

IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC.,
KUNIGAL.

-.PRESENT:-

Sri. Manjunath Shivapooji B.A. LL.B.,

Addl. Civil Judge & JMFC., Kunigal

Dated this the 24th day of September, 2025

O.S. NO.680/2022

Plaintiff : Ningamma
V/s

Defendants : Revanna and others

I.A. No.1

Applicant : Ningamma
V/s.

Opponent : Revanna

ORDERS ON APPLICATION FILED BY THE PLAINTIFF
UNDER ORDER XXXIX RULE 1 AND 2 OF C.P.C

The plaintiff has filed this suit for the relief of permanent injunction against the defendants with respect to suit schedule property.

2. The plaintiff has filed IA No.1 under order XXXIX Rule 1 and 2 of CPC and to restrain the defendants from interfering with her possession over the suit property until

disposal of the suit.

3. The plaintiff in the affidavit annexed to IA No.1 has pleaded that, the defendant No.1 has executed the mortgage deed dated: 26.02.1975 with respect to suit property and handed over the possession of the suit property to plaintiff. From the date of mortgage, the plaintiff is in possession till today. The defendant No.1 has not redeemed the mortgage and not taken possession of the suit property from the plaintiff.

4. The plaintiff further contended that, the defendant No.1 has executed release deed dated: 19.11.2020 in favour of defendant No.2. The defendant No.2 has executed the above said release deed after lapse of 47 years.

5. The defendants have no interest and possession over the suit schedule property, taking advantage of katha not changed in the name of plaintiff, the defendants, surprisingly change the katha of suit property in favour of defendant No.2 and trying to interfere with the plaintiff peaceful possession and enjoyment of the suit schedule property. The plaintiff try

to have police protection, but the police have refused to extent police protection, only say that matter is Civil in nature. Hence, without any alternative remedy, the plaintiff has filed this suit. Hence, prayed to allow the IA No.1.

6. The defendants have appeared before the court and filed written statement and admitted the execution of mortgage deed in favour of plaintiff. The defendant further contended that, the defendant No.1 has redeemed the mortgage deed dated: 26.02.1975 and also repaid the mortgage amount to plaintiff. But, the plaintiff has failed to execute the cancellation of mortgage deed or endorsement with respect to receipt of mortgage amount. The defendants further contended that, while redeeming the mortgage, the defendant No.1 has obtained the possession of the suit property from the plaintiff.

7. The defendant No.1 has filed OS No.233/2023 for the relief of redemption of mortgage and such other reliefs and said suit is pending for disposal. The plaintiff has filed this

suit by suppressing the fact of the above said suit. The plaintiff has not approached this court with clean hands. Hence, prayed to dismissed the application.

8. Heard arguments.

9. On basis of the application, plaint, written statement and documents on record, the following points that arise for the determination of this court.

1. Whether the plaintiff has made out prima- facie case in her favour?

2. Whether the balance of convenience lies in favour of the plaintiff?

3. Whether the plaintiff will be put to great hardship and irreparable loss if, order of temporary injunction is not granted?

4. What order?

10. Heard arguments. Perused the application, affidavit, objections and records placed before this court.

11. My finding on above points are as follows:-

Point No.1 : *Partly in the Affirmative*

Point No.2 : *Partly in the Affirmative*

Point No.3 : *Partly in the Affirmative*

Point No.4: As per the final order for the following;

::REASONS::

12. **Point No.1 to 3**: Since these points are inter connected with each other, they are taken together for the discussion in order to avoid the repetition of the facts and circumstances.

13. In this case, the plaintiff and defendants have produced voluminous documents in support of their case. The plaintiff in support of her contention has produced the certified copy of mortgage deed dated; 26.02.1975. Further, she has produced the encumbrance certificate pertaining to suit property. Further, the plaintiff has produced the relinquishment deed dated: 19.11.2020 which is executed by

defendant No.1 in favour of defendant No.2.

14. In this case while hearing the matter on IA No.1 both plaintiff and defendants have brought the fact of pendency of OS No.233/2023. The plaintiff has produced the plaint in OS No.233/2023. On perusal of the same it appears that, the defendant No.2 has filed the above said suit for the relief of redemption of mortgage.

15. In the case on hand, the plaintiff also contended that, the defendants after lapse of 47 years, the defendants are trying to interfere with the possession of plaintiff over the suit property. Further, the advocate for defendants has filed memo and submitted that, the plaintiff in the suit has filed C.Mis No.139/2025 before District Court for transfer of this suit to Prl.Civil Judge court.

16. On perusal of the entire documents it appears that, in this case evidence is yet to be commenced. Without the evidence this court unable to come to conclusion that, who is in possession over the suit property. Further, this court comes to

the conclusion that, OS No.233/2023 is proper suit to decide every fact with regard to execution of mortgage or redemption of mortgage or who is in possession. Because, the said suit is for title. Hence, this court would like to direct the both parties to maintain status-quo until disposal of OS No.233/2023. Accordingly, ***Point No.1 to 3*** are answered ***Partly in the Affirmative.***

17. **Point No.4::** For the above discussed reasons, this court proceeds to pass the following:

:ORDER::

Both parties are directed to
maintain status-quo until disposal
of OS No.233/2023.

[Dictated to the stenographer directly on computer and then corrected by me and thereafter pronounced in the open court on this the **24th day of September, 2025**]

Sd/-

[Shri.Manjunath Shivapooji]
Addl Civil Judge and JMFC,
Kunigal.