



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

PRESENT: Sri.VINOD KUMAR.M BAL.,LLB,LLM.,
ADDL. SENIOR CIVIL JUDGE & JMFC
AT SIRA

MA.No.05/2021

Dated this the 08th day June – 2026

Appellant/s

Kamanna @ Kamegowda,
S/o late Rangappa,
Aged about 54 years,
R/at Huildore Village,
Bukkapatna Hobli,
Sira Taluk.

(BY **Sri.Y.R.R** Adv.)

V/s

Respondent/s

1. Parashurama,
S/o late Sannaveeraiah,
Aged about 55 years,
R/at Yadaladaku Village,
Hulikunte Hobli, Sira Taluk,
Tumakuru District.

2. Shivappanayaka,
S/o late Sannaveeraiah,
Aged about 52 years,
Both are R/at Santhepete,
Sira Town.
Now R/at Madhugiri Town,
Tumakuru District.

(R.1 & 2 **Sri.DB/KSR.** Adv.)



Date and nature of decree appealed against	Impugned order passed in O.S.No.117/2020 dated 30.01.2021 the Prl. Civil Judge and JMFC, Sira
Date of institution of the appeals	19.02.2021
Date on which the Order was pronounced.	08-06-2026
Total duration	Year/s : Month/s : day/s
	05 03 17

Sd/-
(VINOD KUMAR. M)
Addl. Senior Civil Judge &
JMFC., Sira

:: O R D E R ::

The Miscellaneous appeal filed by appellant/original plaintiff U/o 43 Rule 1 of CPC challenging the impugned order passed in O.S.No.117/2020 dated 30-01-2021 by the Prl. Civil Judge and JMFC, Sira.

2. The appellant was plaintiff and respondents were defendants before the trail court. For the sake of convenient and brevity, the parties would be referred to in this judgment as per their ranks before the trail court.

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

The appellant/plaintiff filed suit in O.S.No.117/2020 against defendants/respondents for the relief of permanent injunction in respect of suit property along with the suit the plaintiff filed an interim application U/o 39 rule 1 & 2 of CPC



restraining the defendants from interfering with possession of suit property. After service of summons the defendants appeared through their counsel and filed their objections to application U/o 39 rule 1 & 2 of CPC. Having heard the matter on both sides, the trial court has dismissed the application filed by plaintiff.

4. The trial court has raised the following points at the time of considering the application U/o 39 Rule 1 & 2 of CPC:-

P O I N T S

- 1. Whether the plaintiff has made out prima-facie case?***
- 2. Whether the balance of convenience lies in favor of plaintiff?***
- 3. Whether the irreparable loss or injury would cause to the plaintiffs if the application is not allowed?***
- 4. What order or decree?***

5. After hearing the arguments, the trial court has dismissed the application. Upon impugned order, the aggrieved party/appellant preferred this Miscellaneous appeal challenging the said order upon following grounds as hereunder:

G R O U N D S

- 1. The trial court has not properly appreciated the pleadings and documents produced by appellant.***



2. The trial court erred in the appellant/plaintiff is in possession of suit property having acquired under sale deed dated 11.05.1992.

3. The impugned order passed by trial court is illegal, arbitrary, capricious and perverse.

4. The trial court has erred in passed order against appellant by dismissed the I.A.NO.1 U/o 39 Rule 1 & 2 of CPC.

6. Hence, on the above among other grounds, the original plaintiff/appellant in appeal prayed before this court to allow appeal and set-aside the impugned order dated 30-01-2021 passed by the trial court in O.S.No.117/2020.

7. After passing of the impugned order in O.S.No.117/2020, the original defendants/respondents appeared through counsel before this court after issued notice on the appeal.

8. The respondents resisted the application by filed objections to appeal and thereafter, heard the arguments of the counsel for appellant and that of learned counsel for respondents with written arguments. Perused the entire materials available on record of the case.

9. In view of the grounds in the appeal made out by the appellant/plaintiff the following points arise for my consideration :



P O I N T S

1. Whether the trial court erred in holding that, the plaintiff has made out prima-facie case, balance of convenience and irreparable hardship for grant of temporary injunction as prayed in the application?

2. Whether the trial court has erred in consider the physical possession of suit property by the plaintiff acquired under sale deed?

3. Whether the order of trial court calls for interference by this court?

4. What order or decree?

10. After perusal of the entire records including documents available on record and hearing the arguments, my findings to the above points are as follows :

POINT NO.1 : In the Negative

POINT NO.2 : In the Negative

POINT NO.3 : In the Negative

**POINT NO.4 : As per final order
for the following :**

R E A S O N S

11. POINTS NO.1 to 3: Since all these points are inter-connected with each other and involved common discussion, they are taken up together for consideration in order to avoid repetition of facts and discussion.



12. It is specific contention of appellant that, he is owner in possession of suit property having acquired under sale deed dated 31.03.1992 from vendor Rajanna and Khatha got transferred in his name before Gramapahchayath including paying taxes to concerned authority. But the defendants trying to interfere with possession of suit property. On other hand, the defendants contended that, originally suit property was granted to their mother/Sannamma in the year of 1975 and put in possession of suit property. After death of Sannamma, the plaintiff created documents in order to knock of the suit property. The plaintiff never in possession of suit property. As such, the appellant has not made out prima-facie, balance of convenience and irreparable loss while dismissal the application filed before trail court.

13. I have gone through the rival contention made by both parties. It is not in dispute by both parties that, originally suit property was granted in favor of Sannamma none other than mother of defendants in the year of 1975. Now it is necessary to culled out about whether the plaintiff has made out prima-facie, balance of convenience and irreparable loss before the trail court while considering the I.A.No.2 U/o 39 Rule 1 & 2 of CPC. It is specific contention of appellant before trial court that, he acquired the suit property under sale deed and got changed Khatha of the property includes put in possession of the same. But the defendants illegally trying to interference over suit property. In order to prove the prima-facie, the plaintiff has produced sale deed dated 31.03.1992 clearly establish that, he



purchased the suit property from Rajanna for valuable sale consideration and Khatha of the suit property got transferred from Rajanna to plaintiff/Kamanna in demand registers from 1992 to 2021. On other hand, the defendants never disputed the Khatha of suit property standing in the name of plaintiff.

14. The defendants/respondents specifically contended that, their mother Sannamma never executed any sale deed in favor of Rajanna none other than vendor of plaintiff over suit property. But the plaintiff created the documents in his name in order to knock of the suit property. In support of contention the counsel for defendants produced house list for the year of 1975-76 clearly establish that, originally suit property was granted to their mother Sannamma by Govt., and further documents clearly revels that, there are no any mahazar, application, meeting resolution and mutation register in the name of Rajanna and plaintiff before Panchayath except issued endorsement. The defendants have produced the further documents to show that, they are in possession of suit property and put fencing around suit property with stones slab and barbed wire. On other hand, the plaintiff never denied the stones slab and barbed wire around suit property installed by defendants.

15. It is specific arguments of counsel for defendants that, the defendants nor their mother/Sannamma never executed any sale deed in favor Rajanna to sell the suit property in favor of plaintiff. If the vendor of plaintiff by name Rajanna claiming the



suit property under un-registered sale deed, it does not creates right over the suit property. If the value of suit property exceed Rs.100/- , it must be registered U/sec. 17 of Registration Act and un-registered sale deed does not creates over the suit property in favor of plaintiff nor his vendor/Rajanna. If the sale deed is not registered, the unregistered sale deed cannot be consider as sale deed U/sec. 54 of Transfer of property Act.

16. It is not in dispute that, the plaintiff produced copy of unregistered sale deed dated 10.01.1992 clearly revels that, the mother of defendants by name Sannamma sold the suit property in favor of Rajanna for Rs.1,000/- as sale consideration amount. But the sale deed dated 10.01.1992 was not registered one as per section 17 of Registration Act and never paid sufficient stamp duty to consider the documents for collateral purpose U/sec. 49 of Registration Act. The plaintiff claiming the possession of suit property based on unregistered sale deed of his vendor/Rajanna before execution of registered sale deed dated 31.03.1992. But the title of the plaintiff and unregistered sale deed over suit property ought to have decide by trial court on merits. In so far as concerned to possession, the photos produced by defendants clearly establish that, the defendants are put in possession of suit property by fenced of stones slabs with barbed wire around the property. On other hand, the plaintiff never opposed nor explained about how the defendants acquired the physical possession of suit property. Even though the plaintiff never produced any documents to show the physical possession of suit property. In the absence of



physical possession, this court never in position to modify or changes the order of trial court from dismissal the application.

17. It is pertinent to note that, the plaintiff has not made out prima-facie of and balance of convenience to get order of injunction before the trial court. The trial court has rightly exercised its power under 39 Rule 1 & 2 of CPC to dismissal the application. Moreover that, the trial court has passed reasonable grounds to dismissal the application. Therefore, for all the above reasons, I hold that the impugned order passed by the trial court is justified and convinced. Hence, no interference of this court is required into the impugned order passed by the trial court. **Accordingly, I answered to Points No.1 to 3 in the Negative.**

18. POINT NO.4 : For foregoing reasons, I proceed to pass the following :

ORDER

The appeal filed by the appellant/plaintiff U/o 43 Rule 1 of C.P.C. is hereby Dismissed.

Consequently, the impugned order passed in O.S.No.117/2020 on dated 30.01.2021 by the Prl. Civil Judge and JMFC, Sira is hereby confirmed.



Office is hereby directed to send the copy of this court order to trial court for intimation forthwith.

(Dictated to Stenographer directly on computer, typed by him, corrected by me & then pronounced in open court on this the **08th day of June 2026**)

Sd/-
(VINOD KUMAR. M)
Addl. Senior Civil Judge &
JMFC., Sira