

KAMS200004072024



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
JMFC AT H.D.KOTE**

Dated : This the 27th day of June, 2026

Present

Sri. Mahesh.B.T.,
B.Com., LL.M.,
Senior Civil Judge & JMFC.,
H.D.Kote

M.A.No.13/2024

Appellant/s : Chandru
S/o Late Venkategowda
Aged about 39 years
R/at. Halladamanuganahalli Village
Hampapura Hobli
H.D.Kote Taluk,
Mysuru District.

(Rep by Sri.S.S.K., Advocate)

-V/s -

Respondent/s: 1. Doddammaiah
S/o Late. Siddaiah
Aged about 66 years

2. Nagammar
W/o. Doddammaiah
Aged about 66 years.

3. Ravikumar
S/o Doddattammaiah
Aged about 41 years.
4. Mahesha.D
S/o Doddattammaiah
Aged about 39 years.
5. Sheela
D/o Doddattammaiah
Aged about 36 years.
Respondent No.1 to 5 are residing
at Southanahalli Village
Kasaba Hobli,
K.R.Nagar Taluk,
Mysuru District.
6. Ananda.H.V
S/o Late. Veerabhadregowda
Aged about 39 years
7. Shivallingegowda
S/o Kalasiddegowda
Aged about 77 years.
8. Ningegowda
S/o Kalasiddegowda
Aged about 50 years.
Respondent No.6 to 8 are residing
at Halladamanuganahalli Village
Hampapura Hobli,
H.D.Kote Taluk
Mysuru District.

(Rep by Sri.S.K.G., Advocate)

**(Mahesh.B.T)
Senior Civil Judge & JMFC.,**

H.D.Kote.

J U D G M E N T

The appellant/plaintiff has preferred this appeal under Order XLIII Rule 1 of CPC challenging the order dated:24.08.2024 passed on I.A.No.I in OS.No.334/2023 by the Learned Addl., Civil Judge and JMFC., H.D.Kote.

2. For the sake of convenience, parties are referred to by their ranking before the Trial Court. Appellant is the plaintiff while respondents are the defendants before the Trial Court.

3. The plaintiff has instituted the suit before the Trial Court for the relief of permanent injunction and other reliefs.

4. Case of the plaintiff is that, the suit schedule property bearing Sy.No.145 measuring to an extent of 2.00 acres situated at Halladamanuganahalli village, Hampapura Hobli, is acquired by the plaintiff on pouthi grounds and khatha has been changed in the name of plaintiff in MR H91/2005-06. The plaintiff is in possession of the suit property by cultivating the same without any interference. The suit property is originally belongs to the government and thereafter granted in the name of plaintiff's father Venkategowda S/o. Girigowda through saguvali in LND H53/1995-96 and LND H-rule.42/1977-78. The plaintiff continued to be in

possession of the suit property. The plaintiff has grown various crops and also planted some valuable trees and has spent huge amount for the development of suit land. The plaintiff in order to made Dhurasth of the said land called upon the Survey officials to get the suit land surveyed. Then only he came to know that suit land has been illegally made Dhurasth and given New Sy.No.205. the plaintiff herein i.e., Chandra S/o. Late. Venkategowda has filed appeal No.144/2022-23 before the ADLR Court seeking to cancel the Durasth made in favor of defendant No.1 to 5. Thereafter as per the direction of ADLR Court, the ADLR has submitted report after surveying the said land along with sketch dated 28.06.2023, the defendants criminally trespassed into the suit land and neighboring lands and threatening them to hand over the said properties in favor of defendants. The defendants have also assaulted one of the neighboring land owner by name Lakshamma W/o. Late Venkategowda, and she has lodge complaint before the H.D.Kote police station and case has been registered against the defendants in Cr.No.213/2023. The defendants are regularly interfering with the peaceful possession of plaintiff over the suit property with an intention to grab the suit land and also damaged the crops grown there. The plaintiff has developed the suit land by investigating huge amount and got sanctioned from the government, but the defendants

with an intention to grab the suit land are interfering with the peaceful possession of plaintiff in the suit property. Despite advised from the elders of the village, the defendants did not stopped their illegal interference. Hence, prays to allow the application.

5. After service of summons the defendant No.4 appeared through the counsel and filed his written statement along with memo contending that contents of the written statement may be treated as objection to IA No.I. The rest of the defendants filed a memo to adopt the written statement filed by the defendant No.4. In the written statement the entire plaint averments are denied as false. It is denied that suit property came to the plaintiff on pouthi grounds and khatha has been changed in his name and is in peaceful possession of the same. Further denied that suit property is originally belongs to the government and saguvali issued in the name of plaintiff's father Venkategowda S/o Girigowda. It is further denied that the defendants have illegally made dhurasth of the suit property and given new Sy. No.205 and filing of appeal in Appeal No.144/2022-23 against the defendants seeking for cancellation of said dhurasth. The alleged interference of the defendants to the suit land is also denied. Rest of the averments made in para 7 to 11 are totally denied. The plaintiff has not value the suit property and has not paid sufficient Court

fee. The suit does not fall within the jurisdiction of this Court.

6. Further it is contended that, the land bearing Sy.No.145 measuring to an extent of 4.00 acres situated at Halladamanuganahalli village, is granted in the name of father of defendant No.1 by name Sidda S/o.Doddathamma dated 05.12.1956 through dharakasth. During the year 1957 the said land was made dhurasth and it was renumbered as Sy.No.205. The said Sidda S/o. Doddathamma was died on 01.04.1992. After his death, the defendants being the L.Rs of said Sidda S/o. Doddathamma are in possession of the suit land and khatha has been changed into their names on pouthi ground vide MR.H6/2022-23. The defendants are in continuous possession of the said land. But the plaintiff has filed this false suit with incorrect boundaries. He has created documents with respect to the suit properties, there is no land granted in the name of plaintiff's grand father. But in the name of plaintiff's father Venkategowda S/o Girigowda has been mentioned in the beneficiary list of temporary saguvali dated 01.02.1999 in LND H 53/1995-96 for an extent of 1.16 acres in Sl.No.2, sketch has been made, but the said land in Sl.No.25 and the defendants property are far away at distance of ½ Km. There is difference in the boundaries mentioned the suit and in the said

temporary beneficiary list. The plaintiff has mentioned the boundaries of defendants property. The family of defendants are in possession of suit property since from 1956 from the lifetime of Sidda @ Siddaiah and it has been made dhurasth in the year 1957. The plaintiff has no original documents with respect to suit property. The land bearing Sy.No.145 has totally 896.00 acres and it has not been made dhurasth. The plaintiff has not identified his land and hence with an intention to grab the property of defendants which has already been dhurash has filed this false suit. There is no question of interference by the defendants as they are in continuous possession of 4.00 acres of land in Sy.No.205 and growing crops. The plaintiff is not entitled for any relief as claimed in the application. Hence, prays to dismiss the suit and the present application.

7. Inter alia, the plaintiff has filed IA.No.I under Order XXXIX Rules 1 and 2 of C.P.C., seeking an order for temporary injunction. Defendants filed objection to IA.No.I. After hearing both sides the learned Trial Judge rejected the application.

8. Being aggrieved by the said order the plaintiff has preferred the appeal on the grounds urged in the appeal memo.

9. After service of notice, defendant/respondents appeared before the Court through his counsel and filed objection. In the objections to the main appeal memo, the respondent has denied the entire case of the appellant and that the present proceeding is initiated only to drag on the proceedings. Hence, on among the various other grounds, it is prayed to dismiss the appeal with costs.

10. I have heard the learned counsel representing the appellant and respondent and perused materials on record.

11. The following points would arise for the consideration of this court:-

1. Whether the impugned order passed by the Trial Court in respect of IA.No.I is arbitrary and not in accordance with law?

2. Whether the interference of this court is required?

3. What order?

12. Finding of this Court on the above points are as follows:-

Point No.1 & 2 :- In the Negative;
Point No.3 :- As per final order
for the following:-

REASONS

13. Point No.1 & 2:- As these two points are interconnected, these points are taken together for common discussion to avoid repetition.

14. Before proceeding further, I must point out the scope of this court while sitting in Appeal. It is to ascertain as to whether the Trial Court exercised its discretion arbitrarily, perversely or against settled principles of law. It is settled law that while hearing appeal against the discretion exercised by the Trial Court while deciding the application U/o 39 Rule 1 and 2 of CPC., the Appellate Court is not expected to substitute its own discretion except where the discretion is shown to have been exercised arbitrarily, capriciously or perversely or against the settled principles of law. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below, if the one reached by that court was reasonably possible view.

15. It is required to be kept in mind that the present Appeal from the impugned order is filed under the provisions of Order XLIII Rule 1 of the CPC and challenge in this appeal is a discretionary order passed by the Lower Court under the provisions of Order XXXIX Rules 1 and 2 of CPC. Before proceeding further it is

required to be noted that the present appeal is against the refusing of interim relief and the main suit is still pending. If this court elaborately deals with the matter on merits it is likely that the same would prejudice the case of either side. Therefore, it is well settled law that this court is not required to go into the merits of the entire matter at this stage and what is required to be seen is whether the Appellant-plaintiff has made out a prima-facie case or not for grant of interim injunction.

16. In the decision reported in 1990 (Supplement) – S.C.C-727 (Wonder Ltd., and another V/s Antox India Pvt., Ltd.), the Hon'ble Supreme Court in para 9 of the said decision, after considering the scope of Order XLIII Rule 1(r) of the CPC in an appeal wherein, the discretionary order passed by the Trial Court was under challenge, held as follows:-

“9. Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the Trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object

of the interlocutory injunction, it is stated "...is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the Trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience lies". The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima-facie. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted".

17. So in light of the limited powers, the Appellate Court can interfere with the discretionary order passed by the Trial Court only in exceptional circumstances and the Appellate court cannot interfere with the exercise of discretion of the court of first instance and substitute its own discretion except, where the discretion has been shown to have been exercised arbitrarily, capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. In nutshell, an appeal against exercise of discretion is said to be an appeal on principle. To put it differently, the Appellate Court cannot reassess the entire evidence so as to come to its own conclusion contrary to the conclusion arrived at by the Trial Court, if two views are possible.

18. In the case on hand, the appellant/plaintiff had approached the learned Trial Court for the relief of permanent injunction praying to restraining the defendants their henchmen, servants or any other persons interfering with the plaintiffs peaceful possession and enjoyment of the suit schedule property. They have also filed I.A No.I, U/o 39 Rule 1 and 2 of CPC seeking restraint order against the defendants from interfering with the peaceful possession and enjoyment of the plaintiff over the suit property, till disposal of the suit.

The learned Trial Court after going through the application and documents available on record, rejected the said application aggrieved by the said order appellant approached this court for interference of the order passed by the learned Trial Court.

19. The suit filed by plaintiff/appellant is for permanent injunction. The plaintiff/appellant state that he is the absolute owner and in possession and enjoyment of the suit schedule property the suit schedule property bearing Sy No-145 measuring to an extent of 2.00 acres situated at Halladamanuganahalli Village, Hampapura Hobli, is acquired by the plaintiff/appellant on pouthi grounds and Khata has been changed in the name of plaintiff/appellant in MR.No-H91/2005-06. The plaintiff/appellant is in possession of the suit property by cultivating the same without any interference. The suit property is granted in the name of plaintiff/appellant father Venkategowda S/o. Girigowda through saguvali in LND H53/1995-96 and LND H-rule 42/1997-98.the plaintiff/appellant continued to be in possession to be in possession of the plaintiff/appellant has grown various crops and also planted some valuable tree and has spent huge amount for the development of the suit land.

20. Further it is stated that, the plaintiff/appellant in order to made dhurasth of the said land called upon the survey official to get the suit land surveyed. Then only he came to know that suit land has been illegally made dhurasth and given new Sy.No.205 plaintiff has filed appeal No.144/2022-23 before the ADLR court seeking to cancel the durasthu made in favour of defendant/respondent No.1 to 5. Thereafter as per the direction of ADLR court the ADLR has submitted report after surveying the said land along with sketch. Dated 28.06.2023 the defendant criminally trespassed into the suit land and neighbouring lands and threatening them to hand over the said land properties in favour of defendant/respondents the defendants have also assaulted appellant/plaintiff mother by name Lakshmma W/o Late. Venkategowda, and case has been lodge complaint before the H.D.Kote police station and case has been registered against the defendants in Cr.No.213/2023. The defendant/respondents are regularly interfering with the peaceful possession of the plaintiff over the suit property with an intention to grab the suit land and also damaged the crops grown there. The plaintiff has developed the suit land by investigating huge amount and got sanctioned from the government, but the defendants with an intention to grab the suit land are interfering with the peaceful possession of plaintiff in the suit property. Despite advised from the

elder of the village, the defendants did not stop their illegal interference.

21. Further it is stated that, on the other hand the defendant/respondent No.4 denied that suit property came to the plaintiff on pouthi grounds and khatha has been changed in his name and is in peaceful possession of the same. Further denied that suit property is originally belongs to the government and saguvali issued in the name of plaintiff/appellant father Venkategowda S/o. Girigowda. It is further denied that the defendants have illegally made durashtu of the suit property and given new Sy No.205 and filling of appeal in appeal No.144/2022-23 against the defendants seeking for cancellation of said durasthu. The alleged interference of the defendants to the suit land is also denied. The plaintiff has not valued the suit property and has not paid sufficient court fee. Further contended that land bearing Sy No.145 measuring to an extent of 4.00 acres situated at Halladamanuganahalli Village, is granted in the name of father of defendant No.1 by name Sidda S/o. Doddathamma dated on 05.12.1956 through dharkasth during the year 1957 the said land was made dhurasthu and it was renumbered as Sy.No.205. The said Sidda S/o. Doddathamma was died on 01.04.1992. After his death the defendants being the Lrs of said Sidda S/o. Doddathamma are in possession of the suit land and

khatha has been changed into their names on pouthi grounds vide MR.H6/2022-23. The defendants are in continuous possession of the said land. But the plaintiff has filed this false suit with incorrect boundaries. He has created documents with respect to the suit properties, there is no land granted in the name of the plaintiffs grant father. But in the name of the plaintiff father Venkategowda S/o. Girigowdahas been mentioned in the beneficiary list of temporary Saguvali dated 01/02/1999 in LND H53/1995-96 for an extent of 1.16 acres in Sl.No.2. sketch has been made but the said land in Sl.25 and the defendants property are far away at distance of 1/2 Km. there is difference in the boundaries mentioned the suit and in the said temporary beneficiary list. The plaintiff has mentioned the boundaries of defendants property. The family of defendants is in possession of suit property since from 1956 from the lifetime of Sidda @ Siddaiah and it has been made dhurasthu In the year 1957. The plaintiff has no original documents with respect to suit property. The land bearing Sy.No.145 has totally 896.00 acres and it has not been made durasthu. The plaintiff has not Identified his land and hence with an intention to grab the property of the defendants which has already been durasthu has filed this false suit.

22. To substantiate the case of the appellant/plaintiff he has produced the Darkhastu saguvali list and sketch, with respect to Sy.No.145 dated 19.05.1961. Application to the Tahsildar seeking cultivation dated 19.05.1951, Grant certificate, Pattabook and receipt. RTC's for Sy.No.145, Revenue Receipts, boundaries mentioned by the PDO with respect to the above said property, Notice issued by H.D. Kote Surveyors on 27.09.2022. Notice issued by H.D. Kote Surveyors on 08.11.2023. Copy of the order of Vide Appeal No. 144/2022-23. Newspaper, FIR copy, complaint and acknowledgment, Notification issued U/Section 28(1) of the Karnataka Industrial Area Development Act,1966, dated 14.05.2010. respondent affidavit. Summons and plaint in OS.No.248/2023 filed by the respondent. Computerized crop confirmation letter for Sy.No.145 and Photos.

23. To substantiate the case of the respondents/defendants, the respondent produced the copy of the Grant certificate Sy.No.145, Xerox copy of the Hand writing RTC (5) Sy.No.205. Xerox copy of the Computerized RTC (2) Sy.No.205. Xerox copy of the Tippani Sy.No.205. Xerox copy of the Phodi sketch. Xerox copy of the Patta Book. Xerox copy of the Mutation Extract. Xerox copy of the order passed by the ADLR Court at Mysuru. Xerox copy of the Akar Band and Xerox copy of the Granted List.

24. On careful perusal of the documents produced by the both the parties it can be seen that, as on the date of the filing of the suit, suit schedule property is standing in the name of plaintiff. It is to be noted here that, as rightly observed by the learned trial court there is a serious dispute with respect to the title of the suit schedule property and also boundaries mentioned and which has to be prove at the time of the trial. As per the case of the plaintiff suit schedule property was granted in the name of the father of the plaintiff and same was came to the plaintiff through pouthi khata. Thereafter, he was in possession and enjoyment of the same, but defendants have seriously denied the possession of the plaintiff and contended that they are in the possession and enjoyment of the suit schedule property. Further it is contended that, suit schedule property was granted in the name of the defendant No.1 father Sidda S/o. Doddathamma on 05.12.1956 through dharkash and during the dursta of the land in the year 1957 it was renumbered as Sy.No.205. After the death of the said Sidda S/o.Doddathamma as per M.R.No.H6/2022-23 were mutated in the name of the defendants. Thereafter, they are in the possession and enjoyment of the same. Both the parties have produced sketch and other revenue documents.

25. On perusal of the same as contended by the defendants new survey number was given as 205 wherein on the face of the documents it can be seen that, there is no order in the survey number shown which creates the doubt in the mind of the court. Since, there is a serious dispute with respect to the boundaries same as to be clear at the full-fledged trial and there is cloud on title. If at all as stated by the plaintiff, if he really is in the possession of the suit property then plaintiff has to prove his case with cogent evidence at the time of the trial. Hence, looking into the interest of both the parties, this court finds the dismissal of the application by the trial court and rejecting the prayer of the plaintiff to grant an interim order was proper and correct and cannot be interfered with for any reasons. The findings given and the conclusion arrived by the learned trial court is proper and correct and the trial court has rightly come to the conclusion that the application is to be dismissed. Under these circumstances, this court hold that the impugned order rejecting the I.A No.I filed by the appellant under Order XXXIX Rules 1 and 2 does not suffer from any infirmities and also it is neither capricious nor perverse. Therefore, this court hold that the appellant has failed to prove points No.1 and 2 and I hold that there are no reasonable and sufficient grounds to interfere with the order of the trial court passed in the

I.A No.I. Therefore, I answer point No.1 and 2 in the Negative.

26. **Point No.3:-** In view of my findings on the above Points No.1 and 2, I proceed to pass the following:

ORDER

The Miscellaneous Appeal filed by the appellant/plaintiffs is hereby dismissed.

The impugned order in OS.No.334/2023 dated:24.08.2024 passed by the learned Addl., Civil Judge and JMFC., H.D.Kote on I.A.No.I is hereby confirmed.

Office is hereby directed to send the copy of this judgment for perusal of the trial court.

(Dictated to the Stenographer in-part and directly on computer, typed by her, then corrected by me and then pronounced in the open Court on this the 27th day of June 2026).

(Mahesh.B.T)
Senior Civil Judge & JMFC.,
H.D.Kote