



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE &
J.M.F.C., AT MAGADI.**

Present:

**Sri. Shivakumar R., B.A.L., LL.B.,
Addl. Sr. Civil Judge & JMFC., Magadi.**

**Dated This the 16th Day of July, 2026
M.A.No.32/2025**

- Appellants** : 1. Kemparaju,
S/o. Late. Thimmabhovi,
Aged about 56 years,
2. Smt. Puttalakshmamma,
W/o. Kemparaju,
Aged about 56 years,
3. Madhusudhana,
S/o. Kemparaju,
Aged about 26 years,
4. Smt. Renukadevi,
D/o. Kemparaju,
Aged about 25 years,
5. Sri. Narayana Swamy,
S/o. Late. Thimmabhovi,
Aged about 36 years,
6. Smt. Puspha,
W/o. Narayana Swamy,
Aged about 29 years,
7. Sri. Chandra,
S/o. Late. Thimmabhovi,
Aged about 41 years,

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8. Sri. Gurumurthy,
S/o. Late. Thimmabhovi,
Aged about 46 years,
9. Sri. Mohan Kumar,
S/o. Gurumurthy,
Aged about 20 years,
10. Sri. Nagaraju,
S/o. Late Thimmabhovi,
Aged about 39 years,

R/at: Basappanadoddi Village,
Madabal Hobli, Magadi Taluk,
Bangalore South District.

(By **Sri. M.N. Advocate**)

-- V/s --

Respondent : Sri. Kemparamaiah,
S/o. Late. Thimmabhovi,
Aged about 69 years,
R/at: Heligehalli Colony,
Madabal Hobli, Magadi Taluk,
Bangalore South District.

(By **Sri. N.R.S. Advocate**)

Date of institution of appeal	28-07-2025
Nature of the appeal	The appellants pray to set aside the Order passed on IA No.I filed U/O.XXXIX Rule 1 and 2 r/w. Sec.151 of C.P.C., by the Court of II Addl. Civil Judge and JMFC,

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	Magadi, in O.S.No.312/2024, dated: 02.07.2025		
Date of Judgment	16-07-2026		
Total Duration	Years	Months	Days
	00	11	18

**Addl. Sr. Civil Judge & JMFC.,
Magadi.**

ORDER

This Miscellaneous Appeal is filed by the defendants/appellants assailing the Order dated: 02.07.2025 passed on IA No.1 filed U/O. XXXIX Rule 1 & 2 r/w. Sec.151 of C.P.C., by the Trial Court i.e., II Addl. Civil Judge & JMFC., Magadi in O.S.No.312/2024, whereby the Trial Court has allowed the application filed by the respondent/plaintiff.

2. For the sake of convenience, the parties are hereinafter referred to, in terms of their status before the Trial Court.

3. **Brief facts leading to the present appeal are as follows:**

(a) The Plaintiff has filed the present suit as against the Defendants seeking for the relief of Permanent Injunction. This Application is filed, along with accompanying affidavit and sworn that, the Plaintiff and his

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family members are an absolute owners of the property bearing Sy.No.74, measuring to an extent of 0.37 guntas, situated at Gejjagaraguppe Village, Madbal Hobli, Magadi Taluk, which is more-fully described as the suit schedule property. Originally, the suit schedule property is the selfacquired property of the Plaintiff and the same was acquired by way of compromise decree passed in OS No.165/1997. As per MR No.2/2001-02, the concerned revenue officials have mutated the name of the Plaintiff in respect of suit schedule property.

(b) The Defendants are an eastern side bajudars of the suit schedule property and are utter strangers. The Defendants have not tolerated the improvements of the Plaintiff. When such being the case, on 11.08.2024, the Defendants came near the suit schedule property and made a hectic attempt to interfere with the possession of the Plaintiff over the suit schedule property. The said act of the Defendants was resisted by the Plaintiff with the help of his neighbors. In this regard, the Plaintiff has lodged a complaint before the jurisdictional police. In-turn, the jurisdictional police gave endorsement stating to seek remedy by way of filing the suit before the jurisdictional Civil Court. The Plaintiff is unable to

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resist the illegal act of the Defendants. With no other alternatives, the Plaintiff has approached this Court seeking for temporary injunction by restraining the Defendants from interfering with the possession of the Plaintiff over the suit schedule property. If this application is not allowed, the Plaintiff will be put to great hardship and on the other hand, no hardship will be caused to the Defendants, as they can always contest the matter on merits. Hence, prayed to allow the application.

(c) The Defendants No.1, 2, 4 & 5 have filed objection and contended that, originally, the total extent of Sy.No.74 is 3 acres 33 guntas and 5 guntas of kharab, out of which, the Defendants are in possession to an extent of 2 acres 14 guntas. The grandfather of the Defendants No.1, 2, 5 to 8 and 10 by name Sri. Thimmabhovi, S/o Bodigabhovi filed an application before Land Tribunal and the said application was registered as Case No.238/1965. Accordingly, 1 acre 20 guntas in Sy.No.74 was granted in favour of grandfather of the Defendants No.1, 2, 5 to 8 and 10. Again, Sri.Thimmabhovi, S/o Bodigabhovi filed an application before Land Tribunal and the said application was registered as Case No.187/1975-76. Accordingly, 36 guntas in Sy.No.74 was granted in his favour. After the

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death of grandfather of the Defendants No.1, 2, 5 to 8 and 10, the Defendants are in possession and enjoyment of the said property.

4. The Plaintiff is well aware about the said facts and he has colluded with the revenue officials and created the revenue documents and filed this suit. The Defendants have filed a suit in OS No.639/2023 as against the Plaintiff seeking for the relief of Declaration and Permanent Injunction in respect of property bearing Sy.No.74, measuring to an extent of 36 guntas and the said suit is pending for consideration. The Plaintiff is not having any manner of right, title or interest over the suit schedule property. If this application is allowed, the Defendants will be put to hardship and the same cannot be compensated in terms of money. Hence, prayed to reject the application.

5. After appreciating the pleadings and materials produced before it and hearing the arguments of both sides, the Trial Court allowed the I.A.No.1 filed by the plaintiff/respondent U/O.39 Rule 1 & 2 r/w. Sec.151 of C.P.C., and granted the order of temporary injunction restraining the appellants/defendants, their agents, servants, henchmen or anybody acting on their behalf from interfering over the suit schedule property till disposal



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of the suit vide impugned order. Being aggrieved by the said order, the present miscellaneous appeal has been filed by the defendants/appellants on the following grounds;

- i. The impugned order is not reasonable order and therefore liable to be set aside.
- ii. The trial court has allowed the I.A. No.1 solemnly on the ground that to support the contention of the plaintiff he has produced the documents.
- iii. The trial court has wrongly come to the conclusion that the RTC extract for the year 2023-24 demonstrates that, the suit schedule property is standing in the name of Plaintiff, the suit schedule property and the property and subject matter of the aforesaid suit are entirely different. Hence the documents pertaining to the aforesaid suit are not applicable to the present case on hand. Thereby came to the wrong conclusion by allowing the IA No. 1 instead of dismissing the same.
- iv. The trial court has wrongly come to the conclusion that the documents produced by the plaintiff prima-facie establishes that, the Plaintiff is in possession of the suit schedule property and the aforesaid documents prima-facie establishes that, the Plaintiff is in possession of the suit schedule property. Thereby came



to the wrong conclusion by allowing the IA No.1 instead of dismissing the same.

- v. The trial court has wrongly come to the conclusion that if the Defendants try to interfere with the suit schedule property, it will cause hardship and injustice to the Plaintiff and same cannot be compensated in terms of money. Thereby come to the wrong conclusion by allowing the IA No.1 instead of dismissing the same.
- vi. The trial court has wrongly come to the conclusion that if the Defendants continued to interfere with the peaceful possession of the Plaintiff in respect of suit schedule property, the right of the Plaintiff to enjoy the suit schedule property will be curtailed. Thereby come to the wrong conclusion by allowing the IA No. 1 instead of dismissing the same.
- vii. The trial court has wrongly come to the conclusion that the balance of convenience is in favor of the Plaintiff and if this act of the Defendants are continued, then it will cause irreparable loss to the Plaintiff. Thereby come to the wrong conclusion by allowing the IA No. 1 instead of dismissing the same.
- viii. The trial court has rightly come to the conclusion that on Perusal of order dated 21.02.1979, passed in LRF(M) No.187/75-76, it reveals that, the property



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bearing Sy.No.74, measuring to an extent of 36 guntas was granted in the name of grandfather of the Defendants No.1, 2, 5 to 8 and 10 and accordingly, the RTC extract from the year 1994-97 reflects the name of their grandfather in respect of the aforesaid property. But come to the wrong conclusion by allowing the IA No. 1 instead of dismissing the same.

- ix. The trial court has not properly looked the documents produced by the plaintiffs and defendants, the documents produced by the plaintiffs itself goes to show that the plaintiffs are out of possession of the suit schedule property.
- x. That the impugned order suffers from illegality and that the same being contrary to the facts and legal position, hence it is liable to be set aside and I.A. No. I filed by the respondents is liable to be dismissed.
- xi. That viewed from any angle the impugned order being unjust an improper is liable to be set aside.

6. After registering the appeal the notice was ordered to be issued to the respondent. In pursuance of the notice, the respondent has appeared before this Court through his counsel. Thereafter, the case was posted for arguments.

7. Heard the arguments of both sides.



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8. In the light of the submissions made by the learned counsel for the appellants and respondents, the following points arise for my consideration:

POINTS

1. Whether impugned order dated: 02.07.2025 passed in O.S.No.312/2024 by the Trial Court is capricious, arbitrary and perverse?
2. Whether the order of the Trial Court calls for any interference?
3. What order or decree?

9. Having gone through the Order of the Trial Court, the document placed by both the parties in this appeal, I answer the above points are as under:

- | | | |
|------------|---|--|
| Point No.1 | : | In the Negative. |
| Point No.2 | : | In the Negative |
| Point No.3 | : | As per final order
for the following; |

REASONS

10. **Point No.1 & 2**:- Since both the points are interconnected and interlinked with each other, they have taken up together for common

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discussion to avoid the repetition of facts. Undisputedly, the plaintiff/respondent has filed the suit before the Trial Court in O.S.No.312/2024 as against the appellants/defendants for the relief of permanent injunction in respect of suit schedule property. It is the case of the plaintiff that, the plaintiff and his family members are the owners and in peaceful possession and enjoyment of the suit schedule property. Originally suit schedule property is the self-acquired property of the plaintiff, she has acquired the same by virtue of the compromise decree passed in O.S.No.165/1997. The defendants are the eastern side bajudars of the plaintiff's property. The defendants have no manner of right, title, interest or possession over the suit schedule property, they had tried to interfere with the possession of the plaintiff.

11. On the other hand, the defendants have contended that, the defendants are in possession of property bearing Sy.No.74, measuring to an extent of 2 acres 14 guntas. The grandfather of the defendant No.1, 2, 5 to 8 and 10 filed an application before Land Tribunal and the said application was registered as case No.238/1965 and case No.187/1975-76 and accordingly, 1 acre 20 guntas & 36 guntas in Sy.No.74 was granted in

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his favour. The plaintiff well aware of the said facts and he has colluded with the revenue officials and created the documents and filed this frivolous suit.

12. As discussed above, after hearing both sides the Trial Court allowed the I.A.No.1 filed by the plaintiff. The Trial Court in paragraph No.13 of the Order it is observed that, on perusal of the order dated: 28.05.1977 passed in LRF(M) 195/75-76, it reveals that, the property bearing Sy.No.74, measuring to an extent of 1 acre 36 guntas was granted in favour of Sri. Guruvabhovi and the same is also reflected in records of rights and index of lands. Further, on perusal of order sheet and decree passed in O.S.No.165/1997, it reveals that, the plaintiffs had filed a suit as against Sri. Guruvabhovi seeking for the relief of declaration and permanent injunction in respect of the suit schedule property. Based on the memo filed by Sri. Guruvabhovi, the said suit was decreed in favour of plaintiff. As such, declaring that the plaintiff as an absolute owner of the suit schedule property. Accordingly, the RTC extract for the year 2023-24 demonstrates that, the suit schedule property is standing in the name of plaintiff. Further, patta book also establishes that, the suit schedule



property is standing in the name of plaintiff.

13. This Court has carefully perused the materials placed before the Trial Court and other materials placed on record. In the instant suit, the plaintiff is claiming possession over the suit schedule property. In order show the prima-facie case, the plaintiff has produced the RTC Extracts for the year 2024-25. On perusal of the same, it appears that, the khata of the suit schedule property was mutated in the name of plaintiff as per MRH.02/2001-02. It is to be noted that, Section 133 of the Karnataka Land Revenue Act, 1964 deals with the “presumption regarding entries in the record.” It mandates that, any entry made in the record of rights (popularly known as the RTC or Pahani) and any certified entry in the Register of Mutations is legally presumed to be true until proven otherwise. The defendants have taken a contention that, the plaintiff has colluded with the revenue officials and created the documents in his name in respect of suit schedule property. At this stage the rights of the parties cannot be adjudicated, it needs full fledged trial. Looking into the pleadings and documents produced by both the parties before the Trial Court at this stage it appears that, the plaintiffs have made out the prima-



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facie case and balance of convenience lies in their favour. If this application is not allowed, the plaintiffs will be put to great hardship. If this I.A., is allowed, there is no harm cause to the other side.

14. At this juncture, I would like to refer the Judgment reported in **ILR 1968 MYS 296**, wherein, their Lordship pleased to held that, “The relief of injunction is based on exercise of discretion by the courts, which cannot be likely interfered with by the appellate court unless where exercise of discretion is unreasonable or capricious. Some possibility of a different view on the facts and circumstances of the case by itself will not be sufficient to interfere with the order.”

15. The Hon’ble Apex of India in the case of **Mohammed Mehtab Khan and Ors., V/s. Khushnuma Ibrahim Khan and Ors. The same is reported in (2013) 9 SCC 221**. In the said Judgment the Hon’ble Apex Court of India observed that, “The interference in the order passed by the Trial Court in the application filed U/O.39 R.1 & 2 of C.P.C., is not permissible unless the exercise of discretion by the Trial court is probably incorrect or untenable. If the view taken by the Trial Court is possible view, the same did not liable to be interfered by the appellant court.”



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16. The ratio laid down in the above referred Judgment are very clear that, the interference in order passed by the Trial Court on the application filed U/O.39 R]\y.1 & 2 of C.P.C, is permissible only when the exercise of discretion by the Trial Court is incorrect and untenable. However, the Trial Court in its order rejected the I.A.No.1 filed by the plaintiffs/appellants was rightly rejected by the Trial Court. So the Trial Court properly appreciated the pleadings and materials produced before it. Therefore, this court come to conclusion that, the impugned order of the Trial Court is not arbitrary, capricious and perverse. Under such circumstances, interference of this Court in the impugned order of the Trial Court is not warranted. For all these reasons I answer the point No.1 & 2 in the negative.

17. **Point No.3:** For the reasons stated on point No.1 and 2, and in the interest of justice and equity, I proceed to pass the following;

ORDER

The Misc. appeal filed by the appellants U/O.43 Rule 1 of C.P.C., challenging the impugned order dated: 02.07.2025 is hereby dismissed.

The Order dated: 02.07.2025 passed by the Trial Court

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allowing the I.A.No.1 in O.S.No.312/2024 is hereby confirmed.

All pending I.As., in the above matter are stand disposed.

Considering the circumstances of the case, no order as to cost.

Send the copy of this order to trial court forthwith.

(Dictated to the Typist directly on the computer, typed by her, corrected by me and then pronounced in the open court on this the **16th day of July, 2026.**)

(Shivakumar R.,)
Addl. Senior. Civil Judge & JMFC.,
Magadi.