

KAMS600002772025



M.A./11/2025

IN THE COURT OF THE SENIOR CIVIL JUDGE

AT PERIYAPATNA

Present

Sri.RAJU.M.,

M.A., LL.B.,

Senior Civil Judge,

Periyapatna.

Dated: 2nd Day of April 2026

MA.No.11 of 2025

Appellants:

- 1.** Smt.Dandamma w/o Late Elliyyaiah @ Eliyaiah,
Age: 75 years, Housewife.
- 2.** Smt.Jayamma w/o Late Siddaramaiah,
Age: 68 years, Housewife.
- 3.** Sri.Mahadeva Murthy s/o Late Siddaramaiah,
Age: 53 years, Agriculturist.
- 4.** Smt.Manjula d/o Late Siddaramaiah,
Age: 51 years, Agriculturist.
- 5.** Sri.Natesha s/o Late Siddaramaiah,
Age: 49 years, Agriculturist.
- 6.** Sri.Satisha s/o Late Siddaramaiah,
Age: 47 years, Agriculturist.
- 7.** Sri.Shivakumara s/o Late Siddaramaiah,
Age: 45 years, Agriculturist.
- 8.** Smt.Savitha d/o Late Siddaramaiah,
Age: 43 years, Housewife.

9. Kum. Deepika.S.S. d/o Late Siddaramaiah,
Age: 68 years.
10. Sri.Abhijith.S.S. s/o Late Siddaramaiah,
Age: 30 years, Agriculturist.
11. Sri.Thammaiah s/o Late Elliyyaiah @ Eliyaiah,
Age: 68 years, Agriculturist.
12. Sri.Swamy s/o Late Elliyyaiah @ Eliyaiah,
Age: 66 years, Agriculturist.

(By Sri.KJM, Advocate)

Versus

Respondents:

1. Smt.Rathnamma.S.K. w/o Vijayakumara.T.A.,
d/o Late Kalegowda, Age: 45 years, Housewife,
No.349, near Pattaladamma Temple,
VTC Koorgalli, Mysuru Town and District
 2. Smt.Sunandamma w/o Late Kalegowda,
Age: 38 years, Agriculturist.
 3. Smt.Tejaswini w/o Late Manjunatha,
Age: 26 years, Housewife.
 4. Sri.Jayanna w/o Late Sannegowda,
Age: 65 years, Agriculturist.
 5. Sri.Ravikumara s/o Late Nagarajegowda,
Age: 45 years, Agriculturist.
 6. Sri.Kumara s/o Late Nagarajegowda,
Age: 43 years, Agriculturist.
 7. Sri.Kumara s/o Late Beeregowda,
Age: 37 years, Agriculturist
- R2 to 7** are the r/o M.Shettahalli village,
Ravanduru Hobli, Periyapatna Taluk.

(By Sri.RVD, Advocate)

Date & nature of decree appealed against	Order on IA III in OS.No.340/24 dated 30.01.25 on the file of Additional Civil Judge & JMFC, Periyapatna.		
Date of institution of appeal	01.03.2025		
Date of judgment	02.04.2026		
Duration of the appeal	Y/s 01	M/s 01	D/s 01

***Senior Civil Judge,
Periyapatna.***

J U D G M E N T

This miscellaneous appeal is filed under Order 43 Rule 1 (r) of CPC, by the appellants/plaintiffs against the order dated 30.01.25 passed by the Additional Civil Judge & JMFC, Periyapatna, in OS.No.340/24 dismissing IA.No.3 filed under Order 39 Rule 1 and 2 of CPC, by the appellants/plaintiffs.

2. The appellants are the plaintiffs and the respondents are the defendants before the trial court.

3. The plaintiffs, in the plaint have pleaded that they are the children and grand children of Late Elliyyaiah @ Eliyaiah s/o Mota and the suit property originally belongs to Karagi w/o Bilibora, who has executed the registered Sale Deed dated: 27.06.1949 in favour of Elliyyaiah @ Eliyaiah. During the lifetime of Elliyyaiah @ Eliyaiah about 40 years back, the hut was burnt due to fire, at that time the sale deed and other documents were destroyed. After obtaining the certified copy from Hunsuru Sub-Register Office, the same is produced. After the death of Elliyyaiah @ Eliyaiah, vide MRH No.1/2024-25 dated 01.08.2024 the plaintiffs got joint khatha of the suit property. Hence, the suit property is their ancestral property and they have been jointly enjoying the same by cultivating it and paying tax.

When facts being so, on 30.08.2024 the defendant Nos.1 to 7 have tress passed into the suit property and caused obstruction. The plaintiffs have lodged complaint with the Periyapatna Police, whom directed them to approach the Civil Court. Hence the suit is filed.

4. After service of summons, the defendant Nos.1 to 7 have appeared before the Court and filed written statement. They have also filed objections to IA.No.III and also prayed to consider the written statement averments as of objections to IA.No.3. In the objections, they have contended that on 27.05.1967, the grand father of defendant No.1 by name Sannappa s/o Thammannagowda of Shettahalli Village, Ravanduru Hobli, Periyapatna Taluk had purchased Sy.No.43/4 measuring 1A 1G, Sy.No.43/5 measuring 1A 13Gs and Sy.No.43/6 measuring 19Gs from Sannahuchhaiah

s/o Biliboraiah and his minor sons Boraiah, Nanjajah and Kalaiah. The above said properties totally measure 2As 33Gs bounded on its East by Land of Ningamma w/o Sannappa (grand mother of defendant No.1), West by Government Road, North by land of Lakkaiah and South by water flowing hole. From the date of the purchase coconut trees have been grown and agricultural activities were carried out. The boundaries assigned to the suit property are the boundaries of the property purchased by the above said Sannappa and the defendants are still in the possession of the property in the above said boundaries. Among these grounds they prayed to dismiss the suit as well as IA.No.3.

5. Plaintiff filed the I.A.No.3 under Order 39 Rule 1 and 2 of CPC with duly sworn affidavit seeking to restrain the defendants/respondents from tress

passing into the suit property and causing interference till the disposal of the suit by granting an ex parte order of temporary injunction till the disposal of suit (IA-3) stating facts set out in the plaint, which are already stated *supra*.

6. Trial Court has raised following points;

1. Whether the plaintiffs have made out prima-facie case for grant of temporary injunction as sought for?

2. Whether the balance of convenience lies in favour of the plaintiffs?

3. Whether the plaintiffs will be put to irreparable loss and hardship, if IA III is not allowed?

4. What order?

7. After hearing arguments, the trial Court has dismissed the application of the appellants/plaintiffs.

Being aggrieved by the said order the

appellants/plaintiffs preferred this appeal by contending that the trial Court has not properly appreciated the case of the parties and the documents produced by them and dismissed IA.No.3 without giving proper reasons with regard to the ownership and possession of the plaintiffs over the suit schedule properties. The trial court has failed to understand the settled principles of law. The trial court has not considered the documentary evidence such as RR5 & 6, tax paid receipt and RTCs. The trial court failed to consider the difference in boundary descriptions with regard to suit schedule property with that of the sale deeds of different dates. The impugned order passed by the trial court is contrary to law, facts and circumstances of the case. Among these grounds they prayed to allow the appeal and to set aside the impugned order.

8. After service of notice the respondents entered appearance through their learned advocate. Respondents have filed written arguments. Heard arguments on both side.

9. Following points arise for consideration;

P O I N T S

1. Whether the findings of Trial Court that the appellant/plaintiff has not made out a prima facie case, balance of convenience not lies in his favour and great hardship will not be caused to him are sustainable under law and on facts?

2. What order?

10. Answer to the above points is as follows;

Point-1: In the Negative .

***Point-2: As per final order
for the following:***

R E A S O N S

11. **Point-1:** The appellants/plaintiffs have pleaded that the suit schedule property originally belonged to Late Elliyyaiah @ Eliyaiah s/o Mota, after his death the plaintiffs got joint khatha of the suit property vide MRH

No.1/2024-25 dated 01.08.2024. Accordingly the suit schedule property is the ancestral property of the plaintiffs and they are in continuous possession and enjoyment of the same.

12. The appellants to prove their case have produced certified copies of RTCs from the year 1996-2024. As per these documents the suit schedule land was entered in the name of Late Elliyyaiah s/o Mota. As per the RTCs of the year 2024 it is found that the suit property has been transferred in the joint names of appellants vide MRH.No.1/2024-25. The plaintiffs have also produced Encumbrance Certificate in respect of the suit schedule property. Apart from that the plaintiff has also produced tax paid receipt and photographs in respect of the suit property.

13. It is the case of the respondents/defendants that Late Sannappa who is the grand father of the defendant No.1 had purchased the land in Sy.No.43/4 measuring 1A 1G, Sy.No.43/5 measuring 1A 13Gs and Sy.No.43/6 measuring 19Gs which was bounded on its East by Land of Ningamma w/o Sannappa (grand mother of defendant No.1), West by Government road, North by land of Lakkaiah and South by water flowing hole.

14. The defendants in support of their case have produced certified copies of registered sale deed dated: 27.05.1967 through which Sannappa said to be the grand father of defendant No.1 had purchased the lands as narrated in the written statement. The defendants have also produced five photographs and CD of the photos. As per the index of lands and records of rights produced by the respondents/defendants, the

land bearing Sy.No.43/4, Sy.No.43/5 and Sy.No.43/6 were entered in the name of Sannappa who is the grand father of defendant No.1. As per this document Sy.No.68 was also entered in the name of Elliyyaiah @ Eliyaiah, who was the propositus of appellants/plaintiffs. But the said land is not the subject matter of this suit. The defendants did not dispute the relationship of the appellants/plaintiffs with the propositus Elliyyaiah @ Eliyaiah, said to be the earlier owner of the plaint schedule property. As per the documents it is clear that the suit schedule property originally was in the name of propositus Elliyyaiah @ Eliyaiah and after his death the appellants/plaintiffs got changed the khatha of the suit schedule property.

15. The trial court while dismissing IA.No.3 has made an observation to the effect that “the grand father of

defendant No.1 has purchased the land in Sy.No.43/4, Sy.No.43/5 and Sy.No.43/6. The boundaries stated in the sale deed depict almost similar descriptions to that of the suit property. When there is boundary dispute, it is settled principle of law that the injunction cannot be granted". The defendants do not dispute the relationship of plaintiffs with purchaser Elliyaiah. The defendants disputes the boundary of the suit land but they are not claiming the land belonging to the appellants/plaintiffs. As per the plaint averments and as mentioned in the schedule of the plaint, the suit schedule property is bounded on east by land of Ningamma (w/o Sannegowda) i.e., grand mother of defendant No.1, west by government road, north by land of Kempri w/o Nanja and south by water flowing course. According to the respondents/defendants themselves, their land is bounded on its east by Land

of Ningamma w/o Sannappa (grandmother of defendant No.1), West by Government road, North by land of Lakkaiah and south by water flowing hole. Northern side boundary of plaintiffs land as well as defendants land are fully different. The suit schedule land as well as the land belonging to the defendants/respondents are fully different. So it cannot be considered that the boundaries of the land belonging to both the parties are one and the same. The suit schedule property has been purchased way back in the year 1997-98. Moreover, the defendants are not at all claiming any right over the suit schedule property. If the boundaries of the suit schedule property are disputed by the respondents/defendants it has to be answered only after completion of trial. There is no document to show that the plaintiffs have furnished the wrong boundaries to the suit schedule

property but they have mentioned the boundaries as per the registered sale deed. The recitals of the registered sale deed may be presumed to be correct unless it is disproved in trial. When such being the fact, it cannot be said that the appellants/plaintiffs are not in possession of the suit schedule property. Therefore the conclusion arrived by the trial court on point No.1 is not correct under law. When plaintiff proved prima-facie case the balance of convenience also follows the prima-facie case. If an order of temporary injunction is not granted an irreparable loss or injury will be caused to the appellants only. On careful perusal of materials available on record it is clear that the trial court has not properly appreciated the case of the parties and documents produced by them in its perspective manner and wrongly dismissed the application filed by the appellants/plaintiffs.

Hence, the said order of the trial court is liable to be set aside and appeal filed by the appellants/plaintiffs deserves to be allowed. Hence, the above point is answered in "**Negative**".

16. Point-2: By virtue of above findings, Court proceeds to pass the following;

ORDER

Appeal is allowed.

Accordingly, the Order dated: 30.01.2025 passed on IA.No.3 in OS.No.340/2024, on the file of the Additional Civil Judge & JMFC, Periyapatna is hereby set aside.

Consequently, the defendants or anybody acting through them are hereby restrained from interfering with the appellants peaceful possession and enjoyment over the suit schedule property pending disposal of the suit.

Send a copy of this order to the trial court.

(Dictated to the Stenographer and transcribed by her, corrected and initialed by me and then pronounced in the open Court on 02.04.26).

sd/-

(RAJU.M.)
Senior Civil Judge,
Periyapatna.