

KAUK510004852024



Presented on : 20-04-2024

Registered on : 20-04-2024

Decided on : 09-07-2025

IN THE COURT OF CIVIL JUDGE & JMFC, HALIYAL
AT: HALIYAL, UTTARA KANNADA

Dated this 9th day of July, 2025

PRESENT

Smt. Geeta. B.A.LL.B (Hon's) LL.M.,
Civil Judge and JMFC, Haliyal

ORIGINAL SUIT NO.64/2024

BETWEEN:

1. Gourakka W/o Hanumanth Hanchinmani,
Age : 52 years, Occ : Agriculturist,
R/o : Nandigadda Village,
Tq: Haliyal, Dist: Uttar Kannada.

.....Plaintiff

(By Shri. S.S. Bhandurji, Advocate)

AND:

1. Hanmanth S/o Irappa Chalwadi,
Age: 60 years, Occ: Agriculturist.

2. Ramchandra S/o Irappa Chalwadi,
Age: 68 years, Occ: Agriculturist.
3. Yallappa S/o Irappa Chalwadi,
Age: 60 years, Occ: Agriculturist.
4. Narayan S/o Irappa Chalwadi,
Age: 46 years, Occ: Agriculturist.
5. Parvati W/o Mahadev Madar,
Age: 60 years, Occ: Agriculturist
(Since deceased LRs)
- 5a. Rudresh S/o Mahadev Madar,
Age: Major, Occ: Agriculturist.
- 5b. Vijay S/o Mahadev Madar,
Age: Major, Occ: Agriculturist.
- 5c. Anand S/o Mahadev Madar,
Age: Major, Occ: Agriculturist.
6. Bharati W/o Maruti Kunakikoppa,
Age: 42 years, Occ: Agriculturist.
7. Geeta W/o Ramchandra Melinmani,
Age: 36 years, Occ: Agriculturist.
8. Rekha Narayan Chalwadi,
Age: 43 years, Occ: Agriculturist.

(R/o. All are resident of Nandigadda Village,
Haliyal Taluk, Dist: Uttar Kannada)

.....**Defendants**

**(D-1, 3, 4, 6 and 8 Exparte)
(D-2 By Sri. P.B. Angadi, Advocate]
(D-5(a) to 5(c) and 7 Exparte)**

I.A.No.I

Applicant/Plff : **Gourakka W/o Hanumanth
Hanchinmani**
-Vs.-
Opponent/Deft : **Hanmanth S/o Irappa Chalwadi
and Others**

ORDERS ON I.A.No.I

The plaintiff filed I.A.No.I under Order XXXIX Rule 1 and 2 of C.P.C praying to grant an interim injunction restraining the defendants, their servants, agents or anybody claiming through them from causing any interference in the her peaceful possession, wahiwat, enjoyment of the suit property as per the Court Commissioner report filed in FDP No.3/2013 till disposal of the suit.

2. In the affidavit, the plaintiff's stated that, she filed this suit for the relief of permanent injunction to restrain the defendants from causing interference in the plaintiff's peaceful possession and enjoyment of the suit property. She and defendants are brothers and sister, they belonged to same family and suit property was their ancestral property. She and defendants jointly inherited the suit property and other properties after death of their father Irappa S/o Durappa Chalwadi and they were cultivating the same jointly. When the

defendants tried to engulf the suit property and tried to deprive the rights of the plaintiff, she filed O.S No.93/2011 for the relief of partition and separate possession, said suit was decreed on 6.3.2013 by granting 1/7th share to the plaintiff. After that, she filed FDP No.3/2013, in which, ADLR was appointed as Court Commissioner to carry out the commission work and demarcate the shares of the parties and his report was accepted by the Court on 7.1.2015 and the share of plaintiff was allotted and she became absolute owner of the same. Such being the case, the defendants being adjoining land owners and there is division in Survey No.101/2, the defendants without having any right, title or interest over the suit property are interfering with peaceful possession and enjoyment of the suit property by the plaintiff. In spite of several requests, the defendants never heeded and insisted the plaintiff to sell the suit properties to them. On 16.04.2024, the defendants with their henchmen and other antisocial elements came to suit property and started abusing plaintiff with malafide intention to cause damage to the land and crops. The defendants also threatened the plaintiff to make permanent damage to the suit property. Therefore, the plaintiff filed this suit along with this application.

3. After service of suit summons, the defendants no.1, 3, 4, 5(a) to 5(c), 6 to 8 have not appeared before the court hence placed *ex parte*. The defendant No.2 appeared through his counsel and filed written statement and objection to I.A. No.1 denying the plaintiff averments that, suit property was fallen to the share of plaintiff in FDP No.3/2013 and she has become absolute owner of the suit property and having absolute right, title and interest over the same and the defendants on 16.04.2024 trespassed over the suit property with malafide intention to cause damage to the suit land and also threatened to make permanent damage to the suit property. The defendants contended that, the suit for partition was decreed and FDP proceedings are closed with respect to agricultural land bearing Block No.101/2 measuring 04 acres 26 gunthas situated at Nandigadde but, said land is not divided by metes and bounds and no separate share has been allotted to any of the parties to the suit. Therefore, question of plaintiff being in separate possession of the suit property and defendants causing interference in enjoyment of the suit property does not arise. The plaintiff presuming himself to be in separate possession of the suit property has filed instant suit only on imaginary grounds to trouble the defendants and to cause injustice. The defendant has also filed

FDP No.9/2024 wherein, he sought for appointment of Court Commissioner for allotment of separate possession of his 1/7th share in the suit property as per the decree in O.S No.93/2011 dated 06.03.2013 and said petition is still pending. Unless and until, the suit properties are divided by metes and bounds, none of the parties can claim any separate possession or independent right on any specific portions of the said property. Hence, the suit of the plaintiff is not maintainable. With these contentions, the defendant no.2 prayed to reject the application.

4. Heard counsel for plaintiff and counsel for defendant no.2 and perused the records.

5. Now the points that arise for consideration are as under;

- 1. Whether the plaintiff has made out prima facie case to grant of temporary injunction?**
- 2. Whether the plaintiff proves balance of convenience lies more in her favor?**
- 3. Whether the plaintiff proves irreparable loss will be caused more to her, if temporary injunction is not granted?**
- 4. What order?**

6. Answers on above points are as follows;

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : In the Affirmative

Point No.4 : As per final order

for the following;

REASONS

7. **POINTS NO.1 TO 3:-** In order to avoid the repetition of facts and for the sake of convenience these points are taken together for discussion.

8. It is the case of plaintiff that, she and defendants belong to same family and suit property is their ancestral property. She filed O.S No.93/2011 for the relief of partition and separate possession and said suit decreed on 06.03.2013 by allotting 1/7th share to the plaintiff in all the properties mentioned in the said suit. Thereafter, she filed FDP No.3/2013 wherein, Court Commissioner was appointed and demarcated the share of plaintiff and said report of the Court Commissioner was accepted by the Court on 07.01.2015. Thus, the plaintiff become the absolute owner of her share in the suit property i.e., in land bearing Survey No.101/2 measuring 26 gunthas 09 annas out of total extent measuring 04 acres

26 gunthas. It is the contentions of the plaintiff that, now the defendants are being adjoining owners are interfering with her possession and enjoyment of the suit property. As such, she filed this application to restrain the defendants or anybody on their behalf from causing interference in her peaceful possession till disposal of the suit.

9. The defendants contended that, though the suit for partition was decreed and FDP proceedings are closed. The agricultural land bearing Block No.101/2 measuring 04 acres 26 gunthas is not divided by metes and bounds and no separate share has been allotted to the parties. As such, the defendant no.2 filed FDP No.9/2024 for allotment of his share in the suit property as per decree in O.S No.93/2011.

10. In the in order to prove her contentions, plaintiff produced the RTC Extract of land bearing Survey No.101/2 of Nandigadda Village for the year 2023-24, certified copy of Judgment in O.S No.93/2011, certified copy of decree in O.S No.93/2011, certified copy of order in FDP No.3/2013 and Survey Map. In order to prove his contentions, the defendant no.2 has not produced a single document.

11. When an application for the relief of temporary injunction is filed by the plaintiff, it is burden

of the plaintiff to prove prima-facie case to go for trial, balance of convenience lie her/his favour and if the temporary injunction is not granted, hardship will be caused. Further, it is well settled principle of law that, Court cannot hold a mini trial while considering the application filed under Order 39 Rule 1 and 2 of C.P.C., based on the documentary evidence produced and also considering the pleadings, Court has to decide and grant discretionary relief of temporary injunction or reject the same.

12. In the case on hand, in order to prove her contentions, the plaintiff produced RTC Extract of land bearing Survey No.101/2 of Nandigadda Village for the year 2023-24 wherein, 04 acres 26 gunthas stands in the name of defendants no.1 to 4 jointly. She also produced certified copy of Judgment and decree in O.S No.93/2011 and also certified copy of Order of FDP No.3/2013. On perusal of judgment and decree passed in O.S No.93/2011, the plaintiff filed said suit for the relief of partition and separate possession with respect to agricultural land bearing Block No.101/2 measuring 04 acres 26 gunthas, Block No.181 measuring 01 acre 33 gunthas and house property bearing number Janaga Gram Panchayat No.3, all properties are situated at Nandigadda Village of Haliyal Taluk. The said suit was decreed on 06.03.2013 by allotting 1/7th share to the

plaintiff and defendants no.1, 4, 6 to 8 in the said suit. Subsequently she filed FDP and as per the Order passed in FDP No.3/2013, Court Commissioner was appointed to demarcate the shares of the parties, after submission of report by the Court Commissioner, Court accepted the same on 07.01.2015. As per the Court Commissioner report, 1/7th share of the plaintiff was demarcated and defendants in the said suit were given consent to keep their share in joint.

13. On perusal of pleadings and documents, it is admitted fact that, the plaintiff and defendants belong to same family and suit property was their ancestral property. In the year 2011, the plaintiff filed a suit for partition and separate possession, it was decreed by allotting 1/7th share to the plaintiff. Thereafter, her share has been demarcated by the Court Commissioner and said report was accepted by the Court in FDP No.3/2013. The documentary evidence proves that, share of the plaintiff has been carved out in FDP proceedings and she is in possession of her share since then. Though, the name of plaintiff has not been entered in RTC extract but, it is admitted fact that, before partition, the plaintiff and defendants are in joint possession and in FDP proceedings, the share of the plaintiff carved out. Therefore, her share in the suit property has been separated since the date of

acceptance of Court Commissioner report by the Court. Therefore, the defendants cannot contend that, all are in joint possession of the suit property. Further, in the Court Commissioner report, it is clearly stated that, the defendants in the said suit agreed to hold the remaining portion of the property in joint. Therefore, though the defendant no.2 filed FDP No.9/2024 for allotment of his share in the suit property, it cannot affect the share allotted to the plaintiff. Further, based on pendency of FDP No.9/2024, the defendant no.2 and other defendants cannot interfere with possession of plaintiff's over the suit property. On perusal of contentions of defendant no.2 in his written statement it appears that, the defendants are interfering with possession of plaintiff's over the suit property. Therefore, at this stage, the plaintiff has made out prima-facie case to go for trial. Further, on perusal of entire documents, balance of convenience lies in favour of the plaintiff, if temporary injunction is not granted and if defendants interfered with her possession over the suit property, she will be put to hardship. Therefore, at this stage, the possession of plaintiff has to be protected till disposal of the suit. Under these circumstances, the plaintiff has made out grounds to allow the application. Hence, **I answer Points No.1 to 3 in the Affirmative.**

14. **POINT NO.4:-** In view of the discussion on Points No.1 to 3 and for the reasons stated therein, I proceed to pass the following;

ORDER

I.A.No.1 filed by the plaintiff under Order XXXIX Rule 1 and 2 of CPC is hereby allowed.

The defendants, their agents, servants or anybody claiming through them are restrained by way of temporary injunction from interfering with plaintiff's peaceful possession, wahivat and enjoyment of the suit property i.e., property carved out by the Court Commissioner in FDP No.3/2013.

No order as to costs.

(Dictated to the Stenographer, transcribed and typed by her, then corrected, signed and pronounced by me in the Open Court on this the **09th day of July, 2025**)

Sd/-
(GEETA)
Civil Judge and JMFC.,
Haliyal