

KAHV210005662026



IN THE COURT OF THE CIVIL JUDGE AND
JMFC BYADGI

Present: **Sri Basavaraja Thulasappa Nayaka, L.L.M**
Civil Judge & JMFC, Byadgi.

Dated this the 07th day of July, 2026

Original Suit NO.142/2026

Sri.Nagappa S/o Kariyappa Asundi
Age: 48 years, Occ: Agriculture,
R/o: Kadaramandalagi, Tq: Byadgi, Dist: Haveri.

(By Sri.H.S.J., Advocate)
.....PLAINTIFF:

V/S

Sri.Hanumantappa S/o Kariyappa Asundi
Age: 54 years, Occ: Agriculture,
R/o: Kadaramandalagi, Tq: Byadgi, Dist: Haveri.

(By Sri.M.M.K., Advocate)
.... DEFENDANT:

PARTIES TO THE IA NO.I

Sri.Nagappa S/o Kariyappa Asundi
Age: 48 years, Occ: Agriculture,
R/o: Kadaramandalagi, Tq: Byadgi, Dist: Haveri.

VS

Sri.Hanumantappa S/o Kariyappa Asundi
R/o: Kadaramandalagi, Tq: Byadgi, Dist: Haveri.

1.	Date of filing of the IA No.1	09.04.2026
2	Date of file in objection	02.05.2026
3.	Date of order	07.07.2026

ORDER ON IA.NO.I

1. The plaintiff has filed the present application seeking to restrain the defendant from interfering with his possession and enjoyment over the suit property till disposal of the suit.

2. The plaintiff in the affidavit filed along with a application contended that, himself and defendant are own brothers. In the year 2010-11 there was a Apsat Watni in respect of their family property and they are in respective possession of shares allotted to them. The RS.No.308/2, measuring 4 acres, 2 guntas was purchased by their father in his name. In respect of the said property, the plaintiff and defendant entered into Registered Partition Deed on 19.08.2021 before Sub-Registrar Byadgi. In the said partition, the land

measuring 2 acres, 1 gunta situated towards southern side of RS.No.308/2 measuring 4 acres, 2 guntas was allotted to his share and he is in possession and enjoyment of the said property and he has cultivated Coconut Mahagani, Sandalwood tree, Arecanut in the property allotted to his share. The defendant having no right whatsoever over the suit property trying to interfere with his possession. The plaintiff has lodged complaint on 16.02.2026. The plaintiff relied on hand sketch map. Hence, prays to allow the application.

3. After service of summons, the defendant appeared before the Court through counsel and filed objection. The defendant admitted the relationship. The defendant denied that, in respect of family property there was a Apsat Watni in the year 2010-11. The defendant admits that, in respect of RS.No.308/2 measuring 4 acres, 2 guntas, himself and plaintiff entered into partition through Registered Partition Deed. Further admitted that, the land measuring 2 acres, 1 gunta fallen to the share of plaintiff in the said survey

number. The defendant contended that, in the Registered Partition Deed due to typographical error the boundaries wrongly mentioned as towards southern side 2 acres, 1 gunta allotted to the plaintiff. The defendant boundary wrongly mentioned as towards northern side property allotted to the defendant . The boundaries are wrongly mentioned due to oversight. Further contended that, the share of plaintiff is towards northern side of R.S.No.308/2 measuring 2 acres, 1 guntas and towards southern side land of the said survey number measuring 2 acres, 1 guntas allotted to defendant. The plaintiff and defendant are in possession of their respective shares as stated above. The plaintiff and defendant are not in possession as per the boundary mentioned in the Partition Deed. The defendant approached the plaintiff to make correction in the boundaries of the Partition Deed but the plaintiff has not bothered. In the land allotted to the defendant i.e., towards southern side he has left 10 feet land for the use of cattle, the same is mentioned in the Partition Deed. The plaintiff has been using the said 10 feet passage till today. The

defendant contended that, the plaintiff taking advantage of wrong boundaries in the Partition Deed has filed the present suit. The defendant has grown Coconut Mahagani, Sandalwood tree, Arecanut in his land i.e., southern side of RS.No.308/6. Further denied all the averments made in the plaint. Further contended that, now the plaintiff only trying to interfere with his possession over the property allotted to his share i.e., his southern side land. Hence, prays for dismissal of the application.

4. Heard, arguments from both side, the following points have arisen for my consideration;

P O I N T S

- 1.** Whether the applicant/plaintiff has made out a prima-facie case for the grant of the TI as prayed?
- 2.** Whether the balance of convenience lies in favor of plaintiff?
- 3.** Whether irreparable loss would be caused to the applicant/plaintiff. If the

instant interlocutory application is not allowed?

4. What order ?

5. My answer to the above points are as under;

Point No1 : In the Negative,

Point No.2: In the Negative,

Point No.3: In the Negative and

Point No.4 : As per final order for the following;

REASONS

6. Point No.1 to 3:- These points are taken together for common discussions and to avoid the repetition of facts.

It is case of the plaintiff that, himself and defendant are own brothers .They have entered into Registered Partition Deed in respect of RS.No.308/2, measuring 4 acres, 2 guntas. In the said land towards southern side land measuring 2 acres, 1 guntas allotted to the plaintiff and towards northern side land measuring 2 acres, 1 guntas allotted to the defendant. The plaintiff contended that, he has grown Coconut Mahagani, Sandalwood tree, Arecanut.

On the other hand, the defendant admitted the relationship. Further admitted that, himself and plaintiff entered into Partition Deed in respect of RS.No.308/6 the land measuring 4 acres, 2 guntas. The defendant contended that, boundaries not correct, by oversight wrongly mentioned in the Partition Deed. The defendant contended that, towards southern side of RS.No.308/2 land measuring 2 acres, 1 guntas allotted to him. Towards northern side of RS.No.308/2 allotted to the plaintiff.

7. The plaintiff counsel in support of his contention relied on RTC, Partition Deed. The defendant in support of his contention relied on bills and RTC.

8. The plaintiff counsel in support of his contention relied on the Partition Deed and argued that as per the Partition Deed, it is clear that towards the southern side of RS.No.308/2 the share of the plaintiff measuring 2 acre 1 guntas was allotted. The land of the defendant towards northern side of R.S.No.308/2. Further relied on the RTC.

The plaintiff counsel further argued that, the defendant has not challenged the Partition Deed till today. The plaintiff counsel further argued in the boundaries of plaintiff towards southern side boundaries is wrongly mentioned as Shivappa Cooli instead of Prasanna Kudapali property.

9. The defendant counsel argued that, the boundaries mentioned in the Partition Deed is not correct. Towards southern side of RS.No.308/2 land allotted to the defendant. In this regard, relied on the survey sketch details and argued that, in the said document wherein clearly mentioned the boundaries of the property allotted to the plaintiff and defendant. As per the said documents block No.1 was allotted to plaintiff and block No.2 allotted to defendant. In the block No.1 boundary towards the southern side shown as block No.2 i.e., the land allotted to the defendant in the RS.No.308/2. Further argued that, in the Partition Deed also sketch number is mentioned. It is clearly shows that, the land allotted to the defendant was towards southern side of RS.No.308/2. Further relied on

document i.e., statement before the Surveyor and argued that, the plaintiff and defendant have shown their shares to Taluka Surveyor to measure the property and argued that, the plaintiff and defendant have sign the said statement. The defendant further relied on the bills to show he has grown coconut plants etc.

10. It is pertinent to note that, it is not in dispute that, the plaintiff and defendant are own brothers. There was a partition between the plaintiff and defendant in respect of RS.No.308/2, measuring 4 acres, 2 guntas through registered partition deed. Further it is not in dispute that, in the said survey number each have got 2 acres, 1 guntas. The plaintiff claims that, towards southern side of RS.No.308/2 land measuring 2 acre 1 guntas allotted to him. On the other hand, the defendant claim towards the southern side of R.S.No.308/2 land measuring 2 acre 1 gunta allotted to him. On perusal of the registered partition deed in respect of R.S.NO.308/2 in respect of share of defendant towards the southern side shown as land measuring 2 acre 1 guntas of plaintiff. In respect of share

of defendant northern side shown as plaintiff. It is pertinent to note that, on perusal of the sketch, which is also part of the partition deed, wherein, block no.1 shown as land measuring 2 acre 1 guntas allotted to the plaintiff and the block no.2 shown as land measuring 2 acre 1 allotted to the defendant. In the boundaries detailed in the said sketch of block no.1 wherein towards southern side shown as block no.2 I.e the land allotted to the defendant. The defendant further rely on the statement made before surveyor. On perusal of the boundaries mentioned in the partition deed and the sketch are different. Partition deed shows as towards the southern side of R.S.No.308/2 allotted to the plaintiff. The sketch shows as towards southern side allotted to the defendant. It is pertinent to note that the sketch is also part of the partition deed. In the partition deed, the plaintiff claim that towards the southern side of his boundary is wrongly mentioned as Shivappa Kooli instead of Prasanna Kudapali. The plaintiff on the one hand rely on the partition deed and claim that the boundaries are correct and on the other hand, contend that towards the southern side of his

boundary wrongly mentioned. As stated supra, in the sketch which is the part of the partition deed, towards the southern side shown as share allotted to the defendant. Though, the plaintiff claim that the defendant has not challenged the partition deed. It is pertinent to note that, the plaintiff also has not made any efforts to make correction in the sketch. As there is a variation in the boundaries in the partition deed and the sketch at this stage only based on the boundaries mentioned in the partition deed it cannot be held that, the suit property allotted to the share of the plaintiff. Hence, I am of the opinion that, at this stage the plaintiff has not made out prima facie case, balance of convenience and irreparable hardship in his favor. Hence, I answer the **Point No.1 to 3 in the Negative.**

11. Point No.4:- In view of the above discussion, I proceed to pass the following:-

O R D E R

IA-No.I filed by the plaintiff U/o
XXXIX Rule 1 and 2, R/w Sec.151 of CPC.,
is hereby dismissed.

No order as to costs.

(Dictated to stenographer typed by her, corrected by me, then pronounced in the open court on this the **07th day of July, 2026**)

Sd/-
(BASAVARAJA THULASAPPA NAYAKA)
Civil Judge & JMFC,
Byadgi.

