

KAMD400007682022



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC
AT MALAVALLI**

Present : Sri. Mahendra. M., B.A., L.L.B.,
Senior Civil Judge and J.M.F.C,
Malavalli.

Dated : This 29th day of January - 2025

MISCELLANEOUS APPEAL No.20/2022

Appellants/ : Defendants/: (OS.No.287/2021)	1. Sri. Appaji S/o Late. Pavadaiah, Aged about 49 years, 2. Sri. Prakash S/o Late. Pavadaiah, Aged about 47 years, 3. Sri.Suresh, S/o Late. Pavadaiah, Aged about 43 years. All are R/at Belathuru Village, Yathambadi Post, Kasaba Hobli, Malavalli Taluk, Mandya District.
	(Reptd. by Sri. M.P.M., Advocate)
Respondent/	Smt. Honnamma,

Plaintiff/: (OS.No.287/2021)	D/o Late.Honnaiah, And Doddahennamma, W/o Siddaiah, Aged about 71 years, R/at Belathuru Village, Yathambadi Post, Kasaba Hobli, Malavalli Taluk, Mandya District
	(Reptd. by Sri. D.R.,Advocate)

DATE OF PRESENTATION OF THE MISCELLANEOUS APPEAL :	20-10-2022		
NATURE OF APPEAL :	Against Order dated 05.09.2022 on I.A.No.I in O.S.No.287/2021 by Principal Civil Judge & JMFC, Malavalli.		
NATURE OF SUIT BEFORE TRIAL COURT :	Permanent Injunction		
JUDGMENT PRONOUNCED:	29-01-2025		
DURATION OF MISCELLANEOUS APPEAL:	Year/s	Month/s	Day/s
	02	03	09

(Mahendra. M)
Senior Civil Judge & JMFC.,
Malavalli.

JUDGMENT

This is a Miscellaneous Appeal preferred by the Appellants/Defendants being aggrieved by the order passed by

the Learned Principal Civil Judge & JMFC, Malavalli on I.A.No.I under Order 39 Rule 1 and 2 of CPC in O.S.No.287/2021 dated 05.09.2022.

2. For the sake of convenience, the parties to the Appeal are referred to in the same rank as before the Trial court in O.S.No.287/2021.

3. The Plaintiff has filed the suit against the Defendants for the relief of Permanent Injunction restraining the defendants their agents, servants or anybody acting on their behalf of from interfere with the peaceful possession and enjoyment of the plaintiff over the suit schedule property. In the said suit the defendant No.1 has filed his written statement and contested the suit.

4. Since from 2022 the Appellants have not produce the copy of interim application under Order 39 Rule 1 and 2 of C.P.C filed before the Trial court in OS No. 287/2021, not produce the copy of IA No.II under Order 39 Rule 4 of C.P.C and also not produce the copy of objection to interim

application filed before the Trial court. Hence, this court passed the Judgment on availability of records.

5. The Plaintiff has filed an I.A.No.I under Order 39 Rule 1 and 2 of C.P.C seeking for an interim order of temporary injunction against the defendants restraining from interfering with peaceful possession and enjoyment of the suit schedule properties till disposal of the suit.

6. The defendant No.1 has filed his written statement and objection to IA No.I., as stated above. The Appellants have not produce the objection to IA No.I filed before the Trial court. This court has perused the written statement filed by the defendant No.1 before the Trial court. After contest the Trial court allowed the IA No.I filed by the plaintiff and granted temporary injunction order against defendants in favour of plaintiff till disposal of the suit and IA No.II under Order 39 Rule 4 of C.P.C filed by the defendant NO.1 before Trial court was dismissed.

7. Being aggrieved by the same, the Appellants/ Defendants have preferred this Miscellaneous Appeal under Order 43 Rule 1 of C.P.C on the following grounds:

The order passed by the Trial court on I.A.No.1 is not at all maintainable either in law or on facts of the case and the same is liable to be set aside. The order of the Trial Court is capricious, arbitrary, perverse and one sided, hence the same is liable to be set aside. The Trial Court has grossly erred in holding that, the Katha of the suit schedule property stands in the name of the respondent, as on date of the suit and since defendants/ appellants have not challenged the katha stood in the name of the respondent, based on the Katha plaintiff / respondent has established her possession over the suit schedule property. The Trial Court has wrongly presumed that, mere existence of katha itself establishes the alleged possession of the plaintiff. The defendants / appellants have prima facie established that, they have grown the sugar cane crop in the suit schedule property and have also produced the photographs to show their physical possession over the suit schedule property. The learned Trial Judge failed to properly evaluate and apply the facts and pleadings of the parties and documents produced by the parties at this stage and also failed to apply the correct legal position before allowing I.A.

No.1, which has resulted in mis-carriage of justice. **With these grounds, the Appellants/ Defendants have sought for allowing the Miscellaneous Appeal and thereby sought for setting aside the Impugned Order.**

8. After filing of the Appeal, the Respondent has appeared through her Counsel. The learned counsel for the Appellants/Defendants has filed the written arguments and also decisions. The respondent has not canvassed the arguments on merits. This court also given liberty to respondent to file written arguments on or before 10.12.2024. Till today the respondent has not file the written arguments and not canvassed the arguments by orally.

9. The following points arise for the considerations of this court are:

POINT No.1 : Whether the Appellants/ Defendants establishes that the Order passed by the Learned Trial Court on I.A.No.1 is capricious, illegal, perverse and without considering the materials placed by them?

POINT No.2: Whether the impugned Order passed by the learned Trial Court requires to be interfered with?

POINT No.3: What Order?

10. The findings of this court on the above points are as under:

POINT No.1 : IN THE Negative

POINT No.2 : IN THE Negative

POINT No.3 : AS PER THE FINAL ORDER, FOR THE FOLLOWING;

REASONS

11. POINT No.1 and 2: Both these points are inter-connected; hence in order to avoid repetition of facts, both these points are taken together for discussion.

12. The case of the Plaintiff is that, the plaintiff is the absolute owner in possession and enjoyment over the suit schedule property. The suit schedule property is the ancestral property of plaintiff. The suit schedule property earlier belonged to the mother of plaintiff namely Smt. Doddahennamma. She has acquired the same under

registered partition deed dated:20.07.1982. The said partition took place between the mother of plaintiff and her sisters namely Chikkathayamma and Sannamma. As per partition deed the khata was transferred in the name of mother of plaintiff in respect of suit schedule property. The mother of the plaintiff died. After her death the khata transferred in to the name plaintiff on the basis of inheritance under M.R. No.16/2019-20. The plaintiff is in peaceful possession and enjoyment of the suit schedule property by growing sugarcane crops over the suit schedule property. The defendants have no manner of right, title, interest or possession over the suit schedule property. They are strangers to the suit schedule property but they are interfere with possession of the plaintiff over the suit schedule property. Hence, filed this suit.

13. The Plaintiff has filed I.A.No.I before the Trial court under Order 39 Rule 1 and 2 of C.P.C seeking had an interim order of temporary injunction against the defendants restraining from interfering with peaceful possession and enjoyment of the suit schedule property till disposal of the suit. The plaintiff further submitted that, she has prima facie case

and balance of convenience in her favour. If this application is not allowed the plaintiff will be put to irreparable loss and injury which cannot be compensated. Hence, filed IA No.I.

With these averments, the plaintiff has sought for allowing I.A No.I.

14. The defendants have filed an written statement and specifically denied the all the averments of the plaint. The defendants further contended that the suit of the plaintiff is barred by law of limitation. The plaintiff is residing at No.31/1 Vasanthappa Badavane 5th Main, 2nd C cross, Ganganagar, Bengaluru. Intentionally and deliberately he has furnished a false address if she is residing at Belathuru Village, Yathambadi Post, Kasaba Hobli, Malavalli Taluk, Mandya District. The plaintiff is not at all residing at the said address. The plaintiff is not in possession and enjoyment over the suit schedule property. There was exchange of properties between the father of plaintiff and father of the defendants and hence, the suit schedule property was delivered in favour of father of these defendants. The father of the plaintiff had taken the possession of the properties belonged to the family of these

defendants long back. It is not within the knowledge of these defendants about the alleged partition deed dated 20.07.1982. The plaintiff has not produced the relevant document to prove her possession over the suit schedule property. The defendants are in peaceful possession and enjoyment over the suit schedule property. The plaintiff has suppressed all material facts before this court. **Hence, With these contentions the defendants have sought for rejection of I.A No.I.**

15. The Learned Counsel for the Appellants has filed written arguments and stated that the plaintiff has failed to prove her possession over the suit schedule property. The Appellants also reiterated the written statement averments which was filed before the Trial Court. The Appellants have also relied upon some decisions of Hon'ble Supreme Court of India and Hon'ble High Court of Karnataka. The Appellants further stated that the Trial court has not considered the defence of the defendants wrongly allowed the IA No.I. Hence, the order passed by the Trial Court is deserves to be set a side by way of allowing the appeal.

16. At this stage, without going in to the merits of the case and holding mini trial, this court has considered the aspect of prima facie case. At this stage, this court makes it very clear that this court is looking towards prima facie case and not prima facie title. It is well-settled principles of law that at the time of disposing the Temporary Injunction application, the court cannot go into the prima facie title and only to consider whether the Plaintiff has made out a prima facie case for granting interim relief.

17. The primary purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and prejudice, likely to be caused to the Plaintiff if the relief is refused; and injury and prejudice likely to be caused to the Defendants if the relief is granted. The underlying object of

granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.

18. The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.

19. The first rule is that the applicant must make out a prima facie case in support of the right claimed by him. The court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of Temporary Injunction.

20. This Court in order to ascertain the prima facie case has considered the material available on record. The Appellants have not produced any single document before this court. This court already given about 2 years time to produce the documents but the Appellants have only filed written arguments but not produce the documents relied upon them before the Trial court. The material available on record the prima facie shows that the plaintiff is in possession and enjoyment over the suit schedule property on the basis of partition deed dated 20.07.1982. The plaintiff has made out prima facie case and balance of convenience lies in her favour. If this application is not allowed the plaintiff will be put to irreparable loss and injury, which cannot be compensated.

21. This Court has let us discuss about Under Order 39 Rule 1 of CPC. The said provision read like this:

"1. Cases in which temporary injunction may be granted.

Where in any Suit it is proved by affidavit or otherwise

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.

The Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in

dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

22. It is relevant to refer the ratio laid down by Hon'ble High Court of Karnataka which is reported in ILR 1991 (4) Karnataka 4544 in between Sanjeevamma Vs. Annayappa, wherein the Hon'ble High Court has held as under

Order 43 R1(r) - It is only where the finding of the Trial Court is contrary to the pleadings or a complete misdirection or non-consideration of any of the material or arbitrary, perverse or capricious, the appellate Court would interfere with the order of injunction passed by trial Court.

23. This court has carefully perused the ratio laid down in the above said case and applied the same to the facts on hand. In the case on hand, the order passed by the learned Trial Court is not capricious, vindictive and is based on facts available on record. The Trial Court has rightly come to the conclusion that I.A.No.I filed by the plaintiff/respondent has to

be allowed. After considering the materials on record this Court is of the opinion that if the relief of Temporary injunction is vacated, then loss or hardship will be caused to the plaintiff. After considering the materials on record, this court is of the considered opinion that the Appeal has to be dismissed and the Impugned order has to be confirmed and accordingly the Temporary Injunction allowed by the Trial Court against Defendants/Appellants has to be confirmed. **With these observations, this Court has answered Point No.1 and 2 in the Negative.**

24. POINT NO.3: For the aforesaid discussion on Point No.1 and 2, this court proceeds to pass the following;

ORDER

The Miscellaneous Appeal filed by the Appellants/ Defendants against the Order Dated: 05.09.2022 passed by the Learned Principal Civil Judge & JMFC, Malavalli in O.S.No.287/2021 on I.A No.1 is hereby dismissed with costs and accordingly Order Dated: 05.09.2022

passed by the Learned Principal Civil Judge & JMFC, Malavalli in O.S.No.287/2021 on I.A No.1 is hereby confirmed.

The Temporary Injunction Order granted by Trial Court on I.A No.1 under Order 39 Rule 1 and 2 of C.P.C Dated 05.09.2022 against defendants is hereby confirmed.

(Dictated to the Stenographer and transcribed by her, Order corrected and signed by me, then pronounced by me in the Open Court on this the **29th day of January -2025**).

**(Mahendra. M)
Senior Civil Judge & JMFC.,
Malavalli.**