

KAVP200000462025



IN THE COURT OF THE I ADDL.SENIOR CIVIL JUDGE
AT : BASAVANA BAGEWADI

PRESENT: Sri.ISHWAR S.M.
B.A.LLB., (Spl)
I Addl. Senior Civil Judge
& J.M.F.C., B.Bagewadi

Dated this the 13th day of November - 2025

O.S.No.14/2025

PLAINTIFFS: Basavva W/o Basagondappa Aloor and
Others

-Versus-

DEFENDANT: Gouramma called herself as W/o
Basagondapppa Aloor

I.A. No.I

Applicant: Yalagurdappa S/o Basagondappa Aloor,
Plaintiff No.2 Age: 48 years, Occ: Agriculture,
R/o: Jeeralbavi, Tq: Nidagundi,
Now residing at Narasalagi,
Tq: B.Bagewadi, Dist: Vijayapura

(By Sri S.S.Kolur, Advocate)

-Versus-

Opponent Gouramma called herself as W/o
Defendant Basagondappa Aloor,
Gouramma D/o Bhimappa Kori,
Age: 60 years, Occ: Household work,
R/o: Rudagi, Tq: Muddebihal,
Dist: Vijayapura

(By Sri B.V.Patil, Advocate)

i	Provision under which the application is filed	U/O XXXIX Rule 1 and 2 of CPC
ii	Relief sought for	With a prayer to restrain the defendant, or anybody acting on her behalf from alienating and mortgaging, with respect to the suit schedule property.
iii	The date on which the application is filed	13.01.2025
iv	Number of the applications	Five
v	The date on which the objections are filed by different opponents	Objections filed
	The date on which the orders were passed on the said application	03.03.2025
vii	The application filed by	Plaintiff No.2
viii	Stage of the suit	For orders on I.A.

(ISHWAR S.M)

I Addl.Senior Civil Judge
& J.M.F.C.,B.Bagewadi

ORDER ON I.A NO.I

The counsel for plaintiffs has filed I.A.No.I U/o XXXIX Rule 1 and 2 of CPC, praying this Court to restrain the defendant, or anybody acting on her behalf from alienating and mortgaging, with respect to the suit schedule property.

2. The I.A. accompanied with sworn affidavit of plaintiff No.2. Wherein the plaintiff No.2 has contended that, the suit property is the joint family property of plaintiffs and the propositus deceased Basagondappa. The suit property is in joint possession of plaintiff and deceased Basagondappa. The deceased Basagondappa on 10.10.2003, has relinquished the suit property in favour of plaintiff No.2 and 3 and handed over the possession of the suit property, since then, the plaintiff No.2 and 3 are the absolute owners and possessors of the suit schedule property. In the year of 2015 there was dispute between the plaintiffs No.2 and 3 and deceased Basagondappa. Then, Basagondappa has filed suit for declaration and injunction before the Senior Civil Judge, B.Bagewadi, which was registered as O.S.No.33/2015. The said suit was disposed off on 11.11.2019 and deceased Basagondappa was declared as owner, but the prayer of injunction was dismissed. The present plaintiffs No.2 and 3 are directed to handover the possession of the suit property to the Basagondappa. By aggrieved by the said judgment and decree, the plaintiffs No.2 and 3 preferred appeal before the Hon'ble District Court, Vijayapura under R.A.No.206/2019

and the said R.A. was pending. In the year of 2019, the present defendant has got created the false WILL deed stating that, she is the wife of deceased Basagondappa. Then, in the year of 2021 the defendant has caused murdered of deceased Basagondappa and alleged that, the said Basagondappa was missing and given false complaint that, someone has killed him. The defendant with political influence, has implicated the plaintiff No.2 and 3 in the said murder case, the defendant is having intention to grab the suit property. Therefore, she has got created the false WILL deed and on the basis of the same, she got impleaded in R.A.No.206/2019, and as per the order on I.A.No.II, in the said appeal, she has making false representation has got mutated her name in the revenue record of the suit property. The defendant has also filed application to come on record as legal heirs in E.P.No.24/2020 the said E.P. is pending for consideration.

3. That, in the year of 2024 the defendant by taking undue advantage orders on I.A.No.II in R.A.No.206/2019, has given false application to the Tahasildar, B.Bagewadi and when the plaintiff came to know that, then, the plaintiffs have filed objections to the Tahasildar, B.Bagewadi requesting him

to give opportunities for being heard before mutating the name of defendant in the revenue record of the suit property. But, the defendant colluding with the revenue authorities and with the political influence without giving any notice to the plaintiff has got mutated her name in the revenue record of the suit property under M.R.No.H-23/2024-2025. The said mutation entry is illegal and will not affect the ownership right of the plaintiff's family. On the basis of the same, the defendant cannot acquire any title. Therefore, the plaintiffs have filed the present suit for declaration that, the suit property is their family property and injunction from alienating the suit property against the defendants.

4. The plaintiff further contended that, the defendant by taking undue advantage of her name appearing in the revenue record of the suit property is having bad intention to alienate the suit property. On those grounds, the plaintiff prays to allow I.A.No.I.

5. On the other hand, the defendant has filed written statement and same is adopted as objections to the said I.A. No.I by filing adoption memo.

6. In the written statement the defendant has denied all the contents of the affidavit of the plaintiff. Wherein the defendant has contended that, the plaintiff has filed false suit for declaration and injunction. The plaintiff has wrongly mentioned genealogy in suit schedule "A". Because, non mentioning of name of second wife Gouramma in the genealogy, in para No.2 the plaintiffs have falsely stated that the defendant is not related to them. There is no dispute regarding plaintiff No.1 is first wife of Basagondappa and plaintiff No.2 and 3 are sons of 1st wife Basavva through Basagondappa. The 1st wife deserted the Basagondappa about 40 years, the marriage of defendant with Basagondappa was celebrated at Jaiwadagi, Awwappa Muttya Temple in B.Bagewadi taluka, since, the marriage the defendant has lead marital life with Basagondappa. But, unfortunately no children were begotten. Previously O.S.No.33/2015 was heard and decided finally by this Court with respect to suit land, this property was allotted to share of Basagondappa in partition with plaintiff No.2 and 3 in the year of 1997 as per M.E. No.2822. Wherein Sy.No.91/2B and Sy.No.224 were fallen to the share of plaintiff No.2 and 3. Thereafter, the plaintiff No.2

and 3 have got created M.R.No.13/2003-04 entering their names in the record of suit property stating that, Basagondappa has relinquished his right in favour of plaintiff No.2 and 3. Hence, Basagondappa has filed O.S.No.33/2015 the said suit was heard and decided in favour of the said Basagondappa and said Basagondappa has declared as absolute owner of the suit property, but possession is to be recovered from plaintiff No.2 and 3 by Basagondappa against the said judgment and decree the plaintiff No.2 and 3 preferred appeal in R.A. No. 206/2019, during the pendency of the said appeal Basagondappa was murdered on 07.08.2021. A criminal case was registered against plaintiff No.2 and 3. the said Basagondappa has filed E.P.No.24/2020 as per decree in O.S.No.33/2015 which is pending before this Court. After death of Basagondappa the defendant came on record in R.A.No.206/2019 on the strength of WILL executed by Basagondappa on 07.11.2019. Wherein the Basagondappa has bequeathed the suit property in favour of defendant. Accordingly, the defendant has filed I.A. No. II in the said RA and after recording of evidence of both the parties, the IA No. II was allowed and defendant was permitted to come on record

as legal representatives of Basagondappa on the basis of the WILL. The said order was not challenged by the plaintiff. The defendant is legatee under WILL came on record in R.A.No. 206/2019 and got entered her name in the revenue record of the suit property. Therefore, the said judgment become final until unless appeal is allowed. During the said period, O.S.No. 662/2019 was filed before Addl.Civil Judge and J.M.F.C., B.Bagewadi by the plaintiffs against the defendants for the same relief in the said suit, which is pending for adjudication. The said suit was filed suppressing the result of previous suit. The plaintiffs have admitted that, the deceased Basagondappa was the owner of the suit property. On those grounds, the defendant prays to reject the I.A.No.I.

7. Heard both sides. Upon hearing, both the parties the points that would arise for my consideration are;

1. *Whether the plaintiffs have made-out prima-facie case?*
2. *Whether the balance of convenience lies in favour of plaintiffs?*
3. *Whether irreparable loss or hardship will be caused to the plaintiffs if interim injunction is not granted?*
4. *What order?*

8. My findings to the above points as under:

Point No.1 to 3 : In the Affirmative

Point No.4 : As per final order
for the following:

REASONS

9. **Point No.1 to 3:** All these points are interrelated to each other and findings on the Point No.1 will have bearing on others. Hence, to avoid repetition of facts, I have taken all these points together for common discussion.

10. That, the facts of the both parties are already narrated supra. The plaintiffs in order to substantiate their contention have produced the documentary evidence i.e. record of right, M.R. extracts, the judgment and decree passed in O.S.No. 33/2015, WILL deed, the FIS in B.Bagewadi P.S. Cr.No.149/2021, FIR in the said Crime, the judgment passed in S.C.No.238/2022, order sheet of R.A.No.206/2019, copy of I.A.No.II and order passed in R.A.No.206/2019, Copy of order sheet in E.P.24/2020, the I.A.No.I in E.P.No.24/2020, objection to I.A.No.I in E.P.No.24/2020, the application given by defendant to Tahasildar B.Bagewadi, the objection given by the present plaintiff to the Tahasildar B.Bagewadi, the

correspondence made by D.C. Vijayapura to A.C. Vijayapura and Tahasildar, B.Bagewadi, the application given by the defendant to Tahasildar B.Bagewadi, the correspondence made by A.C. Vijayapura to Tahasildar B.Bagewadi and correspondence made by Tahasildar B.Bagewadi to A.C. Vijayapura, the M.R. extract, death extract of Basagondappa.

11. On the other hand, the defendant has produced the documents i.e. judgment and decree passed in R.A.No. 206/2019.

12. That, on meticulous perusal of both the parties, the suit property was originally standing in the name of Basagondappa, subsequently the plaintiff No.2 and 3 have got mutated the suit property, then, the Basagondappa has filed suit for declaration and injunction being O.S.No.33/20105, the said suit was decree in part and the father of plaintiff No.2 and 3 i.e. Basagondappa was declared as owner of the suit property and the prayer of injunction was rejected. The present plaintiffs No.2 and 3 are directed to handover the possession of the suit property to their father deceased Basagondappa. The said judgment and decree were challenged

by the present plaintiffs before the Hon'ble District Court in R.A.No.206/2019. During the pendency of the said appeal, the Basagondappa was expired and subsequently the defendant has filed I.A.No.II in the said appeal for impleading herself as respondent No.1A as legaty under the WILL. The said I.A. was allowed and present defendant was permitted to come on record as legaty under WILL, only for the purpose of represent the estate of the deceased. Subsequently, on the basis of the said order, the defendant has got mutated her name in the revenue record of the suit property. For that, the plaintiffs have filed objections, but, considering the order on I.A.No.,II the revenue authority has got mutated the name of defendant in the revenue record of the suit property. But, subsequently, the R.A.No.206/2019 was disposed off. In the said judgment the Hon'ble Appellate Court has categorically observed that, in para No.30 to 34 of the said judgment, the Hon'ble appellate Court has observed that;

"The order on I.A.No.II is summary in nature against the said order no appeal is provided the granting of an opportunity to lead some sort of evidence in support of the claim of being legal heir of deceased party would not in any manner change the nature of the proceedings. Therefore, I am of the view that, it

cannot be stated the WILL is conclusively proved. In my view, considering the facts and circumstances of the case the genuineness of the WILL has to be proved in a separate proceedings.--

33. Hence, by taking-up the above application, while hearing the merit of the case, in my view the above documents are not helpful in deciding the merits of the case. Because of the case of plaintiff or defendants is not based on WILL. There is no pleading with regard to WILL. There is no issue framed with regard to the alleged WILL. In fact, as per order on I.A.No.II respondent No.1(a) was permitted to come on record as legal representatives of deceased Basagondappa it was not order of the Court permitting the respondent No.1 (a) to submit representation to Tahasildar for entering her name in the record of R.S.No.237 measuring 10 acres 26 gutnas as a legaty under the WILL. In fact, this Court has clearly observed that, genuineness of the WILL has to be established in separate probate proceedings,. This Court has simplicitor permitted respondent No.1(a) Gouramma to represent estate of Basagondappa on the basis of the alleged WILL dated 07.11.2019. By the order on I.A.No. II it has not permitted the respondent No.(a) to enter her name in the record of right of the suit. Hence, the acts of respondent No.1(a) entering her name in the record of the suit property is not in accordance with law”.

13. That from the above observation of the Hon'ble Appellate Court, it is clear that, the present defendant was only permitted to come on record as legal representative of deceased Basagondappa and represent his estate. But, not given any finding on the alleged WILL. The said WILL has to be proved in separate proceedings. But, the defendant on the basis of the order on I.A.No.II has got mutated her name in the revenue record of the suit property, which is not permissible. As observed by the Hon'ble Appellate Court. That, though in O.S.No.33/2015 the deceased Basagondappa was declared as absolute owner, but after his death, the interest is created in favour of the legal heirs. But, as per the contention of the defendant during the lifetime of Basagondappa, he has executed the WILL. The said WILL has to be established under separate proceedings if the defendant establishes the WILL then, the plaintiffs are out of the Court. But, if the defendant fails to do so, definitely, the legal heirs will got right to succeed the suit property. Therefore, when the defendant has got mutated her name on the basis of the alleged WILL and as per the interim order on I.A.No.II in R.A.No.206/2019, then, there are chances of alienating the suit property by the defendant

and if the 3rd party interest is created by the defendant over the suit property, then, which will definitely leads to multiplicity of proceedings, therefore, till disposal of the suit the suit property has to be kept in status quo manner in order to protect the right of the succeeding parties. Therefore, the plaintiff has made out prima-facie case to go for trail. Furthermore, the balance of convenience lies in favour of the plaintiff. Because, the defendant has got mutated her name in the revenue record of the suit property on the basis of the interim order on I.A.No.II in R.A.No.206/2019 and the Hon'ble Appellate Court has also observed that, the defendant ought not to have been got mutated her name in the revenue record of the suit property on the basis of order on I.A.No.II, until and unless the alleged WILL is tested legally, the defendant cannot acquire any title over the suit property, therefore, the balance of convenience lies in favour of the plaintiffs. Even irreparable loss would cause to the plaintiffs rather than the defendant. Because the suit property is presently standing in the name of defendant and if the defendant is parted with suit property, then, which cannot be compensated by any means.

14. That, the counsel for the defendant has relied upon the decision reported in **2017 (6) KCCR Page 922**, in between **M/s Alliance University, Bengaluru V/s Sudhir and Others**. Wherein the Hon'ble High Court of Karnataka has held that;

"A. SPECIFIC RELIEF ACT, 1963 – Section 38- CIVIL PROCEDURE CODE, 1908- Order 39, Rule 1 – Temporary injunction Grant of Maintainability of suit – Whether a relevant issue to be considered, yes – If suit is not maintainable the T.I. cannot be granted".

That, question of maintainability of suit, res-judicate is already considered by this Court while disposing I.A.No. IV therefore, the said decision is not helpful to the defendant at this stage. Therefore, in views of the above said discussion made above, my findings to **Point No.1 to 3 are in Affirmative.**

15. **Point No.4:** In view of the above, I proceed to pass the following;

ORDER

I.A.No.I filed U/o XXXIX Rule 1 and 2 of CPC by the plaintiff No.2 is hereby allowed.

The defendant, or anybody acting on her behalf are hereby temporarily restrained from alienating and mortgaging, with respect to the suit schedule property.

No order as costs.

(Typed my dictation through online by the Stenographer, script corrected, signed by me and then pronounced in the Open Court on this the 13th day of November - 2025)

(ISHWAR S.M.)

I Addl.Senior Civil Judge
& J.M.F.C.,B.Bagewadi