

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
SEDAM

PRESENT:

Sri SAGAR GURUGOUDA PATIL
B.A., LL.B(Spl.)
Senior Civil Judge & JMFC, Sedam

Dated: 05-01-2026.

OS No.148/2024.

Plaintiff/s :
Bhimaraya and Others
(Smt/Sri S.S.A. Advocate)

VS

Defendant/s :
Hashappa and Others
(D.2 Smt/Sri N.R. Advocate)
(D.3(a to f), D.4(a, b), D.5, D.6, D.15 &
D.16 Smt/Sri P.D. Advocate)
(D.17 Smt/Sri H.S.R. Advocate)
(D.19 Smt/Sri T.V.P. Advocate)
(D.20 (a)(b), D.18 Exparte)

RANK IN IA 1

Bhimaraya and Others : Applicant/s/Plfts

VS

Hashappa and Others : Opponent/s/Defts

i.	Provision under which the application is filed	U/O 39 Rule 1 & 2 of CPC
ii	Relief sought for	Suit for declaration

		and injunction
iii	The date on which the application is filed	09-12-2024
iv	Number of application	One
v	The date on which the objections are filed by different opponents	02-06-2025
vi	The date on which the orders were passed on the said application	05-01-2026

ORDERS ON IA 1
Under Order 39 rule 1 & 2 of CPC

The plaintiffs/applicants have filed this application under Order 39 Rule 1 & 2 of CPC and sought to restrain the defendant No.1(a) (b) by way of temporary injunction from alienating the suit property and receiving compensation amount till disposal of the suit.

2) The plaintiff No.1 has sworn to an affidavit in support of IA and stated that the suit land was owned and possessed by the father of the plaintiff by name Monappa S/o Ramchandrapa and he died around the year 1982-83 leaving behind him the plaintiffs and defendants. The plaintiffs and defendants succeeded the suit land and they are in joint possession of th suit property. The defendants are not concerned to the suit property. The defendant No.17 acquired the suit land through defendant No.18. In the month of July/August-2024 the plaintiffs came to know that the defendant No.1 behind the back and without knowledge of

the plaintiffs and their father got entered his name in the ROR of the suit land . The plaintiffs also came to know that the defendant No.1 to 15 and their predeceases made false claim behind the back of the plaintiffs and their father before the land tribunal and also in writ petition and writ appeal.

3) It is submitted that after knowing the above facts the plaintiffs went to office of defendant No.18 in the month of July/August-2024 and came to know that defendant No.16 is making payment of compensation to defendant No.1(a) & (b) for acquisition of the suit land and hence plaintiffs got issued notice on 09.08.2024. The deceased defendant No.1 or his Lrs are not concerned to the suit land. Their names were entered behind the back illegally. Since the year 1954 to 1962-63 the name of father of the plaintiffs Monappa was appeared in the revenue records. The father of defendant No.3 deceased Shivappa claimed himself as tenants of the suit land. The claims of fathers of defendant No.2 and 3 were rejected as per the orders of the tribunal and High court records.

4) It is submitted that on the request of sister of deceased defendant No.1-Mallamma who was close to Monappa the defendant No.1 was allowed for a few years to cultivate portion of land I..e., 04 acres on the Eastern side of the suit property for the livelihood of himself and his sister Mallamma. The defendant No.1 during the lifetime of

Monappa cultivated the said 04 acres of land for about 5 to 6 years long back around the year 1960 to 1964-65 and took proceeds and thereafter discontinued cultivation and getting proceeds of the said land. But it seems behind the back the name of defendant No.1 was illegally entered in the revenue records and Pattedar and subsequently name of defendant No.2 was entered as tenants.

5) It is submitted that the defendant No.1 claimed to be the owner of the suit land by virtue of WP No.100323/20013 (LR) dated: 07.08.2018 preferred by him before the Hon'ble High Court of Karnataka Kalaburagi Bench. Recently defendant No.17 and 18 were acquiring the lands and hence plaintiffs looked into the records through literate persons and came to know about illegal revenue entry, the High Court proceedings and illegal acts of defendants. Therefore, the plaintiffs issued legal notice on 09.08.2024 to defendant No.18 calling upon them not to pay any compensation in respect of the suit land to LRs of defendant No.1 or anybody.

6) It is submitted that none of the defendants have any right over the suit land. The revenue entries in the names of deceased defendant No.1 and alleged tenant Shivasharanappa is illegal and void. The father of plaintiffs deceased Monappa or the plaintiffs did not sell the suit property in favour of defendant No.1. They never executed

any registered deed. The revenue entries in the names of deceased defendant No.1 and defendant No.2 do not confer title and the same are void. The defendants deliberately changed the name of plaintiffs father as Mogalappa Batagera and in fact there is no such person by name Mogalappa S/o Ramchandrappa Batagera in Hangnalli village.

7) The plaintiffs being Class-I heirs of the original owner of the suit property deceased Monappa acquired right, title and possession over the suit property and they are entitled to get enter their names in the revenue records of the suit property. The plaintiffs are in possession of the suit property as its exclusive owners. The defendant No.17 and 18 in collusion with defendant No.1(a) and (b) and defendant No.2 to 16 are orally denying the right, title and interest of the plaintiffs over the suit property. Hence, prays to allow the I.A.

8) After service of suit summons, the defendant No.1(a) and (b) appeared through their counsel and find their written statement. IN the written statement they have admitted that land measuring 16 acres 16 guntas in Sy.No.96 of Hanganhalli village was owned and possessed by one Monappa S/o Ramchandrappa Badiger. He died about 35 years back. They have denied that the plaintiffs succeeded the suit land as its owners and possessors. They have denied rest of the plaint averments and contended that the suit is barred by the law of limitation. They have submitted

that deceased Monappa S/o Ramachandrappa R/o Hanganhalli Tq:Sedam has sold the suit land Sy.No.96 measuring 16 acres 16 guntas to the deceased Hashappa S/o Sabanna R/o Sedam for consideration amount of Rs.1000/-. Said Monappa has delivered the possession of the suit land in favour of Hashappa S/o Sabanna i.e., deceased defendant No.1. Further said Monappa S/o Ramchandrappa father of plaintiff has executed unregistered sale deed on 19.12.1961 on the date of receipt of consideration amount. Since from 19.12.1961 deceased defendant No.1 Hashappa S/o Sabanna entered into possession of the suit land and he was cultivating the suit land personally and enjoying the suit land under. Unregistered sale deed without any interruption, with animus possession, openly denying the title of Monappa with the knowledge Monappa during his life time and it is also well within the knowledge of plaintiff. Therefore after the 12 years period from the date of 19.12.1961 the deceased defendant No.1 has perfected his title by way of adverse possessions. The entries of ROR well within the knowledge of Monappa during his life time and also well within the knowledge of plaintiffs and all others villagers. Therefore suit is barred by law of limitation.

9) Further long standing entries of ROR are having presumptive value attached to it and since 1963 onwards the

name of Hashappa appearing column No.19 and 12 of ROR. The said entries of ROR have not challenged before any court or any revenue authorities till today. Therefore the entries of ROR are true and correct and legally binding on the plaintiffs.

10) The plaintiff or their father for a long period more than 60 years slept over their rights if any, Hence plaintiffs are not entitled to the relief sought for on the principles of estoppels by way of conduct. Further plaintiffs have extinguished their rights if any by effective of time.

11) It is submitted that plaint is liable to be rejected U/O 7 rule 11(a) and (d) of C.P.C. All the defense taken in the plaint incorrect and illusory and not known the date of possession and illusory, cause of action are false hence denied specifically. The plaintiffs on illusory cause of action filed this suit taking false grounds in collusion with other defendants. Hence denied specifically.

12) The deceased Hashappa S/o Sabanna filed W.P.100232/2013 filed before the Hon'ble High Court of Karnataka Kalaburagi bench and writ petition is allowed and order of land tribunal 8/1/2013 granted of occupancy rights in favour of Hashappa name of Siddanna is quashed. The Tribunal proceedings pending from last more than 40 years. It is also well within the knowledge of plaintiffs and all other villagers. Hence, prays to dismiss the I.A.

13) On the basis of the above facts the following points arise for my consideration:

- 1) Whether the plaintiffs have made out prima facie case?
- 2) Whether the balance of convenience lies in favour of the plaintiffs?
- 3) What order?

14) Perused the records. Heard arguments.

15) My answer to the above points are as under:

- 1) IN THE AFFIRMATIVE
- 2) IN THE AFFIRMATIVE
- 3) AS PER THE FINAL ORDER

for the following:

REASONS

16) **POINT No.1 and 2:** Since these two points are inter related they are taken up together for common discussion to avoid repetition of the facts.

17) It is specific case of the plaintiffs that their father Monappa S/o Ramchandruppa Badiger was the exclusive owner and in possession of the suit property. He died in the year 1982-83. After his death the plaintiffs being his sons and daughters succeeded the suit property. Since then they have been in possession of the suit property. In the month of July/August-2024 the plaintiffs came to know that the

deceased defendant No.1 behind the back of the father of plaintiffs and plaintiffs and without their knowledge got entered his name in the revenue records of the suit property. The name of defendant No.1 was entered in the revenue records as Pattedar illegally and subsequently name of defendant No.2 was entered in ROR as she had tenant. The defendants No.17 and 18 in collusion with defendants No.1(a) (b) and defendant No.2 to 16 have denied title and possession of the plaintiffs over the suit property and claiming that the suit land is acquired by defendant No.18 for defendant No.17. The defendant No.1(a) and (b) are claiming title and possession over the suit land.

18) On the other hand the defendant No.1(a) and (b) in their written have admitted that the father of the plaintiffs late Monappa was owner and possessor of the suit property. They have contended that the said Monappa executed unregistered sale deed on 19.12.1961 and sold the suit property for a sale consideration amount of Rs.1000/- to the deceased Hashappa S/o Sabanna i.e., defendant No.1. Since then the deceased defendant No.1 had been in possession of the suit property since 19.12.1961 and thereby perfected his title to the suit property by way of adverse possession.

19) It is not in dispute that the father of the plaintiffs Monappa was the owner and possessor of the suit property.

The Khasra pahanies of the year 1954-55, 1955-1958, 1962-63 show that the suit property was standing in the name of Monappa. The Form No.7 of the year 1956-57 shows that suit property was standing in the name of the said Monappa. The above documents reveal that originally the suit property was belonged to father of the plaintiffs Monappa and he was in possession of the suit property.

20) The RTC extracts from the year 1963-64 to 1970-71 shows that during the said period suit property was standing in the name of the deceased defendant No.1 and in column No.10 mode of possession is shown as purchaser. Therefore, it appears that the name of defendant No.1 was entered in the RTC extracts of the suit property on the basis of the alleged unregistered sale deed dtd: 19.12.1961. The defendant No.1(a) and (b) have contended that their father acquired title to the suit property through unregistered sale deed dtd: 19.12.1961 and their father purchased the suit property for a sale consideration amount of Rs.1000/-. It is to be noted that, it is settled law that any sale transaction involving consideration of more than Rs.100/- should be under a registered instrument as per Sec.17 of Registration Act. In this case as per the defendant No.1(a) and (b) their father purchased the suit property for a sale consideration of Rs.1000/-. Therefore, it was require to be register. But the same is not registered. Therefore, it can be said that under

the unregistered sale deed datd: 19.12.1961 no right title, interest was transferred in favour of the deceased defendant No.1. Therefore, the defendant No.1(a) and (b) cannot claim either title or possession over the suit property on the basis of unregistered sale deed dated: 19.12.1961.

21) The defendant No.1(a) and (b) have further contended that their father purchased the suit property under unregistered sale deed dtd: 19.12.1961 and since then he was in possession of the suit property and thereby he acquired title to the suit property by way of adverse possession. In this case it is pertinent to note that the plaintiffs are claiming that their father was the original owner and possessor of the suit property and he died leaving behind the plaintiffs and after his death the plaintiffs succeeded the suit property and they are in joint possession of the suit property. The defendant No.1(a) and (b) have denied possession of the plaintiffs over the suit property and claiming that after the death of their father they are in possession of the suit property. The RTC extracts show that from the year 1971-72 to 1999-2000 show that the name of defendant No.1 was deleted and name of one Siddanna S/o Sharanappa was entered in the RTC extracts of the suit property. The order of the land tribunal dtd: 08.1.2013 shows that the land tribunal granted the suit property to defendant No.2 who is heir of the said Siddanna. The order of the

Hon'ble High Court of Karnataka Kalaburagi Bench in WP No.100232/2013 (LR), wherein the Hon'ble High Court set aside the order of the land tribunal Sedam dtd: 08.01.2013. It is to be noted the defendant No.1 Hashappa had filed this writ petition claiming himself as owner of the suit property and the said petition was allowed. It is pertinent to note that in the proceedings before the land tribunal and the Hon'ble High Court either the plaintiffs or their father were not parties. Therefore, the orders passed in the said proceedings do not bind the plaintiffs.

22) In view of the above discussion it becomes clear that there is title dispute with regard to the suit property in between the plaintiffs and defendant No.1(a) and (b). Further both are claiming that they are in possession of the suit property. Therefore, the right title interest and the possession of the parties to the suit requires to be decided only after the full fledged trial. At this stage it cannot be concluded that who are the owners and who are in possession of the suit property. All these issues can only be decided only after the trial. Therefore, at this stage the plaintiffs have made out prima facie case.

23) As discussed above the right title and possession of both the parties over the suit property is in dispute and the same has to be decided only after the trial. Therefore, it is very much necessary to preserve the suit property as it is till

conclusion of the trial. The suit property needs to be protected until conclusion of the trial. If during pendency of the suit the defendant No.1(a) and (b) alienate the suit property to third parties it will cause irreparable loss the untold hardship to the plaintiffs. On the other hand if IA is allowed no loss or hardship would be caused to the defendant No.1(a) and (b) as they also get an opportunity to prove their case. Therefore, the balance of convenience lies in favour of the plaintiffs. Hence, I answer point No.1 and 2 in the Affirmative.

24) **POINT No.3:** For the foregoing reasons, the following:

ORDER

The application filed by the plaintiffs under Order 39 Rule 1 & 2 of CPC is hereby allowed.

The defendant No.1(a) and (b) are hereby restrained by way of temporary injunction from alienating suit property and receiving compensation amount paid for the acquisition of the suit land till disposal of the suit.

(Dictated to the Stenographer directly on computer, the same revised, corrected and pronounced in the open court on this the **5th day of January 2026.**)

(SAGAR GURUGOUDA PATIL)
Senior Civil Judge & JMFC, Sedam.