

KARN210003572024



M.A.No.7/2024(J)

Presented on : 28-03-2024
Registered on : 28-03-2024
Decided on : 04-04-2026
Duration : 02 year, 00 months,
08 days

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

:PRESENT:

SANDESHA.K., M.A., LL.B,
Addl. Senior Civil Judge & JMFC,
Channapatha

Dated, this the 04th day of April 2026

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APPELLANT :

Sri.Mallesh
S/o Late Channaiah @
Channappa,
Aged about 44 years,
R/at Nunnuru Village,
Virupakshipura Hobli,
Channapatna Taluk,
Ramanagara District.

(By Sri. H.K., Advocate)

-Versus-

RESPONDENTS :

1. Smt.Kullamma,
W/o Late Kalegowda,
Aged about 66 years.

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2. Sri.Shivaramu,
S/o Late Kalegowda,
Aged about 41 years,

Both are residing at,
Nunnur Village,
Virupakshipura Hobli,
Channapatna Taluk,
Ramanagara District.

(By Sri.S.R.V., Advocate)

ORDER

The appellant/plaintiff has preferred this appeal under order XLIII Rule 1(R) of C.P.C., challenging the order on I.A.No.I passed by learned Prl.Civil Judge & JMFC, Channapatna, dated:19.02.2024 in O.S.No.127/2023.

2. For the sake of convenience, hereinafter the parties are referred to as their ranks shown in the suit before the trial court.

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3. The plaintiff has filed an application under Order XXXIX Rule 1 & 2 R/w Sec.151 of C.P.C., pray for restrain the defendant No.1 and 2 there agents, followers, servants, henchman's, supported or anybody form not put-up construction over the suit schedule property, till the disposal of the suit.

4. In the affidavit filed in support application plaintiff sworn that, plaint schedule property is self acquire of the plaintiff, said property got the plaintiff through the grant. Thereafter, Khatha has been mutated in the name of the plaintiff. After the grant due to some financial problem, plaintiff has not put-up any construction in the vacate site. Defendant No.1 is request the plaintiff that, she is not having any resident house to make some accommodation in the said site to reside her and tying her cows for some time within 2 or 3 years she make other arrangement. On the request of the defendant No.1 plaintiff consent to reside

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the defendant No.1 for a period of 2 or 3 years. After that, plaintiff has defendant No.1 to vacate the suit schedule property but defendant No.1 give one other reason to vacate the site, lastly she stated that, suit schedule property belongs to his she is having Khatha in her she vacate the suit schedule property. Thereafter, plaintiff enquired the Grama Panchayatha verified the Khatha has been mutated in name of the defendant No.1 illegally. defendant No.1 colluded with defendant No.3 and 4 she made a Khatha in her name. defendant No.1 and 2 are going to constructed suit schedule property and also they have not having the right over the same. Hence, this application.

5. As against the application filed by the plaintiff, the defendant No.1 and 2 have filed adoption memo and submitted that, written statement of defendant may be treated as objection to I.A.No.I. in the written statement

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defendant No.1 and 2 have admitted that, plaint schedule property is the self acquired property of the plaintiff but defendant No.1 and 2 have been continuous possession and enjoyment of the suit schedule property and has perfected there title to the suit schedule property by virtue of the adverse possession against the true owner. Defendant No.1 and 2 have put-up constructed over the suit schedule property at their cost and also paid tax paid the Grama Panchayathi. defendant No.1 and 2 have exercised all rights of ownership which has open hostile, was well with in the knowledge of the true owner. Defendant No.1 and 2 have been residing in the said house even till today. Defendant No.1 and 2 had continued unbroken possession of the suit schedule property since 2005 and enjoy the same. Hence, pray for dismiss the application.



6. By considering the application and objection filed by the defendant No.1 and 2, the trial court has raised the following points for consideration:

- 1. Whether the plaintiff/applicant has made out a prima facie case?**
- 2. Whether balance of convenience lies in favour of the plaintiff?**
- 3. Whether the plaintiff will be put to irreparable loss and injury if temporary injunction is not granted, as prayed ?**
- 4. What order?**

7. On appreciation of application filed by the plaintiff and objection filed by the defendant No.1 and 2, the learned trial court has reject the application.

8. Being aggrieved by the findings of the learned trial court, the plaintiff has preferred this appeal. The appellant has contended that, the trial court has failed to take in consideration in the nature of the interim application. The trial court simply without knowing scope

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and ambit of interim application and also irreparable loss and injury to the plaintiff while disposing IA No.I on merits. Trial court without consider in the vital aspect of the case regarding rival contention and also scope of suit and right of the respect to party as well as prima-facie case and balance of connivance valid disposing on merits.

9. In response to the notice of appeal, the respondent has appeared through his counsel.

10. Heard the argument of learned counsel for the appellant and the respondent.

11. I have perused the pleadings and material as well as impugned order.

12. The points that arise for my consideration are:

- 1. Whether the appellant/plaintiff proves that, the learned trial court has erred in dismiss the I.A.No.I filed by the plaintiff and hence, interference of this court is necessary?**



2. What order?

13. My findings to the above points are as under:

Point No.1 : In the **AFFIRMATIVE**

Point No.2 : As per final order

For the following:-

REASONS

14. POINT No.1: On perusal of entire material available on record, the suit filed by the plaintiff as well as written statement filed by the defendants, shows that, as per the contention of the defendant N.1 and 2 they are in peaceful possession and enjoyment of the suit schedule property and has perfected their title to the suit schedule property by virtue of adverse possession against the true owner.

15. The appellant produced E-Khatha, copy of grand certificate, demand registered extract, requestion and copy of cancellation and Khatah and copy of Aadhar card.

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Respondent No. 1 and 2 have produced copy of demand registered extracts, copy of death certificate, copy of tax receipt and Aadhar card.

16. The contention of the appellant that, the trial court has failure to find out true fact. Plaint schedule property is the self acquired property of the appellant. With the permission of the appellant respondent No. 1 is residing the suit schedule property. Without the knowledge of the appellant respondent No.1 and 2 colluded with defendant No.3 and 4 have made a Khatha in there favour. Respondent No.1 have no right title over interest over the plaint schedule property and also trying to constructed over the suit schedule property. The appellant has produced E-Khatha and copy of the order of Grama Panchayathi and copy of Hakku Patra. The order the Grama Panchayathi shows that, respondent No.1 Khath has been canceled by the Grama Panchayathi.



17. As admitted by the respondent that, against the true owner they have perfect their title over the suit schedule property by virtue of the adverse possession. such being the case, the plaintiff has filed suit for declaration possession and mandatory injunction. Therefore, when the plaintiff seeking above said relief, the respondent No.1 and2 have not illegally constructed over the suit schedule property. Respondent No.1 and 2 have been in possession enjoyment of the suit schedule property and they are claiming right over the suit schedule property by virtue of the adverse possession. Therefore, respondent No.1 and 2 have no right to constructed a house over the suit schedule property.

18. The document produced by the appellant i.e., E-Khatha copy of order of Grama Panchayathi clearly shows that, Khatha standing in their name of the defendant No.1 is canceled, therefore she clime adverse possession over the



suit schedule property. Therefore, respondent No.1 and 2 have no right constructed a house over the suit schedule property.

19. The main contention of the respondent that, they are claiming the right over the suit schedule property by virtue of adverse possession. but the respondents have prove such facts during in the course of trial. if the respondents have put-up constructed a house over the suit schedule property the appellant will put irreparable loss and injury. defendant No.1 and 2 have unauthorized possession over the plaint schedule property. Therefore, if the defendant No.1 and 2 have to constructed house in unauthorized possession of the property, the owner of the property will be put irreparable loss and injury. Hence, for the praefatus reasons, this court is of the view that, the plaintiff has made out prima-facie case, balance of convenience lies in his favour and irreparable injury will be

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caused to the plaintiff, if the order of temporary injunction is not granted in his favour. The material would clearly reveals that, the trial court has not considered the matter in right perspective and dismissal the application filed by the plaintiff. Hence, interference of this court is called for. As such, I am answering Point No.1 in the **AFFIRMATIVE**.

20. POINT No.2:- In view of my findings on the Point No.1, I proceed to pass the following:-

ORDER

The appeal filed by the appellant/ plaintiff U/o XLIII Rule 1(R) of C.P.C. is hereby allowed.

The impugned order dated:19.02.2024 passed by the learned Prl. Civil Judge & J.M.F.C., Channapatna on I.A.No.I filed by the plaintiff under Order XXXIX Rule 1 & 2 and section 151 of C.P.C. in O.S.No.127/2023 is hereby set aside.

Restrain the defendant No.1 and 2 there

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agents, followers, servants, henchman's, supporters are any body from not put-up any construction over the suit schedule property till the disposal of suit.

In the result I.A.No.I stands disposed.

Considering the facts and circumstances of the case, the parties are directed to bear their own cost.

Send copy of this order to trial court.

(Dictated to the Stenographer, directly on the computer and signed by me and then pronounced in the Open Court on this 04th day of April 2026)

(Sandesha.K.)

**Addl. Senior Civil Judge & J.M.F.C.
Channapatna.**

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***(JUDGMENT PRONOUNCED IN THE OPEN COURT
(ON /04/04/2026)
(VIDE SEPARATE ORDER)***

ORDER

The appeal filed by the appellant/ plaintiff U/o XLIII Rule 1(R) of C.P.C. is hereby allowed.

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**Addl. Senior Civil Judge & J.M.F.C.
Channapatna.**