

KAMD200005692025



Presented on : 22-04-2025

Registered on : 24-04-2025

Decided on : 09-06-2026

Duration : 1 years, 1 months, 17 days

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

:PRESENT:**SRI. DEVARAJU.H.R. BA., LLB.,**

I ADDL.SENIOR CIVIL JUDGE & JMFC,

K.R.PETE.

DATED THIS THE 09th DAY OF JUNE-2026**M.A.NO.16/2025**

Appellant/S:
(Defendant/s
in O.S.315/2019)

1. Sri. Nagendrashetty,
S/o Late Javarayi @
Javarashetty,
aged about 66 years,

2. Sri. Yogesha
S/o Nagendrashetty,
aged about 38 years,

3. Sri.Ganesha
S/o Nagendrashetty,
aged about 36 years,

4. Smt. Rani
S/o Nagendrashetty,
aged about 31 years,

All are R/o
Beeruvalli village,
Akkihebbalu hobli,
K.R.Pete taluk,
Mandya district.

(By.Sri.**RMD.**, Adv)

V/s

Respondent/s: 1. Sri. Devarajashetty
(Plaintiff/s S/o Late Ningashetty,
in O.S.315/2019) aged about 56 years,

2. Sri. Lokeshashetty,
S/o Late Ningashetty,
aged about 45 years,

Both are R/o
Beeruvalli village,
Akkihebbalu hobli,
K.R.Pete taluk,
Mandya distrct.

(By. Sri. **BMJ.**, Adv)

: O R D E R S :

This Miscellaneous Appeal filed by the appellant Under Order 43 Rule 1 CPC by challenging the order dated 18.12.2023 passed by the Hon'ble II Civil Judge and JMFC, K.R.Pete on IA No.10 filed under order XXXIX Rule 1 and 2 of CPC in O.S. No.315/2019.

SCHEDULE

The property bearing Sy. No. 78/02 measuring 02 acre 19 guntas situated at Sakshibeedu village, Akkihebbalu hobli, K.R.Pete taluk, Mandya district bounded on

East by: **Doddegowda's land (Now
B.M. Rangegowda's land)**

West by **Ningashetty's land and Railway
Road,**

North by **1st defendant's land,**

South by **Government Road**

2. The present appellants were the defendants and present respondents were the plaintiffs in original suit before trial court. The parties are referred to as they are referred to before the trial court in original suit.

3. The brief facts leading up to this appeal are as follows: The plaintiffs have filed IA No. 10 U/Order 39 Rule 1 and 2 of CPC for seeking temporary injunction order against the defendants to restrain them from alienating the suit schedule property and mutate the katha into the name of defendants in the interest of justice till pending disposal of the present suit.

4. In annexed affidavit plaintiff No.1 namely Sri. Devarajashetty S/o Late Ningashetty has stated that he has filed suit for declaration and permanent injunction against the defendants, he had acquired the said property through sale deed. Initially katha has been mutated into the name of his mother. Now he is in possession of the suit schedule property. Prior to filing of

the suit defendants have filed R.Mis No. 27/2019-2020 against the plaintiffs by questioning the katha, they could not able to appear before the Assistant Commissioner, Pandavapura in R.Mis No. 27/2019-20 to file their documents. Hence, katha of the plaintiffs had been canceled as per order dated 17.10.2023. The defendants have obtained the order from the Assistant Commissioner, Pandavapura by suppressing real facts and they are trying to alienate the suit schedule property based on the illegal katha. If defendants have alienated the said property based on the katha hardship caused to the plaintiffs. Hence, they have filed IA U/o 39 Rule 1 and 2 of CPC.

5. The plaintiffs have made out prima facie case balance of convenience lies in their favour, if it is not granted much hardship causes to the plaintiffs. Hence, they sought for allow the application.

6. On perusal of the order of the trial court, defendants have not filed objection to the present application. Hence, objection is taken as nil on 06.10.2023.

7. After hearing the learned counsel for the plaintiff the Hon'ble trial court has allowed the IA No.10 and granted temporary injunction order against the defendants. It is that order that has been impugned in this miscellaneous appeal on the following grounds.

GROUND

1. The Hon'ble trial court did not taken consideration of ingredients of temporary injunction order such as prima facie case, balance of convenience and irreparable loss.

2. The Hon'ble trial court did not consider the documents produced by the defendants and passed the order which is against to the law. At the time of registration of the sale deed in favour of defendants no katha has been mutated in the name of brothers of the 1st defendant namely Sri. Shivanna Shetty. However, they have colluded with the revenue officials and created the katha, based on the illegal katha he had executed the sale deed and katha also mutated into the name of plaintiff No.1. Originally suit schedule property standing in the name of Sri.Javarayi S/o Sannashetty. Hence, katha has not been mutated into the name of Sri. Shivannashetty, Nagendra Shetty and Smt. Boramma, but in agricultural column name shown as Smt. Boramma and sons. But katha stood in the name of Sri. Javarayi S/o Sannashetty. Katha of the suit schedule property. It is the ancestral

property. Hence, during the year 01.11.1991 said property has been mutated into the name of defendant No.1 with the consent of Sri.Borashetty and Shivannashetty as per M.R.IHC 2/1990-91. Accordingly, Tahasildar has mutated the katha to an extent of 0.41 guntas only. Hence, he has filed appeal before Learned Assistant, Pandavapura in R. Mis No. 27/2019-20. Accordingly, RTC has been rectified, the Hon'ble trial court without considering these facts has passed the order. The Hon'ble trial court has ordered to not to alienate the property, but based on this order, plaintiffs are trying to interfere with the possession of the defendatns. The plaintiffs have no manner of right, title, interest over the said property. However, they are trying to interfere with their possession based on the concocted documents.

3. Among on other formal grounds they sought for allow the appeal and set aside the order passed on 18.12.2023.

8. Note: On perusal of the entire appeal memo it appears that appellants have stated IA No.1, but on perusal of the order sheet of the trial court it appears

that on 18.12.2023, the Hon'ble trial court has passed an order on IA No.10. On the other hand respondents are also not denied the order dated 18.12.2023 as passed by the Hon'ble trial court on IA No. 10. Hence, it appears that, due to typographical error he stated as IA No.1 instead of IA No.10 in appeal memo.

9. After registration of the appeal notice has been issued against the respondents. They put their appearance through their advocate Sri. BMJ.

10. Heard arguments, perused the available materials on record.

11. The points would arise for my consideration are as follows:-

POINTS

1. Whether the appellants have made out grounds to interfere of this court with the order of the Hon'ble trial court?

2. What order?

12. My findings on the above said points are as follows;

Point No.1: In the Affirmative,

Point No.2: As per final order for the following;

REASONS

13. Point No.1: The learned counsel for the appellants/defendants in support of their appeal has produced certified copies of order passed by the Hon'ble trial court in O.S. No. 315/2019 dated 18.12.2023, plaint and other relevant documents.

14. It is the case of the plaintiffs that, suit schedule property acquired by their mother. Katha has been mutated into her name. However, the defendants have challenged the katha of the plaintiffs before Assistant Commissioner, Pandavapura in R.Mis No. 27/2019-20. Learned Assistant Commissioner, Pandavapura has set aside the katha of their property which stood in their names as they fail to appear before him. The defendants have obtained the order from learned Assistant Commissioner, by suppressing the real facts. Now based on the katha defendants are trying to alienate the suit schedule property to the 3rd person in order to deprive their rights over the suit schedule property. Hence, they have filed IA No. 10 U/Order 39 Rule 1 and 2 of CPC to restrain the defendants from alienating the suit schedule property.

15. On the other hand defendants contended that, originally suit schedule property belongs to one

Sri.Javarayi S/o Sannashetty. Hence, suit schedule property is the ancestral property of defendants. Under partition dated 01.11.1991, this property fallen to the share of defendant No.1. Hence, one Shivannashetty, who is the vendor of the plaintiff No.1 has not valid title in order to execute the sale deed. Based on order dated 18.12.2023 plaintiffs are trying to dispossess them from the suit schedule property by colluding with the police officials. Hence, they sought for set aside the order of the Hon'ble trial court.

16. The defendants have furnished recent RTC extract of the suit schedule property, wherein it appears that, property bearing Sy. No. 78/2 measuring 2 acre 19 guntas. During the year 2025-26 katha has been mutated into the name of plaintiff No.1 to an extent of 30 guntas and in Sy. No. 78/6 property measuring 1 acre 29 guntas is standing in the name of plaintiff No.1. The property bearing Sy. No. 78/6 measuring 1 acre 29 guntas has been jointly mutated into the name of defendants as per the order of Assistant Commissioner, Pandavapura, the defendants have furnished recent RTC extract of the suit schedule property, wherein it appears that, learned District Commissioner in R.P. No. 13/2024 has ordered to re-institute the katha into the name of plaintiff as prior to

filing of the appeal before Assistant Commissioner, Pandavapura is subjected to out come result of the O.S. No. 315/2019, which is pending before the Hon'ble trial court. Accordingly, now katha of the suit schedule property jointly mutated into the name of plaintiffs as per the order passed by the learned District Commissioner, Mandya.

17. Learned counsel for the defendants has argued that, plaintiffs by colluding with the police officials are trying to dispossess the defendants based on the order dated 18.12.2023. Hence, he sought for set aside the order as the katha of the property mutated into the name of plaintiffs herein.

18. On the other hand learned counsel for the plaintiff Sri. BMJ., has argued that, plaintiffs are in possession of the suit schedule property. The defendants are trying to interfere with their possession if it is vacated definitely defendants are trying to interfere with his possession. Hence, he sought for dismiss the appeal. The argument canvassed by the learned counsel for the plaintiff is not sustainable. Because Hon'ble trial court has ordered to not to alienate the suit schedule property based on the katha.

19. Learned counsel for the plaintiff has argued that, the defendants have preferred an appeal against the

order of the learned Deputy Commissioner Mandya, in W.P. No. 28808/2025 before Hon'ble High Court. Hence, he sought for dismiss the appeal.

20. Admittedly, learned Assistant Commissioner has cancel the katha of the property which stood in the name of defendants. Now katha of the suit schedule property is standing in the name of plaintiffs. Hence, defendants are not able to sell the property. The defendants have furnished photos, wherein police officials visited the spot without any court order. Hence, it appears that, plaintiffs based on the order dated 18.12.2023, is trying to cause disturbance on the spot. Now admittedly, katha of the property is standing in the name of plaintiffs herein. Hence, plaintiffs could not able to alienate the property if Hon'ble High Court allow the W.P. than plaintiff may file fresh application in order to get the temporary injunction order, till then if order was in force hardship cause to the defendants. If temporary injunction is vacated no hardship caused to the plaintiffs as the katha of the suit schedule property is standing in their names only. Hence, without much discussion I Hold Point No.1 in the **Affirmative.**

21. Point No.2: For aforesaid reasons discussed in the above said point No.1, I proceed to pass the following:-

ORDER

The Miscellaneous Appeal preferred by the appellants/defendants U/o 43 Rule 1 R/W/sec.104 of CPC is hereby allowed.

Consequently, order passed by the Hon'ble trial court on IA No.10 U/o XXXIX Rule 1 and 2 of CPC is hereby set aside.

IA No.10 filed by the plaintiff U/Order 39 Rule 1 and 2 of CPC is hereby rejected.

Transit copy of this order to the trial court forthwith.

(This order is dictated to the stenographer directly computerized by her, corrected and then pronounced by me in the open court on 09th day of June-2026)

(DEVARAJU H.R.)

I Addl. Sr.CJ & J.M.F.C.
K.R.Pete.

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