

KAHS500005842024



Presented on : 29-05-2024
Registered on : 29-05-2024
Decided on : 04-08-2026
Duration : 2 years, 2 months, 6 days

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

: PRESENT :

**KUM. M.S.SHASHIKALA., B.A.L.LL.B.,
SENIOR CIVIL JUDGE & JMFC,
BELUR**

M.A. No.24/2024

DATED THIS THE 04TH DAY OF AUGUST 2026

Appellants:

Plaintiffs:

1. Smt. Chandrika D.S.
W/o Nagashetty,
Aged about 58 years,
R/o Channakeshava Temple
Road, Hassan Nagara.

[By Sri B.R. Mahesh, Adv.]

V/s.

Respondents:

Defendants

1. Nanjesh S/o Revanna,
Aged about 38 years,

R/o Molenahalli Village,
Madihalli Hobli, Hagare Post,
Beluru Taluk, Hassan District.

2. Revanna S/o Nanjegowda
Dead by LRS

2(a). Smt. Chandramma
W/o Revanna,
Aged about 68 years,
R/o Molenahalli Village,
Madihalli Hobli, Hagare Post,
Beluru Taluk, Hassan District.

2(b). Smt. Geetha R.M. W/o Tharanath
D/o Revanna,
Aged about 44 years,
R/o Molenahalli Village,
Madihalli Hobli, Hagare Post,
Beluru Taluk, Hassan District.

2(c). Smt. Drakshayini W/o Ravish
D/o Revanna,
Aged about 40 years,
R/o Molenahalli Village,
Madihalli Hobli, Hagare Post,
Beluru Taluk, Hassan District.

[R1 by K.M. Suresh, Adv.]

[R2(a) to (c) by M.B. Somashekar, Adv.]

Date of Institution of Appeal	29.05.2024
Nature of Appeal	To grant TI against defendants
Date on Pronouncement of order	04.08.2026

Total Duration	Year/s	Month/s	Day/s
	02	02	06

ORDER

This miscellaneous appeal is filed by the appellant/plaintiff against the impugned order passed by the Civil Judge and JMFC., Belur on I.A.No.III in O.S. No.465/2023, dated: 08.04.2024 for dismissing the application filed by the appellant/plaintiff under Order 39 Rule 1 & 2 of CPC.

2. The parties herein after referred as per their ranking before the trial court for the sake of convenience and in order to avoid confusion.

3. The plaintiff case in brief is as follows:

The plaintiff submits that, she is the absolute owner and in possession of the suit property. The plaintiff has purchased the suit property through registered sale deed dated 14.07.2000 from its previous vendor Revanna (2nd defendant) for valuable consideration. Since the date of purchase, the plaintiff is in actual, physical lawful possession and enjoyment of the same as its absolute owner. Basing on the sale deed, the khata was effected in the name

of plaintiff vide M.R. No.104/4. Subsequently, her name was entered in the RTC extract and she has been paying kandayam, etc.

4. It is further contended by the plaintiff that about 20 days prior to the institution of the suit, the defendants came near the suit property and tried to plough the land without there being any right in order to get enrichment illegally. The plaintiff has not allowed them and prevented their illegal activity. In this regard, the plaintiff has made complaint to the jurisdictional Halebeedu Police. The police have summoned the defendants and directed them not to interfere over the suit property. But the defendants have not heeded to the said advise and again they have been giving pinprick to the plaintiff. The defendants have no manner of might over the suit property having sold the suit property about 23 years ago.

5. It is further contended by the plaintiff that, when Holiday was declared on second Saturday on 14.10.2023 at about 10.30 a.m. the defendants again came near the suit property inspite of instruction given by the police. The defendants being politically

motivated persons having no respect for law heeding voice of the plaintiff. Their illegal act cannot be curbed without the order of the court. Hence, the plaintiff constrained to file suit for permanent injunction as well as TI application.

6. On service of notice/summons, the defendants have entered appearance through through counsel and filed written statement and adopted the same as objection by filing memo.

7. The defendant No.1 has denied the possession of the plaintiff over suit property. The plaintiff claiming her right over suit property after lapse of 23 years. The plaintiff by colluding with the revenue authority has got effected mutation in her name. The defendants have denied specifically contended that the defendant No.1 has filed a suit for partition and separate possession in respect of suit property wherein the plaintiff herein arrayed as 5th defendant in O.S. No.72/2022 before the court of Senior Civil Judge, Belur. The plaintiff has appeared in the said suit and filed her detailed written statement. In spite of knowing all these facts, the plaintiff has filed this suit. The defendant No.2 has

contended that the suit property was originally derived to the parents of 2nd defendant by name of Huliyaamma and Ningegowda, they are dead leaving behind their children Gurubasappa, Nanjamma and Revanna. As such, the defendants and said children are having equal right over their ancestral and joint family properties. As such, the 2nd defendant had no absolute right to sell the suit property and it was a paltry sale transaction created by the plaintiff without involving the brother and sister of 2nd defendant. The sale deed upon which the plaintiff is relying o is not in consonance with the actual existence of the property is entirely different. The defendants are in actual possession and enjoyment of the suit property.

8. The defendants have further contended that, the plaintiff has challenged the survey sketch and durasth before the DDLR, Hassan in R.A. No.68/2022-23. On 30.03.2023, the said appeal came to be dismissed by the said court. In the survey sketch it is clearly mentioned that the defendants are in possession of the property. Further, the survey sketch and report issued by the ADLR, Belur is in respect of Sy.No.104/4, in the said survey sketch the

ADLR has opined that the land holder in Sy.No.104/2 has encroached the property to an extent measuring 10 guntas in Sy.No.104/4, whereas it is contended that there is no question of encroachment of the alleged property since the time immemorial defendants are in peaceful possession and enjoyment of the same. As such, the defendants have sought for dismissal of the instant application and consequently the suit.

9. After hearing of both the parties and considering the materials produced by the plaintiff and defendants, the learned Civil Judge was pleased to dismiss the application filed by the plaintiff. Hence the appellant/plaintiff aggrieved by the said order passed on I.A.No.III preferred this appeal on the following grounds.

:Grounds for Appeal:

1. The impugned order is frivolous, vexatious and liable to be set side.
2. The trial court erred in not properly appreciating the documents filed by this appellant and respondent and wrongly appreciated the documents and arguments of appellant.

3. The trial court has not considered the plaintiff/appellant peaceful possession and enjoyment suit property by way of Registered Sale deed.
4. It is well settled principles of law that the courts at the time of considering I.A.s are required to consider whether the applicant/plaintiff has made out a prima-facie case and balance of convenience lies in her favour.
5. The learned judge has erred in observing that appellant is not claiming any right in the schedule property, as such the order of injunction is to be issued ignoring the basic principles of granting injunction i.e. whether the respondent/defendant have made out a prima-facie case or a trial case, without considering the case pleaded by the appellant.
6. The order of trial court is illegal and not sustainable in law.
7. The finding given by the trial court in support of its conclusion is illegal, arbitrary and against to the law.
10. Notice on appeal memo issued to the respondents is served and respondents appeared through their counsel. Heard arguments by Sri B.R.M. Advocate for appellant/plaintiff and Sri K.M.S

advocate for respondent No.1 and by Sri M.B.S. Advocate for respondent No.2(a) to (c).

11. From the above facts the following Points arise for my determination;

:POINTS:

- 1) Whether impugned order passed by the learned Civil Judge Belur on IA.No.I is perverse, capricious and against the principles of law?
- 2) What order?

12. My answer to above point is as follows:

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

REASONS

13. POINT NO. 1: The plaintiff has filed suit for declaration to declare she is the absolute owner of suit schedule property by virtue of sale deed dated 14.07.2000 and for permanent injunction to restrain the defendant from causing interference. The plaintiff has also filed I.A. No.3 to restrain the defendant from causing interference by way of temporary injunction. The said application is dismissed by the trial Court.

Hence, aggrieved by the said order, the appellant/ plaintiff preferred this appeal.

14. It is the argument of the plaintiff is that, the plaintiff has purchased property from father of defendant No.1 Revanna and she is in possession of suit schedule property. The defendant without having any right over the property causing interference hence the plaintiff constrain to file suit for bare injunction and as well as TI application. The plaintiff has also got produced the sale deed and RTC, the said documents is not all considered by the trial Court and erred in dismissing the application. Hence prays to allow the appeal and to grant TI against defendants.

15. On the other hand, it is the argument of the defendants is that the survey report discloses the suit property was encroached by the owner of the Survey No.104/2. Under such circumstances, the plaintiff is not in possession of entire suit property. Hence, the plaintiff is not entitled for the TI as prayed. Hence prays to dismiss the application.

16. On perusal of the pleadings, it is to be noted it is the case of the plaintiff is that she has purchased the suit property from father of defendant Revanna on 14.07.2000. Since from the date of purchase she was in actual physical possession and as per the sale deed khata was also mutated in her name as per M.R. No.104/4. But the defendants without having any right causing interference. It is to be noted, the plaintiff has got produced the sale deed and RTC, which reveals that she has purchased the property from father of the defendant Revanna and accordingly, khata was also transferred in her name.

17. But on the other hand, it is the defence of the defendant No.1 is that, the said sale deed is concocted and created by plaintiff. The plaintiff never been in possession of the suit property. The defendant has also taken contention that the defendant filed suit for partition in O.S. No.72/2022, in the said suit also the plaintiff appeared and filed written statement. The defendant has also challenged the survey sketch before the DDLR in R.A. No.68/2022-23 the said appeal is also dismissed and in the survey sketch it is mentioned defendant are in

possession of the property. The defendant also got produce the said order.

18. On perusal of the pleadings and documents produced by both parties, it is to be noted that the defendant has taken specific contention the sale deed is created. It is to be noted whether sale deed is created or not, that cannot be considered at this stage and it needs trial. Further it is to be noted, the defendant also got produced the survey sketches, in one sketch, it is mentioned 2 guntas was encroached by the owner of Sy.No.104/2. But another sketch dated 19.02.2024 is also produced by defendant. In the said sketch it is mentioned the entire suit property was encroached by defendant.

19. It is to be noted during course of argument the plaintiff argued that the defendants colluding with Surveyor Department created those survey sketches and while doing the survey, the galata was also taken place. The defendants not allowed the Surveyor Department to survey the property. It is to be noted whether survey sketches are created or not cannot be decided at this stage. It also requires trial, but it is to be noted the plaintiff has claiming title

over the suit property. But it is to be noted, the survey sketch reveals that some portion of the suit property is encroached. Hence, whether property encroached or not, that has to be decided before trial court, after conclusion of trial. Hence, when there is a cloud regarding the title and dispute regarding the possession, it is not proper to grant TI in favour of plaintiff. It is not proper to grant TI. Hence by observing all these facts the trial court has rightly rejected the TI application. Hence, this Court is of the opinion that there are no reasons to interfere with the order passed by the trial Court and there are no grounds to allow the appeal. Accordingly, I answer **point No.1 in Negative.**

20. POINT NO.2:- For the above said reasons, I proceed to pass the following:

:O R D E R:

The Miscellaneous appeal filed by appellant/plaintiff is hereby dismissed.

The order passed by the Addl. Civil Judge & JMFC, Belur on I.A.No.III dated 08.04.2024 in O.S. No.465/2023, is hereby confirmed.

The parties to bear their own costs.

(Dictated to the stenographer, transcribed by him, then corrected by me and pronounced in open court on this the **04th day of August 2026**)

**(M.S. SHASHIKALA)
SENIOR CIVIL JUDGE & JMFC,
BELUR**