



CNR: KAHC010029562025

NC: 2026:KHC:36606
MFA No. 457 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO.457 OF 2025 (CPC)

BETWEEN:

1. SMT. MEERA M E
AGED ABOUT 48 YEARS,
W/O SRI. N RADHAKRISHNA,
RESIDING AT FLAT NO.103A,
RANKA ENCLAVE, C.V. RAMAN ROAD,
SADASHIVANAGAR,
BANGALORE - 560 080.
2. SRI. N. RADHAKRISHNA,
AGED ABOUT 55 YEARS,
S/O SRI. NANJUNDAPPA,
RESIDING AT FLAT NO.103A,
RANKA ENCLAVE, C.V. RAMAN ROAD,
SADASHIVANAGARA,
BANGALORE - 560 080.

...APPELLANTS

(BY SRI. S.V.GIRIDHAR, ADVOCATE FOR
SRI. NARENDRA DEV H.N. & ASHOK G.V., ADVOCATES)

AND:

1. MR. MANJUNATH
AGED ABOUT 55 YEARS,
S/O D.S.JAYARAMAIAH,
2. SMT. RASHMI
ALSO KNOWN AS GOWTHAMI.M,

 Digitally signed
by
GAVRIBIDANUR
SUBRAMANYA
GUPTA
SREENATH
Location: HIGH
COURT OF
KARNATAKA



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AGED ABOUT 27 YEARS,
D/O MR. B.J.MANJUNATHA,

3. SRI. AKHILESH B.M
AGED ABOUT 25 YEARS,
S/O B.J.MANJUNATHA,
4. MR. B.J.CHANDRAPPA
KNOW AS B.J.CHANDRA SHEKAR
AGED ABOUT 53 YEARS,
S/O D.S.JAYARAMAIAH,
5. SMT. AARATHI B.C
AGED ABOUT 26 YEARS,
D/O B.J.CHANDRASHEKAR,
6. SMT. KEERTHANA B.C
AGED ABOUT 24 YEARS,
D/O B.J.CHANDRASHEKAR,
7. MR. B.J.RAMASWAMY
AGED ABOUT 41 YEARS,
S/O D.S.JAYARAMAIAH,
8. MS. B.J. RAMYA RAMASWAMY,
AGED ABOUT 13 YEARS,
D/O RAMASWAMY,
MINOR,
REPRESENTED BY HER MOTHER AND
NATURAL GUARDIAN
SMT. SHOBHA C
9. SRI. R.MOHAN RAGHAVENDRA
AGED ABOUT 8 YEARS,
S/O B.J.RAMASWAMY,
MINOR
REPRESENTED BY HER MOTHER AND
NATURAL GUARDIAN
SMT. SHOBHA C



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ALL RESIDING AT NO.300,
BETTAULSOOR, JALA HOBLI,
BANGALORE - 562 157

10. M/S ESSEM 18 INFRA LLP,
A LIMITED LIABILITY COMPANY PARTNERSHIP
FORMED UNDER THE LIMITED LIABILITY
PARTNERSHIP ACT, 2018,
HAVING REGISTERED OFFICE AT
NO.64/1, 3RD FLOOR, S.M.PLAZA,
DVG ROAD, BASAVANAGUDI,
BENGALURU - 560 004

REPRESENTED BY ITS
DESIGNATED PARTNER
MR. S M VENKATESH

11. SANJAY SURESHA
S/O SRI. SURESHA B.S.
AGED ABOUT 25 YEARS
RESIDING AT NO.174, BYRATHI
DR. SHIVARAMAKARANTH NAGAR POST
BANGALORE - 560 077

...RESPONDENTS

(BY SRI. VISHWANATH H M, ADVOCATE FOR R1;
SRI. K.S.UDAY, ADVOCATE FOR R10;
SRI. VIKRAM A HUILGOL, SENIOR COUNSEL FOR
SRI. PRAVEEN KAMATH, ADVOCATE FOR R11;
R2 TO R9 SERVED - UNREPRESENTED)

THIS MFA IS FILED UNDER ORDER XLIII RULE 1(r) OF
THE CPC, PRAYING TO SET ASIDE THE IMPUGNED ORDER ON
IA NO.1/2024 DATED 23.11.2024 PASSED BY THE HON'BLE
PRINCIPAL SENIOR CIVIL JUDGE & JMFC, DEVANAHALLI IN
O.S.NO.30/2024 PRODUCED AS ANNEXURE-A AND ETC.,

THIS APPEAL COMING ON FOR ADMISSION THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:



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CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

ORAL JUDGMENT

This appeal is preferred by the appellants, who are the plaintiffs before the trial Court in O.S.No.30/2024, aggrieved by the order passed on I.A. No.1 filed under Order XXXIX Rules 1 and 2 read with Section 151 of CPC by the learned Principal Senior Civil Judge & JMFC, Devanahalli.

2. Respondent Nos.1 to 10 are the defendants before the trial Court. Respondent No.11 is arrayed as a party before this Court, but was not a party before the trial Court. It is now submitted that respondent No.11 has been sought to be impleaded before the trial Court, but yet to be allowed.

3. The parties to the proceedings shall be dealt with as plaintiffs and defendants, for the sake of brevity.

4. Plaintiffs filed a suit against the defendants for the relief of specific performance of the agreement of sale dated 25.10.2014; for a direction to the defendants to perform their obligations in pursuance to the agreement of sale mentioned



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herein above and receive balance sale consideration of Rs.2,10,50,000/- and for other consequential reliefs.

5. Along with the plaint, the plaintiff filed an application under Order XXXIX Rule 1 and 2 of CPC seeking for grant of ad-interim ex-parte order of temporary injunction restraining the defendants from alienating or disposing of the suit schedule properties in the interest of justice and equity.

6. Upon service of summons, the defendants appeared before the trial Court; contested the matter; filed statement of objections denying the averments made by the plaintiff and sought for dismissal of the application.

7. Learned trial Judge, upon consideration of the application and the arguments put forth by learned counsel for both parties, framed the following points for consideration:

"1. Whether the plaintiffs have made out prima facie case?

2. Whether the balance of convenience lies in favour of plaintiffs?



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3. Whether the irreparable loss or injury which cannot be compensated in terms of money will be caused to the plaintiffs if temporary injunction as sought in IA No.1 is not granted?

4. What order?"

8. However, while considering the application, the trial Court has come to the conclusion that the plaint itself is barred by law of limitation and the alleged agreement of sale written on the stamp paper for Rs.534/- is invalid and the plaintiff has not paid the correct stamp duty as per Article 5 (e) (ii) of the Karnataka Stamp Act. On the these reasons, the trial Court dismissed the application on the ground that plaintiff has not made out sufficient grounds to allow the application.

9. Learned counsel Sri S.V.Giridhar appearing for the appellants-plaintiffs vehemently contends that the impugned order passed by the learned trial Judge is illegal, perverse, arbitrary, totally contrary to the materials placed on record and against the principles of grant of temporary injunction. Learned counsel further contends that the trial Court has gone on a tangent though it has formulated certain points for



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consideration. However, the trial Court has not dealt with those points for consideration to decide as to whether the plaintiffs have made out a *prima facie* case, balance of convenience or irreparable hardship will be caused to him, rather it has decided the main suit itself on the ground of suit being barred by limitation, the agreement of sale being not in order and the sale agreement is not stamped in accordance with the Karnataka Stamp Act. Accordingly, dismissed the application.

10. Learned counsel further contends that the trial Court has gone beyond the purview of deciding the application for temporary injunction under Order XXXIX Rule 1 and 2. On these grounds, he primarily contends that the trial Court has not looked into the application and the requirement of the essential principles for grant of temporary injunction, rather it has gone on to decide the main suit itself on the ground of limitation and the sale agreement not being valid, the stamp duty not being paid and therefore, rejected the application, which is not the correct, hence the same is perverse and illegal. On these grounds itself, he seeks to set aside the impugned



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order. Consequently, allow the appeal and the application filed for grant of injunction.

11. *Per contra*, learned counsel appearing for respondent No.10 contends that respondent No.10 is the purchaser of the suit schedule property from respondent Nos.1 to 9 after the agreement of sale entered into by respondent Nos.1 to 9 in favour of the appellant-plaintiff. Learned counsel vehemently contends that there is no illegality or perversity in the impugned order passed by the learned trial judge. Learned counsel sustains the impugned order by contending that the plaintiffs, who have come before the Court, have to *prima facie* show that they have filed the suit within the law of limitation. The plaintiffs have not come before the Court with clean hands and have suppressed the material facts. The sale agreement is a concocted and fabricated document. It is also contended that the plaintiffs have not approached the defendants by way of legal notice or a request to register the property in his name by paying a balance sale consideration above. Therefore, he has slept over the matter. Learned counsel submits that there is no



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need for interference of this Court as the impugned order passed does not call for any interference.

12. Learned Senior counsel Sri Vikram Huilgol appearing on behalf of learned counsel Sri Praveen Kamath for respondent No.11 vehemently contends that he has been arraigned in this appeal, whereas he is not a party before the trial Court. Therefore, no order can be passed against him in this appeal since no order was sought against him before the trial Court by the plaintiffs and he was not a party when the impugned order came to be passed. Therefore, he contends that if any order would be passed by this Court, it would affect his right before even hearing him by the trial Court or by this Court. On this ground, he submits that this Court may not pass any order against respondent No.11 and restrict the order to the application filed against respondent Nos.1 to 10.

13. I have heard learned counsel for the appellant and learned counsel for the respondent No.10, and Learned counsel for respondent No.11.



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14. It would be relevant to mention that while considering an application under Order XXXIX Rule 1 and 2, the trial Court is required to consider three essential requirements i.e., *prima facie* case, balance of convenience and irreparable injury that would be caused to the aggrieved party. It is no more *res integra* that while considering an application under Order XXXIX Rule 1 and 2, the trial Court need not consider the *prima facie* title or the merits of the matter and the trial Court need not confuse itself with *prima facie* title and *prima facie* case. What is required to be seen is a *prima facie* case to contest the suit and not to see *prima facie* title having been made out by the plaintiff. So also at the initial stage, it is not required for the trial Court to go into the merits of the matter and conduct a mini trial, which is a fundamental rule as held by several catena of judgments of the Hon'ble Apex Court and this Court. It may be that the plaintiff may not succeed in the suit, but once he makes out a *prima facie* case for grant of a temporary injunction order, the same could be granted. It may be that later on, on an application made or the Court by itself *suo motu*, decides on the application of maintainability of the



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suit, at that stage, no doubt the plaintiff and the parties contesting would have to be given an opportunity to address their arguments on the maintainability of the suit, with regard to limitation or any other factor that is contested. In such circumstances, the same will have to be deliberated, the suit would have to be heard and then decided.

15. In the present case on hand, the trial Court has done something very unique, which is normally not seen namely, the trial Court has decided the main suit in this application. The trial Court has held that the suit is not maintainable on the ground of law of limitation as the same is hit by Article 54 of the Limitation Act. The trial Court has also held that the agreement of sale is not proper, as it is not duly stamped in accordance with the Karnataka Stamp Act more so Article 5 (e) (ii) of the Karnataka Stamp Act. The trial Court has also said in paragraph No.16 that "by looking to the recitals of alleged agreement of sale dated 25.10.2014, apparently it is clear that the sale agreement is without possession and the time is fixed for performance of contract and therefore, the time is the essence of contract". All these aspects touches the



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merits of the matter. By making such observations, the trial Court has decided the entire suit as to the time is the essence of contract and has delved into the agreement of sale, which is not the requirement for the trial Court to deal with. When it is considering an application under Order XXXIX Rule 1 and 2, the *prima facie* case is one where the plaintiff is able to make out a case before the Court that he has a very good case to go in for trial and having satisfied the Court with regard to other requirements.

16. In the present case on hand, when a suit is for specific performance and agreement of sale having been entered into and if any part payment is made and the balance payment to be further paid, the Court will have to see if the plaintiff has approached the Court with inordinate delay thereby the Court may not pass an order of temporary injunction, if such situation arise. But whatsoever circumstances, it is not open to the trial Court to decide the suit or the merits of the matter while deciding an application under Order XXXIX Rule 1 and 2 as it prejudices the entire trial even before the parties go into trial or before framing of issues. Therefore, in the present



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case on hand, the trial Court has committed a serious perversity and illegality. The perversity is because the trial Court has committed an illegality and passed a wrong order. Hence, it leads to perversity. Consequently, an illegality. The plaintiffs, having produced the agreement of sale and having paid the part sale consideration amount, have made out a *prima facie* case and so also the balance of convenience would tilt in their favour rather than in favour of the defendants. While coming to hardship, it is certainly sure that the plaintiffs would be suffering more hardship than the defendants as plaintiffs allege to have parted with more than Rs.7.6 crores and the balance is to be paid is only Rs.2 crores and in such situation if suit schedule property is alienated, hardship would be caused to plaintiffs. Under the circumstances, all these three essential ingredients are in favour of the plaintiffs and not in favour of the defendants. Therefore, the trial Court ought to have allowed the application rather than dismissing the application.

17. During the course of arguments, it is submitted by the learned counsel for the appellant that the respondent No.10



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has sold the suit schedule property to respondent No.11, who is now sought to be impleaded before the trial Court as proposed defendant No.11. Now the fact remains that the sale to respondent No.11 is pursuant to the impugned order. It is submitted by learned Senior counsel for respondent No.11 that pursuant to a valid registered sale deed from respondent No.10, development activities are being carried out in the suit schedule property, which may be permitted to continue till the application, if any, against respondent No.11 is decided.

18. In view of the discussions made herein about, I pass the following:

ORDER

- i) The appeal is ***allowed***.
- ii) The impugned order dated 23.11.2024 passed on I.A.No.1 by the Principal Senior Civil Judge & JMFC, Devanahalli is hereby set aside.
- iii) Status-quo shall be maintained by respondent No.11, for a period of 15 days from the date of receipt of copy of this order so far as it relates to non-alienation.



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- iv) It is made clear that this Court has not expressed any opinion on the merits of the matter including the ground of limitation raised by respondent Nos.1 to 10 and also respondent No.11.
- v) It is of course open to the appellant-plaintiff to file any application seeking any order as against respondent No.11. It is needless again to mention that if any such application is filed, respondent No.11 shall be given an opportunity before any such order is passed.

Pending I.As, if any, stand disposed of.

Sd/-
(PRADEEP SINGH YERUR)
JUDGE

VM
List No.: 1 Sl No.: 25