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**IN THE COURT OF I ADDL. SENIOR CIVIL JUDGE &
JMFC., HUNSUR**

Dated: This the 24th day of March 2026

Presided Over by Smt. Bhagyamma
B.Com. L.L.B.,

M.A./11/2026

Appellants : 1. Smt. Sandhya B.
W/o Sharath D.
D/o late Babu Rao,
Aged about 26 years,

2. Sri Sharath D.
S/o Devaraju S.
Aged about 31 years,

Both are r/at # 6,
NES Colony,
Hunsur Town,
Hunsur.

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

/Vs/

Respondent : Sangeetha B.
W/o Ramesh Rao G.
D/o late Babu Rao,
Aged about 31 years,
NES Colony,
Hunsur Town,
Hunsur.

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

Date of presentation
of Appeal : 25-02-2026

Nature of the Appeal : Miscellaneous Appeal
questioning the orders
passed on IA.No.1 by the
I Addl. Civil Judge &
JMFC, Hunsur in
OS.No.53/2026 dated
23.02.2026.

Judgment pronounced on : 24.03.2026

Duration of the appeal : Year/s Month/s Day/s
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(Bhagyamma)
I Addl. Sr. Civil Judge & JMFC,
Hunsur

**ORDERS ON APPEAL UNDER
ORDER 43 RULE 1 OF C.P.C.**

The appellants have filed this appeal U/O 43 Rule 1 of CPC aggrieved by the orders dated 23.02.2026 passed in OS.No.53/2026 on the file of I Addl. Civil Judge and JMFC, Hunsur on IA.1 filed under Sec.151 of CPC and IA.2 filed under Order 39 Rules 1 & 2 of CPC.

2. The appellants are the defendants, respondent is plaintiff before the trial court and they will be referred in the same ranking before this court to avoid confusion.

3. The plaintiff has sworn to two separate affidavits annexed to the applications. But the averments made in both the affidavits are one and the same. It is stated that, plaintiff and defendant No.1 are own sisters, and defendant No.2 is the husband of defendant No.1. That, the suit schedule properties are self-acquired properties of father of plaintiff and defendant No.1. As their parents did not have any male heirs, the plaintiff's husband was taken as "Mane aliya" into the family and since then the plaintiff and her husband have been residing in the second schedule property and in the first schedule property, they are running a business and also let out certain portions on rent. The parents of plaintiff and defendant No.1 died during the COVID-19 pandemic, the plaintiff has two minor children and that there is an outstanding loan over the suit schedule properties. The plaintiff claims that, she has taken care of education and other necessities of defendant No.1. The plaintiff got

performed the marriage of defendant No.1 with defendant No.2 about ten months ago and ever since the defendant No. 1 has been residing in her matrimonial home. The plaintiff along with her family, is in lawful possession and enjoyment of the first suit schedule property and that she let out a portion thereof to certain tenants. The plaintiff and her husband are running a business in the name and style of "Munvitha Gold Covering Shop" in a portion of first schedule property. It is alleged that, all of a sudden that on 02.02.2026, the defendants along with about 30 persons came near the first schedule property, created a commotion by claiming that the property exclusively belongs to defendant No.1 and attempted to dispossess the plaintiff and tenants from the first schedule property. The defendants forcibly dispossessed them from the first schedule property without following due process of law and locked the shops situated therein. It is also stated that the defendants have threatened to dispossess the plaintiff from the second suit schedule property as well. It is stated that, the plaintiff approached the jurisdictional police seeking protection, however, as no effective action was taken, she has been constrained to approach this Court. It is further averred that, the defendants have taken the law into their own hands and have illegally dispossessed the plaintiff and her tenants from the first schedule property. Hence, the plaintiff constrained to file the present suit along with the accompanying interlocutory applications. Accordingly, the plaintiff pray to allow the applications.

4. On the other hand, the defendants have filed their objections denying the allegations made in the applications. It is contended that the suit of plaintiff is not maintainable as the plaintiff and defendant No.1 are co-owners of suit schedule properties, the plaintiff herself is not the sole owner thereof. The defendants have admitted the relationship between the parties. It is contended that, the suit schedule properties are joint family properties and the plaintiff and defendant No.1 are co-owners of said properties and are enjoying the same in joint possession. It is alleged that, as defendant No.1 has got married defendant No.2, who belongs to another caste, the plaintiff has filed this false suit with an intention to usurp the suit schedule properties. But, the plaintiff has no exclusive right, title, or possession over the suit schedule properties, accordingly the defendants pray for dismissal of applications.

5. After hearing both parties, the trial court formulated a point for its consideration and answered the point for consideration in the affirmative. Accordingly, I.A. No.I filed under Sec.151 of CPC came to be allowed.

6. In respect of IA.No.2, the trial court formulated 3 points for its consideration and answered all the points in the affirmative. Accordingly, I.A. No.II filed under Order 39 Rules 1 & 2 R/w Sec.151 of CPC came to be allowed.

7. Being aggrieved by the said orders, the appellants/defendants-1 & 2 have preferred the present appeal contending that the orders Passed by I Additional Civil Judge

and JMFC Hunsur on IA.1 filed under Section 151 of CPC and IA.II filed under order 39 rule 1 & 2 of CPC in OS.53/2026 is erroneous in the eyes of law. The orders passed by the trial court is otherwise opposed to law, facts, capricious, vexatious, perverse and unsustainable in law and liable to be set aside. The order of the trial court is highly arbitrary in nature suffers for want of proper and convincing reasoning and reason which were assigned by Trial Court while deciding the applications are unjust and illegal and stands with full of arbitrariness. It is contended that the averments made in para-4 of plaint regarding borrowing of 50 lakh loan is false, the plaintiff has not produced any documents to show that loan is pending. This being the fact, the Trail Court has not considered same.

8. The defendants got filed their written statement denying the entire plaint averments at para No 2 to 11 except the relationship and joint ownership and also filed detailed objections to IA.1 & 2. Further, the defendants took contention that plaintiff and defendant No.1 are daughter of late Babu Rao and suit schedule properties are joint family property of both plaintiff and defendant No.1 and they are Co-owners of the suit schedule properties and they are in joint possession of the same and further Nagarasabha Khate of suit schedule properties are in joint name of both plaintiff and defendant No.1.

9. In order to substantiate their contention to support the applications, the plaintiff has prima-facie produced two Form No.3 of suit schedule properties, one unregistered Rental Agreement Dated 03/12/2020 executed by their father

Babu Rao, one Unregistered Rental Agreement Dated 19/09/2024 Executed by Ramesh Rao, Aadhar Card of Appellants & Respondent, 2 photographs, Tax paid Receipts, 2 License Copy and Complaint Copy. It is further submitted that, it is well settled fact that one Co-owner cannot claim Ad-interim Injunction against other Co-owner and the same has been upheld by Hon'ble Supreme Court and High court in numerous cases and further in case of Prakash S Akotkar and others Vs Mansoorkha Gulabkha reported in AIR 1996 Bombay 36. It is further submitted that, averments made in the para-6 relating to the handing over the possession to tenants by name Bashith, Moosa, Shivu, aju, Jaaju are all not believable. Because the plaintiff has not produced any rental agreement to show that their tenant status. This being the fact, the trial court has not considered same and in further the plaintiff has not made those tenants as party in the present suit. It is further submitted that, trial court has not considered the well settled principle that one Co-owner cannot claim ad-interim Injunction against other co -owner in which this principle has been upheld by Hon'ble Supreme Court and Hon'ble High court, but the trial court not considered same. Hence, the orders passed by the I Additional Civil Judge and JMFC Hunsur on IA.1 & 2 in OS.No.53/2026 is very much bad in law and liable to be set aside. On these grounds, the appellants pray that the appellate court should set aside the impugned order.

10. On the other hand, the learned counsel for respondent/defendant has supported findings of trial court.

11. Heard both parties and perused available materials on record.

12. In view of the rival contentions, the Trial Court formed the following Points for Consideration;

1. Whether the Trial Court committed any illegality or material irregularity in granting temporary injunction in favour of the plaintiff?

2. What Order?

13. My findings on the above points are:

Point No.1 : In the Affirmative

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

R E A S O N S

14. **POINTS NO. 1:** It is well settled that an appellate court, while dealing with an appeal against an order granting or refusing injunction, will interfere only when the Trial Court has exercised discretion arbitrarily or ignored settled principles or findings are perverse or unsupported by material. The Trial Court, while considering I.A. No.1 and 2, has recorded a finding that the plaintiff has made out a prima facie case. However, on careful perusal of the records, it is evident that the issue of ownership and possession is seriously disputed. The defendants have specifically contended that the properties are joint family properties and both parties are co-owners. The material on record, including revenue extracts and documents like property register extracts and property details, indicates that the title and possession are not free from doubt.

15. When such dispute exists, the Court must exercise caution while granting injunction, particularly when it amounts to granting exclusive possession to one party. The Trial Court has held that the balance of convenience lies in favour of the plaintiff. However, this finding is not supported by proper reasoning. If both parties are co-owners, then granting injunction in favour of one co-owner would amount to restraining the other co-owner from enjoying the property, which is not permissible under law. The documents relied upon by the plaintiff such as photographs, rent agreements and tax receipts, do not conclusively establish exclusive possession.

16. The Trial Court has held that irreparable injury would be caused to the plaintiff. However, it has failed to consider that the dispute is essentially between co-owners, any injury can be compensated or adjudicated during trial. Further, the direction issued by the Trial Court to remove locks and permit police assistance amounts to granting final relief at interlocutory stage, which is impermissible. It is no doubt that the applicants have filed IA-2 under Or 2 Rule 10(2) R/w sec.151 CPC to implead them as parties in this appeal, however the impleading of parties i.e., said to be the tenants can be considered in the suit before the trial court. But, it is not the forum to consider the same before the appellant jurisdictional court.

17. The Trial Court has committed serious errors and failed to appreciate co-ownership aspect and granted relief amounting to final relief. It has ignored settled principles

governing injunction and did not properly analyze documents. The order granting permission to remove locks with police aid is highly excessive and beyond the scope of interim relief. It is a settled principle that one co-owner cannot seek injunction against another co-owner unless exclusive possession is clearly established. Further, interim orders should not grant final relief and alter status quo irreversibly.

18. On careful consideration, this Court is of the opinion that the plaintiff has not established exclusive possession and the dispute involves co-ownership, so the Trial Court has exercised discretion improperly. In the light of the authoritative principles laid down by the Hon'ble Supreme Court in the above referred decisions, this Court proceeds to examine the facts of the present case. It is not in dispute that the relationship between the parties is admitted and the defendants have specifically pleaded that the suit schedule properties are joint family properties and that both parties are co-owners thereof. The plea of co-ownership is not a vague or bald contention, but is supported by the nature of relationship between the parties and the documents placed on record.

19. It is further to be noted that the plaintiff has not produced any cogent or convincing material to establish her exclusive possession over the suit schedule properties. The documents relied upon by the plaintiff such as photographs, rent agreements and tax receipts, at the most indicate user of certain portions, but do not conclusively establish exclusive, settled possession to the exclusion of the defendants. In a

case of co-ownership, mere user or occupation of a portion does not amount to exclusive possession in the eye of law.

20. When the defendants have specifically asserted co-ownership and joint possession, the burden lies heavily upon the plaintiff to demonstrate clear, exclusive possession and ouster of the defendants. In the absence of such proof, the Court cannot presume exclusive possession in favour of the plaintiff. The Trial Court has failed to appreciate this fundamental aspect. Therefore, applying the principles laid down by the Hon'ble Supreme Court in *Anathula Sudhakar's case* and *Kishore Kumar Khaitan's case*, this Court holds that the grant of injunction in favour of the plaintiff, in the absence of proof of exclusive possession, is contrary to settled law. The impugned order, therefore, cannot be sustained.

21. The Trial Court, while passing the impugned order, has failed to properly consider the defence taken by the defendants regarding co-ownership and joint possession. The Trial Court has proceeded as if the plaintiff is in exclusive possession, without recording any clear finding to that effect based on reliable evidence. The Trial Court has also misapplied the settled principles governing the grant of temporary injunction. It has not properly analyzed the three essential ingredients, namely prima facie case, balance of convenience and irreparable injury, in their correct legal perspective. The findings recorded by the Trial Court on these aspects are apparent and unsupported by proper reasoning. Further, the Trial Court has granted a direction permitting removal of locks with police assistance. Such a direction, in effect, amounts to granting a substantial part of the final relief

at the interlocutory stage itself. It is well settled that interim orders should not result in granting final relief or altering the status quo irreversibly. The said direction is therefore clearly unsustainable. The Trial Court has also failed to consider the documentary evidence produced by the defendants, which prima facie indicates joint possession. Non-consideration of material evidence has resulted in an erroneous and contrary finding.

22. Upon careful re-appreciation of the entire material on record, this Court finds that the plaintiff has not established a prima facie case of exclusive possession over the suit schedule properties. The claim of the plaintiff is seriously disputed by the defendants on the ground of co-ownership, which has not been effectively rebutted. This Court further finds that the balance of convenience does not lie in favour of the plaintiff. The granting injunction in favour of the plaintiff would result in restraining the defendants, who are prima facie co-owners, from exercising their lawful rights over the property. Such a course is not permissible in law. It is also held that the plaintiff has failed to establish that irreparable injury would be caused if the injunction is not granted. On the contrary, the grant of injunction would result in greater hardship and injustice to the defendants. It is evident that the Trial Court has exercised its discretion improperly and contrary to settled legal principles, thereby warranting interference by this Court.

23. Therefore, for the foregoing reasons and upon a thorough consideration of the pleadings, documents and

settled principles of law, this Court is of the considered opinion that the impugned order passed by the Trial Court is arbitrary and unsustainable in law. The Trial Court has failed to exercise its discretion judiciously and has granted relief contrary to the principles laid down by the Hon'ble Supreme Court. Hence, the impugned order is liable to be set aside and the appeal deserves to be allowed. Therefore, for the above reasons, this Court holds that the order of Trial Court is arbitrary, unsustainable and liable to be set aside. Anyhow, it is made clear that the appellants shall not interfere with the possession of the tenants except in accordance with due process of law. All observations made herein are confined to the disposal of this appeal and shall not influence the Trial Court while adjudicating the suit on merits. Accordingly, **the point No.1 answered in the Affirmative.**

24. POINT NO.3:- In view of my answer to the points No.1 and 2 as above, this court proceeds to pass the following:-

ORDER

The Miscellaneous Appeal filed U/O 43 Rule 1 of CPC is hereby allowed in part.

The order dated 23.02.2026 passed on I.A. No.1 and I.A. No.2 in O.S. No.53/2026 is hereby set aside.

The applications filed by the plaintiff under Order XXXIX Rules 1 and 2 CPC are hereby dismissed.

However, both parties are directed to maintain status quo with regard to nature

and possession of the suit schedule properties till disposal of the suit. Anyhow, it is made clear that the appellants shall not interfere with the possession of tenants except in accordance with due process of law. The Trial Court is directed to dispose of the suit expeditiously.

(Dictated to the stenographer directly on computer, typed by him, corrected by me and then pronounced in the open court on this the 24th day of March, 2026).

(Bhagyamma)
I Addl. Sr. Civil Judge & JMFC,
Hunsur