

KAHS510000372025



Presented on : 08-01-2025

Registered on : 08-01-2025

Decided on : 09-12-2025

IN THE COURT OF ADDL. CIVIL JUDGE AND JMFC., BELUR

Present:-

Smt. Salma A.S.

B.B.A., LL.B.,(Hons)

Addl. Civil Judge and JMFC., Belur.

Dated this, the 09th day of December, 2025

O.S. No. 16/2025

Eregowda S/o late Ajjegowda

...Plaintiff

-Versus-

Chandregowda S/o late Ajjegowda and others

....Defendants

I.A. No.II

Eregowda S/o late Ajjegowda

...Applicant/ Plaintiff

-Versus-

Chandregowda S/o late Ajjegowda and others

..Opponents/Defendants

(By- **Sri. K.L.N.**, Advocate for Plaintiff)

(By- **Sri. C.M.C.**, Advocate for Defendants)

ORDERS ON I.A. NO.II

1	Provision under which the application is filed	U/o 1 Rule 39 rule 1 and 2 of CPC
2	Relief sought for	
3	The date on which the application is filed	08.01.2025
4	Number of the application	II
5	The date on which the objections are filed by different opponents	05.07.2025
6	The date on which the orders were passed on the application	09.12.2025

The counsel for the plaintiff has filed IA No.II under order 39 Rule 1 and 2 of CPC with a prayer to grant temporary injunction restraining the defendants or anybody claiming under them from causing interference to the plaintiff's peaceful possession and enjoyment over the suit schedule property.

2. In support of the IA the plaintiff has sworn an affidavit contending that, the present suit is filed for the relief of Permanent Injunction. That originally property bearing Sy No.20 measuring 6.06 acres of Jinagenahalli village was the joint family property of plaintiff and defendants. That in the Panchayath Palu Patti dated 02.08.1985 the plaintiff was allotted 1.35 acres of land in Sy No.20 i.e., suit schedule property. That the father of the defendant No.1 and 2 T.S. Puttaiah was allotted 2.10 acres and father of 3rd defendant was allotted 2.01 acres in Sy No.20. After the partition they were in possession of their respective shares and Khata is also effected and plaintiff is paying taxes to the concerned

authorities. That from the date of partition plaintiff is the absolute owner and he is growing crops. That the property allotted to the share of the plaintiff is Poded and renumbered as Sy No.20/2, that in the said property there is the canal Karab land measuring 0.2 guntas. The said canal lies on the southern side of the suit schedule property. That the plaintiff is the retired Government employee and he is residing in Hassan. That the defendants properties are located towards the Eastern side of the suit schedule property. That the defendants have no manner of right, title and interest over the suit schedule property, but the defendants colluding with each other since one year taking advantage of the situation, that the plaintiff is residing in the Hassan have attempted to interfered with the possession of the plaintiff and disposes him from the suit schedule property. Though there is a path way in Sy No.20/1 belonging to the defendants, they have also attempted to form a road in the suit schedule property illegally. When the plaintiff questioned the same, the defendant left the spot. In this regard the plaintiff has lodged the complaint before the police, but they did not take any action. That the prima facie case and balance of convenience lies in favour of the plaintiff and if IA is not allowed the plaintiff will be put to irreparable loss and injury which cannot be compensated in terms of money.

3. The counsel for the defendants have filed objection by contending that, the IA is not maintainable either in law or on facts. That the facts stated in IA and affidavit is not true. The relationship and the partition is not denied, but has contended that, the plaintiff has approached the court by suppressing the

material facts, hence he is not entitled for equitable relief. That the prima facie case and balance of convenience does not lie in favour of the plaintiff. That the plaintiff is not in possession of the suit schedule property as claimed by him and hence he is not entitled to any relief. That the plaintiff has included the water canal that is in his property, as if it is his own to claim injunction and to restrain the defendants from using the Karab land as path way. That the defendants have never interfered with the possession of the plaintiff.

a) The defendants have further specifically contending that, originally the parties of the suit, belongs to one joint family. That the suit schedule property was ancestral and joint family property before it was divided among joint family members. It is true that the suit schedule property bearing Sy No.20/2 measuring 1 acre 35 guntas had fallen to the share of the plaintiff and he is in separate possession and enjoyment, likewise Sy No.20/1 and 20/3 have fallen to the share of his brothers I.,e., Somashekhara and Puttaiah. That the present defendants who are their children are in possession and enjoyment of the said properties allotted to their father's share. That in Sy No.20 and in its sub-divisions have Kharab land totally measuring 0.6 guntas which is meant for water canal which is towards the southern side of the suit schedule property. Hence in Sy No.20/2 which belongs to the plaintiff has 2 guntas of Kharab A land for water canal which also continues on the land of the defendants. Though the water canal is shown in Sy No.20, water canal is made on Sy No.13 of Krishnapura village and on Sy No.21 of Jinagenahalli village. Hence the family of plaintiff and defendants were freely using this

Kharab land, which is meant for water canal as path way to reach their respective lands, for ingress and egress for men and material. This has been used as pathway since time immemorial. That since from the date of partition i.e., from the year 1985 the plaintiff and defendants are enjoying their properties separately. Though the family was separated in the year 1985, the plaintiff was not cultivating his land personally, since he was in Government service. The father of the defendant No.1 and 2 was cultivated the land which belongs to the plaintiff. Hence the plaintiff has no personal knowledge of land and its terrine and fully encroaches the A Kharab land, which is meant for water canal and virtually blocked the ingress and egress of the defendants, denying the enjoyment of their respective lands. That the defendants have left continued Kharab A land, which is meant for water canal, uncultivated so as to give way to adjoining land owners. But the plaintiff has been cultivating A Kharab land and hence the plaintiff himself is a tort feisor and hence he is not entitled to any relief. That the plaintiff has falsely shown the boundaries at Southern side of the suit schedule property, he has not shown Kharab land its southern side. Hence prayed to reject the IA.

4. Heard learned counsel for the plaintiff and defendants.

5. After perusal of the records of the case, the following points would emerge for my consideration:

1. Whether the plaintiff have made out a prima-facie case?
2. Whether the balance of convenience is lies in favour of the plaintiff?

3. Whether the plaintiff would be put to untold hardship and irreparable loss if the temporary injunction is not granted?
4. What order?
6. My findings on the above points are as under:
 - Point No.1:Partly in the Affirmative,
 - Point No.2:Partly in the Affirmative,
 - Point No.3:Partly in the Affirmative,
 - Point No.4:As per final order for the following:

REASONS

7. **Point No.1 to 3:** I have taken these three points together for my common discussion as they are inter-linked with each other in order to avoid repetition of the same.

It is the contention of the plaintiff that, the suit schedule property was allotted to his share in the family partition. That since from the date of partition he is the absolute owner and in possession of the suit schedule property. That the defendants without any manner of right are interfering with the possession of the plaintiff over the suit schedule property.

8. On the other hand the defendants have contended that, it is true that in the partition the suit schedule property was allotted to the share of the plaintiff, but in the suit schedule property there is 0.2 guntas of canal Kharab land which is used by the defendants as road. The plaintiff has blocked the said canal Kharab.

9. In view of rival contentions put forth by both the parties, now let me see whether the plaintiff has made out prima facie case and balance of convenience for grant of temporary injunction as prayed in I.A.No.II.

10. The plaintiff in support of his case, has produced certified copy of sale deed dated 06.07.2000, copy of MR, RTCs, order copy issued ADLR, plaint and compromise petition in O.S. No.92/2024, xerox copy of complaint dated 05.01.2025, Acknowledgment copy of Halebeedu Police dated 06.01.2025.

11. On the contrary, the defendants in support of their case, have produced RTCs and Genealogical Tree.

12. It is the contention of the plaintiff that, the suit schedule property was allotted his share in the family partition. The relationship is not in dispute, in the family partition the property was allotted to the share of plaintiff and father of defendants. That it is not in dispute that, the suit schedule property was allotted to the share of the plaintiff in the family partition and he is in possession of the same. The only dispute is with regard to 0.2 guntas of canal Kharab which is situated towards the southern side of the suit schedule property.

13. It is the contention of the defendants that, they are using the said canal Kharab land to reach their property as path way. That the existence of 0.2 guntas of canal Kharab land is not in dispute. That the plaintiff in para No.2 of the plaint has clearly stated that there is 0.2 guntas of canal Kharab land which is situated towards the southern side of the suit schedule property.

That on perusal of the boundaries it is found that, the plaintiff has shown land belonging to Mullaiah as property situated towards the southern side. The plaintiff has shown canal Kharab towards the southern side of the suit schedule property. Even though in the schedule the plaintiff has stated excluding 0.2 guntas of canal Kharab, but in the boundaries the plaintiff has shown by including canal Kharab. Since it is canal Kharab the plaintiff has no right over the same. Here the possession is not in dispute the only dispute is with regard to use of 0.2 guntas of canal Kharab land. Since it is a Kharab land the plaintiff has no right over the same and hence the defendants have liberty to use the said land as path way and the plaintiff cannot prevent them and hence on perusal of the pleadings and documents this court is of the opinion that the plaintiff has made out prima facie case and balance of convenience in part. If Temporary Injunction is not granted the plaintiff will be put to irreparable loss and injury. Accordingly **Point No.1 to 3 are answered Partly in the Affirmative.**

14. Point No.4: For the aforesaid reasons and discussions made supra, I proceed to pass the following:

ORDER

IA No.II filed by the plaintiff under Order 39 Rule 1 and 2 of Code of Civil Procedure is hereby **Partly allowed.**

The defendants or anybody claiming under them are hereby restrained from interfering with the plaintiff's peaceful possession and enjoyment over the suit schedule property till disposal of the suit.

Further it is clarified that the plaintiff has no right over the 0.2 guntas canal Kharab situated towards the southern side of the suit schedule property.

Under the facts and circumstances of the case, no order as to costs.

*(Dictated to Stenographer, transcribed by her, transcription corrected by me and then pronounced in the open court on this, the **09th day of December, 2025**)*

**(Smt. Salma A.S.)
Addl. Civil Judge and JMFC.,
Belur.**