

KAMS600010852025



**IN THE COURT OF THE SENIOR CIVIL JUDGE AT  
PERIYAPATNA**

**Present: Sri RAJU M., M.A., LL.B.,  
Senior Civil Judge & JMFC,  
Periyapatna.**

**Dated this, the 6<sup>th</sup> Day of June 2026**

**MA/33/2025**

- Appellant/s : 1. Srinivasa S/o Late Venkata Bhovi @ Venkatesh, aged about 50 years.
2. Manja S/o Late Venkata Bhovi @ Venkatesh, aged about 35 years.
3. Krishna S/o Late Venkata Bhovi @ Venkatesh, aged about 48 years.
4. Thimma S/o Chandra, aged about 38 years.
5. Phillip S/o Girisha, aged about 33 years.
6. Girisha S/o Late Muniyaiah, aged about 50 years.
7. Rama S/o Late Muniyaiah, aged about 47 years.

8. Munivenkatesha S/o Late Ramaiah, aged about 40 years.
9. Karthik S/o Ganesha, aged about 27 years.

Appellant No. 1 to 5 are R/o Vaddarakoppalu Village, Kasaba Hobli, Periyapatna Taluk.

**(By Sri Chandrashekara M.B., Adv.)**

**V/s.**

Respondent/s : Thimmegowda M.J. S/o Javaregowda, aged about 42 years, R/o Magali Village, Kasaba Hobli, Periyapatna Taluk.

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

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Date & nature of decree appealed against	: Order on IA I & II in OS No.123/2025 dated 22.07.2025 on the file of Civil Judge & JMFC, Periyapatna.
Date of institution of appeal	19.08.2025.
Date of judgment	: 06.06.2026
Duration of the appeal	: Years Months Days 00 09 17

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**Senior Civil Judge & JMFC  
Periyapatna**

## J U D G M E N T

This miscellaneous appeal under Order 43 Rule 1 of CPC is filed by the appellants/ defendants No.1 to 9 against the order dated 22.07.2025, passed by the learned Civil Judge & JMFC, Periyapatna, in OS No.123/2025 allowing IA.No.I & II filed under Order 39 Rule 1 and 2 of CPC, by the respondent/plaintiff.

2. The appellants were the defendants and the respondent was plaintiff before the Trial Court.

3. The plaintiff, in the plaint has pleaded that the suit schedule property bearing Sy.No.71 measuring 2 acres was a Government land, which was granted to one Channaraje Urs as per Order No.LND(K).234/1992-92 dt:25.03.1997 and Grant Certificate issued in favour of said Channaraje Urs on 01.04.1997. Thereafter, said Channaraje Urs executed a registered agreement dt:05.05.2005 in favour of the

plaintiff for a sale consideration of Rs.2,50,000/- and also executed lease deed, GPA and Will dt:05.05.2005 in favour of the plaintiff and then said Channaraje Urs died on 09.03.2014. Thereafter, the legal heirs of said Channaraje Urs have filed a suit against the plaintiff in OS No.17/2016, which was ended in compromise by receiving a sum of Rs.3,00,000/- from the plaintiff. Accordingly, the suit schedule property was mutated in the name of the plaintiff. Except the plaintiff nobody is having any right, title over the suit schedule property. The plaintiff is in possession and enjoyment of the same by doing agriculture. When such being the situation, the defendants are trying to interfere with the possession of the plaintiff over the suit schedule property without having any right, title. Hence, the suit is filed along with IA.No.I and II.

4. Defendants by filing memo, prayed to consider the written statement as objection to the instant

applications. It is the case of the defendants that the landed properties bearing Sy.No.71 and 71/35 measuring 2 acres situated at Chamenahalli Village was originally granted the father of defendant No.1 by name Late Vankatabovi @ Venkatesha in the year 1971 as per the Order of Tahasildar passed in GDR No.10/64 dt:29.05.1964, since from the date of grant, the father of defendants No.1 and 3 was in possession and enjoyment of the same as absolute owner thereof. After the death of father of defendant No.1 and 3, they being his legal heirs are only the successors and having right, title and interest over the suit schedule property and they are in possession and enjoyment of the same. The defendant No.2 and 3 and others have filed the suit against the plaintiff and others in OS No.133/2025 for the relief of permanent injunction and same is pending for adjudication, hence, prayed to dismiss the suit with cost.

5. Along with plaint the respondent/plaintiff filed the applications i.e., I.A.No.I and II under Order 39 Rule 1 and 2 of CPC with duly sworn affidavit seeking to restrain the defendants/respondents from interfering with the appellant/plaintiff's peaceful possession and enjoyment over the suit schedule property and from putting up of fence to the said property ,by granting an ex-parte order of temporary injunction till disposal of suit (IA-I & II) stating facts set out in the plaint, which are already stated *supra*.

6. Trial Court has raised the following points:

1. Whether the plaintiff has made out prima-facie case in his favour?
2. Whether the balance of convenience exists in favour of the plaintiff?
3. Whether irreparable loss or injury will be caused to the plaintiff. temporary injunction is not granted at this stage?
4. What order?

7. After hearing arguments, the Trial Court has allowed the applications of the appellant/plaintiff. Being aggrieved by the said order the appellants/defendants have preferred this appeal by reiterating the written statement averments. It is urged that the appellant herein has produced the RTC of the suit schedule property, which clearly demonstrates that there are 381 acres of land in total, without any specific demarcation of separation of ownership. No single landowner has been allotted a separately demarcated portion. In many instances, the land has been granted by the State Government on different occasions, and only based on such grants, the respective grantees are in possession of their respective portions. Likewise, the defendants are in possession of the suit schedule property, under such circumstances, the Trial Court has arrived at erroneous finding. Since the above said land is consolidated, the defendants have also filed an application U/o XXVI Rule

9 of CPC R/w.Sec.151 of CPC seeking appointment of a Government Surveyor and Tahasildar to conduct a local inspection, as the plaintiff has denied the possession of defendants. But, the Trial Court has dismissed the said application, the defendants have preferred an appeal before the High Court of Karnataka challenging the said order. The Trial Court while passing order on the application filed by the plaintiff has relied on a sketch produced by the plaintiff. The said sketch was prepared in the absence of defendants, without issuing any notice to them, based on sketch, claim of the plaintiff is not admissible. Therefore, the order passed by the Trial Court is causing grave injustice and prejudice to the defendants possession. In an injunction suit, possession is a vital consideration, the defendants have produced the Grant Certificate along with RTC, despite the Trial Court erred in passing the order. Among these grounds, it is

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. Heard arguments on both side.

9. Following points arise for consideration;

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

2.What order?

10. Answer to the above points is as follows;

*Point No.1: In the Affirmative.*

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

### REASONS

11. Point No.1: The respondent/plaintiff in support of his case has produced xerox copy of Grant Certificate, sketch prepared by the Revenue Authority, RTCs and

Mutation Extract. As per these documents, 2 acres of land in Sy.No.71/P12 situated at Cahnnenahalli Village, Periyapatna Taluk was granted to Channaraje Urs. After that, khata was effected in his name vide MR No.15/1996-97. The respondent has also produced the xerox copy of registered Will dt:05.05.2005. As per the recitals of the Will the original Grantee Channaraje Urs, has bequeathed the suit schedule property in favour of the respondent. As per the compromise decree in OS No.17/2016, Kumararaje Urs and others, who are the children of original grantee of the suit schedule property have filed a suit before the Civil Court, Periyapatna, against the respondent M.J.Thimmegowda, but the plaintiff Kumararaje Urs and the defendant M.J.Thimmegowda have entered into compromise. As per the said compromise, the LRs of the original grantee have received consideration amount of Rs.3,00,000/- and given up their right over the suit schedule property in favour of the

respondent herein and possession of the property was also handed over to the respondent. By virtue of the compromise decree, the respondent Thimmegowda got changed the khata of the schedule property vide Mutation No.H23/2020-21.

12. It is the case of the defendants that, 2 acres of the land in old Sy.No.71 New Sy.No.71/35 situated at Channenahalli Village, Periyapatna Taluk was granted to Venkata Bhovi @ Venkatesh, who is father of defendant No.1 and 3. After the death of their father, the defendants No.1 and 3 entered into possession of the above said property. The appellants have produced xerox copy of Grant Certificate.

13. As per copy of plaint in OS No.133/2025, the appellant No.1 and 3 have filed the suit against the respondent and others for the relief of permanent injunction in respect of the land bearing Sy.No.71, New Sy.No.71/35 measuring 2 acres, which is bounded East by land of

Peddanna, West land of Narayanamma, North by land of Sharadamma and South by land of Javaregowda. The respondent has sought for temporary injunction in respect of 2 acres of land bearing No.71 in Sy.No.71/P12 bounded East by originally belonged to Munivenkataiah, now the land of Peddanna, Marakka, Ramesha, Venkataswamy and Kamalamma, West by land originally belonged to Ramappa, present of Narayanamma and houses of Subramani and Munivenkatesh, North by earlier land Muniyappa, now the lands of Krishna and Srinivasa and South by earlier land of Mallaiah, now the land of Javaregowda.

14. Looking to the pleadings and documents of both the parties, both the parties are claiming injunction in respect of different lands. The boundaries of the lands of both the parties also different together. In OS No.133/2025, which was filed by the respondents, they have maintained an application U/o.XXXIX Rule 1 and 2 of CPC for

temporary injunction, but the said application came to be dismissed. The claim of the appellants herein already decided in OS No.133/2025 by the learned Prl. Civil Judge & JMFC, Periyapatna. So the appellants cannot agitate their right once again before this Court by filing this Miscellaneous Appeal. On perusal of pleadings and documents of both the parties, the respondent has made out prima facie case. The Trial Court in its order has made an observation that the plaintiff is in possession of the suit schedule property and also observed that appellant/plaintiff has adduced prima facie document towards the interference of the defendants/respondents over the suit schedule property is correct. Normally there will be no document in respect of the interference made by any person in respect of the immovable properties. Interference is to be answered only after completion of trial. While considering the application under Order 39 Rules 1 and 2 of CPC, only prima-facie case,

balance of convenience, irreparable loss or injury are the important facts. On the basis of the report prepared by the revenue authority and photos produced by the respondent/plaintiff, it is found that he is in possession of the suit schedule property and it is held that he has made out a prima facie case. Therefore, when it is found that the respondent/plaintiff is in possession of the different property, the appellants/defendants cannot interfere in respect of the property, which is in possession of the respondent/plaintiff and if the defendants/appellants keep on interfering with the possession of the respondent/plaintiff over the suit schedule property, he may lose his possessory rights over the same. Then the irreparable loss and injury will be caused to the respondent/plaintiff. With all these reasons, I come to conclusion that the respondent/plaintiff has proved his prima facie possession over the suit schedule property, balance of

convenience lies in his favor. On careful perusal of materials available on record, it is clear that the Trial Court has properly appreciated the case of the parties and documents produced by them in its perspective manner and rightly allowed the applications filed by the respondent/plaintiff. Hence, the imugned order of the Trial Court does not warrant any interference by this Court and hence, appeal preferred by the appellants/defendants deserves to be dismissed. Hence, the above point is answered in the *Affirmative*".

15. Point No.2: By virtue of above findings, Court proceeds to pass the following;

### ORDER

Miscellaneous Appeal is dismissed.

Accordingly, the Order dated: 22.07.2025 passed on IA.No.I & II in OS.No.123/2025, on the file of the Civil Judge & JMFC, Periyapatna is hereby confirmed.

Send copy of this order to the Trial Court forthwith.

(Dictated to the Stenographer and transcribed by her, corrected and initialed by me and then pronounced in the open Court on this the 6<sup>th</sup> day of June 2026).

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