

KAVP020000042025



Presented on : 04-01-2025
Registered on : 07-01-2025
Decided on : 02-06-2026
Duration: 01 year,04 months,28 days

**IN THE COURT OF IV ADDITIONAL SENIOR CIVIL JUDGE
AND JMFC, VIJAYAPURA**

: PRESENT:

Sri. SAMEER KOLLI., B.A.L.,LL.B.,

IV Addl. Senior Civil Judge and JMFC, Vijayapura

Dated this the 02nd day of June 2026

: MISCELLANEOUS APPEAL No.01/2025:

Appellant/ plaintiff:

1. Sangappa S/o Venakappa Amalazari,
Age: 52 years, Occ: agri,
R/o Sangapur S H, Tq.Babaleshwar,
Dist.Vijayapura,

(By Sri. S.T.D., Adv. for Appellant)

V/s

Respondent/ plaintiff:

1. Veerappa @ Veeranna @ Irappa Adopted
father of Hanamappa @ Hanamantappa Baragi,
Age: 56 years, Occ: Agri and Business,
R/o 8 J KIADB Industrial Estate,
Hoskote, Bangalore - 562114,

2. Sushila W/o Nagappa Machakanur,
Age: 69 years, Occ: H.H.Work,
R/o Chikkood, Tq.Athani, Dist.Belagavi,
3. Savitri W/o Gurappa Somaraddi,
Age: 67 years, Occ: H.H.Work,
R/o Sangapur S.H. Tq.Babaleshwar,
Dist.Vijayapura,
4. Shantavva W/o Shankrappa Kotikall,
Age: 64 years, Occ: H.H.Work,
R/o Sangapur S.H. Tq.Babaleshwar,
Dist.Vijayapura.
5. Anasuya W/o Subhash Giraddi,
Age: 60 years, Occ: H.H.Work,
R/o Kuchanur road,
Opposite Police Quarters, Tq.Tunga,1
Tq. Jamakhandi, Dist.Bagalkot,
6. Suvarna W/o Basavaraj Biradar,
Age: 58 years, Occ: H.H.Work,
R/o Near Shivaji Circle Mudhol,
Dist: Bagalkot,

(By Sri.S.V.K.. Adv for Respondent No.1)
(Respondent No.2 to 6 placed exparte)

: J U D G M E N T :

This miscellaneous appeal is filed by the appellant/plaintiff under order 41 Rule 3 (r) of CPC challenging the correctness and legality of the impugned order passed on I.A.No.I under order 39 Rule 1 and 2 filed in OS No.38/2023 dated 04.12.2024 by the learned IV Addl. Civil Judge & JMFC, Vijayapura (trial court for short).

2. The appellant herein is the plaintiff and defendants herein are the respondents before the trial Court. So, for the sake of convenience, the parties to the present appeal would be referred to hereinafter as per their ranks assigned in the trial Court.

3. **The brief facts leading for filing this appeal are as under:**

The plaintiff has filed a suit in OS No.38/2023 on the file of trial court along with I.A.No.I under order 39 Rule 1 and 2 of CPC seeking a restraint order against defendant No.1 from alienating, transferring or creating encumbrance over the suit property bearing Sy.No.177/*/* measuring 27 acres 34 guntas of Halagani village.

4. In the affidavit annexed to I.A.No.I it is stated that, one Mr. Hanamappa @ Hanamantappa is the propositus and he had a daughter by name Heerabai. Hanamappa died leaving behind his wife Gangabai and daughter Heerabai along with an adopted son. Later on, Gangabai died and Heerabai also died leaving behind defendant No.2 to 6 as her legal heirs. Heerabai had 07 children and defendant No.1 is one among them. Gangabai had no male issues from her marriage and thus, she adopted defendant No.1 and after her death, defendant No.1 has succeeded her estate. The suit property is a joint family property of plaintiff and

defendants and the plaintiff has got 1/6th share out of share of deceased Heerabai. The defendant No.1 is trying to alienate the suit property. The above background led the plaintiff to file suit along with I.A.No.I.

5. The defendant No.1 has filed written statement along with memo of adoption to treat the contents of written statement as objections to I.A.No.I. The defendant No.1 claims that, he is the absolute owner of suit property and it was originally granted to his adoptive father on 21.06.1976. The land tribunal, Vijayapura also issued Form No.10 in the name of his adoptive father and thus, the suit property became his absolute property and his name was mutated in the revenue records of suit property. After death of his adoptive father, the name of his adoptive mother Smt. Gangabai came to be reflected in the revenue records of suit property and after her death, the name of defendant No.1 is mutated. It is further contended that, at the time of adoption of defendant No.1 the age of his adoptive mother was around 70 years and he was adopted on 22.05.1981. It is contended that, Gangabai might have born in the year 1911 and his natural mother Heerabai was born in the year 1938 and she died in the year 2000. Heerabi was born prior to enactment of the Hindu Succession Act and thus, she was not entitled for any share in the suit property. On the above grounds, it is sought for dismissal of

suit and I.A.No.I.

6. ***The trial court has framed following points upon hearing the learned counsel for the parties.***

:POINTS :

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

2. *Whether plaintiff will be put to irreparable loss if the application is not allowed?*

3. *Whether the balance of convenience lies in favour of plaintiff?*

4. *What order?*

7. After hearing the arguments of both sides, the trial Court has rejected I.A.No.I under order XXXIX Rule 1 and 2 of CPC holding that, the suit property is a granted land and the daughter is not included in the definition of a family as per the provisions of Karnataka Land Reforms Act, 1961 and thus, the plaintiff has not made out a prima-facie case.

8. Being dissatisfied with the said order of the trial court, the plaintiff has preferred this miscellaneous appeal on the following amongst other grounds:

i) *The order passed by the trial court rejecting I.A.No.I is erroneous.*

ii) *The trial court has wrongly considered section 2 (12) of Karnataka Land Reforms Act*

and has failed in arriving to a conclusion that, daughter is not a family member. The trial court failed to note that, the question of grant of tenancy is not the dispute involved but, the dispute is regarding succession after death of owner of the land who acquired grant of tenancy. The question of adoption etc are triable issues which the trial court has failed to take note of.

iii) The trial court failed to note that, the tenancy rights acquired by maternal grandfather of plaintiff enures for the benefit of legal heirs of the tenant also. The trial court has also not properly considered provisions of section 3 and 4 of the Karnataka Land Reforms Act and failed to note that succession is always governed by Hindu Succession Act and not Karnataka Land Reforms Act.

iv) The trial court has committed error by relying upon an unreported ruling in RFA No.4179/2012 clubbed with RFA No.4177/2012 and 4150/2012 is not the proper law and the finding of the trial court is

contrary. The findings of the trial court on point No.2 and 3 in para No.16 and 17 of the judgment is uncalled for. The mutation entry bearing ME No.2451 does not create absolute title in favour of defendant No.1 since the daughter was also a legal heir as per the Hindu Succession Act.

v) As per section 24 of the Karnataka Land Reforms Act, the rights of a tenant are heritable by the heirs and therefore, application of personal law governs with rights of heirs. The trial court has failed to take note of balance of convenience and irreparable loss.

vi) The order of the trial court on I.A.No.I is unsustainable and thus, he has sought to allow the appeal.

9. The notice of appeal was issued to the respondents and respondent No.1 has appeared through his advocate and whereas, respondent No.2 to 6 have not entered appearance and they are placed *exparte*.

10. Heard the learned counsel for appellant and learned counsel for respondent No.1.

11. ***The following points arise for consideration:***

1. *Whether the order passed by the trial court on I.A.No.I suffers from illegality?*
2. *Whether the appeal filed by the appellant under order 43 Rule 3 (r) of CPC deserves to be allowed?*
3. *What order?*

12. ***My findings on the above points are as follows:***

Point No.1: In the Negative

Point No.2: In the Negative

Point No.3: As per final order

for the following:

:R E A S O N S:

13. **Point No.1 and 2 :** As both the points are inter related to each other and they are taken up together for discussion to avoid repetition of facts.

13.1. The learned counsel for the appellant contended during the course of his arguments that, the plaintiff who is son of deceased Heerabai who was the daughter of Gangabai and Hanamappa is also a coparcener and he has got his right and share in the suit property. He further contended that, unless the trial is concluded, an order of temporary injunction has to be granted to see that, the suit property is preserved till final adjudication. He contended that, trial court without considering the material on record has technically dismissed I.A.No.I by

invoking section 2 (12) of the Karnataka Land Reforms Act and therefore, the said order is unsustainable. He further contended that, the succession is as per the Hindu Succession Act and not Karnataka Land Reforms Act. Thus, he has sought to allow the appeal and set aside the order of the trial court.

14. Per contra, learned counsel for the respondent No.1 contended that, the trial court by applying section 2 (12) of the Karnataka Land Reforms Act has rightly dismissed I.A.No.I as, Heerabai was given in marriage and she does not become a member of the family and therefore, the trial court is justified in dismissing I.A.No.I. Thus, he has sought to dismiss the appeal and confirm the order passed by the trial court.

15. Having heard the learned counsel for the respective parties, I have bestowed my thoughtful consideration to the rival contentions, the material placed on record and also the impugned order under challenge.

16. At the outset, it is necessary to note that the powers of the appellate court under order 43 Rule 1 of CPC are very limited. In this context, it is useful to refer a decision of ***Hon'ble Apex Court in the case of Ramakant Ambalal Choksi vs Harish Ambalal Choksi and others, reported in 2024 SCC Online SC 3538*** in which the Hon'ble Apex Court held as under:

26. What flows from a plain reading of the decisions in Evans (supra) and Charles Osenton (supra) is that an appellate court, even while deciding an appeal against a discretionary order granting an interim injunction, has to:

a. Examine whether the discretion has been properly exercised, i.e. examine whether the discretion exercised is not arbitrary, capricious or contrary to the principles of law; and

b. In addition to the above, an appellate court may in a given case have to adjudicate on facts even in such discretionary orders”.

17. Adverting to the case on hand, it is significant to peruse ME.No.1493 which reveals that, Sy.No.177 is granted in favour of Hanamantappa by the land tribunal vide its order dated 21.06.1976. After death of Hanamantappa, the property devolved upon Veeranna and as he was minor then, the name of Gangawwa who was his adoptive mother was reflected as his minor guardian. A perusal of ME.No.2451 indicates that, after attaining the age of majority, Veeranna got discharged the minor guardianship of his adoptive mother and his name was entered vide ME.No.2822.

18. Admittedly, Hanamantappa had no male issues and for that reason, defendant No.1 was adopted on 22.05.1981. ME.No.1020 dated 03.10.1961 indicates regrant of land and

name of Hanamappa Sangappa Baragi came to be mutated. The RTC extract of Sy.No.177 reveals that, the name of defendant No.1 was entered. What could be gathered from the above aspect is that, the land was granted in favour of Hanamappa in the year 1976 and Heerabai who is the mother of plaintiff was already married by then.

19. Section 2 (12) of the Karnataka Land Reforms Act postulates that, a married daughter will not fall under the purview and the definition of a family. Section 2 (12) (a) clearly mandates that, family includes a spouse or spouses, their minor sons and unmarried daughters. The section is crystal clear that, it does not include married daughters under the definition of a family. When Heerabai was already married, she cannot claim any share in the suit property which is a tenanted land.

20. In this context, it is useful to refer a decision of ***Hon'ble High Court of Karnataka in the case of Nimbavva and Others Vs Channaveerayya and Others, reported in 2013 SCC OnLine Kar 10751: (2015) 1 KCCR 205*** in which it is held as under:

16. So far as the first point is concerned, Section 2(12) of the Karnataka Land Reforms Act defines "Family" as under:

2(12) "Family" means-

(a) in the case of an individual who has a spouse or spouses, such individual, the spouse or spouses and their minor sons and unmarried daughters, if any;

(b) in the case of an individual who has no spouse, such individual and his or her minor sons and unmarried daughters;

(c) in the case of an individual who is a divorced person and who has not remarried, such individual and his minor sons and unmarried daughters, whether in his custody or not; and

(d) where an individual and his or her spouse are both dead, their minor sons and unmarried daughters."

17. By looking into the definition of family, it includes only the spouse, minor sons and unmarried daughters. At no place, "married daughters" finds a place under the Karnataka Land Reforms Act.

18. Section 24 of the Karnataka Land Reforms Act reads as hereunder:

"24. Rights of tenant to be heritable: Where a tenant dies, the landlord shall be deemed to have continued the tenancy to the heirs of such tenant on the same terms and conditions on which such tenant was holding at the time of his death."

21. On perusal of Section 24 of the Act read with the definition of family, it is clear that married daughter cannot claim

share in respect of tenanted land. Only the family members as defined in the Karnataka Land Reforms Act are entitled for inheritance by way of succession after the death of their father. The legal position in regard to the right of a married daughter to claim a share in respect of a tenanted land of her father cannot be disputed by the plaintiff. The Karnataka Land Reforms Act is a special enactment which has been enacted for the benefit of cultivator, the same cannot be deviated by this court by applying the provisions of Hindu Succession Act.

22. The ground urged in the appeal that, the law held in RFA No.4179/12 is not correct is unsustainable. The ratio laid down by the Hon'ble High Court of Karnataka and the Hon'ble Apex Court are binding unless they are set aside. Therefore, in my considered view the plaintiff has not made out a prima-facie, balance of convenience does not tilt in his favour and he does not face any loss or hardship if injunction is refused. ***Thus, in view of my above discussion, I answer point No.1 and 2 in the Negative.***

23. **Point No.3:** In view of my discussion on point No.1 and 2, the following order is passed.

:O R D E R:

This miscellaneous appeal filed by the appellant under order 43 Rule 3 (r) of CPC is hereby dismissed.

Consequently, the order passed by the trial Court on I.A.No.I dated 04.12.2024 in OS No.38/2023 is hereby affirmed.

No order as to cost.

Pending I.A's if any shall stands disposed off.

Office to remit back the trial Court records, if any, along with the copy of the judgment to the trial court forthwith.

(Dictated to the Stenographer directly on computer, script typed by her and corrected, signed and then pronounced by me in the open court on this the ***02nd day of June 2026***)

***(Sameer Kolli)
IV Addl. Senior Civil Judge
and JMFC, Vijayapura***