

KADW200034922025



Govt. of Karnataka **TITLE SHEET FOR JUDGMENT IN
APPEALS**

Form No.11 (Civil)
Title Sheet for Judgment in
Appeals
(R.P.93)

**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE & JMFC
HUBBALLI**

Present: Sri. Yamanappa Karehanumanthappa,
Prl. Senior Civil Judge, Hubballi.

Date of Judgment: **4th DAY OF JULY - 2026**
MISCELLANEOUS APPEAL No.22/2025

Appellant : Sri. Nannesab S/o. Miyasab Hebballi,
(Original defendant) Age: 56 years, Occ: Private work,
R/o. Near Jumma Masjid, Tajnagar,
Hubballi, Dist: Dharwad.

[By Sri. A.A. Kamangar, Advocate]

-Vs-

Respondents 1: Sri. Guranagouda S/o. Hanumantgouda
(Original plaintiffs) Kenchanagoudra, Age: 51 years,
Occ: Agriculture, R/o. Kenchangoudra
Oni, Unkal, Hubballi, Tq: Hubballi,
Dist: Dharwad.

- 2: Sri. Malajagouda S/o. Ramanagouda
Kenchangoudra, Age: 76 years,
Occ: Agriculture, R/o. Kenchangoudra
Oni, Unkal, Hubballi, Tq: Hubballi,
Dist: Dharwad.
- 3: Smt. Shantavva W/o. Venkanagouda
Kenchangoudra, Age: 62 years,
Occ: Agriculture and household work,
R/o. Kenchangoudra Oni, Unkal,
Hubballi, Tq: Hubblali, Dist: Dharwad.
- 4: Basanagouda S/o. Venkanagouda
Kenchangoudra, Age: 47 years,
Occ: Agriculture, R/o. Kenchangoudra
Oni, Unkal, Hubballi, Tq: Hubblali,
Dist: Dharwad.
- 5: Bheemappa S/o. Gadigeppa Sunkad,
Age: 54 years, Occ: Private Service,
R/o. Pinjar Oni, Chabbi, Tq: Hubballi,
Dist: Dharwad.
- 6: Sachin S/o. Bheemappa Sunkad,
Age: 25 years, Occ: Private Service,
R/o. Pinjar Oni, Chabbi, Tq: Hubballi,
Dist: Dharwad.
- 7: Vijay S/o. Bheemappa Sunkad,
Age: 25 years, Occ: Agriculture,
R/o. Pinjar Oni, Chabbi, Tq: Hubballi,
Dist: Dharwad.

[By Sri. Y.U. Mudigoudar, Advocate]

1)	<i>Date of institution of the Appeal</i>	:	18-12-2025
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2)	<i>Nature of the Proceedings</i>	:	Appeal is against the impugned order passed in O.S. No.784/2024, on I.A. No.II U/o.39 Rule 1 and 2 of CPC, dated: 06.12.2025, by the IV Addl. Civil Judge and JMFC, Hubballi.		
3)	<i>Date and Nature of the decree or order appealed against</i>	:	Miscellaneous appeal as against order on IA No.II U/o.XXXIX Rule 1 and 2 of CPC.		
4)	<i>Pronouncement of Judgment</i>	:	04-07-2026		
5)	<i>Duration of the Appeal</i>	:	Year/s	Month/s	Day/s
			00	06	16

J U D G M E N T

This miscellaneous appeal is filed by the aggrieved defendant in O.S.No.784/2024 as against order on I.A. No.II filed by the plaintiffs U/o.39 Rule 1 and 2 of C.P.C. by IV Addl. Civil Judge and JMFC, Hubballi.

2. In this judgment the parties would be referred as per their rank before the trial Court. The appellant herein was the original defendant and respondents herein were as the original plaintiffs.

3. **The facts leading to the present appeal in a nutshell are as under:**

Plaintiffs filed a suit for the relief of permanent injunction restraining the defendant from taking possession of the suit property and constructing the house in the suit property.

4. Plaintiff filed I.A. No.1 U/o.39 Rule 1 and 2 of C.P.C. seeking temporary injunction restraining the defendant obstructing the plaintiffs possession over the suit property.

5. In support of the application the plaintiff No.1 filed affidavit by reiterating contents of the plaint. He has also contended that he has got prima facie case and balance of convenience leans in his favour and if temporary injunction is not granted he will be put to hardship.

6. On issuance of suit summons defendant has filed written statement and has filed memo to treat the written statement as objection to I.A. He has denied that the suit property is agricultural land and plaintiffs are doing agricultural work in the suit property. It is not the ancestral property of plaintiffs. The defendant is not at all concerned to the suit property and suit property is not at all agricultural land. The suit property has been converted into residential plots by the ancestors of the plaintiffs and plaintiffs by executing the documents in favour of several persons. Further he has contended that 1000 persons are residing in the suit land carried out work of residential houses, commercial shops and public amenities are also provided in the suit. The defendant

has contended that the plaintiffs are not at all in possession of the suit property. The defendant is permanent resident of Taj Nagar having his own house at Unkal. The name of defendant is also wrongly mentioned in the cause title as Nanne Saheb. The defendant is the reputed person in the locality and having good business and belongs to respectable family, the plaintiffs with an intention to defame the name of the defendant in the society and to cause loss to the business of the defendant, unnecessarily dragged this defendant to the court. The plaintiffs have not at all made persons who are in possession of the suit property as parties to this suit. Hence, prayed to dismiss the suit with cost.

7. The trial Court after hearing both side on I.A. No.II framed three points for consideration and answered all the points in Affirmative and allowed I.A. No.II. As against said order defendant filed this miscellaneous appeal on the following grounds:

(1) The impugned order is arbitrary and contrary to law and case law on the point.

(2) The trial court has committed an error in holding that the plaintiff has made prima facie case for grant of injunction. Such findings are contrary to the pleadings of the parties on record.

(3) The trial court has failed to appreciate the documentary evidence and pleadings on record produced by the plaintiff, which has resulted in miscarriage of justice.

(4) The trial court has not at all given any proper reasons or allowing the grant of ad interim injunction. The findings given by the trial court are contrary to the settled law. The trial court has failed to appreciate the law governed by the parties and settled law that the possession is not at all with the plaintiffs and nature of the suit land is already converted by forming the layouts.

(5) The trial Court ought to have looked into the suit property belongs to whom and ought to have looked into the contention raised by the defendant and has come to the wrong conclusion. The trial court ought to have refused the relief as sought in I.A.

(6) The trial court has not at all given any kind of reasons and has not at all referred any kind of document while coming to the conclusion while granting of injunction. The plaintiff has not proved the prima facie case and also balance of convenience.

(7) The trial court has committed an error in holding that the defendant has not at all produced any document to show their contention. The trial court has committed an error in holding that there is no document regarding change of land.

(8) The trial court has not assigned sound and cogent reasons. The impugned order, the reasoning and findings suffers from grave irregularities, inconsistency.

8. After admitting the appeal notice was issued to respondents, they appeared through their Advocate and filed objection to the appeal.

9. Heard both side and perused the materials on record. The following points arise for my consideration:

- 1) Whether the trial Court was not right in allowing I.A. No.II by holding that plaintiffs have made out prima facie case, balance of convenience leans in their favour?**
- 2) Whether the interference is required in the order of the trial court by this court?**
- 3) What order?**

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

- Point No.1 : In the Negative.**
Point No.2 : In the Negative.
**Point No.3 : As per final order,
for the following;**

REASONS

11. **Points No.1 and 2:** This appeal is miscellaneous appeal and hence, this Court cannot conduct mini trial while deciding this appeal. But in order to grant temporary injunction plaintiffs have to make out prima facie case and they have to make out that balance of convenience leans in their favour and they will be put to more hardship if T.I. is refused. So, keeping these well settled proposition of law in the mind let me consider the materials on record.

12. The plaintiffs have filed this suit for permanent injunction restraining the defendant from obstructing the possession of the plaintiffs over the suit property. The suit property is the ancestral possession of plaintiffs. After the death of father and mother of the plaintiffs, their names were mutated in the suit property. The plaintiffs have constructed farm house in the suit property and doing agricultural work and enjoying the suit property. Now the defendant is obstructing the possession of the plaintiffs over the suit property and trying to construct house in the suit property.

13. It is the contention of the defendant that he is not at all concerned to the suit property and suit property is not at all agricultural land. The suit property has been converted into residential plots by the ancestors of the plaintiffs and plaintiffs by executing the documents in favour of several persons. Further he has contended that 1000 persons are residing in the suit land carried out work of residential houses, commercial shops and public amenities are also provided in the suit. The defendant has contended that the plaintiffs are not at all in possession of the suit property. The defendant is permanent resident of Taj Nagar having his own house at Unkal. The name of defendant is also wrongly mentioned in the cause title as Nanne Saheb. The defendant is the reputed person in the locality and having good business and belongs to respectable family, the plaintiffs with an intention to defame the name of the

defendant in the society and to cause loss to the business of the defendant, unnecessarily dragged this defendant to the court.

14. I have perused the documents produced by the plaintiffs. They have produced record of rights of the suit property, which reveals that it was obtained by the plaintiffs on 10.03.2024. It is standing in the names of plaintiffs. They have grown Soyabean in the said property. So on perusing this record of right of the suit property it is clear that it is agricultural land and not the residential property. The defendant has taken a contention that the suit property is not an agricultural land it is a residential property and 1000 persons are residing in the suit property and plaintiffs are not in possession of the suit property. On perusing the documents produced by the plaintiffs it is clear that the suit property is agricultural land and it is jointly standing in the names of plaintiffs. The mutation extracts also reveals that after the death of father of plaintiffs and their uncle, the names of plaintiffs were jointly mutated to the suit property.

15. So, considering the materials on record the trial Court has rightly held that the plaintiffs have made out prima facie case and balance of convenience leans in their favour. Defendant has not produced any documents before the trial Court to show that the suit property is not agricultural land and 1000 persons are residing in the suit property. The full pledged

trial is required to consider whether suit open space is a residential property and 1000 persons are residing in the suit property. Admittedly, while passing order on application U/o.39 Rule 1 and 2 of C.P.C. the Court cannot conduct mini trial. So, without conducting mini trial I hold that the trial Court was right in answering points for consideration in Affirmative. I am also considered opinion that the plaintiffs have made out prima facie case and balance of convenience leans in their favour. If T.I. is refused, they will be put to hardship.

16. Advocate for appellant by producing tax assessments extracts argued that plots were formed in the suit property. Further the appellant has produced photographs to show that plots were laid down and houses were constructed, but only on the basis of photograph it cannot be held that the said property is not agricultural land. The grounds urged in the appeal memo are not at all sufficient to interfere in the order of the trial Court. So, without giving any findings on merits of the case and without conducting mini trial, I hold that the trial Court was right in allowing I.A. No.II. It has rightly appreciated the materials on record and rightly applied its judicial mind and hence, the interim order is proper and correct and it does not require interference by this Court. Plaintiffs have made out prima facie case to grant the T.I. The balance of convenience leans in their favour and they will be put to hardship if T.I. is refused. Hence, I answer points No.1 and 2 in **Negative**.

17. **Point No.3:** In view of my answer to points No.1 and 2 as stated above, I proceed to pass the following:

ORDER

The Miscellaneous Appeal filed by appellant/Original defendant, U/Order 43 Rule 1 of CPC is dismissed with costs.

The order passed by IV Addl. Civil Judge and JMFC, Hubballi, in OS No.784/2024, dated 06.12.2025 by allowing I.A. No.II is confirmed.

The reasons made in this appeal shall be restricted to this appeal only and it has no binding effect on the trial court while deciding the case on merits.

Send back the records to the trial court along with copy of this order forthwith.

(Dictated to the Stenographer directly on computer, computerized by her, script corrected directly on computer and then pronounced by me in the Open Court on this the 4th day of July - 2026).

**(Yamanappa Karehanumanthappa)
Prl. Senior Civil Judge, Hubballi.**