



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

Appellants :

1. Kemparaju,
S/o. Late. Thimmabhovi,
Aged about 56 years,
2. Smt. Puttalakshamma,
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 :

1. Sri. Venkataswamy,
S/o. Late. Chinnaiah,
Aged about 54 years,
2. Sri. Ramakrishnaiah,
S/o. Late. Chinnaiah,
Aged about 50 years,
3. Sri. Nagaraju,
S/o. Late. Chinnaiah,
Aged about 41 years,

All are R/at:
Heligehalli Colony,
Madabal Hobli,

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Magadi Taluk,
Bangalore South Taluk.

(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, Magadi, in O.S.No.311/2024, 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.311/2024, whereby the Trial Court has allowed the application filed by the respondents/plaintiffs.

2. For the sake of convenience, the parties are hereinafter referred

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to, in terms of their status before the Trial Court.

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

(a) The Plaintiffs have 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 Plaintiffs and their 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 self acquired property of the mother of the Plaintiffs and the same was acquired by her in compromise decree passed in OS.No.164/1997. From the date of decree, the mother of the Plaintiffs was in possession of the suit schedule property as an absolute owner. After her demise, the Plaintiffs have inherited the suit schedule property. As per MR No.H12/2022-23, the concerned revenue officials have mutated the name of the Plaintiffs 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

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improvements of the Plaintiffs. 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 Plaintiffs over the suit schedule property. The said act of the Defendants was resisted by the Plaintiffs with the help of his neighbors. In this regard, the Plaintiffs have 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 Plaintiffs are unable to resist the illegal act of the Defendants. With no other alternatives, the Plaintiffs have 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 Plaintiffs 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) In pursuance of the suit summons, the defendants have appeared through their counsel and filed the detailed written statement and resisted the I.A., filed by the plaintiffs. The defendants have filed the memo

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adopting the written statement averments as objection to I.A.No.1. In the written statement the defendants have contended that, the mother of the plaintiffs by name Jayamma and one Guruva Bhovi are colluded each and created the revenue records, on the basis of created revenue records, they have colluded each and filed the suit in OS.No.164/1997 and obtained the colluded decree, on the basis of colluded decree they have created the revenue records. The above said colluded decree, subsequently came to knowledge of this defendants. The said colluded decree not binding on the right, title interest and possession over the property of the defendants.

(d) It is further contended that, the plaintiffs have included the property of these defendants, they have filed this false suit by suppressing the true facts. The plaintiffs have created the measurement and filed this suit. The plaintiffs are not the owner and not in possession over the suit schedule property. Originally the land bearing Sy No. 74 of Gejjagaraguppe village, Madbal Hobli, Magadi Taluk, Ramanagara District is totally measuring 3 acres 33 guntas and 0.05 guntas of Karab, out of which this defendants are in possession and enjoyment over the landed property bearing Sy.No. 74 measuring to an extent of 2 acres 14 guntas situated at

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Gejjagaraguppe Village, Madbal Hobli, Magadi Taluk, Ramanagara District. The plaintiffs include the above said property and filed this false suit with an intention to grab the above said property.

(e) It is further contended that, the grandfather of the defendant No.1, 2, 5 to 8 and 10 and great grandfather of the other defendants by name Thimmabhovi S/o Bodiga Bhovi has filed the application before the land tribunal for grant of land which is in possession. The said tribunal registered the case in case No. 238/1965 and considered the application of the Thimmabhovi and granted the land measuring to an extent of 1 acre 20 guntas in land bearing SY No. 74 in favour of Thimmabhovi. The said Thimmabhovi is in possession and enjoyment over the above said property and he was died. After his death, his legal heirs i.e.. defendants are in possession and enjoyment over the above said property.

(f) It is further contended that, the grandfather of the defendant No.1, 2, 5 to 8 and 10 and great grandfather of the other defendants by name Thimmabhovi S/o Bodiga Bhovi is filed the application before the land tribunal for grant of land which is in possession. The said tribunal registered the case in case No. 187/1975-76 and considered the application

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of the Thimmabhovi and granted the land measuring to an extent of 0.36 guntas in land bearing SY No. 74 in favour of Thimmabhovi. The said Thimmabhovi is in possession and enjoyment over the above said property and he was died. After his death, his legal heirs i.e.. defendants are in possession and enjoyment over the above said property. The above said facts well known to the plaintiffs, the plaintiffs by colluding with the revenue officials and without having any right, title interest or possession over the suit schedule property, he created the revenue records. On the basis of created revenue documents, the plaintiffs have filed this suit. Subsequently the above said facts came to know the knowledge of the defendants and they are reserved their right to challenge the revenue records before the concerned authority.

(g) It is further contended that, the plaintiffs are out of possession of the suit schedule property and they are not the owner of the suit schedule property. Hence the plaintiffs are not entitled for any reliefs as sought in the plaint. The plaintiffs and others have created the revenue records and interfered with the defendants peaceful possession and enjoyment over their some portion of the property, hence the defendants have filed the suit

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against the plaintiffs and others with respect to land bearing Sy No. 74 measuring to an extent of 0.36 guntas situated at Gejjagaraguppe village, Madbal Hobli, Magadi Taluk, Ramanagara district in OS No. 639/2023 seeking the relief of declaration and permanent injunction and the said suit is still pending for consideration. After filing the suit, the plaintiffs suppressed the above said facts and filed this false suit. For all these grounds, the defendants pray to reject the I.A., filed by the plaintiffs.

4. 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 plaintiffs/respondents 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 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 trail court has allowed the I.A.No.1 solemnly on the



ground that to support the contention of the plaintiffs, they have produced the documents.

- iii. The trial court has correctly come to the conclusion that on Perusal of order dated 21.02.1979, passed in LRF(M) 187/75-76, it reveals that, the property bearing Sy. No.74, measuring to an extent of 36 guntas was granted in the name of grand father 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.
- iv. The trial court has wrongly come to the conclusion that the suit schedule property and the property and subject matter of the aforesaid suit are entirely different and hence, the documents pertaining to the aforesaid suit are not applicable to the present case on hand. Thereby come 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 the aforesaid documents prima-facie establishes that, the Plaintiffs are in possession of the suit schedule property. 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 try to interfere with the suit schedule property, it will cause hardship and injustice to the Plaintiffs 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.
- vii. The trial court has wrongly come to the conclusion that if the Defendants continued to interfere with the peaceful possession of the Plaintiffs in respect of suit schedule property, the right of the Plaintiffs 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.
- viii. The trial court has wrongly come to the conclusion that the balance of convenience is in favor of the Plaintiffs and if this act of the Defendants are continued, then it will cause irreparable loss to the Plaintiffs. Thereby 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.



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- 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 and improper is liable to be set aside.
- xii. That the appellant seek permission of this court to urge such other grounds and documents at the time of hearing of this appeal.

5. After registering the appeal the notice was ordered to be issued to the respondents. In pursuance of the notice, the respondents have appeared before this Court through their counsel. Thereafter, the case was posted for arguments.

6. Heard the arguments of both sides.

7. 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.311/2024 by the Trial Court is capricious, arbitrary and perverse?



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2. Whether the order of the Trial Court calls for any interference?

3. What order or decree?

8. 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

9. **Point No.1 & 2:-** Since both the points are interconnected and interlinked with each other, they have taken up together for common discussion to avoid the repetition of facts. Undisputedly, the plaintiffs/respondents have filed the suit before the Trial Court in O.S.No.311/2024 as against the appellants/defendants for the relief of permanent injunction in respect of suit schedule property. It is the case of the plaintiffs that, the plaintiffs and their family members are the owners and in peaceful possession and enjoyment of the suit schedule property.

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Originally suit schedule property is the self-acquired property of the mother of the plaintiffs, she has acquired the same by virtue of the compromise decree passed in O.S.No.164/1997. After demise of mother of the plaintiffs, the plaintiffs have inherited the suit schedule property. Accordingly, the khata of the suit schedule property is jointly stands in the name of plaintiffs. When such being the case, the defendants have no manner of right, title, interest over the suit schedule property and they are trying to interfere with the possession of the plaintiffs.

10. 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 his favour. The said fact known to the plaintiffs. The plaintiffs have filed this suit only with an intention to knock of the property belongs to the defendants.

11. As discussed above, after hearing both sides the Trial Court

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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.164/1997, it reveals that, the mother of 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 was decreed in favour of mother of the plaintiffs as an absolute owner of the suit schedule property. After the death of mother of the plaintiffs, as per M.R.No.H12/2022-23, the suit schedule property was mutated in the name of plaintiffs. Accordingly, the RTC extract for the year 2024-25 demonstrates that, the suit schedule property is standing in the name of plaintiffs. Further, patta book and hiduvali certificate also establishes that, the suit schedule property is standing in the name of plaintiffs.

12. This Court has carefully perused the materials placed before the

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Trial Court and other materials placed on record. In the instant suit, the plaintiffs are claiming possession over the suit schedule property. In order to show the prima-facie case, the plaintiffs have produced the RTC Extracts for the year 2024-25. On perusal of the same, it appears that, the khata of the suit schedule property jointly mutated in the name of plaintiffs as per MRH.12/2022-23 by way of inheritance. 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. 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-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.

13. At this juncture, I would like to refer the Judgment reported in



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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.”

14. 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.”

15. 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.1 & 2 of C.P.C, is permissible only when the exercise of discretion by the Trial Court is incorrect and untenable.

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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.

16. **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 allowing the I.A.No.1 in O.S.No.311/2024 is hereby confirmed.

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

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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.