

KADG020080212023



Presented on : 04-10-2023
Registered on : 04-10-2023
Decided on : 06-07-2026
Duration : 2 years, 9 months, 2 days

**IN THE COURT OF PRL. SENIOR CIVIL JUDGE & CJM.
DAVANAGERE.**

Present:

**Sri. M. Mahesh Babu., B.A., LL.M.,
Prl., Senior Civil Judge & CJM.,
Davanagere.**

Dated this the 6th day of July - 2026

M.A.No.29/2023

APPELLANTS :

1. Smt. Drakshayanamma W/o Late Hanumanthappa, Aged about 61 years, Housewife, Mathi village, Davanagere taluk & district.
2. Smt. Renkamma W/o Late Malleshappa, Aged about 55 years, Housewife, Near Anjaneya temple, Avaragere, Davanagere taluk & district.
3. Naveen Kumar M.M. S/o Late Malleshappa, Aged about 31 years, Near Anjaneya temple, Avaragere, Davanagere taluk and district.
4. Smt. Sarojamma W/o Hanumanthappa, Aged about 55 years, Housewife, Rampura village, Davanagere taluk & district.

5. M.D. Hanumanthappa S/o Late Dyamappa, Aged about 54 years, Agriculturist, Near Anjaneya Temple, Avaragere, Davanagere taluk & district.

6. Smt. Nethravathi W/o Late Shivananda, Aged about 35 years, Housewife, Near Anjaneya temple, Avaragere, Davanagere taluk & district.

7. Kum. Priyanka M.S. D/o Late Shivananda, Aged about 18 years,

8. Chi. Shashank S/o Late Shivananda, Aged about 15 years,

Appellant No.8 is minor represented by natural guardian and next friend i.e., appellant No.7 and are R/o Near Anjaneya temple, Avaragere, Davanagere taluk & district.

(By Sri. B.V.G., Advocate)

-// Versus //-

RESPONDENTS:

1. Kariyappa S/o Late Yallappa, Aged about 68 years, Agriculturist, Near Anjaneya temple, Avaragere, Davanagere taluk & district.

2. Smt. Sharadamma W/o Kariyappa, Aged about 55 years, Housewife, Near Anjaneya temple, Avaragere, Davanagere taluk & district.

3. Manjunath K. S/o Kariyappa, Aged about 33 years, Agriculturist, Near Anjaneya temple, Avaragere, Davanagere taluk & district.

4. Anaberu Annappa S/o Hanumanthappa, Aged about 38 years, Madivalara Beedi,

Avaragere, Davanagere taluk & district.
Mobile No. 9844527808.

5. Shivanna S/o Hanumanthappa, Aged about 40 years, Paint work, Madivalara Beedi, Avaragere, Davanagere taluk & district.
Mobile No. 9900638016.

6. Mandalur Thippanna, Auto driver work, Aged about 58 years, Shekharappa Nagara, Avaragere, Davanagere taluk & district.
Mobile No. 9731102592.

7. Esthri Siddappa S/o Gangappa, Aged about 64 years, Iron Shop, Madivalara Colony, Avaragere, Davanagere taluk & district.
Mobile No. 7019099797.

8. Ravi Kumar S/o Jayappa, Aged about 40 years, Paint work, Shekharappa nagara, Avaragere, Davanagere taluk & district.
Mobile No.9743075528.

9. Manjunath S/o Hanumanthappa, Aged about 40 years, Agriculturist, Avaragere, Davanagere taluk & district. Mobile No. 9742404094.

10. Ajjaiah (Ajaiya) S/o Basavarajappa, Advocate, Near Ganesha Temple, Shekharappa Nagara, Avaragere, Davanagere taluk & district. Mobile No. 7892017309.

11. Anjinappa H.G. S/o Gorappa, Aged about 50 years, Paint work, Shekharappa Nagara, Avaragere, Davanagere taluk & district.
Mobile No. 7088090628.

12. Asagodu Hanumanthappa, Aged about 60 years, Tharagar, Near the house of phone Ningappa, Shekharappa Nagara, Avaragere,

Davanagere taluk & district. Mobile No. 8095161949.

13. Rajappa S/o Shekharappa, Aged about 50 years, Shekharappa nagara, Avaragere, Davanagere taluk & district.

14. Manjunatha S/o Thippanna, Aged about 40 years, Paint work, Shekharappa Nagara, Avaragere, Davanagere taluk & district.

(By Sri.K.G.K.S., Advocate)

J U D G M E N T

The appellants/defendants have filed this appeal U/o 43 Rule 1 of CPC., against the Plaintiffs/respondents by challenging the orders passed on I.A.No.I U/o.39 Rule 1 & 2 of CPC by the learned 4th Addl. Civil Judge & JMFC, Davanagere in OS.No.191/2023 dated 08/09/2023.

2. For the sake of convenience, the parties will be referred as they are referred to in the original suit.

3. The respondents have appeared through Sri. K.G.K.S., Advocate and opposed the appeal.

4. **BRIEF FACTS OF THE APPELLANT'S CASE ARE AS FOLLOWS:-**

The appellant has produced the certified copies of the orders passed by the learned trial Court wherein the trial Court has made observations about the pleadings of both the parties. On perusal of the xerox copy of plaint and interest statement it is revealed that

the plaintiff has approached the trial Court seeking the relief of permanent injunction. Restraining the defendants and their agents from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property.

It is the case of the plaintiff that The plaintiffs are the absolute owners in possession and enjoyment of the suit schedule property. Further contented that the actual property bearing number 85/1A2 measuring 18 guntas 0.8 situated at Davangere taluk at Avangere Village was originally purchased by one Dhamappa, who is the propositor of plaintiff's family through the registered sale deed dated 20.02.1972. After the death of Dhyamappa, the plaintiffs have succeeded to the suit schedule property and Khatha and other revenue records pertaining to the suit schedule property are standing in the name of plaintiffs.

The defendants have got no right title interest over the suit schedule property. But still they tried to bury the dead body of one Kariyappa. In this regard the plaintiff has approached the jurisdictional police. But the jurisdictional police have not taken any action. Hence without any alternative The plaintiff has approached the learned trial Court by seeking the suit reliefs and sought an order of temporary injunction against the defendants.

5. The defendants have marked their appearance before the trial Court and they have filed the written statement and also objections to IA No.1, wherein they have denied the case of the

plaintiff. And they have taken a specific plea that neither the plaintiff nor their predecessors were in possession of the suit schedule property. As such, the suit filed by the plaintiff is not at all maintainable in the eye of law. The defendants have further taken the contention that the peoples of Madivala Samaja in Avaragere Village have utilizing the scheduled property as a graveyard. As such, the suit filed by the plaintiff is not at all maintainable. Further, contained that The peoples of Madivala Samaja have started buried the dead bodies in the schedule property from the ancient time and even today the same is continued and even today if anybody died in the Madhivala Samaja, the people used to bury their bodies in the suit schedule property.

The defendants have further taken contention that the plaintiffs, by manipulating the documents, have come up with this false suit. In this regard, the elders of Madhivala Samaja and elders of Avaragere Village, have approached the Tahsildar and Taluk Executive Magistrate to conduct survey regarding factual situation of the suit schedule property. As such, by understanding the seriousness of the situation, the learned Tahsildar has pleased to depute the Revenue Inspector to conduct the survey regarding the factual status of the suit schedule property and based on the report of Revenue Inspector, the Thasildar has issued an endorsement in this regard. Further contented that the plaintiffs have no prima facie case and balance of convenience also does not lies in their favour. Hence on the above-said grounds, prayed for dismissal of suit and also IA1.

6. The Learned trial Court after hearing on IA.No.1 has dismissed the application holding that the plaintiffs have not proved the prima-facie case and has also the balance of convenience does not lies in favour of the plaintiff. Further contended that if the said application is considered it would cause great hardship to the other side hence IA.No.1 is not deserved for consideration. Hence on the above said grounds rejected the IA.No.1.

7. Aggrieved by the said orders of the trial court, the plaintiff has preferred this Miscellaneous appeal on the following grounds:

- The order passed by the trial Court is highly arbitrary, capricious and perverse.
- The order passed by the trial Court is opposite to the well established legal presumptions.
- The order passed by the trial Court is based on assumption and presumption. Next point The trial Court has not considered the pleadings of the parties in proper perspective and hence the approach of the trial Court is not tenable in law.
- The trial Court committed grave error in not objectively assessing the pleadings of the parties. And the documentary evidence produced by the plaintiffs in proper perspective. Hence, the order of a trial Court is liable to be set aside. The reasoning given by the trial Court while disposing IA.No.1 and

disposing temporary injunction are all opposite to law and facts and probabilities of the case and as such under appeal deserves to be allowed.

- Hence the plaintiff has requested the court to allow the appeal in the interest of justice and equity.

8. That the impugned orders passed by the trial Judge is not maintainable either in law or on facts and as such same is liable to be set aside. The learned trial court has not at all understood the pleadings on record, which has resulted in miscarriage of justice. The learned trial court has not at all considered the oral and documentary evidence produced by the plaintiffs/appellants. The impugned orders of the trial court is one sided, though the respondents/plaintiffs has not placed any material to disprove the case of the appellants/plaintiffs, hence the orders of the trial court are liable to be set aside.

9. Further, contended that the reasoning given, presumptions made and conclusions arrived at any, the trial court while disposing I.A.No.I and granting temporary injunction are all opposed to law and facts and probabilities of the case and as such under appeal deserves to be allowed. Hence they requested the court to allow the appeal in the interest of justice and equity.

10. On the basis of the above pleadings, following points arise for my consideration:

1. Whether the impugned order passed on IA No. 1 on 08.09.2023 by the Learned, 4th Additional Civil Judge & JMFC, Davanagere, In OS 191/2023 are illegal, erroneous, contrary to law, which needs interference of this Court?

2. What order?

11. Heard both counsels of appellant and respondents on merits. On perusal of records, my answers to the above points are as under :

Point No.1 : In the Negative.

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

REASONS

12. **Point No.1:-** This is a miscellaneous appeal filed by the plaintiff against the order passed by the trial Court on IA.No.1 dated 08/09/2023. Since this is a miscellaneous appeal, its scope is very limited and the appellant court cannot interfere with the discretionary order of the trial Court only if it is established that the order of the trial Court is erroneous and illegal.

13. Both the parties in support of their contentions have produced copies of the pleadings which were submitted before the trial Court. The learned trial judge in its orders on IA No.1 has discussed the contention raised by both the parties and the documents produced before it. Accordingly, it is revealed that the plaintiff is the lawful owner and in possession and enjoyment of the suit schedule property and all the revenue records pertaining to the suit schedule property are standing in the name of plaintiffs. The defendants have got no right, title, interest over the issued property. But still, the defendants interfered with the

possession of the plaintiffs in respect of the suit schedule property without any manner of right and also tried to bury the dead body of one Kariyappa on 27.02.2023.

14. The plaintiffs have requested the defendants not to interfere over the statutory property. But the defendants did not heed to the words of the plaintiffs. The defendants are no way concerned with the suit schedule property. Still the defendants have interfered over the suit schedule property. Hence, without any alternative, the plaintiffs have approached the trial Court along with IA seeking the relief of permanent injunction.

15. In order to prove their contention, the plaintiffs have produced RTC in respect of A schedule property and also produced mutation register and xerox copy of the sale deed, NCR and other documents. I have gone through the above said revenue records. No doubt on perusal of the same, the A schedule property is standing in the name of present plaintiffs herein. Further on perusal of the documents produced by the plaintiffs, it is evident that the B schedule property is a property given for burial of the dead bodies in favour of Madivala Samaja.

16. Per contra in the present case on hand the defendants have taken a specific contention that since from ancient time, the peoples of Madivala Samaja have been burying the dead bodies in the A schedule property. In order to prove their contention, the Tahsildar has also given a report stating that in the A schedule property there are so many dead bodies have been buried since from many years and also the defendants have submitted the affidavits of neighbouring landowners of the A suit schedule property stating that In the A suit schedule property since from ancient

time the peoples of Madivala Samaja have been burying the dead bodies. As such at no point of time the plaintiffs are in lawful position and enjoyment over the A suit schedule property. It is pertinent to note that in order to prove the contention of the defendants and in order to show that the plaintiffs are not in possession and enjoyment of the A suit schedule property, the defendants have produced Endorsement issued by Tahsildar.

17. On perusal of the same, Tahsildar has given endorsement stating that in Sy.No. 85/1A2 of Avaragere Village, measuring 18 guntas, since from 40 to 50 years, the peoples of Madivala Samaja have been burying the dead bodies. Further in the present case on hand the plaint A schedule demonstrates that on the east-west-north-south of the suit schedule property, the neighbours are cultivating their lands. The defendants have produced the affidavits of the said neighbours of the A suit schedule property wherein the neighbours of the A suit schedule property have submitted an affidavit before trial court along with their Aadhar cards wherein they have specifically contented that in the suit schedule property since from ancient time the peoples of Madivala Samaja have been burying the dead bodies and at no point of time the suit schedule property has been used for cultivating purpose.

18. Further in the present case on hand, the learned counsel for the defendants have produced plenty of photographs in order to show the exact position of the A suit schedule property. On perusal of the photographs produced by the defendants, At this stage, it demonstrates that the A suit schedule property is not a cultivable land and there are so many bodies have been buried in the A suit schedule property.

19. In order to grant the discretionary relief of temporary injunction, the party who approaches the court must approach the court with clean hand and they should not suppress the material facts and also the party who seeks the relief of injunction must prove three most important ingredients i.e. prima facie case and balance of convenience and irreparable loss. In the present case on hand on perusal of the documents placed before this court by the defendants, prima facie at this stage it demonstrates that the suit schedule property is not a cultivable land and in the A suit schedule property there are so many dead bodies have been buried.

20. This fact has been suppressed by the plaintiffs. As such, I am of the opinion that the plaintiffs have not approached the court with clean hands. On perusal of the documents available on record and as per the discussion made above, at this juncture, I am of the firm opinion that the plaintiffs have not made out the prima facie case. The balance of convenience also does not lies in favour of the plaintiffs herein. On the event of grant of injunction, more over will be caused to the defendants rather than the plaintiff.

21. The learned trial Judge by accepting the pleadings and documents, has rightly dismissed the interim application and thereby rejected the temporary injunction. Based on the available documents which not requires any interference. The appellants have not made out any grounds to interfere with the discretionary orders passed by the trial court on I.A.No.1. **Hence I answer point No.1 in the Negative.**

22. **Point No.2:-** As discussed in the aforesaid paragraphs, I proceed to pass the following:

-:: ORDER ::-

The Miscellaneous Appeal filed U/o.43 Rule 1 of CPC by the plaintiff is hereby dismissed.

The impugned orders passed on I.A.No.1 U/o.39 Rule 1 & 2 of CPC by the 4th Addl. Civil Judge & JMFC., Davanagere in O.S.No.191/2023 dated 08/09/2023 is hereby confirmed.

No order as to costs.

Send copy of this orders to the trial court.

(Typed to my dictation directly on the computer by the Stenographer, corrected, signed and then pronounced by me in the open Court on this the 6th day of July – 2026)

(M. MAHESH BABU)
Prl Senior Civil Judge & C.J.M.,
Davanagere.