



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
J.M.F.C. AT N.R.PURA, ITINERATE AT KOPPA**

Present : Sri Raghunatha Gowda K.T., B.Com., L.L.B,
Senior Civil Judge & J.M.F.C., N.R.Pura, Itinerate at Koppa

Dated this the 7th day of March, 2026

M.A. No.07/2025

Appellants/s : Sri. D.R. Gopalakrishna
(Plaintiff) @ D.R. Gopal,
S/o. Late. D.S. Rama Rao,
Aged about 72 years, Agriculturist,
R/o. Sithoor Village,
N.R.Pura Taluk,
Chikkamagaluru District.
Represented by his GPA Holder
B.S. Srinivasa,
S/o. Late. B.R. Shankare Gowda,
Aged about 55 years, Agriculturist,
R/o. Megaramakki Village,
N.R.Pura Taluk,
Chikkamagaluru District.

(By Sri. H.S./M.S.B., Advocate)

// -Vs- //

Respondent/s : 1. Sri. K. Srinivasa,
S/o. Kittappa,
Aged about 53 years,
R/o. No.33,
3rd Cross, Lakkasandra,



Bangalore – 30.

2. Sri. Mithun S. Shetty,
S/o. Sudhakara S. Shetty,
Aged about 42 years,
R/o. 'Padma Nilaya', Kudregundi,
Thalamakki Village, Koppa Taluk,
Chikkamagaluru District.
3. Sri. S.P. Renukardhya,
S/o. S.M. Panchaksharaiah,
Aged about 50 years,
R/o. Opp. Fire Station, Kadur Town,
Chikkamagaluru District,

*(Respondent No.2 represented by Sri. B.S.N.,
Advocate, Respondent No.3 represented by Sri. M.H.N.,
Advocate, Respondent No.1 placed Ex-parte)*

Date of Institution of : 30.06.2025
the Appeal

Appeal against : The order passed on I.A. No.II by
Civil Judge and J.M.F.C, Koppa,
in O.S. No.15/2023 dated
15.04.2025.

Date of Judgment : 07.03.2026

Duration of the Appeal : Year/s Month/s Day/s
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: J U D G M E N T :

This appeal filed by the plaintiff in O.S. No.15/2023 which is pending on the file of Civil Judge and J.M.F.C., Koppa. He filed the present appeal being aggrieved by the order passed on IA No.II in that suit dated 15.04.2025.

2. The appellant was the plaintiff, the respondent No.1 to 3 are defendants before the trial Court. For the sake of convenience and clarity hereinafter ranking of the parties will be referred as per their ranking before the trial Court.

3. **Brief facts of the plaintiff case before the trial court as under:**

a) The plaintiff filed the suit against the defendants for relief of declaration and permanent injunction. As per plaint averments the plaintiff contended that suit property was granted in favour of his father by name D.S. Rama Rao by the Tahsildar, Koppa vide order No.B.S.4/1942-43, dated 31.10.1942, as per the said grant the mutation was effected in M.R.



No.89/1941-42, but katha was not entered in the R.T.C. and no alienation phodi was conducted.

b) Further he contended that he acquire the suit schedule property under partition deed dated 31.10.1971 same was registered on 24.11.1971, he was in possession and enjoyment of the suit property, towards Eastern side of the road which deviates from Koppa – Tarikere Road and reaches Nuggi and Khandya Villages. Further he contended that the said road form the boundary between the land granted to the defendant. Further he contended that his father was also possession of more than 10 guntas including the plaint schedule property peacefully, continuously and without any interference.

c) Further he contended that land bearing Sy. No.111 to extent of 10 acres of Talamakki Village was granted to One K. Dayananda by the State, the durasthi was conducted as per pakka phodi and new Sy. No.159 was assigned to the said land. The said originally grantee has sold the said land to one Manmohan kale under registered sale deed bearing



No.416/1980-81, who got converted 20 guntas for non-agricultural purpose and it was assigned hissa number 2, defendant No.1 purchase the said land in Sy. No.159 through registered sale deed dated 01.03.2008.

d) Further he contended that the pakka phodi and durasthu was not conducted as per possession and enjoyment of the predecessor in title of the defendant and the said pakka phodi was wrongly made including his property and K. Yallappa Ajila property. Further he contended defendant No.1 in order to knock of his property he has got rectified the sale deed. Further he contended that in fact the vendor of defendant No.1 had admitted the true boundaries and error conducted while pakka phodi. Further he contended that without issuance of any notice to himself or his predecessor the pakka phodi was conducted.

e) Further he contended that the said fact came to know, he has filed revision petition under provision of Karnataka Land Revenue Act questioning the said illegal phodi before the Deputy Commissioner, Chikkamagaluru in D.D.L.R. RP No.22/2015-16, which



was transferred to the J.D.L.R., Mysore and renumbered as J.D.L.R. RP No.113/2021-22 and the said revision petition was dismissed on 18.03.20223.

f) Further he contended that the said order is illegal and non-speaking order and he has taken steps to question the said order as per law. Further he contended that defendant No.1 sold the land in favour of defendant No.2 under registered sale deed dated 03.11.2022 to extent of 2 acres 1½ guntas, the defendant No.3 purchase the land from defendant No.1 in Sy. No.159/4 to extent of 1 acre 1 guntas, after passing the order of the J.D.L.R. Further he contended that on 11.05.2023 defendant No.2 along with his supporters are trespassed into the suit property and tried to remove the gate and fence. Hence he constrained file the suit and also filed I.A. No.II under Order XXXIX Rule 1 and 2 of C.P.C. to restrain the defendants, their men, agents, servants or anybody claiming through them from trespassing into the schedule property or from dispossessing him from the



plaint schedule property and also seeking permanent injunction till disposal of the suit.

4. The defendants are appear through their respective counsels and filed a separate memo stated that the contents of written statement treated as objection to said application.

5. The written statement of defendant No.1 and 2 are one at the same as under;

a) In the written statement of defendant No.1 and 2 are denied the entire contents of plaint averments except admitted some material facts. Further defendant No.1 contended that he is the absolute owner of land bearing Sy. No.159/1 to extent of 9 acres 20 guntas of coffee land and 20 guntas of converted land with rice and flour mill, with house property having assessed by the Binthruvalli Grama Panchayath. Further he contended that before purchasing the property the said survey number was 111 same was new survey number as 159 after the phodi. Further he contended that he was in possession



and enjoyment of the same, after he sold the said property the defendant No.2 and 3 are in possession and enjoyment of the same. Originally Sy. No.111 was granted in favour of Dayanand in the year 1949-50, he has sold in favour of One Manmohan Kale through registered sale deed bearing S.R. No.416/1980-81.

b) Further he admitted that the Revision Petition filed by the plaintiff is dismissed. Further they are contended that the property was not granted to the D.S. Rama Rao, he was in possession and enjoyment of the same. Further he admitted that the boundaries shown in the sale deed executed by the vendor was rectified by rectification of sale deed. Further he contended that the Manmohan Kale has converted 20 guntas of land and for non-agricultural purpose. Further he admitted that he has purchase the 10 acres 5 guntas land through registered sale deed bearing S.R. No.690/2007-08.

c) Further he contended that there exist the road in the suit property from the inception which leads to a village from the Koppa – Shivamogga Main Road and



same is left as road even now also. The previous vendor of the plaintiff was in exclusive possession of the suit property excluding the road in two lots. Further he contended that as per sale deed the katha of the suit property was changed and he has invested the huge amount for improving the property and the plaint schedule property is covered with fence. Further he has growing coffee, areca and other subsidiary crops in the suit property and also running a Flour Mill in the suit property.

d) Further he contended that after purchase the property he has erected a separate Iron Gate and he has laid underground pipelines for the purpose of irrigation. Further he contended that except himself the plaintiff has no manner right, title or interest over the suit property. Further he contended that at the instigation of Geetha Ajila the plaintiff file this suit in order to try to disturb the possession and enjoyment of the property. Further he contended that he has filed a suit against One Ramanna and Smt. Geetha Ajila before this Court same was renumbered as 23/2018



for relief of declaration and injunction the said suit was decreed by this Court and now the plaintiff sailing with Geetha Ajila to file this suit.

e) Further he contended that after purchasing the property the defendant No.3 formed the sites and the area is developed as residential and commercial area, the plaintiff out of possession over the suit property and the Court Fee paid by the plaintiff is insufficient. Hence he prays to dismiss the said application.

6. The written statement of defendant No.3 before the trial court as under:-

a) In the written statement the defendant No.3 has denied entire contents of plaint averments except admitting the material fact with regard to Sy. No.111 was resurvey numbered as 159 and defendant No.1 purchase the property on 01.03.2008. Further he contended that the pakka phodi and durasthi was conducted as per possession and enjoyment of the predecessor in title.



b) Further he contended that defendant No.2 has sold the property bearing Sy. No.159/3 to extent of 2 acres 1½ guntas and he purchase 1 acre 1 gunta from defendant No.1 in Sy. No.159/4 dated 03.11.2022 and he was in possession and enjoyment of the same.

c) Further he contended that originally Sy. No.111 to extent of 10 acres was granted to One Dayananda by issuance of grant certificate dated 02.07.1950, after durasthu and pakka phodi the said 10 acres of land is new survey number as 159. Further the said K. Dayananda has alienated 20 guntas of land for non-agricultural purpose and on 12.11.1980 he has sold 4 acres of land in favour of Manmohan kalle, apart from that 4 acres land in Sy. No.111 of Talamaki Village has been granted to Manmohan Kalle under grant certificate number 19/1963-64. dated 25.04.1964.

d) Further he contended that from date of purchase he was in possession and enjoyment of the property as per registered sale deed dated 02.07.2020. Further he contended that he obtain the permission from the competent authority and he formed layout,



the plaintiff has got on evil eye over the said property he has filed the suit without any manner of right, title or possession. Hence he prays to reject the said I.A.

7. By considering the I.A. No.II filed by plaintiff, the trial Court is rejected said I.A. No.II by its order dated 15.04.2025.

8. Being aggrieved by the said order, the plaintiff / appellant has filed the present appeal on the following grounds;

1) The impugned order dated 15.04.2025 rejecting the I.A. No.II passed by the learned Hon'ble Civil Judge Koppa, is perverse, capricious and is not maintainable.

2) The trial court committed grave error in not considering the citation relied on by the appellants which resulted in miscarriage of justice.

3) The impugned order is passed without considering the documents which were



produced by the appellant. There is no whisper about the appreciation of the documents produced by the appellants in the impugned judgment.

4) The trial court failed to consider that the said Pakka Phodi was conducted behind the back of the late D.S. Rama Rao without issuing any notice to him. In the impugned Pakka Phodi, the road and the lands situated towards the eastern side of the said road which was/is in possession of the plaintiff and that of late K. Yallappa Ajila were included. The plaintiff or his predecessors in title were not aware of the impugned Pakka Phodi, But relying on the said illegal Pakka Phodi resulted in miscarriage of justice.

5) The trial court failed to consider that the vendors of the 1st defendant had admitted the true boundaries and the error in conducting Pakka Phodi through her letter which was produced by



the plaintiff.

- 6) *The survey sketches which were prepared during the pendency of the revision petition before the JDLR and during the complaint lodged to the police clearly establish the possession of the plaintiff which was ignored by the trial court.*
- 7) *the trial court failed to appreciate that the land measuring 5 guntas situated in Sy. No.111 of Thalamakki Village of Koppa Taluk which is more fully detailed in the schedule was granted to the father of the plaintiff by name late D.S. Rama Rao by the Tahasildar, Koppa Taluk vide order in B.S. 4/42-43 dated 31.10.1942. As per the said grant mutation was effected vide M.R.89/41-42 but Khatha was not entered in the RTC and no alienation Phodi was conducted. The said documents clearly establish the title and possession of the plaintiff over the suit property.*



- 8) *The conclusion of trial court that 'the documents show that the mutation as in favour of the plaintiff without Pakka Podi and that is sufficient to say that the Plaintiff himself does not know where exact this land is' opposed to documents produced by the appellant.*
- 9) *The trial court failed to appreciate that the land granted to the plaintiff is demarcated and the sketch produced by the plaintiff proves the same.*
- 10) *The trial court is very much influenced by the dismissal of this suit filed by the Geetha V Ajila which resulted in miss carriage of justice.*
- 11) *The conclusion of the trial court the plaintiff and Smt. Geetha V Ajila colluded together without there being any evidence and trail is opposed to law.*

Hence he prays to set aside the order of the trial court and to allow the I.A. No.II.



9. Notice duly served to the respondents, the respondents are appeared through their respective counsels and supported the order passed by the trial court.

10. Heard the arguments of both sides and perused the material placed on record.

11. The following points arise for my consideration:

1. Whether plaintiff/Appellant prove that he has got prima-facie case lies in his favour?
2. Whether plaintiff/Appellant further proves that the balance of convenience lies in his favour?
3. Whether plaintiff/Appellant further proves that if the injunction is not granted he will suffer irreparable loss and it will cannot be compensated in terms of money?
4. Whether the order passed by trial Court is capricious, arbitrary and it has committed error in dismissing



I.A. No.II, hence interference by this Court is necessary?

5. What order?

12. My answers to the above points are as under:

Point No.1 to 4: In the Negative.

Point No.5 : As per final order, for the following:

: REASONS:

13. **POINT No.1 to 4**: Learned counsel for appellant vehemently argued that the suit schedule property granted in favour of father of plaintiff and he was in possession and enjoyment of the same, while conducting the pakka phodi the suit property was included and while conducting the durasthu the notice was not issued. Further he argued that the vendor of the defendant No.1 given statement that the boundaries were wrong and the alienation phodi was illegal. Now the defendants are trying to trespass into the suit property and they are interference his



possession and enjoyment of the suit property. The said fact was not considered by the trial court and rejected the I.A. No.II is against the principal of natural justice. Hence he sought to set aside the order of the trial court and allow the I.A. No.II.

14. The learned counsel for respondents argued that the identity of the property is in disputed, the original grant certificate was not produce and the property claimed by the plaintiff is not in existence and no record of rights entered on the basis of the grant certificate, the plaintiff filed the suit sailing with One Geetha Ajjila, while the said suit was decreed by this Court. Hence they prays to dismiss the Miscellaneous Appeal.

15. On careful perusal of the entire documents produced by the both the parties, as per mutation register in M.R. No.89/1942-43 to extent of 5 guntas granted in favour of D.S. Rama Rao, who is father of plaintiff. Further on the basis of the mutation no revenue entries made out in the name of said D.S.



Rama Rao. Further plaintiff/appellant has not produce the grant certificate before this court.

16. Further as per the document produce by the appellant i.e., one requisition given by the vendor of defendant No.1 by name Shylaja M. Kalle to the Tahasildar, Koppa dated 05.06.2007 that while conducting the durasthi the property belongs to Yallappa Ajila to extent of 10 guntas and to extent of 5 guntas belongs to Rama Rao were granted in the year 1942-43 for the purpose of Manedala, while conducting the durasthu due to fault in the sketch the said properties boundaries were mentioned. As per the requisition of the said vendor of the defendant No.1 discloses that while conducting the durasthu / pakka phodi the wrong was committed. Further as per the sketch prepared by the surveyor discloses that the property belongs to Yallappa Ajjila to extent of 10 guntas and property belongs to Rama Rao to extent of 5 guntas are over lapping in Sy. No.159.

17. The main contention of the appellant in the suit that the pakka phodi conducted by the surveyor in



Sy. No.159 has not based on possession and enjoyment of the predecessor in title. Admittedly against the said durasthu the plaintiff preferred the appeal before the D.D.L.R. and the said Revision Petition was dismissed on 18.03.2023. Against the said order the appellant / plaintiff has not preferred any appeal.

18. Further on document produce by the plaintiff discloses that on 29.02.2008 defendant No.1 purchase the property in Sy. No.159 to extent of 10 acres 5 guntas and in Sy. No.168 to extent of 4 acres from its previous vendor by name Shylaja M. Kalle and her children's. Further on 11.05.2015 defendant No.1 and his previous owner are enter into rectification of the sale deed with regard to boundary of the Sy. No.159 towards Eastern side. Further on 02.07.2020 defendant No.3 purchase the property bearing Sy. No.159/1 to extent of 9 acres 20 guntas out of which 2 acres 4 guntas from defendant No.1. On 03.11.2022 defendant No.2 purchase the property from defendant No.1 to extent of 1 acre 8 guntas in Sy. No.159/1. On



the basis of the said sale deed the mutation and record of rights were entered.

19. On perusal of the relief sought in the plaint schedule as well as the relief claimed in the interim application or one at the same. Further while considering the application under Order 39 Rule 1 and 2 of C.P.C. the plaintiff prima-facie must establish that the defendants are illegally trespass into the suit property and they are caused interference over the suit property from dispossessing him in the suit property. On perusal the entire plaint averments as well as interim application the plaintiff pleaded that on 11.05.2023 defendant No.2 along with his supporters are trespass into the plaint schedule property try to remove the gate. In this regard except the oral testimony of plaintiff he has not produce any piece of document before the Trial Court nor before this Court to prove the said contention.

20. Further on perusal of the entire record it is admitted that the Sy. No.111 of Talamakki Village to extent of 10 acres 5 guntas after durasthu phodi the



new survey number 159 was given, further in the said extent the 20 guntas of land was converted into non-agricultural purpose. Further as per material available on record when the grant was made in favour of father of the plaintiff and One Geetha Ajila the survey was not conducted and boundaries was also not fixed for identity of the property. When there is no material placed before the Court as per boundaries shown in the plaint the plaintiff was in possession and enjoyment of the property.

21. Further according to the plaintiff the pakka phodi was conducted behind back himself without issuance of any notice. However, the plaintiff has challenge the pakka phodi before the competent authority by filing a appeal and the said appeal was dismissed by the Appellate Court. Further while adjudicating the present application the plaintiff prima-facie establish that he was in possession and enjoyment of the property within the boundaries mentioned in the plaint schedule and the defendants caused interference or by trying to trespass into the



suit property. When the identity of the property is disputed and if the survey authority not conducted the haddubasthu in accordance with law the plaintiff has exhausted his remedy before the competent authority.

22. On perusal of the entire record and the respondent produce the judgment and decree passed in O.S. No.23/2018 that one Srinivasa i.e., defendant No.1 filed a suit against One Ramanna and Geetha Ajila for relief fo declaration and permanent injunction, the said suit was decreed. Subsequently with regard to suit property the plaintiff filed the suit. On perusal of the entire record as well as the relief sought in the prayer portion the plaintiff seeking multiple relief in a single application the said application is not maintainable under Rule 23 of Karnataka Civil Rules of Practice.

23. Further on perusal of the entire records the plaintiff filed the I.A. No.II before the Trial Court seeking an order of temporary injunction restraining the defendants, their agents, their men, servants or anybody claiming through them from trespassing into



the plaintiff schedule property or from dispossessing of the plaintiff in the plaintiff schedule property or in any way interfering with peaceful possession and enjoyment of the suit property till disposal of the suit. Further it is pertaining to mentioned that the relief claimed by the plaintiff in the plaintiff and the present application i.e., I.A. No.II are one at the same.

24. Further on perusal of record the original grantee by name K. Dayanand was mentioned the Eastern boundary of possession, subsequently the purchaser was deviates from the Koppa – Tarikere road and reaches Nuggi and Khandya villages same was shown in the sale deed in favour of defendant No.1. Subsequently in order to knock the property and possession of the plaintiff the defendant No.1 rectified the boundaries and the said fact will be decided by the trial court at the time of full pledge of trial.

25. Further while considering the interim application of temporary injunction the appellant must establish that he has got prima-facie case, balance of convenience lies in his favour and if injunction is not



granted he will suffers irreparable loss and it will cannot be compensated in terms of money. At this juncture the plaintiff / appellant has not made out any prima-facie case to proves that the defendants are caused trying to interference over the suit property by trespassing and the identification of the suit property is disputed and at this juncture the plaintiff / appellant has not produce any documents to show that since 1942 his father or himself was in possession and enjoyment of the suit property. When the plaintiff / appellant failed to establish the prima-facie case then the balance of convenience cannot lies in favour of appellant. Further defendants are very disputed the identity and existence of the suit property and at this juncture considering the entire material available on record the plaintiff / appellant has failure to prove that he has got prima-facie case and balance of convenience lies in his favour and if the injunction is granted as sought by the appellant irreparable injury is caused to the defendants and it will cannot be compensated in terms of money. Hence the trial court considering the all the aspect in prospective manner and rightly



rejected the application filed by the appellant. Hence by considering all these aspects the trial Court has properly appreciated the material placed on record and rejected the I.A. No.II. Thus, this Court do not find any illegality in that order and thus interference of this Court is not necessary. The appellant has not made out any grounds to allow the appeal. Hence, I answer **point No.1 to 4 are in the Negative.**

26. **Point No.5:** In view of the aforesaid reasons, I proceed to pass the following:

: ORDER :

Miscellaneous appeal filed by the appellant / plaintiff under Order XLIII Rule 1 of C.P.C is hereby dismissed.

The order passed on I.A. No.II in O.S. No.15/2023 dated 15.04.2025 by the learned Civil Judge and J.M.F.C., Koppa is hereby confirmed.



No order as to costs.

Office is directed to transmit
judgment to the trial court.

(Dictated to the Stenographer, typed by him, corrected and signed by me and then order is pronounced by me in the open court on this 7th day of March, 2026.)

Sd/-

(Raghunatha Gowda K.T.)
Senior Civil Judge & J.M.F.C.,
N.R. Pura. Itinerate at Koppa