

KABI200022182024



IN THE COURT OF THE CIVIL JUDGE & JMFC.,

AT: HAGARIBOMMANAHALLI

DATED THIS THE 23rd DAY OF JUNE 2025

: **PRESENT:**

SRI. **SAYED MOHIUDDIN URF KHAWAJA PEERAN.**, BA. LLB.,(Spl.)
CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI.

O.S.No.201/2024

PLAINTIFF/s : **Kumbar Basavarajappa S/o Kumbar Mallappa,**
Aged about: 72 years, Occ:Agriculturist,
R/o Malvi Grama, H.B.Halli Taluk,
Vijayanagara District.

Vs

DEFENDANT/s : **T.Kotreshappa S/o Late Arjunappa,**
Aged about: 65 years, Occ: Agriculturist,
R/o Hulavatti Village, H.B.Halli Taluk,
Vijayanagara District.

I.A.No.II

APPLICANT/PLAINTIFF: Kumbar Basavarajappa S/o Kumbar Mallappa,

(Rep. by Sri.**K.M.V.**, Advocate)

V/s

RESPONDENT/DEFENDANT: T.Kotreshappa S/o Late Arjunappa,

(Rep. by Sri.**A.K.**, Advocate)

ORDER ON I.A.No.II

The plaintiff has filed the IA No.II under Order 39 Rule 1 and 2 R/w Section 151 of CPC to restrain the defendant from interfering with his peaceful possession and enjoyment over the suit schedule property bearing Sy.No.520A/2 measuring 2.80 acres situated at Hiregondanahalli Village, Hagaribommanahalli Taluk till disposal of the suit.

2. In the accompanying affidavit to the IA., it is stated by the plaintiff that, he is the absolute owner and in possession and enjoyment of the suit schedule property. Originally the suit schedule property belongs to the grandfather of the plaintiff Revajja. After the death of said Revajja, the suit schedule property entered in the name of Basamma. After demise of Basamma, the suit schedule property mutated in the name of plaintiff and his brother Ujjinappa under Mutation No.30/2001-02. Originally the suit schedule Sy.No.250 total measures 5.61 acres. The said property was purchased by the grandfather of the plaintiff Revajja. The plaintiff and his brother had partitioned the said property, in the said partition suit schedule property was

fallen to the share of plaintiff, and 2.81 acres of land fallen to the share of his brother Ujjinappa. Due to lack of poverty the plaintiff has executed the agreement of sale dated 07.12.2010 with respect of suit schedule property in favour of defendant for a sum of Rs.1,10,000/-. But he is in possession and enjoyment of the same. As per the said agreement, the defendant has not complied the conditions. Later on, the defendant had executed the agreement dated 26.12.2012 in favour of the plaintiff with respect of suit schedule property and received a sum of Rs.1,10,000/- from the plaintiff, and he relinquished his right, title and interest over the suit schedule property in favour of the plaintiff. The defendant has filed suit against the plaintiff in O.S.No.195/2015 before this Hon'ble Court for the relief of permanent injunction and obtained exparte decree. Prior to filing of the suit he was executed the above said agreement dated 26.12.2012. The defendant has no manner of right, title and interest over the suit schedule property. The suit schedule property is standing in the name of defendant which is not binding on him. He approached the defendant and requested him to change the Khata of the suit

schedule property into his name, but the defendant has not heed the request of the plaintiff. The defendant is trying to interfere with his peaceful possession and enjoyment of the suit schedule property. If the defendant has succeeded in his act, the plaintiff will be put to hardship. He has made out prima facie case, balance of convenience lies in his favour. If the temporary injunction is granted no injustice will be caused to the defendant. If temporary injunction is not granted, plaintiff will be put to hardship. Hence, he prays to allow the IA.

3. After registration of the suit, suit summons was issued to the defendant. The defendant served with the same, in response to the same he has appeared before the Court through his Counsel and filed the written statement. In the written statement the defendant has denied the case of the plaintiff, and further contended that the plaintiff has sold the suit schedule property in favour of defendant under registered sale deed dated 28.05.2012 for valuable consideration amount of Rs.1,04,000/-. The defendant is in peaceful possession and enjoyment of the suit schedule property. The suit schedule

property is standing in the name of defendant. The defendant has filed the suit against the plaintiff in O.S.No.195/2015, the said suit was decreed on 29.06.2016. The plaintiff has not challenged the said decree. The daughter of the plaintiff Smt.Pushpa was filed a suit for partition and separate possession with respect of suit schedule property in O.S.No.3/2015, the said suit was also dismissed on 19.09.2024. The plaintiff has fully aware of the said facts, but he has not pleaded the same in the plaint. The plaintiff has suppressed the material facts before the Court. The suit is bad for non-joinder of necessary parties. The suit is clearly hit by the principles of RESJUDICATA. With an intention to harass the defendant, the plaintiff has filed the false suit. Hence he prays to dismiss the IA.

4. Heard Both the side. Perused the records.

5. The following points arise for my consideration:

1 .Whether the plaintiff has made out *prima-facie* case?

2 .Whether the balance of convenience lies in favour of plaintiff?

3. Whether the plaintiff will be put to irreparable loss and injury, if the order of Temporary Injunction is not granted?

4. What order?

6. My answers to the above points are as under:

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: -

REASONS

7. Point No.1 to 3:- As the facts involved in point No.1 to 3 are interlinked together, hence they are taken up together for common consideration.

8. The present suit is filed by the plaintiff against the defendant for the relief of declaration of title and permanent injunction with respect of suit schedule property.

According to the plaintiff, he is the absolute owner and in possession and enjoyment of the suit schedule property. Originally the suit schedule property belongs to his grandfather. After the death of his grandfather and

grandmother, partition was effected between the plaintiff and his brother Ujginappa with respect of suit schedule Sy.No.250 totally measuring 5.61 acres. As per the said partition, suit schedule property was fallen to the share of plaintiff and 2.81 acres of land was fallen to the share of his brother Ujginappa. From the date of partition, he is in possession and enjoyment of the suit schedule property. The plaintiff has executed the agreement of sale dated 07.12.2010 in favour of the defendant for valuable consideration amount of Rs.1,10,000/-, but the defendant has not fulfilled the terms of the said agreement. Later on, the defendant has executed the registered agreement in favour of the plaintiff and received a sum of Rs.1,10,000/- from the plaintiff and he relinquished his right, title and interest over the suit property in favour of plaintiff. The suit schedule property is standing in the name of defendant. He requested the defendant to change the mutation, but the defendant has not heed the request of the plaintiff and the defendant is trying to interfere with the plaintiff's peaceful possession and enjoyment over the suit

schedule property. Hence he has filed the present suit and prays to decree the same.

9. The contention of the defendant is that, the plaintiff has sold the suit schedule property in his favour. He is in possession and enjoyment of the suit schedule property. The RTC extract of the suit schedule property is standing in his name. The defendant has filed suit against the plaintiff in O.S.No.195/2015, the said suit was decreed. The plaintiff has not challenged the said decree. The daughter of the plaintiff filed O.S.No.3/2015, the said suit was dismissed. The suit is clearly hit by the principles of RESJUDICATA. The plaintiff with an intention to harass the defendant has filed the false suit. Hence he prays to dismiss the I.A.

10. I have perused the materials available on record. At this stage the plaintiff has produced RTC extract of Sy.No.250/2 for the year 2001-02 total measuring 5.61 acres, on going through the said document prima facie it appears that 2.80 acres of land i.e. suit schedule property was stands in the name of plaintiff, 2.81 acres of land was stands in the name of his brother Ujjinappa. The plaintiff has produced the

copy of the RTC extracts of Sy.No.250/2 measuring 5.61 acres for the year 2009-10 and 2011-12, in the said RTC extracts the name of plaintiff is entered to an extent of 2.80 acres, 2.81 acres of land entered in the name of his brother Ujjinappa. The plaintiff has produced the Mutation No.30/2001-02, on going through the same prima facie it appears that the partition has been effected between the plaintiff and his brother, in the said partition the present suit schedule property fallen to the share of plaintiff. The plaintiff has produced the certified copy of the agreement of sale dated 09.12.2010, on going through the same prima facie it appears that the present plaintiff has executed the said agreement of sale in favour of the defendant with respect of suit schedule property for valuable consideration amount of Rs.1,10,000/-. Further the plaintiff has produced the certified copy of the cancellation of the agreement of sale dated 11.01.2013, on going through the same prima facie it appears that the defendant has executed the said cancellation of agreement of sale dated 09.12.2010 with respect of suit schedule property and received Rs.1,00,000/- from the plaintiff. The plaintiff

has produced the RTC extract of suit schedule property Sy.No.250/2A for the year 2024-25, as per the said document, prima facie it appears that as on the date of filing of the suit, the suit schedule property is standing in the name of plaintiff. The plaintiff has produced the certified copy of Encumbrance certificate, on going through the said document at Sl.No.8 prima facie it appears that the present plaintiff has executed the registered sale deed dated 28.05.2012 under document No.HBH100758/2012-13 with respect of suit schedule property in favour of defendant, plaintiff has not disclosed the said fact in the present plaint. The defendant also taken a contention that the plaintiff has sold the suit schedule property in favour of defendant. As per the document produced by the plaintiff itself, it clearly discloses that the defendant is in possession and enjoyment of the suit schedule property. The plaintiff has not produced any material documents before the Court to show that as on the date of filing of the suit he is in possession and enjoyment of the suit schedule property. Hence, at this stage the plaintiff has failed to prove his possession over the suit schedule

property, therefore granting of temporary injunction to restrain the defendant from interfering with his peaceful possession and enjoyment over the suit schedule property does not arise. Hence plaintiff has not made out prima facie case for granting of temporary injunction. If the temporary injunction order is granted, injustice will be caused to the defendant. On the basis of above reason and discussion, I answer **Point No.1 to 3** in the **NEGATIVE**.

11. Point No.4 :- For the aforesaid reasons and discussions made above, I proceed to pass the following:-

ORDER

I.A.No.II filed by the plaintiff under
Order 39 Rule 1 & 2 R/w Section 151 of CPC
is hereby dismissed.

*(Dictated to the Stenographer, transcribed and computerized by her, corrected by me, and then pronounced in the open court on this the **23rd day of June 2025.**)*

(SAYED MOHIUDDIN URF KHAWAJA PEERAN)
CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI.