

KAVN500000062025



**IN THE COURT OF THE SENIOR CIVIL JUDGE &
JMFC., AT HARAPANAHALLI**

: Present :

SMT. USHARANI.R B.A.L., L.L.M.
Senior Civil Judge & JMFC, Harapanahalli

M.A. No.04/2025

Dated this the 7th day of March 2026

Appellant : Sri. A.Nagarajappa S/o Late
Hanumanthappa, aged about 75 years, Agriculturist, R/o
Myduru village, Harapanahalli taluk

(By Sri K.B.R., Advocate)

Vs

Respondents: Sri. Gundagathi Bullappa S/o
Kotragouda, aged about 78 years, Agriculturist, R/o
Myduru village, Harapanahalli taluk, Vijayanagara district.

(By Sri. B.R.G., Advocate)

Date and nature of the : Orders on I.A No.I passed in
decree or order appealed O.S.No.37/2023 dated
against 13.02.2025 by the learned
Civil Judge & JMFC,
Harapanahalli

Date of institution of : 03.04.2025
the appeal

Date of Judgment pronounced : 07.03.2026

Duration of the Appeal : Year Months Days
01 01 11

Senior Civil Judge & J.M.F.C.,
Harapanahalli.

J U D G M E N T

The plaintiff has filed this appeal feeling aggrieved by the dismissal of the IA No.1 filed before the trial court in OS No. 37/2023

2. Brief facts of the case:

The plaintiff Sri.A. Nagarajappa had filed a suit before the trial court seeking relief of declaration that he is the absolute owner in possession of the suit property and for permanent injunction. IA No.1 was also filed by the plaintiff seeking to restrain the defendant or his agents from interfering with the peaceful possession and enjoyment of the suit property and not to obstruct utilization of the bore well water situated in the suit property ie. old Sy.No.443 and new Sy.No.443/2 measuring 0.40 cents situated at Myduru village.

3. In the accompanying affidavit the plaintiff has sworn to the facts that he is the absolute owner of the suit

schedule property and defendant colluding with the revenue authorities illegally mutated his name in extent of 0.40 cents of the suit property. In fact suit property exclusively belongs to him. Mutation proceedings are also challenged before the revenue authorities which is still pending for adjudication. Defendant who is aware of the revenue proceedings had filed an application before ADLR Harapanahalli and notice is served on him. On the strength of survey notice respondent/defendant is trying to interfere with the peaceful possession and enjoyment of the suit property. Hence, there is need to restrain his illegal acts.

4. In the trial court the defendant appeared and contested the case by filing a written statement. He filed written statement and also a memo adopting the written statement itself as objections to IA No.1. Defendant has denied the entire plaint averments. The plaintiff has no locus standi to file the present suit. In fact Sy.No.443 totally measures 12 acres 68 cents. It originally belonged to one Seturamachar. Plaintiff and defendant during their minority have themselves purchased the entire property in Sy.No.443. Subsequently when there was a division between the plaintiff and defendants in the family of their grandfather plaintiff received an extent of 4 acre 38 cents and defendant received 3 acre 40 cents. Accordingly, mutation is effected in the year 1988-89. The remaining

extent of 4 acre 90 cents stood in the name of grandfather of parties by name Kenchappa and he does not know how records were mutated in the name of the grandfather. One Kamma on the strength of sale deed executed by one M Basavaraja has got possession in respect of 4 acre 90 cents and was in actual possession. Now the children of Kamma viz., Prakashgouda and Lingeshgouda have divided the said property and are in possession. In fact the suit property records do not show the actual possession of the plaintiff over the suit schedule property. Mortgage deeds are not deeds of title. Revenue authorities colludingly brought about survey documents which are concocted. The learned counsels for the plaintiff and defendants had not consented for surveying of the suit property and the plaintiff has come up with this false case.

5. In fact suit property comes in the extent available to the defendant and defendant is having right over the suit property. Plaintiff is trying to gulp away the bore well situated in the share of the defendant. Plaintiff has issued documents pertaining to the bore well and electricity standing in the name of his wife and has tried to gulp up the bore well of the defendant. Defendant is an illiterate person, innocent and plaintiff is trying to gulp up 0.40 cents belonging to the present defendant. Suit is also bad

for non-joinder of necessary parties. Therefore, there is no reason to allow IA no. 1.

6. The trial court has framed the following points for consideration:

1. Whether plaintiff has made out prima facie case for grant of temporary injunction?
2. Whether balance of convenience lies in favour of plaintiff in the present case?
3. Whether plaintiff suffers irreparable loss and hardship if temporary injunction is not granted?
3. What order?

7. After hearing both sides the trial court answered point No.1 to 3 in the negative and ultimately dismissed the IA No.I without costs.

8. Feeling aggrieved by the dismissal of the IA No.1 the plaintiff has come up with the present appeal on the grounds that the trial court has not properly appreciated the case on hand. The trial court failed to consider the documents produced by the plaintiff. Vital documents produced by the plaintiff was not considered by the trial court. The revenue authorities had wrongly entered the name of the respondent exceeding his title and this was not looked into by the trial court. The appellant had

purchased the suit property and sale deed was acted upon and the trial court has not considered all the vital documents.

9. In the appeal respondent /defendant appeared and contested the case. Objections are filed denying the grounds of appeal.

10. Heard the arguments canvassed on both sides and perused trial court records.

11. The following points arise for consideration:

(1) Whether the findings of the trial court that, the plaintiff had no prima-facie case is erroneous under law and facts?

(2) Whether the finding of the trial court that, the balance of convenience does not lean in favour of the plaintiff is erroneous under law and facts?

(3) Whether the finding of the trial court that, there was no hardship caused to the plaintiff if an order of TI is not granted, is erroneous under law and facts?

(4) Whether the impugned order calls for interference by the court? If so to what extent?

(5) What order or direction ?

12. My findings 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 : In the negative.

Point No.5 : As per the final order, for the following :

//REASONS//

13. **Point no.1 to 4** :- These points taken together for common consideration to avoid repetition of facts and evidence as these points are interrelated. Law relating to grant or refusal to grant temporary injunction has been enunciated by the Honble Supreme Court of India and Honble High Court of Karnataka in a plethora of cases. The court while exercising its discretion applies the following tests-(i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory in injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and

remain uncertain till they are established at the trial on evidence.

14. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial.

15. Keeping in mind the well settled legal principles regarding granting or refusal for granting Temporary Injunction enunciated in these decisions, the factual aspects of the case has to be embarked upon.

16. According to the plaintiff he is the absolute owner of the suit schedule property and defendant colluding with the revenue authorities illegally mutated his name in extent of 0.40 cents of the suit property. There is a borewell and there is interference by the defendant in user of the said borewell water.

17. Per contra the defendant contend that Sy.No.443 totally measures 12 acres 68 cents. It originally belonged to

one Seturamachar. Plaintiff and defendant during their minority have themselves purchased the entire property in Sy.No.443. Subsequently when there was a division between the plaintiff and defendants in the family of their grandfather plaintiff received an extent of 4 acre 38 cents and defendant received 3 acre 40 cents. Accordingly, mutation is effected in the year 1988-89. The remaining extent of 4 acre 90 cents stood in the name of grandfather of parties by name Kenchappa and he does not know how records were mutated in the name of the grandfather. One Kamma on the strength of sale deed executed by one M Basavaraja has got possession in respect of 4 acre 90 cents and was in actual possession. Now the children of Kamma viz., Prakashgouda and Lingeshgouda have divided the said property and are in possession. In fact the suit property records do not show the actual possession of the plaintiff over the suit schedule property.

18. In order to prove the prima facie case the Plaintiff has produced RTC extracts of Sy.No.443 standing in the name of Gundagathi Bullappa, Hunsihalli Nagarajappa minor guardian grandfather Kenchappa Myduru from the year 1968 up to 1995-96. in computerized RTC extract of Sy.No. 443/B measuring 4.90 acres is in the name of Heggangoudra Kamma W/o Dyamanagouda from the year 2000-01 up to 2016-17 and

the name of H.Prakashgouda S/o Dyamanagouda and H.Lingeshwaragouda S/o Dyamanagouda is entered in the year 2017-18 up to 2022-23. In respect of Sy.No. 443/1A measuring 4.38 acres which shows the name of K.Kotrappa S/o Chandrappa Chigateri, in Sy.No. 443/1 measuring 9.28 acres in the name of Hegganagoudra Kalamma W/o Dyamanagouda(4.90 acres) and K.Kotrappa S/o Chandrappa Chigateri (4.18 acres) is entered in the year 2003-04, Sy.No. 443/1A measuring 4.38 acres is in the name of Anjigere Savakka /o Nagarajappa Myduru is entered in the year 2016-17 up to 2022-23. In Sy.No. 443/2 measuring 3.40 acres which shows that name of Gundagathi Bullappa S/o Kotragouda is entered in the year 2001-02 up to 2022-23.

19 The plaintiff also produced certified copy of the sale deed dated 19.04.1965 executed by Sethuramachari S/o Venkobachari in favour of Nagaraja S/o Hanumanthagouda minor guardian grandfather Anni Kenchappa in respect of Sy.No. 440B measuring 2.45 acres and Sy.No. 443 measuring 9.68 acres , The plaintiff also produced encumbrance certificate in respect of Sy.No. 443. He has also relied on certified copy of the sale deed dated 19.04.1965, 11.03.1999, 08.04.2009, mutation register extracts MR No. 106/1980-81, 20/1992-93 and 1/1999-2000 and 09/1999-2000. The plaintiffs also produced the mortgage deeds dated 21.02.1985, 19.04.1986,

17.05.1985. These documents are also produced by the appellants. Copy of the gift deed dated 08-04-2009 is produced which shows that T Kotrappa S/O T Chandrappa had executed gift deed in favor of Anagigeri Savakka W/O Nagarajappa in respect of Sy no 443/ A measuring 4-38 cents. Rectification deed to the gift deed dated 02-09-2009 is also produced. Mutation register extracts and mortgage deeds encumbrance certificates holding certificate, sketch servicing of 5 HP IP set, application for regularizing illicit pumpset, letters, endorsement, copy of orders passed by AC survey notice are also produced are also produced by the plaintiff.

20. It is the contention of the appellant/plaintiff that the trial court has not properly appreciated the case on hand. The findings of the trial court is not prima-facie and it is erroneous based on appreciation of self assumption and presumption. Trial court did not look into primafacie case and balance of convenience. The position of law regarding the mutation proceedings in the name of plaintiff/appellant and long standing revenue entries were not considered. Revenue entries were wrongly entered in the name of respondent exceeding his title which fact itself is sufficient to show that there was a primafacie case in favor of the plaintiff. Trial court failed to take note that appellant had purchased the suit property under registered

sale deed and registered sale deed was acted upon. But these documents were not properly appreciated. The orders passed by the trial court is not legal and justified.

21 Respondents who appeared and contested the appeal filed a memo and adopted the objections filed on IA No.1. According to the respondents their case is clearly depicted in the written statement and the plaintiff is not at all entitled for any relief sought for in the appeal.

22. There are voluminous documents produced but there is no document is produced by the plaintiff to show that he himself is in actual possession of 0.40 cents as claimed and the RTC extracts and the encumbrance certificate produced does not show bifurcation of 0.40 cents. Though RTC extracts shows right of the plaintiff over Sy no 443 the exact 0.40 cents, its location and right over the said portion cannot be ascertained from mere perusal of these documents. The sale deeds, mortgage deeds and other documents are to be marshalled to find out the exact location and right over the 0.40 cents of the suit property as claimed. There are sub divisions also effected in Sy no 443 and these voluminous documents are to be marshalled in the light of oral evidence for which full fledged trial is essential.

23. The contention of the plaintiffs that he has in fact dug borewell and he is in possession of the said borewell is also to be proved in evidence. Where exactly is the borewell located is to be also proved in trial.

24. It is too premature to decide about the right of the plaintiff over the suit schedule property, the borewell and exact location of 0.40 cents. Plaintiff is yet to prove the situation of borewell and where exactly 0.40 cents is located and there is only an arguable case and there is no prima-facie case to grant the relief of temporary injunction.

25. Therefore at this pretrial stage there is no prima-facie case for grant of injunction. There is also no balance of convenience. Before an injunction can be granted, the plaintiff has to establish a prima-facie case, balance of convenience. After establishing these two aspects the plaintiff should also show that if temporary injunction is refused he will be put to irreparable injury which cannot compensated in terms of money. It is also settled principle that while considering an application for temporary injunction the court cannot hold a mini trial. The temporary injunction is in aid of the main relief.

26. Admittedly this is pre trial stage and at the infant stage the court cannot straight away conclude that the suit

property is the exclusively property of the plaintiff and now plaintiff is the absolute owner and is also in possession of the said borewell. Exclusive possession is not prima faice proved. The said aspects are to be proved in evidence. Admittedly there is serious dispute regarding the title and extent of the suit property who is in actual possession and thus there is absolutely need to venture trial. Thus opportunity has to be given to both parties to prove the title to the suit property and put forth their respective contentions and to prove who actually is in possession. Thus without trial the rights cannot be adjudicated upon.

27. Thus being the case the trial court was of the correct opinion that there was no prima facie case to grant relief. So also rightly the trial court held that there was no balance of convenience and no irreparable injury would be caused to the plaintiff. In the said circumstances the impugned order appears to be reasoned and does not call for interference as it is not arbitrary, capricious and perverse. Accordingly I answer the point no.1 to 4 in the negative.

28. **Point No.5:** In view of my findings to points No.1 to 4 and the reasons stated therein, I proceed to pass the following:

ORDER

Miscellaneous Appeal preferred by the appellant/ plaintiff under Order 43 Rule 1 (r) R/w Section 151 of CPC is hereby dismissed.

The impugned orders on I.A.No.I passed by the trial court in OS. No.37/2023 dated 13.02.2025 is hereby confirmed.

Office is directed to re transmit the trial court records along with a certified copy of judgment forthwith.

(Dictated to the stenographer, transcribed and computerized by her, revised, corrected, signed and pronounced in the open court on 7th day of March 2026)

(Smt.USHARANI.R.)
Senior Civil Judge & J.M.F.C.,
Harapanahalli.