

KADK400002902026



Presented on : 15.04.2026
Registered on : 17.04.2026
Decided on : 27.07.2026
Duration : 00y/03m/10days

IN THE COURT OF SENIOR CIVIL JUDGE & J.M.F.C.
AT : SULLIA, D.K.DISTRICT

PRESENT: SMT.TATTANDA DAMAYANTI SOMAYYA,
B.A., LL.B.,

Senior Civil Judge & JMFC,
Sullia, D.K.District

Dated on this 27th day of July 2026

M.A No.2/2026

APPELLANT : **YASHAWANTHA SHETTY**
DEFENDANT S/o. Seetharama Shetty
Aged 40 years,
Agriculturist,
R/o: Durga Nivas House,
Kenya Village & Post
Kadaba Taluk, D.K.

-V/s-

RESPONDENT : **Smt. Venkamma**
PLAINTIFF W/o. C.H. Giridhara,
Aged about 68 years,
R/o. Kankal Chemnur House,
Kenya Village, Kadaba Taluk, D.K.

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Appellant Rep. By : Sri.Mahesh N, Advocate,
Respondent Rep. By : Sri. Lokesh M.J., Advocate.
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Date of institution of appeal	17.04.2026
Nature of judgment/order appealed against which	Against the order passed by Prl.Civil Judge & JMFC, Sullia on 01.04.2026 in O.S.No.2/2026.
Date of pronouncement of judgment/order	27.07.2026
Total duration	<u>Year/s</u> <u>Month/s</u> <u>Day/s</u> 00 03 10

ORDERS

[DELIVERED ON 27.07.2026]

The appellant has filed this miscellaneous appeal U/Sec.96, U/O.XLIII Rule 1 and Sec.151 of CPC by questioning the correctness of the orders passed by the Prl. Civil Judge and JMFC, Sullia on 01.04.2026 on I.A.No.2 U/O. XXXIX R. 1 and 2 of CPC in O.S.No.2/2026.

2. The appellant was the defendant and the respondent was the plaintiff before the Prl. Civil Judge and JMFC Court, Sullia in O.S.No.2/2026. For the sake of convenience to avoid confusion, they will be referred in the same ranking before this Court also.

3. The plaintiff had filed I.A.No.2 U/O. XXXIX Rule 1 and 2 and Sec.151 of CPC seeking an order of temporary

injunction restraining the defendant, his men, servants, LRs or any other persons claiming through him from trespassing into plaint 'A' and 'B' schedule properties or from interfering with peaceful possession and enjoyment of plaint schedule properties or from doing any sort of illegal activities in or around plaint 'A' and 'B' schedule properties till the disposal of the suit.

4. It is the case of the plaintiff is that, plaint 'A' schedule property was originally belonged to the Government. It was granted to her by the Tahasildar Sullia vide order bearing NCR SR 130/1991-91 and 141/98-99 dated: 07.03.2020. Out of 0.29 acres of land, 0-05 extent of land was converted for residential purpose which is described as item No.2 of 'A' schedule property. She is in actual possession, cultivation and enjoyment of plaint "A" schedule properties as its absolute owner. 'B' schedule property is the adjacent property of 'A' schedule property, which was originally belonged to Government. That land was granted to Ramappa Acharyaa S/o. Krishnayya Acharyaa by the

Tahasildar Sullia vide order No. NCR SR 159/75-76 on 1983. Accordingly, Ramappa Acharyaa was in possession and enjoyment of 'B' schedule property as its absolute owner. The said Ramappa Acharyaa has two children by name Janardhana Acharya and Pusphavathi. During his lifetime, his two children started residing separately. The plaintiff being his neighbor, started to provide food to him and assisted him in cultivating the land when he was ill, as his children totally abandoned him. Towards service rendered by her, Sri. Ramappa Acharyaa bequeathed his right, title and interest over the plaint 'B' schedule properties in her favour as per Will dated 20.08.1995. Ramappa Acharyaa died on 22.09.1996. After the death of Ramappa Acharyaa, she became the absolute owner in lawful possession and enjoyment of the same by virtue of the Will. Nobody including the defendant have any right, title and interest over the same. After his death, she has improved plaint 'B' Schedule property by planting arecanut, cashew nut plants, Banana and other fruit bearing plants and also

constructed a residential building therein by investing huge money and labour. Till date, she is paying tax to the Government on behalf of Ramappa Acharyaa in her name. The legal heirs of Ramappa Acharyaa never applied for change of Khatha. After the death of Ramappa Acharyaa his legal heirs kept quite knowing the fact that, plaint 'B' Schedule property is bequeathed to her. The defendant is a land broker joined the hands of the legal heirs of Ramappa Acharyaa and to make unlawful gain, in the year 2010-11 forced them to give an application for mutation and succeeded in getting Khatha in spite of the objection filed by her. The defendant falsely assured them that, he will get Rs.25,00,000/- after selling the property. The Tahasildar of Kadaba issued a notice in DCR No.39/2025-26 on 13.11.2025. Accordingly, she appeared before the Tahasildar court. It appears that, the defendant has purchased the plaint 'B' Schedule property without giving consideration and got registered a sale deed behind her back. He was well aware of the execution of the Will by

Ramappa Acharyaa in her favour. She has acquired right by way of Will and thereby she is in possession and enjoyment of the same. After the death of Ramappa Acharyaa, she has become the absolute owner of the same. She has filed a suit for declaration in O.S.No.37/2011 against the legal heirs of Ramappa Acharyaa. Later the said suit came to be dismissed for non-prosecution. Now she has filed miscellaneous case for the restoration of the suit. When the matter stood thus by suppressing the fact of execution of the Will, the defendant has approached the Co-operative bank for loan to create charge over plaintiff 'B' schedule property. The defendant has no right whatsoever over plaintiff 'B' schedule property. Hence, she prayed the court to restrain the defendant from doing any sort of illegal activities in and around 'A' and 'B' schedule properties.

5. The defendant has objected this application and filed his written objections contending that, the Ramappa Acharyaa died leaving behind his two children. But, he denied that, the plaintiff was providing food to Ramappa

Acharyaa during his last days. He denied that, Ramappa Acharyaa executed a Will in favour of the plaintiff. He denied that, the plaintiff was assisting Ramappa Acharyaa in improving 'B' schedule property. He denied that the legal heirs of Rammappa Acharyaa never applied for change of khatha to their names. In spite of knowing the fact of filing of declaration suit by the plaintiff against Janardhana Acharyaa and his sister Pushpavathi, he contacted them and proper inspection of property title deeds, he negotiated the price and consented to purchase plaintiff "B' schedule property. After the death of Ramappa Acharyaa, his children i.e., Janardhana Acharyaa and the Pushpavathi being the absolute owners were in possession of plaintiff "B' schedule property and they agreed to sell the same to him. As such he got executed registered sale deed dated: 23/10/2025 before the Sub-Registrar, Sullia and thereby purchased 'B' schedule property. After the registration of the sale deed, he received a notice from the Taluk Office, Kadaba Taluk, D.K., stating that, the plaintiff has filed an objection for the change

of Khatha to his name with respect to plaint "B' schedule property and Tahasildar, Kadaba Taluk asked for the adjudication of DCR 39/25-26 of Kenya Village. Thereafter, she produced a Will purported to be executed in her favour. Hence, he contacted the previous land owners of plaint 'B' schedule property and enquired about the Will. Then he came to know that, in the year of 2011 the plaintiff had filed an application before the Tahasildar Sullia for change of the khatha to her name with respect to 'B' schedule property. On the strength of Will purported to be executed by Ramappa Acharya, the Tahasildar issued notice to the legal heirs of the Ramappa Acharyaa in DCR No:85/2010-11, who in turn filed their objection and as such the learned Tahasildar Sullia rejected the application filed by the plaintiff. Subsequently, the plaintiff filed an Appeal before the Assistant Commissioner, Puttur in RRT.SR 07/11-12 and after detailed enquiry, that appeal came to be rejected. Thereafter the plaintiff filed O.S.37/2011 which was dismissed for non prosecution on 26.06.2015. That order is

not yet challenged. Thereafter, the plaintiff appeared before the Tahasildar, Kadaba Taluk and gave a document stating that, she has got an injunction order from the court of law. After the receipt of that document, the Tahasildar, Kadaba Taluk passed the orders and directed the parties to maintain status quo till the final adjudication of the civil suit. Subsequently, the defendant came to know about the present suit. The plaintiff herein was not in possession of the plaint "B" schedule property and she didn't continue the civil suit in O.S. No.37/2011. Since, the date of sale deed, he is in possession and enjoyment of the plaint "B" schedule property. At no point of time, the plaintiff was in possession of the plaint "B" schedule property. There is no prima facie case against the plaintiff and balance of convenience does not lie in her favour. Hence, the defendant prayed the court to dismiss the application.

6. After hearing both the parties, the trial Court formulated three points for consideration and on the basis of the pleadings and documentary evidence placed before it, the

trial Court answered point No.1 to 3 in affirmative and thereby allowed I.A.No.2 and directed both the parties maintain status quo.

7. Being aggrieved by the orders passed by the Principal Civil Judge and JMFC, Sullia on 01.04.2026 in O.S.No.2/2026 on I.A.No.2, the defendant has preferred this miscellaneous appeal on the grounds that, the impugned order passed by the trial Court is contrary to law, facts and probabilities of the case. The trial Court has not considered the factual aspects and believe story of plaintiff without considering the registered sale deed. The trial court did not give importance to the dismissal of O.S.No.37/2011, which was dismissed for non-prosecution. The plaintiff has filed miscellaneous petition for the restoration of O.S.No.37/2011 after a lapse of 10 years. The Will relied by the plaintiff is not yet proved. The impugned order is illegal and one sided, which liable to be set-aside. Accordingly, the defendant prayed to set aside the order passed by the Principal Civil Judge and JMFC, Sullia on 01.04.2026 on

I.A.No.2 filed U/O. 39 Rule 1 and 2 and Sec.151 of CPC in O.S.No.2/2026 and thereby allow his appeal.

8. After filing of this appeal by the appellant, this Court issued notice to the respondent/plaintiff. In response to the service of notice, the respondent/plaintiff appeared before the Court through her counsel and she is supported by the findings given by the trial Court.

9. I have heard the arguments of both the counsels on this miscellaneous appeal. The counsel appearing for the respondent/plaintiff filed his notes of arguments.

10. On the basis of the contentions taken by the appellant in in his appeal memo, the following points arise for my consideration:

1. Whether the trial Court is justified in allowing I.A.No.2 filed by the plaintiff U/O. XXX1X R. 1 & 2 & Sec.151 of CPC in O.S.No.2/2026?
2. Whether the interference of this Court is required?
3. What order ?

11. On the basis of the pleadings and documents, my answers to the above points are as under:

Point No.1 : In Affirmative

Point No.2 : In Negative

Point No.3 : As per final orders for the following:

REASONS

Point No.1 & 2: As these two points are interrelated, I take both the points together for common discussion to avoid repetition.

12. The appellant/defendant has approached this Court by questioning the correctness of the orders passed by the Principal Civil Judge and JMFC, Sullia on 01.04.2026 on I.A. No.2 filed U/O.XXX1X R.1 & 2 of CPC in OS. No.2/2026. In order to seek an order of temporary injunction, the person claiming such relief must establish that, he/she has got a prima facie triable case as against the opposite party and balance of convenience lies in his/her favour. Likewise, he/she has to prove that he/she would be

put to great loss and hardship in the event of rejection of his/her application.

13. It is not in dispute that, the plaintiff is in possession and enjoyment of 'A' schedule properties. As per the saguvali chit dated: 07.03.2007 issued by the Tahasildar, Sullia, plaint 'A' schedule property was granted in favour of the plaintiff. Likewise, plaint 'B' schedule property was granted in favour of K.Ramappa Acharya, by the orders of Tahasildar, Sullia.

14. As per the death certificate produced before the Court, Ramappa Acharya died on 22.09.1996. It is an admitted fact that, Ramappa Acharya died leaving behind his two children by name Pushpa and Janardhana Acharya. The plaintiff in her pleadings has pleaded that, Sri.Ramappa Acharya was her neighbor and she was taking care of him as his children abandoned him. According to the plaintiff, she was providing food, medicines to Ramappa Acharya and assisting him in cultivating 'B' schedule property during his life time and towards that love and affection, Ramappa Acharya

bequeathed 'B' schedule property in her favour by executing a Will dated: 20.08.1995.

15. On the strength of un-registered Will, the plaintiff is agitating her rights in 'B' schedule properties. The defendant is agitating his rights over 'B' schedule property on the strength of sale deed dated: 18.10.2025 executed by the children of deceased Ramappa Acharya, which was registered on 23.10.2025. From the contents of written statement, it appears that, the defendant opted to purchase 'B' schedule property, inspite of knowing the fact that, the plaintiff has filed a suit against the legal heirs of Ramappa Acharya, by making claim over their property.

16. From the pleadings, it appears that, the plaintiff filed O.S.No.37/2011, when the Tahasildar, Sullia effected khatha in the name of Janardhan Acharya, the son of Ramappa Acharya, by overruling her objections. As per order dated: 26.06.2015, O.S.No.37/2011 came to be dismissed for non-prosecution. The defendant has relied on previous revenue proceedings, wherein the claim of the

plaintiff was not considered. But, revenue entries are not conclusive proof of title. Similarly, having registered sale deed does not by itself is a proof of lawful possession.

17. The plaintiff specifically stated that, the defendant attempted to dispossess her on 02.01.2026 and threatened her to dispossess her. That allegation is supported by the complaint filed before the jurisdictional police. The Court has to consider the claim of long possession of the plaintiff over 'B' schedule property. No doubt, execution of Will has to be proved by examining its attested witnesses as required U/Sec.68 of Bharatiya Sakshya Adhiniyama.

18. Prima facie, possession of the plaintiff can be gathered from the previous revenue proceedings held between herself and the children of Ramappa Acharya. At this stage, if the defendant is not restrained from creating third party interest over 'B' schedule property, the purpose of filing of this suit would be frustrated. The Court has to protect the rights of the parties as well as the property. The Court has to compare the relative hardship, that would be caused to

each party if the relief is either granted or refused.

19. The Court has to see, which course would cause lesser injustice and preserve the subject matter in its present and actual condition. By considering all these aspects, the trial Court has rightly allowed I.A.No.2 and directed both the parties to maintain status quo. The trial Court has not committed any error while passing orders on IA.No.2. The trial Court is justified in allowing I.A.No.2 filed by the plaintiff U/O.XXXIX R.1 and 2 of CPC. Therefore, there are no grounds to interfere with the findings given by the trial Court. By considering all these aspects, I answer point No.1 in affirmative and point No. 2 in Negative.

Point No.3: For the aforesaid reasons, I proceed to pass the following:

ORDER

Miscellaneous appeal filed by the appellant
U/Sec.96, U/O.XLIII Rule 1 & Sec.151 of
C.P.C is hereby dismissed with costs.

Orders passed by the Prl. Civil Judge and JMFC, Sullia, D.K District, on 01.04.2026 on I.A. No.2 filed by the plaintiff U/O. XXX1X R. 1 & 2 r/w.151 of CPC in O.S.No.2/2026 is hereby confirmed.

Office to send the copy of this order to the Court of Prl. Civil Judge & JMFC., Sullia, D.K.

27.07.2026 **[TATTANDA DAMAYANTI SOMAYYA]**
 SENIOR CIVIL JUDGE & JMFC.,
 SULLIA, D.K.DISTRICT

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Dictated on : 25.07.2026
Transcribed on : 25.07.2026
checked on : 27.07.2026
Signed on : 27.07.2026

[TATTANDA DAMAYANTI SOMAYYA]
SENIOR CIVIL JUDGE & JMFC.,
SULLIA, D.K.DISTRICT

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