

KAMS310002652021



IN THE COURT OF 1ST ADDL. CIVIL JUDGE & JMFC, HUNSUR

Dated this the 13th day of October, 2025

:Present:

**Smt. Namrata S Hosmath, B.A., LL.B.,
1st Addl. Civil Judge & JMFC,
Hunsur.**

O.S. No.45/2021

<u>PLAINTIFF:</u>	Nilashekaregowda S/o Late Hanumegowda, Aged about 54 years, R/at Hegganduru Village, Hanagodu Hobli, Hunsur Taluk. Mysuru District.
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// Vs //

<u>DEFENDANT:</u>	Nagarajegowda S/o Hanuvegowda, Aged about 51 years, R/at Hegganduru Village, Hanagodu Hobli, Hunsur Taluk. Mysuru District.
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PARTIES TO I.A. NO.II

APPLICANT /PLAINTIFF	:	Nilashekaregowda
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V/s

OPPONENT/ DEFENDANT	:	Nagarajegowda
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i	Provisions under which the application is filed	U/o 39 Rule 1 and 2 R/W/Sec.151 CPC
ii	Reliefs Sought for	Temporary Injunction
iii	The date on which the IA No.I is filed	18.02.2021
iv	Number of the application	II
v	The date on which the objection are filed by opponent on IA No.I	10.02.2022
vi	The date on which the order was passed on the said applications	13.10.2025

ORDERS ON I.A. NO. II

The plaintiff has approached this Court seeking the relief of declaration and permanent injunction in respect of the suit schedule property. Along with the suit, the plaintiff has filed an interlocutory application registered as I.A. No.2, under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, seeking an ad-interim order of temporary injunction, restraining the defendant, his servants, agents, or

any persons acting on his behalf, from alienating the suit schedule property in any manner until the disposal of the suit.

2. The description of suit schedule property is as follows:

The land bearing Sy.No. 133/1 measuring 2 acres situated at Hairige Village, Hanagodu Hobli, Hunsur Taluk, Mysuru District and is bounded on the;

East by - Road

West by - Hairige Kere

North by - Lands of Radhamma

South by - Lands of Nagarajegowda

3. In the affidavit filed in support of the application, the plaintiff has averred that the defendant is his brother. It is further stated that the plaintiff, the defendant, and their father, Late Hanumegowda, had entered into an oral partition, pursuant to which the suit schedule property fell to the share of the plaintiff. Subsequently, the plaintiff got the khata of the suit schedule property changed to his name and has been in peaceful possession and enjoyment thereof ever since.

4. It is also stated that Survey No.133, measuring 2 acres, fell to the share of the defendant, who is in possession of the same. However, it is alleged that the defendant, without the knowledge of the plaintiff, fraudulently got a gift deed

executed and managed to get the khata of the suit schedule property changed to his name. It is further alleged that, despite having no right, title, or interest, the defendant unlawfully attempted to interfere with the plaintiff's possession. Hence, the plaintiff was constrained to file the present suit and interlocutory application. The plaintiff submits that the prima-facie case and balance of convenience lie in his favor, and if the application is not allowed, the plaintiff will suffer great hardship and irreparable injury, which cannot be compensated. Therefore, the plaintiff prays to allow the application.

5. The defendant has filed a memo seeking to treat his written statement as objections to I.A.No.2. In the said objections, the defendant has categorically denied the averments made in the plaint. While admitting the relationship between the parties and that he is in possession of Sy.No.133 (2 acres). It is contended that Late Hanumegowda had already handed over his ancestral properties, namely, Sy.No.107/1 and Sy.No.107/3, to the plaintiff, who is in possession of the same. It is further submitted that Sy.No.133/2, a self-acquired property of Late Hanumegowda, was gifted to the defendant in the year 2014-15, and Sy.No.133/1 was gifted under a registered gift deed dated 30.08.2018. The defendant asserts that he is in lawful possession and enjoyment of the suit schedule property as its absolute owner. The defendant

contends that the plaintiff has no right, title, or interest in the suit schedule property and has filed the present suit with a malicious intention to lay claim over the same. On these grounds, the defendant prays that I.A. No.2 be dismissed.

6. Heard and perused the materials on record.
7. The following points arise for my consideration:-

1) Whether plaintiff has made out a prima-facie case in his favour?

2) Whether the balance of convenience is in favour of the plaintiff?

3) Whether the plaintiff would suffer irreparable injury, if the temporary injunction is not granted?

4) What order?

8. My findings on the above points are as under:-

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : In the Affirmative

Point No.4 : As per final order

for the following;

REASONS

9. **POINT NO.1 TO 3:-** These points are taken up together for common discussion to avoid repetition, as they involve common questions of facts and law, and are therefore interrelated.

10. This Court has carefully examined the pleadings, the affidavit filed in support of I.A. No. 2, the objections filed by the defendant, and the documents placed on record by both parties. The plaintiff has instituted the present suit seeking the relief of declaration and permanent injunction in respect of the suit schedule property. Alongside, the plaintiff has filed the present interlocutory application, seeking a temporary injunction restraining the defendant from alienating the suit schedule property, pending disposal of the suit.

11. The plaintiff's case rests on the assertion that there was an oral partition between himself, the defendant, and their father, Late Hanumegowda. Pursuant to this alleged partition, the suit schedule property fell to the plaintiff's share, while another portion of the land in Sy.No.133, measuring 2 acres, was allotted to the defendant. In support of his contentions, the plaintiff has produced the RTC extracts for the year 2016-17, which reflect the name of Late Hanumegowda as the khatedar, followed by entries showing the name of the plaintiff. He has also produced RTC for the year 2020-21, which reflects the name of the defendant.

12. Additionally, the plaintiff has produced a police acknowledgment, said to be in respect of a complaint lodged by him against the defendant. Furthermore, a statement given by both parties has been produced, wherein the defendant is stated to have admitted that both he and the plaintiff are cultivating the suit schedule property by ploughing 1 acre each. This admission, at this stage, prima-facie supports the plaintiff's assertion of joint possession or at least shared possession.

13. On the other hand, the defendant's claim is that he has acquired title to the suit schedule property by way of a registered gift deed dated 30.08.2018, executed by Late Hanumegowda. He claims to be in possession and enjoyment of the same as an absolute owner. In support of this, he has produced a Saguvali Chit, which shows that 4 acres of land in Sy.No.133 was granted to Late Hanumegowda. He has also filed RTC extracts for the year 2021-22, which continue to reflect the name of Hanumegowda. Further, he has produced the registered gift deed, the Akarband, and mutation register extracts. However, the mutation entries and RTC extracts relating to other properties, which are not under dispute in this case, are not relevant for the present application and hence, do not require consideration at this stage.

14. The existence of competing documents, including revenue records showing both parties' names at different times, and the admitted joint cultivation as per the statements on record, indicate that the matter involves serious triable issues regarding title and possession. This Court is of the considered opinion, at this stage, determination of this issue requires a full-fledged trial, including examination of oral and documentary evidence.

15. As regards the documents placed on record, it is evident that all the revenue records and other supporting documents show that the suit schedule property stands in the name of the defendant. It is the grievance of the plaintiff that the defendant is trying to alienate the schedule property and plaintiff claims a share in the said property.

16. As per Section 52 of the Transfer of Property Act, 1882, during the pendency of any suit in which a right to immovable property is directly in question, the property cannot be transferred or otherwise dealt with by any party to the suit so as to affect the rights of any other party under any decree or order that may be made therein. Any such transfer, if permitted, would not only be violative of the doctrine of lis-pendens but may also result in creation of third-party rights, complicating the proceedings and causing irreparable injury to the plaintiff.

17. In the present case, restraining the defendant from alienating the suit schedule property would not result in any prejudice or irreparable harm to him. On the contrary, such restraint would protect the plaintiff's claimed interest in the property and avoid unnecessary complications or third-party rights being created during the pendency of the suit. The materials placed on record at this preliminary stage sufficiently demonstrate that the plaintiff has a prima-facie case for trial, the balance of convenience lies in his favour, and that if injunction is not granted, he is likely to suffer irreparable injury. Accordingly, **Points No. 1 to 3** are answered in the **Affirmative**.

18. **POINT No.4**: In view of my above discussion and conclusion arrived at points No. 1 to 3, the application filed by the plaintiff deserves to be allowed. Accordingly, I proceed to pass the following.

ORDER

I.A. No.2 filed by the plaintiff under Order 39 Rule 1 and 2 R/w Sec.151 of CPC, is hereby allowed.

The defendant, his agents, servants, or any person acting on his behalf are hereby restrained from alienating,

encumbering, or creating any third-party interest in respect of the suit schedule property, by way of sale, mortgage, gift, exchange etc. in any manner till disposal of the suit.

*(Dictated to the Stenographer Grade-III, directly on computer, typed by her, corrected, signed and then pronounced by me in the open Court on this the **13th day of October, 2025**)*

(NAMRATA S HOSMATH)
1st Addl. Civil Judge & JMFC.,
Hunsur.