

KAVP420003442025



**IN THE COURT OF V ADDITIONAL DISTRICT AND  
SESSIONS JUDGE, VIJAYAPURA, (TO SIT AT  
MUDDEBIHAL).**

**DATED THIS THE 2<sup>nd</sup> DAY OF JUNE-2026**

**PRESENT**

**Sri. Sachin Kaushik R.N  
B.Sc., LL.M**

V Additional District and Sessions Judge,  
Vijayapura, To sit at Muddebihal.

**M.A.No.5040/2025**

**(Old M.A.No.4/2023)**

**(Arising out of order IA No.II  
passed in O.S.No.96/2019)**

**Appellant:**

Mallappa S/o. Hanamantappa  
Badavadagi, Age:64 years,  
Occ:Agriculture, R/o. Sarur,  
Tq. Muddebihal

**(Rep. by Sri.I.S.H. Advocate)**

**///Versus///**

**Respondents:** 1. Siddamma W/o. Basayya Purari @  
Guruvini, Age:49 years  
Occ:Household work  
R/o. Sarur, Tq. Muddebihal

2. Neelamma W/o Mallayya Pujari @  
Guruvin Age:44 years,  
Occ:Household work  
R/o. Sarur, Tq. Muddebihal
3. Mallayya S/o Karisiddayya Guruvin  
Age:39 years, Occ: Agriculture  
R/o. Sarur, Tq. Muddebihal
4. The Panchayat Development Officer  
Gram Panchayat Office  
Kavadimatti Tq Muddebihal

**(Rep. by Respondent No.1 to 3  
Sri. H.T.P. Advocate and  
Respondent No.4 placed ExParte).**

### **J U D G M E N T**

The plaintiff/appellant has preferred this appeal U/o.XLIII Rule 1(r) of C.P.C., against the rejection of IA No.II filed by him U/O.XXXIX R-1 and 2 of CPC for temporary injunction restraining defendants and their men from putting up construction on property No.114/4/B measuring 20'X18' in Kavadimatti village, Muddebihal. The said property is suit schedule property.

2. For sale of convenience, the parties shall be refused by their ranks in the suit.

3. The plaintiff states that, in 1978, he was given Hakku Patra of suit schedule property. He is owner and in possession of suit schedule property. The defendants No.1 to 3 with help of P.D.O. Kavadimatt village, who is defendant No.4, have shown suit property as No.546 on 8.12.2004 by passing resolution No.3/1, and are trying to encroach his property by putting up construction. Hence he has filed I.A.No.II U/o.XXXIX Rule 1 & 2 of C.P.C. to stop them from putting up construction in suit schedule property.

4. The defendant No.1 and 4 have filed separate written statements denying the averments of plaint. They state that no Hakku Patra was given to plaintiff in 1978, and no entry as 546 is done on 8.12.2004. Plaintiff has no such property at all. The suit property shown in handsketch belongs to defendant No.2. It was granted to her in 2004. The defendant No.2 relinquished her rights to defendant No.1, who is her brother in 2018. The defendant No.1 is now constructing house on said property by taking permission from Gram Panchayath. Hence, property No.546 belongs to

defendant No.1 and plaintiff has no right whatsoever and has filed false application. They have prayed to dismiss suit and I.A.

5. The trial court framed following 4 points for consideration.

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

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

3. Whether the plaintiff show that, if the application is not allowed irreparable loss will cause to the plaintiff?

4. What order?

6. The trial court answered the said points as follows:

Point No.1 : In Negative

Point No.2 &3 : In Negative

Point No.4. : As per final order

7. Being aggrieved by rejection of IA No.II, the plaintiff in this appeal has stated that, the trial court has not

considered the false resolution No.3/1 of defendant No.4. He has prayed to allow appeal and said IA No.II.

8. The points that arise for determination are as follows:

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

2.Whether the plaintiff has shown balance of convenience and irreparable loss are in his favour?

3.Whether the order dated: 10.03.2023 passed by trial court is perverse, and calls for interference?

4. What Order?

9. Perused pleadings, IA-II, produced by plaintiff.

10. The answers to the above points are:

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**

11(a). **Points No.1 to 3:-** As these points are interconnected, they are taken together for consideration.

(b). The plaintiff/appellant has not produced any document to show ownership over suit schedule property like property extract copy. The plaintiff has not produced any document to show property 546 is induced in place of suit property, like copy of resolution, property extract copy of 546, latest and previous. No copies of documents were produced by appellant. Even TCR was sent back as arguments were not being advanced and appellants intention was to stall, even trial court proceedings in garb of this appeal. Hence, as there is no document in favour of plaintiff this court finds that, the trial court has rightly answered the 3 points for consideration, in negative, and this court also answers the same, in negative. The decision reported on **AIR 2010 SC 296** lays that, when plaintiff fails to make out prima facie case, and balance of convenience and irreparable loss do not stand in his favour, injunction cannot be granted, is applicable herein. The plaintiff has failed to makeout prima-facie case in his favour, nor balance of convenience and irreparable loss stand in his favour. Accordingly points No.1 to 3 herein, are answered in the **Negative**.

12. **Point No.4:-** For the aforesaid reasons, this court proceeds to pass the following.

**O R D E R**

**The appeal filed by plaintiff/appellant U/O.XLIII R.1(r) of C.P.C., is hereby dismissed.**

**IA No.II filed by plaintiff U/O.XXXIX Rule 1 and 2 of C.P.C., is hereby rejected.**

**Parties shall bear their own costs in this appeal.**

**The order dated 10.03.2023 passed by Learned Civil Judge and J.M.F.C., Muddebihal on IA No.II in O.S. No.96/2019 is hereby confirmed.**

(Dictated to the I/c Typist, transcribed and computerized by her, corrected by me and then pronounced in the open Court, on this the **02<sup>nd</sup> day of June 2026**)

**(Sachin Kaushik R.N)**  
V Additional District and Sessions  
Judge, Vijayapura, To Sit at  
Muddebihal.