

KAUK610003152025



**IN THE COURT OF SENIOR CIVIL JUDGE AND JUDICIAL  
MAGISTRATE OF THE FIRST CLASS AT HONNAVAR**

**DATED ON THIS 07<sup>TH</sup> DAY OF MARCH, 2026**

**PRESENT : SRI B.C. CHANDRASHEKAR B.A., LL.B.  
SENIOR CIVIL JUDGE AND JMFC  
HONNAVAR**

**MISCELLANEOUS APPEAL NO.05 OF 2025**

**APPELLANT/S** : 01. Veena Hanumant Naik,  
Aged about 50 years,  
R/o Janata Plot No.71,  
Melin Mudkani,  
Tq: Honnavar (U.K).

02. Hanumant Shambhu Naik,  
Aged about 52 years,  
R/o Janata Plot No.71,  
Melin Mudkani,  
Tq: Honnavar (U.K).

**(By Sri SGH, Advocate)**

**VERSUS**

**RESPONDENT/S** : Anasuya Dharma Naik,  
Aged about 71 years,  
R/o Tumbolli,  
Tq: Honnavar (U.K).

**(By Sri VRN, Advocate)**

Date and nature of the order or decree appealed against	:	Against the order passed by the Principal Civil Judge and JMFC., Honnavar on IA No.III in OS No.63/2025, dated 05-07-2025		
Date of Institution of the appeal	:	28-07-2025		
Date of Judgment	:	07-03-2026		
Duration of appeal	:	Year/s	Month/s	Day/s
		00	07	07

### **J U D G M E N T**

This is an appeal filed by appellants/defendants challenging the order on IA No.III under Order XXXIX, Rule 1 and 2 of CPC in OS No.63/2025 dated 05-07-2025 on the file of Principal Civil Judge and JMFC, Honnavar.

02. The rank of the parties assigned by the trial court are also assigned in this appeal, for the sake of convenience.

03. The plaintiff has filed a suit for permanent injunction to restrain the defendants from interference into the possession and enjoyment of the schedule property. In the meanwhile, the plaintiff has filed IA No.III under Order XXXIX, Rule 1 and 2 of

CPC praying to restrain the defendants from any obstruction to do the repair work in the schedule property and enjoyment of the plaintiff over the suit schedule property.

04. The application has been supported with the affidavit of plaintiff and she has shown to that she is in possession and enjoyment of the schedule property. The property of the defendants is situated towards southern side of the schedule property. By taking its advantage, the defendants are causing obstruction to do repair work in the suit schedule site. Hence the plaintiff has filed the suit for permanent injunction. If the defendants are obstructed for repair work, she will put more loss and hardship. Hence she prayed to restrain the defendants from causing any obstructions to the repair work of suit schedule house by granting temporary injunction.

05. The defendants have put appearance through counsel and filed written statement and requested to consider it as an objection on IA and accordingly considered. It has contented by the defendants that the suit of the plaintiff is not maintainable under law. Though the plaintiff is not in possession of any property she claiming the land of defendants as her site and filed this false suit.

06. It has contented that the Karnataka Government has granted a site on 19-11-1991 in favour of husband of the

plaintiff Dharma Narayana Naik and issued the Hakku Patra, but since he was residing in Tumbolli village, the husband of the plaintiff has given the said site to the defendants by taking money. Thus the defendant No.1 has constructed the house in the said property in the year 1991 and residing therein. The defendant has made an encroachment of forest land around the said site. While granting the plot to the husband of the plaintiff, the authorities have mentioned the Plot No.9, measuring 30 x 40 feet and the very same property has been given by her husband to the defendant No.1. After construction of tiled house the defendant No.1 has demolished the same and now she has constructed the RCC and the Panchayat Authorities have given the Form No.3 to the said house. Thus the Gram Panchayat have given No.81/1 to the house of defendant No.1. The defendant No.1 has taken KEB connection in the name of her husband, the defendant No.1 and she is in possession of the said house. Thus, the plaintiff is not in possession of any Plot No.9 which has granted by the Karnataka Government under the Ashraya Scheme. But she filed this false suit against the defendants with an intention to evict the defendants. If the court grant the temporary injunction the plaintiff would construct the house overnight. Hence, the defendants have prayed to dismiss the IA No.III.

07. After being heard the arguments, the trial court has allowed the IA No.III filed under Order XXXIX, Rule 1 and 2 of

CPC and granted the temporary injunction vide order dated 05-07-2025.

08. Being aggrieved by the order of trial court, the defendants/appellants have filed this appeal on the grounds urged in the appeal memo.

09. It has contended by the appellants that impugned order of the trial court is contrary to law and true facts of the case. The trial court has wrongly and illegally allowed the IA and restrained the defendants from continuing with their possession of their property. The trial court ought to have dismissed the IA with costs. But the trial court has wrongly and illegally come to conclusion that plaintiff has made out prima-facie case and balance of convenience and irreparable loss would caused to the plaintiff if IA is rejected. The plaintiff has no prima-facie case and balance of convenience not lies in favour of the plaintiff. The defendants are in continuous possession of the house and she has constructed it by spending huge amount.

10. The trial court has not followed the principle of law and wrongly and illegally held that possession of the defendants cannot be decided at this moment. The trial court has failed to understand the nature of suit and prima-facie case. The trial court ought to have seen the loss and injury which will caused to the defendants. Thus order of the trial court is capricious or perverse and as such interference of this court is required.

Accordingly, the appellants have prayed to allow the appeal and set-aside the order of the trial court on IA No.III on 05-07-2025 in OS No.63/2025 on the file of Principal Civil Judge and JMFC., Honnavar and prayed to dismiss the IA.

11. In response of the notice issued by this court, the respondent has appeared through counsel.

12. By considering the submission of counsel for the both sides, the trial court records have been secured.

13. Heard the argument of both counsels. Perused.

14. On the basis of the above, the following points have arisen for my consideration:

**POINTS**

01. Whether the trial court is justified in allowing I.A. No.III?

02. Whether order of the trial court is illegal, capricious and liable to set aside and interference of the court is warranted?

03. What order?

15. My findings to the above points are as follows:

Point No.1	:	In the affirmative,
Point No.2	:	In the negative,
Point No.3	:	As per the final order for the following:

## REASONS

16. **Point No.1 and 2:** Since these points are inextricably mixed up with each other, I have taken them together for common discussion in order to avoid the repetition of discussion.

17. The plaintiff has filed this suit for permanent injunction to restrain the defendants from interference into the possession of the plaintiff over the schedule property as well as restrain the defendants from causing obstruction for the repair of the suit schedule site. The counsel for the appellants have argued that they admits that a site has been granted in favour of husband of the plaintiff by the Karnataka Government under the Ashraya Scheme. But during his lifetime he has given it to the defendant No.1 and he has taken the amount and the defendant No.1 has constructed the house over the said site. Further, the defendant No.1 has made an encroachment of forest land situated beside the said site. Now, the plaintiff claiming the vacant space available beside the said site is a site granted to her husband. But no site has been remained with the plaintiff. But the trial court has granted the temporary injunction. Hence they prayed to allow the application.

18. On the other hand, the counsel for the respondent has argued that whatever the site granted by the government to husband of the plaintiff is with her possession only and initially she has constructed a house and now she wanted to get it repair

by taking the license. But the defendants without having any right are causing interference for the repair work of the plaintiff. Hence they requested to dismiss the application as the trial court has rightly granted the temporary injunction.

19. By considering the submissions of both the counsel, I carefully gone through the materials available on record. The suit schedule is a site in Plot No.9 measuring 30x40 feet formed in Survey No.77 of Moodkani village. The plaintiff claiming that the said site has been granted by the government under the Ashraya Scheme. Granting of the site by the Ashraya Scheme to the husband of the plaintiff has not at all been disputed by the defendants. But their claim is her husband has given the very same site to the defendants for money and they have constructed the house on the very said site and now the Panchayath have given the house No.81/1 to the said site. But on perusal of the documents, it appears that as per the site Hakku Patra, a site bearing Plot No.9 has been granted to the husband of the plaintiff on 19-11-1991 and it is an admitted facts. But on perusal of entire materials placed by both the parties, absolutely there is no any documents to show that husband of the plaintiff has given the very same site to the defendants as contented by them. On the other hand, as per the repair license issued by the Panchayath Authorities to the plaintiffs, it appears that the Panchayath Authorities have permitted the plaintiff for repair/renovation of the house bearing No.81 of Moodkani

village. Further they have issued Form No.3 in the name of plaintiff by collecting the tax to the said house bearing No.81. Thus since grant of site to the husband of the plaintiff is an admitted fact and the Panchayat Authorities have issued the house No.81 in the name of plaintiff and now they have issued the license for repair and renovation of the house it could be held that the plaintiff is in possession of the suit property and doing the repair work. Thus absolutely there is a prima facie case in favour of the plaintiff and balance of convenience lies in her favour.

20. On the other hand the main contention of the defendants are that since husband of the defendant, husband of the plaintiff has given the site granted to him the defendants have constructed the house on the very same site. But absolutely they have not produced any iota of evidence or materials to show that husband of the plaintiff has given the granted site in favour of defendant No.1. Accordingly at the outset there is no any concrete materials by the defendants to establish their right over the schedule property as well as the house constructed by them situated beside the suit schedule property. Under such circumstances without having any locus standi the defendants are claiming that schedule site is also their site though they have already constructed a house on a site by saying that the said site has been given by the husband of the plaintiff only. In other words, it could be hold that virtually the defendants have no

right to construct any house in any site as they have not at all having any right and ownership on that particular site. But they have already constructed house and residing therein. In spite of that the vacant space available beside their house is also claiming to be their place that too it is a forest land and they made an encroachment. But on perusal of the photo snaps, it appears that the said vacant land is situated beside the road. Thus it appears to be granted by the Government to the husband of the plaintiff. Accordingly though the defendants are not having any semblance of right, title, interest or possession not only the schedule property but also on the site house constructed by them they trying to cause interference into repair work of the plaintiff. Under such circumstances, it is just and necessary to restrain the defendants from causing any hurdles or interference for the repair work of the plaintiff. Thus, the IA is required to be allowed. Accordingly, the trial court has considered all the facts and materials and rightly allowed the IA. But the defendants have filed this appeal without having any merits. Accordingly there is no necessity to call for the interference into the findings of the trial court and appeal is devoid of merits and liable to be dismissed with costs. Hence, I answered **Point No.1 in the affirmative and Point No.2 in the negative.**

21. **Point No.3:** In the result, I proceed to pass the following:

**ORDER**

The miscellaneous appeal filed by the appellants/defendants under Order XLIII, Rule 1(r) read with section 104 of CPC is hereby dismissed with costs.

Send the TCR along with the copy of the order to the trial court for information.

**(Dictated to the stenographer directly on the computer, typed by her, corrected, then signed and pronounced in the open court on this 07<sup>th</sup> day of March, 2026)**