

KAVN310002012025



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

Dated this the 10th day of June 2026

PRESENT

MADHUSUDHANA D.K. B.A. LL.B.
Senior Civil Judge & JMFC
Hagaribommanahalli

MA No.5/2025

APPELLANT: Smt. V.Saroja
W/o Late V. Prasad
Aged 41 years.
R/o 4th Ward, Kottur Road
Kudligi Town and Taluk.
Vijayanagara District.

(By Sri. H.B.Ravikumar Advocate)

V/s

RESPONDENTS: 1)Sri. V.Nagaraja
S/o Late Valekar Pakkerappa
Aged 61Years
2)Sri. V.Yallanagouda
S/o Nagaraja Valekar
Aged 36 Years
3)Sri. Sanna Yamunurappa
S/o Late Pakkerappa
Aged 58 Years.
4)Sri.V.Mallanagouda
S/o Late Pakkeerappa
Aged 53 Years.
All are resident of
Nelkuduri-II Village
Hagaribommanahalli Taluk.

(by Sri. P.Ramesh Advocate)

Date and nature of the Order or Decree appealed against	:	Order dated 20.01.2025 passed by the Civil Judge and JMFC in Hagaribommanahalli in OS No.138/2023
Date of Institution of the Appeal	:	26.04.2025
Date of Judgment	:	10.06.2026
Duration of appeal	:	Year Months Days 01 01 15

MADHUSUDHANA D K
Senior Civil Judge & JMFC
Hagaribommanahalli

ORDER

This Appeal is filed by the Appellant/Plaintiff by challenging the correctness of the Order passed by the Civil Judge and JMFC in Hagaribommanahalli on the IA No.3 filed under Order 39 Rule, 1 and 2 of CPC filed in OS No.138/2023 by Order dated 20.01.2025. The Appellant was the Plaintiff and the Respondents were the Defendants before the Trial Court and therefore, they are referred to their Original Rank before the Trial Court.

2. The Case of the Plaintiff before the Trial Court in brief is that, the Plaintiff has filed the Suit in OS No.138/2023 by seeking Permanent Injunction against the Defendants by restraining them from interfering with his Possession and Enjoyment over the Sy.No.345/A measuring 1A 12C out of 2A 47C of Nelakuduri Village-II. The Plaintiff has pleaded in brief that, the above Property originally belonged to one Akki Karibasappa. The Plaintiff's Paternal Grandfather V.Dodda Yamunappa was having two sons by name

Valekar Pakkirappa and Valekar Yamunurappa. Valekar Pakkirappa is the father of Defendants No.1, 3 and 4 and Valekar Yamunurappa is the Plaintiff's father-in-law. During the lifetime of the Grandfather Dodda Yamunappa, he was acting as the Kartha of the Family and after his death, his eldest son Valekar Pakkirappa was acting as the Kartha of the Family. Valekar Pakkirappa had purchased the Property bearing Sy.No.345A measuring 2A 11C out of 2A 47C under a Registered Sale Deed dated 09.07.1969 and an extent of 36C was purchased in the said Property in the name of Plaintiff's Father-in-law Valekar Yamunurappa under a Registered Sale Deed dated 10.09.1984 and both the Father-in-law of the Plaintiff and Father of the Defendants were in lawful Possession and Enjoyment. During the lifetime of Pakkirappa and Yamunurappa they have effected Partition of 2A 47C in Sy.No.345A and the same was allotted to the Share of Plaintiff's Father-in-law. The Partition Deed was reduced in writing in the Year 1984 and once again on 19.01.2010, the Family arrangement was reduced in writing and the Parties have acted upon the same by obtaining Mutation Order No.50/1984-85 dated 26.12.1984. Valekar Pakkirappa had also gave his Statement before the Revenue Officials by submitting to change the Khatha in the name of Valekar Yamunurappa in respect of entire 2A 47C. Plaintiff's Father-in-law Valekar Yamunurappa was died intestate by leaving behind Plaintiff and her Family Members. Therefore, the Mutation was effected in the name of Plaintiff's Mother-in-law Smt.V.Ambakka on 08.01.2010. The Plaintiff and her Family Members have effected a Registered Partition dated 03.07.2020 and in the said Partition, the Schedule 'C' was allotted to the Share of the Plaintiff and she has obtained the Suit Schedule Property by way of Mutation No.H1/2020-

21 and she is in lawful Possession and Enjoyment as the Absolute Owner. The Defendants have filed a Revenue Appeal before the Assistant Commissioner in Pahani Appeal No.41/2022-23 dated 08.06.2023 by questioning the Mutation No.H1/2020-21 and the Assistant Commissioner has wrongly set aside the said Mutation Order and directed the subordinates to cancel the same and to effect the Mutation in the name of Original Purchaser Valekar Pakkirappa. The said Order of the Assistant Commissioner directing to enter the Khatha in the name of Deceased Person is against to the Law and Karnataka Land Revenue Act. The Defendants have started to interfere with the Plaintiff's Possession and therefore, on 09.10.2023, the Plaintiff has lodged Police Complaint against the Defendants with Ittagi Police. For these reasons, the Plaintiff has prayed for Temporary Injunction to restrain the Defendants from interfering with his Possession over the Suit Schedule Property.

3. Before the Trial Court, the Defendants have appeared and filed their common Written Statement by denying the Case of the Plaintiff in total. The Defendants have contended that, *their Father's Brother Valekar Yamunurappa was claiming 2A 47C without any Registered Documents and without the consent of the Original Owner and the Claim was made on the basis of unregistered Release Deed dated 06.09.1984 and unregistered Sale Deed dated 10.09.1984 which are compulsorily requires Registration and therefore, the Plaintiff is not having the Ownership and Possession on the basis of these Documents.* Therefore, the Defendants have prayed for dismissing the IA No.3.

4. The Trial Court has heard both Parties and ultimately, dismissed the IA No.3 by its Order dated 20.01.2025 and therefore, the Plaintiff has filed the above Appeal on the following:

GROUND

- i) The Trial Court has not considered the Revenue Entries standing in the name of Plaintiff's Father-in-law and Plaintiff's Mother-in-law prior to the Order of the Assistant Commissioner in Appeal No.41/2022-23 and wrongly dismissed the IA No.3*
- ii) The Trial Court has arrived at a wrong conclusion that, the Respondents have produced recent Revenue Records and the Trial Court has ignored the earlier Revenue Entries in the name of Ancestors of the Plaintiff since 1984-85*
- iii) The Trial Court has not considered the IA No.3 on the probabilities and wrongly dismissed the same*
- iv) Among the other grounds also, the Order passed by the Trial Court is liable to be set aside*

5. The Trial Court Record is received and both Parties are heard on the Appeal.

6. The Appellant and Defendants both have addressed arguments and also filed their Written Arguments as per the grounds urged in their Appeal and Objections.

7. Now, the Points that arise for My consideration are as follows:

POINTS

- 1) *Whether the Order passed by the Trial Court is against to the Pleadings and Documents?*
- 2) *Whether the Order passed by the Trial Court calls for interference by this Court?*
- 3) *What Order or Decree?*

8. Now, My answers on the above Points are as follows.

ANSWERS

POINT NO.1 : In the Negative

POINT NO.2 : In the Negative

POINT NO.3 : As per the final Order for the following:

REASONS

9. **POINTS NO.1 AND 2:** To avoid repetition of giving same reasoning again and again, these interlinked Points are discussed together.

10. Before proceeding to consider the Documents of the Parties and correctness or otherwise of the observations made by the Trial Court, it is necessary to know the duties and procedures to be followed by the Appellate Court while dealing with the Miscellaneous Appeal. To condense the duties cast on the Appellate Court as held by the Hon'ble High Court of Karnataka in reported cases **No.(1) ILR 1995 KAR 22, (2) Mys LJ1968 552 and (3) Mys LJ 1965(1) 370**. It is convenient to reiterate the duties of the Appellate Court as follows:

Granting or refusing of Temporary Injunction rests on the sound exercise of discretion by the Court. Such exercise of discretion cannot

be lightly interfered with by the Appellate Court, unless it is shown that, such exercise of discretion is unreasonable or capricious. That a different view was possible on the facts and circumstances of the case by itself will not be sufficient to interfere with the order.

An appeal lies from the order of a Trial Court or refusing the grant of Temporary Injunction, but, what the Court of appeal has to consider is simply whether or not the Trial Judge, who dealt with the matter has properly exercised the discretion which he undoubtedly possesses.

The Appellate Judge is not to approach the case as if he were the Trial Judge.

11. The Plaintiff has pleaded in her Pleint and IA No.3 that, *her Father-in-law Yamunurappa and Defendants Father Valekar Pakkirappa are own brothers and they are sons of Valekar Dodda Basappa.* The Plaintiff has also pleaded that, *during his lifetime, Valekar Dodda Basappa was managing the affairs of the Family and after his death, the Defendants Father Valekar Pakkirappa was acting as the Kartha of the Family.* The Plaintiff has further pleaded that, *out of 2A 47C of Sy.No.345A, the Defendants Father Valekar Pakkirappa had purchased 2A 11C under Registered Sale Deed dated 09.07.1969 and Plaintiff's Father-in-law Valekar Yamunurappa had purchased remaining 36C under a Registered Sale Deed dated 10.09.1984.* The Pleadings of the Plaintiff further

speaks that, *during the lifetime of her Father-in-law Yamunurappa and Father of the Defendants by name Pakkirappa, they have effected Partition of Sy.No.345A totally measuring 2A 47C and the said Partition was reduced into writing in the Year 1984 and once again, the said Family Arrangement was reduced into writing on 19.01.2010 and the Family has acted upon the earlier Partition as the MR No.50/1984-85 dated 26.12.1984 was entered in the name of Plaintiff's Father-in-law.* Among the Documents produced by the Plaintiff before the Trial Court, the unregistered Release Deed (ಹಕ್ಕು ಬಿಡುಗಡೆ ಪತ್ರ) is available and the recitals of the said Document speaks that, *Valekar Pakkirappa had relinquished his rights over 2A 11C in favor of his Brother Valekar Yamunurappa on 08.09.1984.* The Plaintiff's Documents also contain the MR No.50/1984-85 which speaks about change of Khatha of entire 2A 47C in the Sy.No.345A in the name of Plaintiff's Father-in-law on the basis of a Partition. The Plaintiff has not produced the alleged Partition Deed reduced to writing in the Year 1984 and she has not pleaded anything about Defendants Father Valekar Pakkirappa had executed the unregistered Release Deed on 08.09.1984. The Plaintiff has pleaded that, *her Father-in-law Valekar Yamunurappa had purchased the remaining 36C of Sy.No.345A under Registered Sale Deed dated 10.09.1984.* If the Defendants Father Valekar Pakkirappa had purchased the extent of 2A 11C in the Sy.No.345A under Registered Sale Deed dated 09.07.1969, it was not possible for the said Person and for the Plaintiff's Father-in-law to effect Partition of total extent of 2A 47C in Sy.No.345A on the date of unregistered Release Deed dated 08.09.1984. In other words, the alleged unregistered Release Deed dated 08.09.1984 came into existence before the Plaintiff's Father-in-law Valekar Pakkirappa had purchased

remaining 36C in the Sy.No.345A on 10.09.1984. As on the date of Release Deed executed by Valekar Pakkirappa, he was having the extent of only 2A 11C in the Sy.No.345A as his Brother the Plaintiff's Father-in-law Valekar Yamunurappa had not yet purchased the remaining 36C in the Sy.No.345A and therefore, the Mutation Order No.50/84-85 entered in respect of the entire extent of 2A 47C in the Sy.No.345A in the name of Plaintiff's Father-in-law creates doubts. The subsequent Mutation entries in the name of Plaintiff's Mother-in-law Ambakka and later in the name of Plaintiff's Family Members all are entered on the basis of MR No.50/84-85 which was entered not on the basis of alleged Partition but, it was entered on the basis of unregistered Release Deed. The Release Deed requires compulsory Registration and therefore, the Trial Court has rightly not considered the Revenue Documents of the Plaintiff for the reason that, they were entered on the basis of an unregistered Release Deed. Since the Plaintiff is seeking Temporary Injunction by claiming Ownership and Possession and the Defendants are seriously disputing the title of the Plaintiff and therefore, the Plaintiff has to prove her Ownership and Title before the Trial Court. Therefore, I do not see any illegality or perversity caused by the Trial Court in appreciating the Pleadings, Facts and Documents of the Plaintiff. Therefore, ***the Points No.1 and 2 are answered in the Negative.***

12. ***POINT NO.3:*** For the above discussion, I proceed to pass the following:

ORDER

The Miscellaneous Appeal filed by the Appellant by questioning the correctness of Order passed by the Civil Judge and JMFC in Hagaribommanahalli on the IA No.3 filed under Order 39 Rule 1 and 2 of CPC filed in OS No.138/2023 by Order dated 20.01.2025 is hereby dismissed.

The Trial Court Order on the IA No.3 dated 20.01.2025 is hereby confirmed.

Send back the LCR along with a Copy of this Order to the Trial Court.

MADHUSUDHANA D K
Senior Civil Judge & JMFC
Hagaribommanahalli