the definition of Order XXXIX Rule 1(c) of CPC, hence, IA.No.IX is not maintainable, accordingly, this point answered ***in the Affirmative.***

10. **Point No.2 :-** For the reasons assigned to Point No.1, resulted in following :-

ORDER

IA.No.IX filed by the defendant
No.3 under Order XXXIX Rule 1(A)
r/w Sec.151 of CPC, is dismissed.

No order as to the cost.

(Dictated to the Stenographer, transcribed by her, corrected and then pronounced by me in the
open court, on this, **the 10th day of April, 2026**)

(MANJUNATHA M.)

II Addl. Senior Civil Judge & JMFC.,
Anekal.

