



**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
VIRAJPET.**

Dated this the 13th day of July, 2026.

:PRESENT:

Sri.Manjunatha R., B.A.L.,LL.B.,
Senior Civil Judge & JMFC, Virajpet.

M.A.No.9/2025

APPELLANTS:

1. Sri. K.Balakrishna Rao,
S/o. Late Srinivasa Rao,
Aged 70 years.

2. Smt. Parvathi,
W/o.K.Balakrishna Rao,
Aged 60 years.

3. Sri. Bharath,
S/o.K.Balakrishna Rao,
Aged 34 years,
All are R/at, Badaga-
Banangala village,
Virajpet Taluk, Kodagu.

(By Sri.B.S.Pushparaj, Adv.,)

-Vs-

RESPONDENT:

1. Smt. Kavya B. Rao,
W/o. Kishore Kumar. P,
Aged 34 years,
R/o. Peruvaje house,
Peruvaje village and post,
Sullia Taluk.



2. Smt. Kalpitha B.Rao,
W/o. Dr. Amith Kumar Rao,
Aged 33 years,
R/o. Shasan Apartment,
G1, besides Samruddhi
residency, Kuttar Junction,
Kuttar Padav, Mangalore.

(By Smt. Vidya C.P. Adv.,).

:J U D G M E N T:

This Miscellaneous appeal is preferred by the defendants calling in question the order dated 08-12-2025 on I.A.No.II in O.S.No. 114/2024 on the file of the Prl.Civil Judge and JMFC, Virajpet ('Trial Court' for short), whereby, the application filed by the plaintiffs under Order XXXIX Rules 1 and 2 Read with Section 94(e) and Section 151 of CPC has been allowed and defendants have been restrained from interfering with the peaceful possession and enjoyment of the suit schedule property.

2. The appellants are defendants and respondents are plaintiffs before the Trial Court. For the sake of convenience, both the parties will be referred to in their ranks as assigned before the Trial Court.

3. The plaintiffs instituted suit for Permanent injunction in respect of suit schedule property. Along with the suit,



the plaintiffs filed an application I.A.No.II Order XXXIX Rules 1 and 2 Read with Section 94(e) and Section 151 of CPC before the Trial Court seeking an order of Temporary Injunction against the defendants restraining them from interfering with their peaceful possession and enjoyment of the suit schedule property.

4. The reasons ventilated by the plaintiff No.1 in the affidavit accompanying to the application are that, she and plaintiff No.2 are the joint owners of suit schedule property and they are in actual possession and enjoyment over the same and its revenue records standing in their joint names. The defendants have started to ask possession of the suit schedule property and also persuading to hand over its possession to them. In the year 2024, there was good coffee crop and same become ready for harvest, probably the defendants become an eye-sore for the yield and has made them greedy towards the suit schedule property. The defendants have got their own vast immovable agricultural properties at Bandaru village of Belthangady Taluk. The defendants have no manners of right over the suit schedule property and they have no manners of rights to claim its possession. Hence, the plaintiffs have refused all their demands. On 15.12.2024, the plaintiff No.1 and her husband went to the suit schedule property for cultivation and other works



and also to talk with workers and to give instructions to them. On that day during afternoon, the defendants have came to the suit schedule property since they are close relatives, plaintiff No.1 talked with the defendants cordially. But, the defendants started to ask possession of the suit schedule property. But the plaintiffs again refused the demands of the defendants. For which, the defendants have jointly and severally raised their voice and started to scold them and threatened that they will come with more men and will take forcible possession of the suit schedule property. Due to which, on 16.12.2024, the plaintiffs filed a complaint to the Police, but they have stated that it is a civil dispute and suggested to approach Civil Court to redress grievances. The repeated acts and threats of the defendants is eminent and still persisting. The plaintiffs have made out prima-facie case and balance of convenience also lies in their favour. In order to perverse the status quo of the suit schedule property, the restraint order against the defendants is very much necessary. If the temporary injunction is not granted, it will cause hardship, which cannot be compensated in terms of money. Per contra, no hardships will be caused to the defendants by granting the temporary injunction. Hence, the plaintiffs constrained to file an application along with suit. Accordingly, prays to allow the application.



5. On the other hand, the defendants resisted the application by filing objection, wherein it is contended that the plaintiffs are not in possession of suit schedule property. The plaintiffs mother Swarnagowri is the sister of defendant No.1 and she got married Sri. Babu Rao of Badaga Banangala village, Virajpet Taluk. On 07.07.1998, the said Babu Rao along with his two friends were drowned in the flooded Cauvery River at Karadigodu village near Siddapur, because of the flash floods of River Cauvery gushed into the car in which Babu Rao and two of his friends were traveling to Karadigodu village. Later the dead body was secured after two days at Valnur-Thyagathuru village at a distance of 10 km., in the same Kavery river. At the time of above incident, the wife of late Sri.Babu Rao namely Smt. Swarnagowri was about 32 years old and their children were aged 5 and 3 ½ years and both were nursery going children. Due to sudden demise of late Babu Rao, the entire family plunged into shock and sorrow and all the family members became helter and skelter and were plunged into confuse in bad shock. Thereafter, at the persuasion of Smt. Devakamma the mother-in-law of Smt.Swarnagowri and two of her sons and also elders and relatives of the family such as daughters and their husbands, the defendant No.1 was forced to abandon his activities in Bandaru village of Belthangady Taluk and came down to Badaga-Banangala



village. As a security, the defendant No.1 demanded the right over the suit schedule property, to look after it. At that time Smt.Devakamma assured to the defendant No.1 that after obsequies ceremony of deceased Babu Rao a meeting or Panchayath will be organized and documentation will be made in his favour. Further they delivered the physical possession of suit schedule property in the presence of villagers on 10.07.1998. The sister of defendant No.1 assured that necessary documents will be executed in his favour. Upon the assurance made by the plaintiffs mother and grand mother, the defendant No.1 started to lead life with his family at the house situated in the suit schedule property.

6. Further it is contended that, the defendant No.1 started to work as Archaka in the year 1998 itself at Aishwarya Ganapathy Temple of Maldare village to augment the income for the running of family. Further he joined his daughter to Lourds Convent at Polibetta. Thereafter the defendant Nos.1 and 2 became the members of Vyavasaya Seva Shahakara Sanga, Maldare. Further the defendants and their daughter Smt. Bhavashree have obtained their Ration cards from the Tahsildar, Virajpet, Voter ID Cards and Aadhaar cards by showing their residential address at Badaga-Banangala village. The plaintiffs have concealed the material facts



and have not come before the Court with clean hands. As such, an equity cannot be extended to them. Hence, prays to dismiss the application.

7. The Trial Court after hearing both sides has formulated 3 points with regard to prima-facie case, balance of convenience and regarding irreparable injury. The Trial Court based on the records answered Point Nos.1 to 3 in the Affirmative, consequently allowed the I.A.No.II.

8. Being aggrieved by the impugned order passed on I.A.No.II by the Trial Court, appellants have preferred this appeal on the following grounds:-

9. The impugned order is not maintainable both in law and on facts and it is erroneous, perverse and capricious. The order passed by the Trial Court is liable to be dismissed. The Trial Court has not considered the lawful possession of the appellants in the suit schedule property and passed the order in a hurried manner. The Trial Court has not considered the documents filed by the appellants in its perspective. The Trial Court order is not maintainable and it is liable to be rejected. On these grounds prays to allow the appeal and set aside the order passed by the Trial Court on I.A.No.II and thereby dismiss the said application.



10. In pursuance of notice, the respondents entered their appearance through their counsel.

11. Heard the learned counsel for appellants and respondents and perused the records.

12. The following points arise for the consideration of this Court are :-

1. Whether the appellants prove that the impugned order passed by the trial Court on I.A.No.II dated 08.12.2025 in O.S.No.114/2024 is perverse, capricious and calls for interference of this Court ?

2. What order ?

13. The findings of this Court on the above points are as under :-

Point No.1 :- In the Negative

Point No.2 :- As per the final orders
for the following:

-:R E A S O N S:-

14. Point No.1:- It is well settled principle of law that even if on the pleadings and documents produced by the parties it is possible to come to a different conclusion than one arrived by the trial Court is not a ground to interfere with discretionary order of the trial Court. In other words this Court can interfere with the orders of the trial Court



only if an order of the trial Court is perverse, vexatious and capricious and not on the mere ground that another view is possible on the pleadings and documents of the parties. This position of law has been laid down by the Hon'ble Supreme Court of India in the decisions reported in 1990 Supp. (1) SCC 727 (The Wonder Limited and another V/s Antox India Pvt.Ltd) 1960 SCR (3) 713 (The Printers Mysore Pvt Ltd., V/s Pothan Joseph) and the Hon'ble High Court of Karnataka in the decisions reported in ILR 1998 KAR 419 (Basavaraj Shivaramgouda Patil Vs Mahesh) & ILR 1992 KAR 554 (Kuppuraj Vs Bharat Gold Mines Ltd.,). Therefore, the powers of this Court to interfere with the discretionary orders of the trial Court are restricted and limited in nature. In this background it is to be discussed whether the order of the trial Court is liable to interfered with or not.

15. As borne out from the pleadings of both the parties it is an undisputed fact that, suit schedule property was allotted to the share of plaintiffs mother under registered partition deed dated 10-11-1999. The mother of plaintiffs died intestate on 27-12-2015 leaving behind the plaintiffs as her legal heirs to succeed her estate. Further it is an undisputed fact that plaintiffs mother is none other than the sister of defendant No.1. The plaintiffs claiming their ownership and possession over the suit schedule property



by way of inheritance. The defendants denied the title and possession of plaintiffs over the suit schedule property. Per contra they set up their ownership and possession over the suit schedule property by virtue of adverse possession. It is well settled principle of law that while considering the application for temporary injunction, the Court cannot hold mini trial of the case and only based on the prima-facie materials placed on record has to dispose of the application for temporary injunction.

16. The learned counsel appearing for the appellants has argued vehemently by reiterating the contentions urged in the appeal memo and further relied on the documents produced by the appellants. Further argued that the order passed by the trial Court is erroneous and prays to allow the appeal by set a side the order passed by the trial Court. Per contra the learned counsel appearing for the respondents has argued vehemently in which she has reiterated the contentions taken by the plaintiffs before the trial Court and sought for dismissal of appeal.

17. In the light of the arguments canvassed by the learned Counsels for the respective parties and rival contentions urged by the parties and documents produced by them, it appears that the plaintiffs filed the suit against the defendants seeking for the relief of Permanent



Injunction claiming that they are the joint owners and in joint possession and enjoyment over the suit schedule property and the defendants without having any right, title or interest over the suit schedule property causing interference to their peaceful possession and enjoyment over it. Through the IA.No.II plaintiffs praying to restrain the defendants from causing interference to their peaceful possession and enjoyment over the suit schedule property. The plaintiffs are claiming their ownership and possession over suit schedule property through their mother, since after death of their mother, she had acquired suit schedule property under registered partition deed had taken place between the family members. The mother of plaintiffs died intestate. The plaintiffs being the class-I legal heirs claiming their right and possession by way of inheritance as well as a co-parceners. The defendants are seriously disputed the ownership as well as possession of plaintiffs over the suit schedule property. Per contra they are claiming their title and possession over the suit schedule property by virtue of adverse possession.

18. The plaintiffs to prove the partition as alleged by them, they have produced copy of partition deed and also produced the mutation register extract. Those documents clearly indicates that the suit schedule property was



ancestral property of plaintiffs father and after his demise the family partition had taken place and under the registered partition deed dated 10-11-1999 the suit schedule property was allotted to the share of plaintiffs mother and after her demise the revenue records of the suit schedule property got mutated in the joint names of plaintiffs by way of inheritance. Though the defendants admitted the ownership of plaintiffs mother over the suit schedule property, but they denied the ownership and possession of plaintiffs over it. The defendants never disputed the relationship of plaintiffs with deceased Swarnagowri and Babu Rao. During the life time of deceased Swarnagowri, she did not execute any documents infavour of defendants in-respect of suit schedule property. Further the defendants did not produce any documents to show that the possession of suit schedule property was handed over to them by the plaintiffs mother through documentary proof. The plaintiffs never admitted the possession of defendants over the suit schedule property as averred by them.

19. The dispute between the parties clearly discloses competing claims of title and possession, which requires adjudication in a full fledged trial. The law is well settled that,



(i) a temporary injunction order can be granted when there is a serious dispute to be tried in the Court

(ii) there is a probability of the plaintiffs being entitled to the relief asked for in the plaint. The Court's interference is necessary to protect the party from the injury.

(iii) The comparative hardship and inconvenience that is likely to occur while withholding the injunction order will be of greater than that would be likely to be acted from granting it.

20. At the stage of considering the application under Order XXXIX Rules 1 and 2 CPC, the Court is required to examine whether a *prima facie* case, balance of convenience and irreparable injury are made out. The Trial Court on appreciation of the material has recorded a finding that:

- i. There exists serious triable issues between the parties
- ii. The plaintiffs have established a *prima facie* case based on a registered partition deed dated 10.11.1999.



iii. The balance of convenience lies infavour of protecting the existing state of affairs and

iv. Denial of injunction would result in irreparable injury.

21. The scope of interference in an appeal under Order XLIII Rule 1 of CPC is limited. Unless the order of Trial Court is shown to be perverse, arbitrary or suffering from illegality, the appellate Court would not interfere with the discretionary order. In the present case, the Trial Court has applied the settled principles of law governing the grant of temporary injunction and has exercised its discretion Judicially. This Court does not find any perversity or illegality warranting any interference by this Court. Accordingly, this Court answered Point No.1 in the **“NEGATIVE”**.

22. Point No. 2:- For the aforesaid discussion on point No.1, this Court proceeds to pass the following:-

:ORDER :

Miscellaneous Appeal filed by the Appellant/defendants is hereby dismissed.



The order passed by the Learned Prl. Civil Judge and JMFC, Virajpet on I.A.No.II in O.S.No.114/2024 dated 08.12.2025 is hereby confirmed.

Under the facts and circumstances of the case both parties bear their own costs.

Office is hereby directed to send the copy of the judgment to the Trial Court.

(Dictated to the Stenographer, transcribed and computerized by her, transcript revised, corrected and pronounced by me, in the Open Court, dated this the **13th** day of **July, 2026**).

Sd/-xxx
(Manjunatha R.)
Senior Civil Judge & JMFC,
Virajpet.