

KAUK610004562025



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

**DATED ON THIS 13<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.09 OF 2025**

**APPELLANT/S :** Sri Timmappa S/o Timmappa Gouda,  
Aged about 45 years,  
Agriculturist,  
Residing at Mugali,  
Gunavante village,  
Taluk Honavar – 581 348.

**(By Sri CG, Advocate)**

**VERSUS**

**RESPONDENT/S :** Sri Shambhu S/o Manju Gouda,  
Aged about 60 years,  
Agriculturist,  
Residing at Mugali,  
Gunavante village,  
Taluk Honavar – 581 348.

**(Respondent is placed Ex-parte)**

Date and nature of the order or decree appealed against	:	Against the order passed by the Additional Civil Judge and JMFC., Honnavar on IA No.I in OS No.96/2025, dated 27-10-2025		
Date of Institution of the appeal	:	11-11-2025		
Date of Order	:	13-03-2026		
Duration of appeal	:	Year/s	Month/s	Day/s
		00	04	02

### **ORDER**

This is an appeal filed by the appellant/plaintiff challenging the order on IA No.I passed by Additional Civil Judge, Honnavar in OS No.96/2025 dated 27-10-2025 whereby declining to grant the temporary injunction by rejecting the application.

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 against the defendants and in the meanwhile he filed IA No.I for temporary injunction. The application has been supported with the affidavit of plaintiff and he has sworn to that he filed the suit

for permanent injunction and he is an absolute owner of agricultural land bearing Survey No.58A measuring 3-0-0 acres out of total de-notified area situated in Gunavante village of Honnavar taluk. He has been in possession of the schedule property and enjoying the same without any interruption.

04. It has further stated that the defendant is an adjacent owner cultivating the land of forest land at southern side of suit schedule property. By taking its advantage recently the defendant and his family members, legal heirs are trying to interfere with the possession of the plaintiff and enjoyment of the schedule property. Thus they are obstructing him to do the agricultural work. On 18-06-2025 the defendant and his workers have trespassed into the schedule property and dismantled the compound wall and thrown the bricks. Thus they are trying to interfere with the peaceful possession and enjoyment of the schedule property.

05. The defendant and his family members are using money and muscle power and creating nuisance and trying to trespass the schedule property. Hence the plaintiff has filed suit for permanent injunction as well as IA No.I for temporary injunction to restrain the defendant from interference into the possession of the schedule property.

06. In spite of service of summons, the defendant did not appear before the court.

07. After being heard the arguments, the trial court has dismissed the IA No.I filed under Order XXXIX, Rule 1 and 2 read with section 151 of CPC vide order dated 27-10-2025.

08. Being aggrieved by the findings of the trial court, the plaintiff/appellant has filed this appeal challenging the legality and correctness of the order of trial court on the grounds urged in the appeal memo.

09. It has contended by the appellant in the appeal memo that order of trial court is totally erroneous, contrary to law and opposed to settled principle. The trial court while passing the impugned order has not taken into consideration the relevant facts and circumstances of the case. The trial court has not considered the pleading and documents and affidavit of appellant.

10. It has further averred that the father of the plaintiff Timmappa Kuppa Gouda had purchased the land from Dolla S/o Manju Gouda and his family members on 25-10-1996 for a consideration of Rs.6,000/-. The said Dolla S/o Manju Gouda was the original grantee under the government and he was cultivating the revenue land measuring 1-0-0 acres along with granted land for growing fruits and peanuts. But the documents placed by the appellants are observed by the trial court and hold that appellant has no prima-facie case and not entitled to get the benefit is totally incorrect.

11. The trial court has failed to consider the vital and relevant evidence that after death of appellant's father, the appellant has made so many request letters to the Revenue Authorities and the panchanama the Village Accountant has conducted the spot inspection on 02-03-2023 reporting that appellant has been cultivating the suit property and he is in possession and growing fruits and vegetables. The Tahsildar has issued an endorsement on 30-05-2023 asking the de-notification order and appellant has got the same on 05-05-2025. Hence the order of the trial court is erroneous and liable to be dismissed. Accordingly the appellant has prayed to set-aside the order of trial court dated 27-10-2025 passed on IA No.I in OS No.96/2025 and grant the temporary injunction by allowing IA No.I.

12. Despite notice being served on the respondent, he did not appear before the court. Accordingly, the respondent placed ex-parte.

13. Heard the arguments of counsel for the appellant and perused the materials available on record.

14. On the basis of the above, the following points are arises for my consideration:

**POINTS**

01. Whether the trial court is justified in dismissing IA No.I?

02. What order?

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

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

### **REASONS**

16. **Point No.1:** The learned counsel for the appellant has argued that by virtue of the agreement executed by the original grantee in favour of father of the plaintiff put into the possession and it has been continued by the plaintiff. But the respondent being the adjacent owner tried to interfere into the possession. Hence he wanted to restrain him and filed the suit for permanent injunction and also requested for temporary injunction. But trial court without appreciate any materials placed by the appellant straight away dismissed the application and accordingly they requested to allow this appeal. By considering the arguments, I carefully gone through the materials available on record. More particularly, the copy of the plaint, affidavit of the plaintiff coupled with appeal memo.

17. It has been contented by the plaintiff that a land in Survey No.58/A was totally measuring 392-21-0 acres was the minor forest and as per the order dated 30-08-1967, 15-0-0 acres of the land has been handed over to the cultivators as Hangami Lagani. The said forest land has been de-notified and it

has handed over to the Revenue Department on 12-07-1972. It has further averred that one Dolla S/o Manju Gouda was allotted 1-0-0 acre of the land by the Tahsildar, Honnavar and put him in actual possession vide MR No.3132 dated 13-07-1976. But due to illiteracy the said Dolla S/o Manju Gouda had not applied for permanent Lagani, but he has been cultivating the allotted land of 1-0-0 acre. More particularly, it is further averments that the said Dolla S/o Manju Gouda with his wife Kanne and son Shambhu have executed an Agreement of Sell along with the possession on 25-10-1996 in favour of father of the plaintiff Timmappa S/o Kuppa Gouda and purchased 2-0-0 acre of the land for a consideration of Rs.6,000/-. The said Timmappa died on 09-03-2021 and after his death the plaintiff being the male member continued the possession of the schedule property. Thus the plaintiff claiming to be in possession of schedule property. But since the defendant causing interference he approached the court for permanent injunction.

18. As stated above even for a moment the facts averred by the plaintiff appears to be true and correct it is very significant to note here that the temporary Lagani has been granted in favour of Dolla S/o Manju Gouda only to an extent of 1-0-0 acre in suit survey number. The plaintiff has produced the copy of the Agreement of Sell dated 25-10-1996 and on perusal of the same, it appears that the said Dolla Manju Gouda along with family members have executed it and sold their encroached property

measuring 2-0-0 acres in Survey No.58/A of Gunavante village and handed over the possession of encroached portion.

19. It is further significant to note that as averred by the plaintiff the Dolla Manju Gouda had been granted the Temporary Lagani only with an extent of 1-0-0 acre. As per the agreement executant has made an encroachment of 2-0-0 acres of the forest land. But this suit is with respect to 3-0-0 acres. There is no proper pleadings and materials to show how the 1-0-0 acre of the property become 3-0-0 acres. Thus again possession with respect to 3-0-0 acres of the property is become not only doubtful, but there is no proof to believe the same.

20. It is further significant to note here that as contented by the plaintiff, Dollu Manju Gouda had been granted 1-0-0 acre of the property only under Temporary Lagani. But till today the authority has not granted the Permanent Lagani to Dollu Manju Gouda. Thus either Dollu Manju Gouda or his family members have no right at all to execute any Agreement of Sell and sale of any property to the father of the plaintiff as contented by him. Thus virtually it could be held that executants of the agreement have no absolute right to sell the property. Under such circumstances again possession of plaintiff with respect to 3-0-0 acres as shown in the plaint appears to be susceptible and not a believable thing.

21. It is further significant to note here that on perusal of the documents placed by the plaintiff, it appears that the plaintiff has submitted the representation to the Revenue Authorities to grant 3-0-0 acres of the property in survey No.58A and he claiming that Permanent Lagani grant proceedings is still pending. On perusal of the letter dated 29-07-2022 written by Tahsildar, Honnavar to Deputy Conservator Forest, Honnavar it discloses that the plaintiff has submitted an application for grant of 3-0-0 acres of the property in the suit survey number and the Tahsildar has asked whether the said land is comes under deforest land or is there any application for temporary grant of Lagani. As per the letter dated 12-12-2022, the ACF has been called for the report from the RFO, Honnavar about the requisition of plaintiff. Finally the Tahsildar has written a letter to the plaintiff on 30-05-2023 by intimating the plaintiff that “you are not produced any documents to show that the alleged land has been deforest from the authority” and directed the plaintiff to submit necessary documents before the Nadakacheri Office. Thus till today no property has been granted permanently to either executant of the agreement or plaintiff. Under such circumstances possession of the plaintiff appears to be suspectable.

22. It is further significant to note here that as already stated above, the Temporary Lagani has been granted only to an extent of 1-0-0 acre, but plaintiff claiming to be in possession of

3-0-0 acres without any materials to show about the possession of 3-0-0 acres. Accordingly on perusal of all the documents, no documents are whispering that plaintiff is in possession of 3-0-0 acres of the property with exact boundary as averred in the plaint. Thus at this stage the documents and materials placed by the plaintiff are not at all sufficient to believe that he is in possession of the schedule property as contented by him.

23. It is further significant to note here that alleged Agreement of Sell relied by the plaintiff is an unregistered one. But plaintiff claiming that the possession has handed over under the unregistered agreement. When the possession has been handed over under the agreement, in order to take the benefit under section 53A of Transfer of Property Act, it must be registered under sections 17 of Indian Registration Act. But it has not been registered. Accordingly it is not a valid document under the law.

24. It is very significant to note here that at last but not least, the plaintiff claim is on the strength of alleged Agreement of Sell said to have been executed by Dollu Manju Gouda and other family members. Thus, the plaintiff is required to prove the execution of the agreement before the Competent Court of law and at the outset he can get his right and title on the strength of agreement subject to proof of execution of the agreement. Accordingly on the strength of agreement the plaintiff is having

only the right to enforce the agreement but not any other rights on the strength of alleged Unregistered Agreement. In other words the plaintiff is having only the right to enforce the agreement and get execute the Sale Deed with due process of law, except this the plaintiff has no right to sought for any prayer on the strength of Unregistered Agreement of Sell, which possession has been handed over and it is hit under section 17A of Indian Registration Act. Thus the alleged Agreement of Sell is not a document under law in view of bar under section 53A of Transfer of Property Act and under section 17A of Indian Registration Act.

25. At this stage it is benefit to refer the decision of Hon'ble Supreme Court reported in **2022 Live Law (SC) 800 in between Balram Singh V/s Kelo Devi**. Wherein the Hon'ble Supreme Court was pleased to held as here under:

*Therefore, the plaintiff cannot get the relief even for permanent injunction on the basis of such an unregistered document/agreement to sell.*

26. In view of the pronouncement of Hon'ble Supreme Court based on unregistered agreement of sell even the plaintiff cannot sought for suit for permanent injunction.

27. In view of the detailed discussion made above, on meticulous verification of entire materials absolutely the plaintiff has not produced any iota of materials to show his possession of

3-0-0 acres as sought for. But it appears to this court that though the temporary grantee was owner of only to an extent of 1-0-0 acre, the plaintiff is instead of filing a suit for specific performance filed this suit for permanent injunction only to take seal of the court about 3-0-0 acres of the property as a possessor and owner. But absolutely there is no any materials to show about his possession. Accordingly the trial court has considered the facts and materials of the plaintiff and rightly dismissed the IA No.I. Hence this court did not found any grounds to call for the interference into the findings of the trial court and this appeal is devoid of merits liable to be dismissed with costs. Accordingly, I answered **Point No.1 in the affirmative.**

28. **Point No.2:** In the result, I proceed to pass the following:

### **ORDER**

The miscellaneous appeal filed by the appellant/plaintiff under Order XLIII, Rule 1(r) of CPC is hereby dismissed with costs.

Send 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 13<sup>th</sup> day of March, 2026)**