

KADG210003932025



Presented on : 18-06-2025  
Registered on : 18-06-2025  
Decided on : 02-05-2026  
Duration : 0 years, 10 months, 14 days

**IN THE COURT OF SENIOR CIVIL JUDGE AND J.M.F.C,  
AT:CHANNAGIRI**

**Present:**  
**Soubhagya.B.Bhusher,**  
**B.A.,LL.M**  
**Senior Civil Judge & J.M.F.C,**  
**Channagiri**

**DATED; THIS THE 02<sup>nd</sup> DAY OF MAY-2026**

**M.A.NO.15/2025**

**APPELLANT/  
PLAINTIFF**

H.S.Gurushanthappa S/o Late  
Shivabasappa, Age: 60 years, Occ:  
Agriculturist, R/o: Garaga, Tq:Channagiri,  
Dist: Davanagere.

**(By Sri.B.Rudrappa.,Adv.,)**  
**V/s**

**RESPONDENTS  
/DEFENDANTS**

1. Theerthappa S/o Late Shivabasappa, Age:  
55 years, Occ: Agriculturist,
2. H.S.Palakshappa S/o Late Shivabasappa,  
Age: 50 years, Occ: Agriculturist, Both are  
R/o: Garaga, Tq:Channagiri, Dist:  
Davanagere.

**(By Sri.H.M.Vijay.,Adv.,)**

1.	Date & Nature of decree appealed against.	Order passed on I.A.No.1 in O.S.No.42/2025 on the file of Prl. Civil Judge & J.M.F.C., Channagiri, dated: 20.03.2025.		
2.	Date of Institution of the appeal.	18.06.2025		
3.	Date of Judgment.	02.05.2026		
4.	Duration of the Appeal	Year	Month	Days
		00	10	14

**(Soubhagya.B.Bhusher)**  
**Senior Civil Judge & J.M.F.C.,**  
**Channagiri**

**JUDGMENT**

This Misc. Appeal filed under Section 96 and under order 41 Rule 5 of C.P.C., is filed by the aggrieved plaintiff against the order on I.A.No.1 filed under order 39 Rule 1 and 2 R/w section 151 of C.P.C., in O.S No.42/2025 passed by Prl. Civil Judge & J.M.F.C., Channagiri, dated:20.03.2025.

2. The appellant was the plaintiff and the respondents were the defendants before the trial court. They are referred by the same ranking in this appeal.

**3. The case of the plaintiff in brief is that:** The plaintiff has filed this suit against the defendants for the relief of permanent injunction with respect to suit schedule property. The suit schedule property is described in the plaint schedule. The plaintiff is in lawful possession and enjoyment of the suit schedule property. It is further stated that the suit property is the self acquired property of the plaintiff. The suit schedule property was purchased by the plaintiff on 13.05.2009 through a registered sale deed. At the time of the purchase of the same it is vacant site. Afterwards the RCC building was constructed during the year 2011-2012. Since from the date of purchase the plaintiff is in actual physical possession and enjoyment of the same and paid necessary taxes also. The E-swathu was also made and it was in the name of present plaintiff. The plaintiff is in residing in the suit schedule property. The defendant No.1 and 2 have no right to over it. The defendant No.1 and 2 forcefully entered in the suit schedule property and the plaintiff resisted the act of the defendants with great difficulty. Hence, the plaintiff has constrained to file the suit.

**4.** Along with the suit the plaintiff has also filed an I.A.No.1 under Order 39 Rule 1 and 2 R/w Section 151 of C.P.C., seeking ad-interim temporary injunction against the defendants for restraining them disposes the plaintiff and his family therefrom. This application sworn an affidavit of the plaintiff, wherein he has stated above said facts pleaded in the plaint. The plaintiff has got prima facie case, the balance of convenience lies in his favour. If

the order as prayed for is not granted he would be put in irreparable loss, which cannot be compensated in terms of money. Thus, he prays to allow the application.

5. On the suit being registered, the summons was issued to the defendants. The defendants are appeared through their counsel and filed written statement. The defendants filed memo treated the written statement as objection to IA No.1. In the written statement they have denied the entire plaint allegation. It is contending that the plaintiff and the defendants are brothers born out of wedlock of Shivabasappa and Smt.Parvathamma. The plaintiff has suppressed this relationship and filed the suit. That itself shows the ill intention and approach of the plaintiff without clean hands. Further contended that Shivabasappa and Smt.Parvathamma had two daughters by name Rudramma and Hemavathi. The late Shivabasappa had owned, possessed landed and house properties, wherein, no partition taken place amongst the family members the plaintiff, the defendants, their two sisters. The daughters of Shivabasappa, have raised their voice for partition and separate possession in joint family properties. In that course have initiated the suit for partition and separate possession in O.S.No.102/2024, which is pending on the file of the Senior Civil Judge Court at Channagiri. Wherein, the plaintiff and his wife described as the defendant No.1 and 4. The present suit schedule property is also the part of the schedule of the property mentioned thereunder. The plaintiff and his wife put their appearance in the

said suit on 19.12.2024. The plaintiff having knowledge of the said proceedings has suppressed the same.

6. Further contended that the plaintiff being elder son of Shivabasappa is managing the joint family affairs and is acting as kartha. In that capacity, the vacant site and landed property purchased in the name of the plaintiff by utilizing the joint family funds. The building was also constructed out of the joint family nucleus in suit schedule property. Wherein, the defendants and their family members are jointly residing. However, the plaintiff and his family members were also residing in the said house along-with the defendants. Due to some differences of opinion amongst womenfolk the plaintiff shifted his residence at Channagiri Town. Since then the defendants are residing in the suit schedule property. Further contended that the joint family is owning about 6 ½ of Acres of Arecanut garden land and out of which it is generating sufficient source to purchase the suit property and other properties held in the name of the defendant No.1 and his wife. The plaintiff is making false claim that the suit schedule property and other property is his self acquired properties. On the guise of it, he had executed Gift Deed in favour of his wife on 07.02.2024. In the said Gift Deed, the plaintiff has disclosed his residential address at Basaveshwara Nagara, 13<sup>th</sup> Cross, Channagiri Town, this itself suffice to hold that the plaintiff and his family members are not residing in the suit schedule property. It is the defendants, who are residents of the said house. The

defendants have also denied the fact of raising the loan for construction of building. Further contended that there is no cause of action as the present suit filed after the suit for partition and separate possession was being filed by the sisters of parties. The plaintiff himself is trying to dispossess the defendants from the suit schedule property and as such there is no prima facie case, there is no balance of convenience in favour of the plaintiff. As such, they prayed to dismiss the suit and reject the application.

7. After hearing the both sides and perusing the records, the trial court by its order dated: 20.03.2025 has rejected the I.A.No.1.

8. Being aggrieved by the same the plaintiff has preferred this appeal before this court on the ground that the order passed by the trial court is not tenable and is liable to set aside one by this Court. The Trial Court while answering the order on I.A stated that there is no specific pleadings with regards to the other prayers without considering the pleadings of the plaintiff the erroneous opinion about the case of the plaintiff. The trial court not at all consider the sanctity of documents produced by the plaintiff and also order passed by the trial court on IA is a capricious and arbitrary one. The trial court while passed the impugned order without ascertain the possession of the appellant/plaintiff in suit property and came to wrong conclusion passed the erroneous order and same is set aside one by this Court. The appellant/plaintiff is till today is in possession of the suit schedule

property in question, but the respondents never in possession of the suit property on the basis of the respondents cause trouble to the plaintiff possession over the suit property. The trial court not at all appreciated the documents produced by the appellant/plaintiff the trial court while pass the impugned order on I.A.No.1 given untenable reasons and are not satisfactory one. Hence, he prays to allow the appeal.

**9.** Along with the appeal IA No.I was also filed Under Section 5 of Limitation Act seeking condone the delay of 1 month 27 days in filing the appeal.

**10.** On the appeal being registered before this court, notices were issued to the defendants/respondents, the respondents have appeared through their counsel. Both the parties have produced the certified copies of trial court documents and orders.

**11.** Heard the arguments and perused the records placed before me. The following points arise for my consideration:

1. Whether the appellant has made out sufficient cause for condoning the delay in filling this appeal?
2. Whether the order under appeal is illegal, perverse and against the facts of the case warranting interference?
3. What order?

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

Point No.1: In the Affirmative.

Point No.2: In the Negative.

Point No.3: As per final order, for the following:

### **REASONS**

13. **POINT NO.1:** The impugned order was passed by the trial court on 20.03.2025. The present appeal has been filed on 18.06.2025. As per the provisions of the limitation act the appeal has to be filed within 30 days from the date of order by excluding copying date if any. On perusing the certified copy of the order, it is disclosed that copy was applied by the plaintiff on 26.03.2025 and it was received by him on 28.03.2025. So, copying days can be excluded. The appeal should have been filed on or before 22.04.2025 but it has been filed on 18.06.2025.

14. According to the plaintiff/appellant due to the death of his wife Smt.Geetha on 26.03.2025 an account of that he was not met with his advocate in time. Hence, there is delay of 1 month 27 days in preferring the appeal. The respondents after appearing before this court have not chosen to file any objection to this application. Thereby the reasons assigned by the plaintiff/appellant for the delay caused in filing the appeal has remained unchallenged. It is settled principle that when any appeal has been filed the delay if negligible has to be condoned and the matter has to be heard on merits. In this case, since appeal involves right over

immovable property and there has been delay of 57 days. Therefore, the said delay if condoned no prejudice will be caused to the respondents. Therefore, this court is of the opinion that the plaintiff/appellant has made out sufficient cause to condone the delay caused in filing the present appeal. Accordingly, I answered point No.1 in the Affirmative.

**15. POINT NO.2:** Before considering the grounds urged by the appellant in the present appeal, it is necessary to consider certain facts that the plaintiff is that he working as District Social Specialist at Jalasamvardhana Yojana Sangha, which is under Minor Irrigation Department and his work place at Chitradurga from 2006 to 2013. He had purchased the suit property on 13.05.2009 from its erstwhile owners Smt.H.P.Kamamma W/o Late Shankarappa and Maheshwarappa S/o Late Shankarappa through a registered sale deed. Then it was vacant site and later in the year 2011-12, he had constructed the RCC building thereon. Thereafter, he is in actual, physical possession of the same by paying taxes to the local authority. Accordingly the E-swathu and such other assessment records of the suit property maintained by the Grama Panchayath are disclosing the name of the plaintiff as owner. Further the plaintiff had invested an amount of Rs.25,00,000/- for the construction of RCC building in the suit property. In that regard, he has borrowed loan of Rs.10,00,000/- in IDFC Bank, Channagiri borrowed approximately for Rs.15,00,000/- from his well wishers and he is paying monthly

installment at Rs.15,588/-. Further the defendants without there being any right, title or interest in and over the suit schedule property, since 3 months are making every attempt to dispossess plaintiff and his family therefrom. The suit schedule property is not the joint family property and it is the self acquired property of the plaintiff. The plaintiff has made a representation to the concerned police, but no use. Hence, the plaintiff constrained to file the suit.

**16.** Both the parties have produced certain documents before the trial court. The trial court after considering the above stated pleadings and also documents produced by the parties proceeded to rejected I.A.No.I on the main ground that all the prima facie materials referred by the parties depicts that the joint family between the plaintiff and the defendants is in existence. The same has properties and out of it the family is generating the income. The salary statement of the plaintiff has not made out a case that after the partition or after severance of joint family he had purchased the property and constructed the building. Moreso, the plaintiff has suppressed material facts of relationship between the parties, joint-ness of the families of the plaintiff and the defendants even he has suppressed the fact of pendency of the partition suit filed by his sisters. As per the records the said suit is prior one to the suit on hand. It was further observed that inspite of knowledge, appearance therein he has not disclosed the said fact. The suppression of the fact is prime aspect to decline the add interim relief. Furthermore, the plaintiff has not made out prima

facie case to consider the application. As the quantum of earning upto 2013 and payment of alleged installment more than what he was earning needs full-pledged trial. In the absence of such prayer, the plaintiff is not entitled to the relief of injunction. The trial court in its order clearly mentioned the documents. The trial court while observing the prima facie documents placed by the plaintiff to grant temporary injunction in his favour there is no any prima facie case made out at this stage.

17. The learned counsel for the appellant/plaintiff has vehemently argued that from the pleadings and other materials, it is seen to show that the suit schedule property is the self-acquired property of the plaintiff and he is in possession and enjoyment of the same. He has also argued that the trial court has not considered the documents relied by the plaintiff. Further argued that the suit schedule property is not the joint family property of the parties to the suit. The trial court only on the basis of pending of partition suit it has come to the conclusion that the plaintiff and the defendants are the members of the joint family. Further the trial court while passing the impugned order without ascertaining the possession of the appellant/plaintiff in suit property and came to wrong conclusion passed the erroneous order. Further argued that the appellant/plaintiff is till today is in possession of suit schedule property in question, but the respondents never ever in possession of the suit property on the basis of joint family. The defendants/respondents cause trouble to

the plaintiff possession over the suit property. Further argued that there is no prima facie case and balance of convenience not in favour of the plaintiff as observed by the trial court is not right. Hence, he prays to allow the appeal.

**18.** On the other hand the learned counsel for the respondents has argued that there is no error committed by the trial court in rejecting the I.A.No.1. After considering all the materials in the right perspective, the trial court has refused injunction. Therefore, there appears to be no grounds made out in the appeal. Hence, the appeal has to be dismissed and the impugned order has to be confirmed.

**19.** The appellant has filed this appeal on the main ground that the trial court has failed to take into consideration the documents produced by the appellant/plaintiff. Further contended that several reasonings given by the trial court in respect of passing the order is not based on sound principle of law, further the trial court wrongly come to the conclusion considering the facts and circumstances of the case. The trial court not look into the documentary evidence of the plaintiff. Hence, order of the trial court is capricious, unjust and liable to be reverse. So also trial court has not taken into account the rights given to the plaintiff over the suit schedule property. Hence, the impugned order is illegal.

20. While considering the grant of temporary injunction, the court is required to take into account the affidavit evidence and other materials to find out whether the prima facie case is made out or not. Thus the non consideration of the material has not resulted in any miscarriage of justice. Second aspect which requires consideration is whether the balance of convenience and irreparable loss or injury lies in favour of the plaintiff or the defendants. The plaintiff has claimed that the trial court wrongly held that the plaintiff has not made out prima facie case to grant temporary injunction in his favour at this preliminary stage. However the pleadings of the plaintiff suffer suppression of material facts of relationship between the parties, joint-ness of the families of the plaintiff and the defendants. Even the plaintiff suppressed the fact of pendency of the partition suit filed by his sisters. Thus the reasons assigned by the trial court to hold that the plaintiff is not entitled the interim injunction as prayed in the application and accordingly his application needs to be rejected. Further, the plaintiff has failed to prove the very prima facie case and therefore question of considering the irreparable loss and the balance of convenience is not in favour of the plaintiff. Further it was observed that as the quantum of the earning upto 2013 and payment of alleged installment more than what he was earning needs full-pledged trial. Under such circumstances, the plaintiff is not entitled the relief as sought for until the trial.

**21.** In the case on hand from the records the plaintiff has failed to establish the existence of the prima facie case. The plaintiff raised an allegation against the defendants that the defendants without any right, title or interest in and over the suit schedule property are making every attempt to dispossess the plaintiff and his family therefrom. The suit schedule property is not the joint family property and it is the self acquired property, but no such documents are placed to establish the same at this stage, as rightly observed by the trial court. Though the material was not referred to by the trial court, no injustice has been caused. Because the trial court has applied the correct principles of law.

**22.** Even otherwise when the trial court on the materials placed before it has invoked its discretion and not granted the relief to the plaintiff. Therefore, in view of the above discussions the reasonings assigned by the trial court in holding that the plaintiff has failed to make out prima facie case in his favour for grant of temporary injunction do not warrant interference by this court. So also there are no grounds to show that it is the plaintiff who will be put to more inconvenience and hardship if the temporary injunction is refused rather than the defendants. Moreover, if at all the plaintiff succeeds in proving his claim over the suit schedule property at the trial of the suit, then he is entitled for suitable relief while main suit is being disposed off. If there appears to grave injustice to the court, only then, this court can interfere with such a discretionary order and same can be set

aside. Therefore, this court is of the opinion that the trial court has properly used its discretion and refused the injunction order sought by the plaintiff. The said discretion order which has not been resulted in miscarriage of justice do not call for interference in the appeal. Hence, I answered point No.2 in the Negative.

**23. POINT NO.3:** For the aforesaid reasons, I proceed to pass the following;

**ORDER**

IA No.1 filed by the appellant/plaintiff under Section 5 of Limitation Act is hereby allowed and thereby delay of 57 days caused in filing this appeal is hereby condoned.

The Misc. Appeal filed by the appellant/plaintiff under Section 96 and Order 41 Rule 5 of C.P.C is hereby dismissed.

No order as to cost.

The order on I.A.No.I passed by Prl. Civil Judge & J.M.F.C, Channagiri in O.S.No.42/2025 dated: 20.03.2025 is hereby confirmed.

Draw the decree accordingly.

The office is hereby directed to send copy of this judgment and decree to the trial court.

**(Directly dictated on computer script to typist, typed by him, corrected by me, signed and then pronounced in open court on 02<sup>nd</sup> day of May 2026)**

**(Soubhagya.B.Bhusher)  
Senior civil judge and J.M.F.C  
Channagiri**