

KAVN200012902025



**IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC  
KUDLIGI**

**PRESENT : SRI. YOGESHA. J., B.A., LL.B.,**

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

**M.A. No. 16/2025**

**APPELLANT**

C. Raju,  
S/o Late Hanumanthappa,  
Aged 43 years, Agriculturist,  
R/o Mangapura Village,  
Kottur Taluk, Vijayanagara District.

(By Sri.A.Vijaykumar, Advocate)

**V/s**

**RESPONDENTS**

1) Kariyamma,  
W/o Late Chalavadi Hanumanthappa,  
Aged 75 years.

2) Anjinappa,  
S/o Late Chalavadi Hanumanthappa,  
Aged 58 years.

3) Erappa,  
S/o Late Chalavadi Hanumanthappa,  
Aged 55 Years.

4) Nagaraja,  
S/o Late Chalavadi Hanumanthappa,  
Aged 50 years.

All are Agriculturists,  
R/o Mangapura Village,  
Kottur Town and Taluk,  
Vijayanagara District.

(B Sri.M.N.J, Advocate)

Date and nature of the decree or order appealed against.	Against the order passed on I.A. No. 1, in O.S. No. 473/2024 dated 04.07.2025 passed by the learned Civil Judge & JMFC, Kudligi		
Date of institution of appeal	28.07.2025		
Date of pronouncement of order.	07.02.2026		
Duration of the appeal	<u>Year/s</u> 00	<u>Month/s</u> 08	<u>Day/s</u> 11

### **ORDER**

Defendant in O.S. No 473/2024 on the file of the learned Civil Judge and JMFC, Kudligi has preferred this miscellaneous appeal challenging the order dated 04.07.2025 allowing the I.A-I filed by plaintiffs U/o 39 Rules 1 and 2 R/w Section 151 of CPC.

2. Respondents herein were the plaintiffs before the Trial Court. Plaintiff has instituted the suit in O.S. No. 473/2024 against the defendant for the relief of declaration and consequential relief of permanent injunction in respect of the suit schedule property. ***(Parties herein shall be referred to as per their ranks before the Trial Court for the sake of convenience.)***

3. In the affidavit annexed to I.A. No.1, it is stated by the plaintiffs that the suit schedule property originally belongs to the husband of the plaintiff No.1 and father of plaintiffs No.2 to 4 by name Hanumanthappa. After the death of Hanumanthappa, the plaintiff No.1 to 4 have succeeded to the suit schedule property. The defendant is not the owner of the suit schedule property, there is no single piece of documents to show that the defendant is the owner of the suit schedule property. The defendant is the adjacent land owner and he is not in possession of the suit schedule property. The Government has granted patta in the name of Chalavadi Hanumanthappa who is husband of plaintiff No.1 and father of the plaintiff No.2 to 4 on 31.08.1959. From that date, the said Hanumanthappa is in possession of the suit schedule property. The RTC's were

standing in the name of plaintiff No.1 from 15.02.2021 and continued till today on the basis of Pothi Varasu. That the plaintiffs are the absolute owners and in possession of the suit schedule property. Therefore, the suit was filed by the plaintiffs before the learned Trial Court and prayed to allow the application.

4. In response to suit summons, the defendant has tendered his appearance through his counsel before the learned Trial Court and filed objection to the application by denying the averments made in the application. It is contended that his grand father by name Mukappa @ Mukabasappa has cultivated the suit schedule property and the RTCs of the year 1968-69 to 1981-82 is reflected in the defendant's grandfather's name. After the death of defendant's grandfather, father of defendant was in possession and enjoyment of the same. After the death of defendant's father, defendant is in peaceful possession of the suit schedule property. Therefore, he prayed for rejection of application before the learned Trial Court.

5. The Trial Court after hearing the parties, vide impugned order allowed the I.A. No. I and the defendant is

hereby restrained from interfering with the possession of the plaintiffs over the suit schedule property by way of permanent injunction until disposal of the suit and also ordered no order as to the costs. Being aggrieved by the said order, defendant has come up with this appeal.

In the grounds of appeal the defendant/appellant contended that the impugned order is opposed to law and also facts as well as circumstances of the case which is not sustainable under law. The learned Trial Court completely mislead the facts and did not consider the discretionary relief vested with it under the relevant provision to protect by invasion of the property by the opponents. Hence, the order of learned Trial Court is against the provisions of order 39 Rules 1 and 2 of CPC which is not sustainable and it causes great injustice to the appellant. The principles laid down under the provisions of order 39 Rules 1 and 2 are not applied to the facts and circumstances of the case while considering the I.A. No.1. The suit of the plaintiff become infructuous due to trial Court order. The prima-facie case and balance of convenience is in favour of appellant and there is no prima-facie case and balance of convenience in favour of respondent. The documents produced by the

appellants are not at all considered by the learned Trial Court as such prayed to allow the appeal by setting aside the impugned order passed by the learned Trial Court on I.A. No.1 dt: 04.07.2025 in O.S. No. 473/2024 by allowing the appeal filed by the defendant.

6. Pursuant to the notice of this appeal, plaintiffs/respondents have appeared before this Court through counsel and supported the orders passed by the learned Trial Court.

7. Heard the learned counsel appearing for the parties and perused the memorandum of appeal and the grounds urged in the appeal.

8. Under the circumstances, following points arises for consideration.

### **POINTS**

- 1) *Whether the impugned order passed by the Trial Court by allowing the I.A. No. 1 filed by the plaintiffs U/o 39 Rules 1 and 2 of CPC is illegal and not based on sound principles of law?*

2) *Whether the impugned order by allowing the I.A. No. 1 filed by the plaintiffs U/o 39 Rules 1 and 2 of CPC needs to be interfered with?*

3) *What order?*

9. The points framed for consideration are answered as under;

Point No.1: In the Negative

Point No.2: In the Negative

Point No.3: As per the final order,  
for the following;

### **REASONS**

10. **POINTS No 1 & 2:-** It is the contention of the plaintiffs that the suit schedule property originally belongs to the husband of the plaintiff No.1 and father of plaintiffs No.2 to 4 by name Hanumanthappa. After the death of Hanumanthappa, the plaintiff No.1 to 4 have succeeded to the suit schedule property. The defendant is not the owner of the suit schedule property, there is no single piece of documents to show that the defendant is the owner of the suit schedule property. The defendant is the adjacent land owner and he is not in possession of the suit schedule

property. The Government has granted patta in the name of Chalavadi Hanumanthappa who is husband of plaintiff No.1 and father of the plaintiff No.2 to 4 on 31.08.1959. From that date, the said Hanumanthappa is in possession of the suit schedule property. The RTC's were standing in the name of plaintiff No.1 from 15.02.2021 and continued till today on the basis of Pothi Varasu. That the plaintiffs are the absolute owners and in possession of the suit schedule property.

11. In support of the I.A No.1 along with affidavit, the plaintiffs have produced the documents. On perusal of the documents available on record, the plaintiffs have filed the grant certificate, wherein it shows that the suit schedule property granted in the name of Chaluvadi Hanumanthappa on 31.08.1959 and the revenue records submitted by the plaintiffs shows since 1981-82 RTCs are sanding in favour of Harijana Hanumanthappa, he mutated the khatha in his name and he has been in continuous peaceful possession and enjoyment of the suit schedule property till 2003-04. The said Harijana Hanumanthappa is the husband of the plaintiff No.1 and father of plaintiffs No.2 to 4. After the death of said Hanumanthappa the plaintiff No.1 has

mutated the khatha in her name in the year 2021 vide M.R.H.No. 25/2020-21 by inheritance and the plaintiffs are enjoying the suit schedule property till filing of the suit before the learned Trial Court.

12. On the other hand, the defendant has filed objection to the application by denying the averments made in the application. It is contended that his grand father by name Mukappa @ Mukabasappa has cultivated the suit schedule property and the RTCs of the year 1968-69 to 1981-82 is reflected in the defendant's grandfather's name. After the death of defendant's grandfather, father of defendant was in possession and enjoyment of the same. After the death of defendant's father, defendant is in peaceful possession of the suit schedule property. Therefore, he prayed for rejection of application before the learned Trial Court.

13. In this regard, the defendant has not produced any piece of document to show that the suit schedule property belongs to the grandfather by name Mukappa @ Mukabasappa. But, the documents submitted by the plaintiff i.e., old RTC Extracts shows that since 1978-79 till

1980-81 the name of the Harijana Mukappa was standing in the RTC's. But, the plaintiff has filed the suit against the defendant in the year 2024. At the time of filing the suit, there is no documents to show that, the defendant is not in possession and enjoyment over the suit schedule property. Hence, on perusal of the documents available on record, which shows that the plaintiffs are in possession over the suit schedule property. Hence, the plaintiffs have made out prima-facie case to grant the discretionary relief of ad-interim T.I. against the defendants. On perusal of the documents available on record, the balance of convenience lies in favour of the plaintiffs rather than the defendant. If T.I. is vacated the plaintiffs will be put to great hardship and injury. On the other hand, if the T.I. is not granted, no hardship or injury would be caused to the defendant. Hence, the learned Trial Court has rightly answered the points No.1 to 3 in the Affirmative and granted the relief of T.I. in favour of the plaintiff. Further on over all consideration of the facts and circumstances of the case and the grounds urged in the grounds of appeal by the appellant, I am of the opinion that the learned Trial Court has rightly allowed the I.A. No.1 filed by the plaintiffs. Hence, in these circumstances, question of interfering with the impugned order passed by the Trial

Court does not arise. Accordingly, the points No.1 and 2 framed for consideration are answered in the negative.

14. **POINT No. 3**:- In view of answering the points No.1 and 2 in the negative, appeal is to be dismissed and the impugned order is liable to be confirmed. Hence, I proceed to pass the following;

**ORDER**

Miscellaneous appeal preferred by the appellant/defendant in O.S. No. 473/2024 U/o 43 Rule 1 R/w Sec. 151 of CPC is hereby dismissed with costs.

Impugned order dated 04.07.2025 passed by the learned Civil Judge and JMFC, Kudligi allowing the I.A-1 filed by the plaintiff U/o 39 Rules 1 and 2 R/w Section 151 of CPC, in O.S. No. 473/2024 is hereby confirmed.

Office is hereby directed to send the copy of this order to the Trial Court for information forthwith.

(Dictated to the Stenographer, transcribed and computerized by him, corrected and then pronounced by me in the open court on this 07.03.2026)

**(YOGESHA. J.)**  
**Senior Civil Judge & JMFC,**  
**Kudligi.**

(Order pronounced in the open Court)  
(Vide separate orders)

**ORDER**

Miscellaneous appeal preferred by the appellant/defendant in O.S. No. 473/2024 U/o 43 Rule 1 R/w Sec. 151 of CPC is hereby dismissed with costs.

Impugned order dated 04.07.2025 passed by the learned Civil Judge and JMFC, Kudligi allowing the I.A-1 filed by the plaintiff U/o 39 Rules 1 and 2 R/w Section 151 of CPC, in O.S. No. 473/2024 is hereby confirmed.

Office is hereby directed to send the copy of this order to the Trial Court for information forthwith.

**(YOGESHA. J.)**  
**Senior Civil Judge & JMFC,**  
**Kudligi.**