



CNR: KAHC010041452026

NC: 2026:KHC:36899
MFA No. 536 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 536 OF 2026 (CPC)

BETWEEN:

SRI. M.G. SIDDARAJU
S/O SRI. K. GANGADHARA,
AGED ABOUT 46 YEARS,
R/AT GOWRAMMA NILAYA,
AMAR AMBAREESH ENCLAVE,
MADAGALLI, YELWALA HOBLI,
MYSURU TALUK AND DISTRICT - 570 026.

...APPELLANT

(BY SRI. R.S. RAVII, SR. COUNSEL A/W
SRI. ROOPESHA B, ADVOCATE)

AND:

1. SMT. SHARMILA
W/O SRI. K.S. SHIVAKUMAR,
AGED ABOUT 58 YEARS,
2. SRI. SHIVAKUMAR K.S,
S/O LATE SRI. SUBRAMNYA K.G,
AGED ABOUT 59 YEARS,
BOTH ARE RESIDING AT
D.NO.1117, 4TH STAGE,
NEW KANTHARAJ URS ROAD,
KUVEMPUNAGAR, T.K.LAYOUT,
MYSURU - 570 009.

...RESPONDENTS

(BY SRI. VENUGOPALA M.S, ADVOCATE)



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THIS MFA IS FILED U/O 43 RULE 1(r) OF CPC, AGAINST THE ORDER DATED 11.12.2025 PASSED ON I.A.NO.1 IN OS.NO. 1557/2025 ON THE FILE OF THE VI ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, MYSURU, ALLOWING THE I.A.NO.1 FILED UNDER ORDER 39 RULE 1 AND 2 OF CPC.

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

CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

ORAL JUDGMENT

This appeal is preferred by the defendant in O.S.No.1557/2025 aggrieved by the impugned order dated 11.12.2025 passed on I.A.No.1 filed under Order XXXIX Rule 1 and 2 of the CPC by the VI Additional Senior Civil Judge and J.M.F.C., Mysuru.

2. The respondents are the plaintiffs before the Trial Court. The suit came to be filed by the plaintiffs seeking for the relief of declaration, possession and injunction. Along with the suit, the plaintiffs filed an application under Order XXXIX Rule 1 and 2 of the CPC seeking for an order of temporary injunction restraining the defendant from development works in the A and



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B schedule properties in any manner till disposal of the suit. Upon such application being filed, another application under Order XXXIX Rule 4 of the CPC was filed by the defendant on appearance to vacate the exparte temporary interim order granted by the Trial Court. Upon consideration of this application, the learned trial judge allowed I.A.No.1 filed by the plaintiffs under Order XXXIX Rule 1 and 2 of the CPC and dismissed the application filed by the defendant under Order XXXIX Rule 4 of the CPC. It is this order that is in challenge by the defendant before this Court.

3. It is a vehement contention of Sri R.S.Ravi, learned Senior counsel appearing for the appellant on behalf of Sri Roopesha B., that the impugned order passed by the Trial Court is illegal, arbitrary and perverse. The same requires to be set aside, as it is contrary to the materials placed on record, facts, probabilities of the case and the documents. It is also vehemently contended that the defendant is in absolute possession and enjoyment of the property by way of grant and therefore the question of encroachment into the property of the plaintiffs would not arise. No proper case has been made out by



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the plaintiffs and plaintiffs themselves have not clearly shown as to which portion of the property is allegedly encroached. Therefore, in the absence of such pleading, no injunction could be granted against the true owner of the property, who is in peaceful possession and enjoyment of the same.

4. It is further contended by learned Senior counsel that the Trial Court has failed to notice that suit A schedule property land bearing Survey No.199 measuring 4 acres belonged to the plaintiffs and that the defendant property is land bearing Survey No.15 new Survey No.221 measuring 4 acres are not adjacent to each other as reflected in the survey records and the village map of the Maratikyatanahalli Village. It is contended by learned Senior counsel that there is a pavement road on the eastern side of property of the plaintiffs and there is no encroachment by the defendant on the plaintiff's property whatsoever. The description of the property of the plaintiffs is different from that of the description of the property of the defendant. The Trial Court has not noticed all these aspects and without application of mind and having got swayed by seeing



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the sketch, has granted an interim order in favour of the plaintiffs.

5. It is also the vehement contention of learned Senior counsel that the defendant is the absolute owner of 4 acres of his property and the revenue records depict his name. He has also got converted the land from agricultural to residential status and has obtained permission and approval of the layout from the MUDA for formation of sites. Based on the same, the defendant has formed a layout of the written statement schedule property. Therefore, he contends that the property of the plaintiffs is different from the property of the defendant. Under these circumstances, it is contended that there is no question of interference or encroachment. Even according to the plaintiffs, the defendant is in possession and is putting up construction and development in the suit B schedule property measuring to an extent of 1 acre. Therefore, he seeks to allow the appeal and set aside the impugned order.

6. It is further contended by learned Senior counsel that the Trial Court has committed perversity in coming to a



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conclusion that there is karab land to an extent of 39 guntas adjacent to Survey No.15, which is in dispute. Learned Senior counsel contends that in pursuance to the survey ordered by this Court and a report having been submitted by the ADLR, there is no such karab land that could be identified by the ADLR. Therefore, he contends that the appeal requires to be allowed.

7. Per contra, Sri Venugopala M.C., learned counsel appearing for the respondents, vehemently contends that there is no perversity or illegality in the impugned order passed by the learned trial judge. He further contends Trial Court has considered all materials placed before the court with regard to the extent of land of the plaintiffs as well as that of the defendant. Perused the materials placed even by the defendants so also the documents and has rightly come to a conclusion with regard to the encroachment of the defendant over the land to an extent of 1 acre specifically mentioned in the B schedule, by the defendant and therefore there is no illegality in passing of the order on the said application and he seeks to sustain the impugned order.



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8. Learned counsel further contends that the survey that the map prepared by the ADLR was in the absence of the plaintiffs, but he had participated in the survey. He disputes the map furnished by the ADLR and contends that the portion of land which is shown in the sketch belongs to the plaintiffs, where the defendant is making hectic efforts to put some layout and developmental activities. If the same is allowed, the plaintiffs would be put to inconvenience and hardship and therefore, the Trial Court, having considered all these aspects, has rightly allowed the application. Hence, it does not call for interference.

9. Having heard learned Senior counsel Sri R. S. Ravi for the defendant/appellant and learned Counsel Sri Venugopala M.S. for the plaintiffs/respondents, the points that arises for consideration before this Court is as under:

1. Whether the Trial Court has committed any perversity or illegality in allowing the application?
2. Whether the impugned order calls for interference at this stage?



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10. Apparently there is no dispute to the fact that both the plaintiffs and the defendant are claiming ownership to an extent of 4 acres in their respective lands, that is, Survey No.199 and Survey No. 221. It is also their contention that they are in peaceful possession of their respective portions. However, it is seen that the plaintiffs are making allegations with regard to defendant having encroached a portion of 1 acre of land morefully mentioned in schedule B of the suit schedule property. The plaintiffs have also admittedly made a plea for directing the defendant to stop development work in the A schedule property, approximately measuring to an extent of 1 acre, which is more fully mentioned as the B schedule property, on the ground that the said property belongs to them and they are the absolute owners. Whereas it is the claim of the defendant that the portion shown as B schedule property belonging to the plaintiffs and the defendant having encroached into the land of the plaintiffs is far-fetched and imaginary and the same cannot be believed. So also the sketch prepared by the ADLR is actually in favour of the defendant, who has not properly described and ascertained the extent of land belonging



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to the plaintiffs. As he has left out some portion and gone beyond what is required to be specified while doing the assigned task of survey.

11. Be that as it may. It is seen that the defendant has converted the land for residential purposes. He has obtained the permission for putting up layout from the MUDA and he should be permitted to develop the property in the other areas and he may be permitted to proceed with the layout in the area mentioned in the B schedule property, but he would not alienate or create any third party interest and he would also not seek equity in case he does not succeed in the suit. It is seen that the survey report has been filed by the ADLR by producing a sketch map, which is disputed by both the parties and both want to file objections to the same and want to contest the said report along with the sketch produced by the ADLR, which is placed before this Court. It is a matter of record. It would not be proper and appropriate for this Court to delve upon the report and decide as to who is in possession of which portion based on the report, as the matter would require proper evidence to be recorded and parties to cross-examine each



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other, including the surveyor who has given the report. Therefore, it would be appropriate for this Court to direct the parties to approach the Trial Court to either accept the report filed by the ADLR or file their objections and contest the matter or file necessary application before the Trial Court seeking a fresh appointment of a fresh surveyor or commissioner in the presence of both the parties to draw out a sketch and plan and to file a report.

12. In the meanwhile, since the defendant has already obtained permission from the MUDA for making the layout and for developmental activities, which, even according to the plaintiffs, the defendant has commenced developmental activities in the B schedule property, the defendant shall be permitted to continue with the developmental activities in his remaining three acres apart from the B schedule property and even secure the layout plan pertaining to B schedule property, which is in dispute as of now. But he shall not create any charge over the said B schedule property. He shall not develop and alienate any portion of the B schedule property till the disposal of the suit. The parties would be at liberty to move



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before the Trial Court for variation or modification so far as regards the B schedule property measuring to an extent of 1 acre, if so, advised. Accordingly, I pass the following:

ORDER

- i. The appeal is ***disposed of***;
- ii. The order passed by the Trial Court is maintained with slight modification to the extent that the defendant is permitted to carry out developmental activities in his 4 acres of land, except putting up any developmental activities of layout in the B schedule property. However, the same would be subject to further outcome on the applications, if any, moved by the respective parties before the Trial Court;
- iii. It is made clear this Court has not expressed any opinion on the merits of the matter, including the ownership or possession of either parties.

**Sd/-
(PRADEEP SINGH YERUR)
JUDGE**