

**IN THE COURT OF THE II ADDL CIVIL JUDGE &
JMFC, CHANNAGIRI.**

Dated: 02nd Day of May 2025

PRESENT: **SMT. MAHALAKSHMI G M.A., L.L.B.,
II Addl Civil Judge & JMFC, Channagiri.**
OS No.215-2024

BETWEEN :

T.R. Prema

...Plaintiff

AND

Matti Govindappa

...Defendant

I.A. No. I

BETWEEN :

T.R. Prema

...Applicants/Original Plaintiff

AND

Matti Govindappa

...Opponent/Original defendants

1.	Provision under which the application is filed:	:	U/o 39 rule 1 and 2 R/w Sec.151 of CPC.
2.	Relief sought for	:	Interim Temporary injunction
3.	Date on which the application is filed	:	25.07.2024
4.	Number of the application	:	IA.No.I
5.	Date on which the objections are filed by different opponents:	:	

6.	The date on which the orders is passed:	02.05.2025
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Date:02.05.2025
Place: Channagiri.

(Smt.Mahalakshmi. G)
II Addl Civil Judge And Jmfc.,
Channagiri.

ORDER ON IA No.I

This is an application filed by the plaintiff seeking the relief of temporary injunction against the defendant with respect to suit schedule property.

2. Sum and Substance of the affidavit as under:

In support of the application the plaintiff sworn an affidavit and stated that, She filed the suit against the defendant for the relief of permanent injunction in respect of suit schedule property. The plaint averments may kindly be read as part and parcel of this affidavit.

3. The plaintiff submitted that, the suit schedule property was purchased by her father-in-law namely late Murudappa and he was the owner, kathedar was in possession enjoyment and personal cultivation of the said land till his death. Subsequent to his death her husband Kariyappa succeeded to the estate of deceased Murudappa and became the successor, owner, kathedar in possession and enjoyment of the suit schedule property. He died leaving behind his wife and children i.e., present plaintiff. The katha and pahani of the suit schedule property changed into the names of her and her children jointly on the basis of inheritance. She enjoying the suit property having its peace full possession and personal cultivation till date.

4. The plaintiff further submitted that, the defendant having no manner of right, title, interest in and over the suit schedule property in any manner had instituted the suit against her husband vide no. OS No.203/2018 for seeking easement right of way in the suit property. Subsequently, during pendency of the suit her husband died, and she and her children have brought on record and said suit was dismissed on merits. Against the said dismissal order the present defendant preferred appeal before the Hon'ble Senior Civil Judge and JMFC, Channagiri as per RA No.18/2023 and the said appeal was allowed and Aggrieved by the said order she preferred RSA No.882/2021 before Hon'ble High Court of Karnataka and same is pending.

5. The plaintiff further submitted that, the defendant on the basis of order of the RA No.18/2023 during 1st week of July 2024, came near the suit schedule property with tractor and trailer and to tried to farm road in the suit property. Said acts of the defendant was resisted by her giving complaint to the Channagiri police. It is very difficult to resist the illegal and high handed acts of the defendant without the aid of the Hon'lbe Court. She being a lady and having no support in village and the defendant having men and money power in the locality. Under said circumstances it is very difficult for her to resist the illegal and high handed acts of the defendant without the aid of the court. She has made out the prima-faice case lawful ownership, physical and actual possession on records as well as on facts. If the application is not allowed it will put to great injustice and much inconvenience. The balance of convenience lies in her favour. If this application is not allowed she will be put to irreparable loss and legal injury. Thus, prays to allow the application.

6.The defendant appeared through his counsel and filed written statement along with memo to treat the same as objection to IA No.1.

The defendant denied the entire averments of the plaint and specially contended that, the Murudappa had several sons and there may be partition among the children of Murudappa and subsequent to his death, the revenue records have been changed in the name of successor of Murudappa. But there is no specific pleading relating to the remaining successor of Murudappa as well deceased Kariyappa M. Hence the plaintiff has suppressed the material facts before this court and she is not a sole owner of suit property. Moreover, the plaintiff has not narrated the interest of the remaining LR's of Murudappa and Kariyappa intentionally. Hence the suit itself is not maintainable for non-joinder of necessary parties. The plaintiff and her children succeeded the estate of the deceased Kariyappa as joint owners in possession and cultivation. The revenue authorities clubbed entire extent in Sy.No.7 and assigned the Sy.No.11/1 in RTC relating to the year 2023-24. The plaintiff is not a sole owner according to her pleadings. Such being the case, the children of Kariyappa are interested parties. Hence, in their absence the plaintiff could not succeed in the present suit any manner. The defendant Further contended that he had filed a suit against Kariyappa who is husband of present plaintiff as per OS No.203/2018 on the file of Prl Civil Judge and JMFC, Channagiri seeking right of way available to reach his landed property in which deceased Kariyappa appeared and contested the suit which was resulted in dismissal and against the said judgment and decree he had preferred RA before Senior Civil Judge and JMFC, Channagiri vide RA No.18/2023 and same is

allowed on 04.04.2024. Subsequently aggrieved by the same present plaintiff has preferred second appeal before the Hon'ble High Court of Karanataka in RSA No. 892/2024. There is no dispute relating to the previous proceedings. But there is no notice of filing RSA No. 892/2024 has been served on him and other person regard to filing of RSA. He seriously disputed the cause of action as narrated by the plaintiff on 02.07.2024. There is no necessity for him to form new road as there is already an approach road is existed to his property in which the defendant is continuesly enjoying the right of way and he is using the said road for better cultivation of his property. Hence, the plaintiff with an intention to create new cause of action for file this suit stated that the defendant is managing to farm new road. Such being the case there is no cause of action of the suit and conduct of the plaintiff is not fair and having knowledge of existing road and right of way even recognized by the court of law, the plaintiff managing to miss lead the court. Thus, the plaintiff is not entitled for equitable relief much less the relief of injunction. There is road existed from southern side to northern side adjoining to the land of the plaintiff and the said road runs from Hiregangur to Hodigere village. This fact is well with the knowledge of the plaintiff and same is suppressed intentionally. The plaintiff has filed this suit with an intention to harras him by creating new cause of action though she only preferred the RSA which is still pending. Hence there is continues legal proceedings pending before the court. Thus, this suit amounts to double jio-pardy. Thus, prays to dismiss the application with cost.

7. On the basis of rival contention this court formulated the following points for determination.

POINTS

1. Whether the plaintiff has made out prima facie case?
2. Whether the balance of convenience lies in favor of the plaintiff?
3. Whether the plaintiff will be put to irreparable loss, if the order as prayed for is not granted?
4. What order?

8. Heard the learned counsels appearing for the plaintiff and defendants. Perused the records and on perusal of the same, my findings to said points are as under;

POINTS

Point No.1 to 3 : In the Negative

Point No.4 : As per the final order

for the following.,

REASONS

9. Point No. 1 to 3 : These points are incumbent upon each other in view of factual backgrounds and therefore are discussed together.

In order to substantiate the prima-facie case, the plaintiff has placed C/c of registered sale deed bearing No.1378/1953-54 with respect to suit property. The mutation register extract bearing MR No.16/1953-54, wherein mutation was accepted in the name of Murudappa, on the basis of sale deed with respect to suit property is concerned. The C/c of RTC consisting for the year 1990-91 to 1994-95 with respect to sy.No.11/B measuring 3 acres 35 guntas stands in the name of

Murudappa. As per the entries in column No.9 and 12(2). The copy of mutation register extract bearing MR No.H56/2021-22 wherein the suit property is mutated from the name of Kariyappa S/o Murudappa, Basavarajappa, Gundappa jointly to in the names of plaintiff, jyothi, Santhosh, Basavarajappa, Gundappa who are children of Kariyappa jointly. The computerized copy of RTC for the year 2023-24 bearing Sy.No.11/1 of Hodigere village stands in the name of plaintiff along with her family members jointly. The copy of acknowledgment issued by Channagiri PS dated 02.02.2024. The resolution of village panchayath dated 02.01.2022 and one photograph.

10. On the other hand, the defendant seriously disputed the claim of the plaintiff and taken contention that he has obtained decree on the hand of Senior Civil Judge and JMFC in RA No.18/2023. Accordingly, he had right of way in the suit schedule property to reach his property.

11. In support of his contention he has placed C/c of plaint filed in OS No.203/2018 and judgment passed in RA No.18/2023. That apart, the defendant also placed the village map pertaining to Hodigere Village, and utaar bearing Sy.no.11 of Hodigere Village and sketch of Hodigere village pertaining to Sy.No.11/2A2 and 11/2B which belongs to plaintiff and defendant.

12. Though the defendant had taken a contention in his written statement that the plaintiff has not arrayed necessary parties who were legal heirs of Murudappa and the children of Kariyappa in the present suit and not

stated their interest in the suit schedule property. The said contention is not considered in the present suit as the nature of suit is with respect to permanent injunction. It is well settled law that any person having interest over the property can file permanent injunction suit before the court seeking necessary orders to safe guard possession over the suit property. Admittedly the suit property purchased by her father-in-law is not disputed by the defendants. Thus she has right to file present suit.

13. Having gone through the aforesaid prima facie documents and the pleadings of the parties what it appears is the suit schedule property belongs to Murudappa is not disputed by the defendant. As per the judgment and decree passed by the Honb'le Senior Civil Judge in RA No.18/2023 is also admitted by the parties. The said fact is clear from the C/c copies of judgment and decree placed on records by the defendant side. As per the admission in the pleadings of the both parties the first round of litigation between the parties with respect to suit schedule property is still pending for determination before the Honb'le High Court of Karnataka with respect to right of easement is concerned. Such being the case, the parties are not supposed to file another suit on the same subject matter which leads to another round of litigation. Moreover mere filing appeal before appellate court does not create any rights on the parties. Hence there is no express stay order from the appellate court. They are at liberty to approach the concerned appellate authority for their grievance. Under such circumstances, the plaintiff has

not made out prima-facie case to grant temporary injunction. As per the available registered document and also supporting mutation entries as per the available judgment and decree passed in RA No.18/2023 which is still in force over the suit property. If this order has prayed for if granted it will definitely effect adversely on the appellant court order which is not permissible under law. That may results inconvenience and injustice to the defendant rather than the plaintiff. Thus the order of the senior civil judge court is still in force. Thus, the present application is not maintainable. Accordingly the **Point No.1 to 3 are held in the Negative.**

14. Point No.4 : As a result, this court proceed to pass the following:

Order

The IA No.I filed by the
plaintiff U/o 39 Rule 1 and 2 R/w
Sec.151 of CPC is hereby rejected.

No order as to cost.

(Dictated to the Stenographer, transcribed and computerized by him, script corrected and then pronounced by me in Open Court on this day 02nd day of May 2025)

Date: 02.05.2025
Place: Channagiri.

(Smt.Mahalakshmi .G)
II Addl Civil Judge And Jmfc.
Channagiri.

(Vide Separate orders pronounced on open court).

ORDERS

**The IA No.I filed by the plaintiff U/
o 39 Rule 1 and 2 R/w Sec.151 of
CPC is hereby rejected.**

No order as to cost.

Issues framed.

**For list of documents and List of
Witnesses if any.**

Call on: 09-06-2025.

**Il Addl Civil Judge And Jmfc.
Channagiri.**