



CNR: KAHC010062232026

NC: 2026:KHC:46502
MFA No. 711 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 711 OF 2026 (CPC)

BETWEEN:

1. SRI THIRU ALLANGADU
IMMUDI DHARMA SHIVA
ACHARYA VYSHYA MUTT
REPRESENTED BY ITS
MATHADHIPATHI
AT BURUBHOETTAI
BHAVANI TALUK
ERODE DISTRICT, TAMILNADU
REPRESENTED BY ITS SPECIAL
POWER OF ATTORNEY HOLDER
SRI KOTHANDAN RAVI
S/O. KOTHANDAN
AGED ABOUT 63 YEARS
NO.206/6, CANARA BANK
LAYOUT ENTRANCE
KODIGEHALI, BENGALURU - 560 097.
2. SRI GAUTHAM KOTHARI
S/O. LATE MANGILAL KOTHARI
AGED ABOUT 47 YEARS
R/A. NO.126, SHANTI VILLA
2ND STAGE, 1ST MAIN
11TH CROSS, NEAR
MAHALAKSHMIPURAM
POLICE STATION
WEST OF CHORD ROAD
MAHALAKSHMIPURAM LAYOUT
BANGALORE - 560 086.
3. SRI KOTHANDAN RAVI
S/O. KOTHANDAN


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



NC: 2026:KHC:46502
MFA No. 711 of 2026

CNR: KAHC010062232026

AGED ABOUT 62 YEARS
R/A. NO.206/6, CANARA BANK
LAYOUT ENTRANCE
BEHIND ARBINDO
PUBLIC SCHOOL
KODIGEHALLI
BANGALORE - 560 097.

...APPELLANTS

(BY SRI S. KALYAN BASAVARAJ, ADVOCATE)

AND:

1. SRI SURAJ S.
S/O. SHANKAR G.
AGED ABOUT 29 YEARS
R/A NO. 254, 4TH MAIN
K.G. NAGAR, BANGALORE - 560 079.
2. SMT. MANASA B.S.
D/O. SHANKAR G.
W/O. SHARATH P.
AGED ABOUT 25 YEARS
R/A NO.13/A, 5TH CROSS
P.G.LAYOUT, ITTAMADU
BANGALORE - 560 035.
3. SRI B.S. RAGHURAM
S/O. LATE BERI
SEETHARARNAPPA SHETTY
AGED ABOUT 68 YEARS
R/A NO.9, SBI HOUSING COLONY
KANAKPURA ROAD
BANGALORE - 560 078.
4. SMT. MANJULA SRIDHAR
W/O. LATE B.S. SRIDHAR
AGED ABOUT 63 YEARS.
5. SRI JAYANTH S. BERI
S/O. LATE B.S. SRIDHAR



NC: 2026:KHC:46502
MFA No. 711 of 2026

CNR: KAHC010062232026

AGED ABOUT 43 YEARS.

6. SRI MANOJA S. BERI
S/O. LATE B.S. SRIDHAR
AGED ABOUT 41 YEARS.
7. SMT. NIRMALA PURUSHOTTAM
W/O. LATE PURUSHOTTAM
AGED ABOUT 58 YEARS.
8. SMT. SRILAKSHMI P
D/O. LATE PURUSHOTTAM
AGED ABOUT 40 YEARS.
9. SMT. SANNIDHI P
D/O. LATE PURUSHOTTAM
AGED ABOUT 38 YEARS.

RESPONDENT NO. 4 TO 9
R/A NO.186, KAMADHENU
BSK 1ST STAGE, NEAR
MANJUNATHA SWAMY TEMPLE
BANGALORE - 560 050.

10. SRI E.S. RAM PRASAD
S/O. LATE B.R. SHAMANNA
AGED ABOUT 61 YEARS.
11. SRI B.S. LAKSHMAN PRASAD
S/O. LATE B.R. SHAMANNA
AGED ABOUT 61 YEARS

RESPONDENT NO.10 TO 11
R/A NO.2B, CHAMPAKA MAHAL
NEAR CHAITANYA TECHNO SCHOOL
4TH CROSS ROAD, BANGALORE - 560 061.

12. SRI G. RAVI
S/O. LATE B.R. GOPAL
AGED ABOUT 66 YEARS.



NC: 2026:KHC:46502
MFA No. 711 of 2026

CNR: KAHC010062232026

13. SRI G. MOHAN
S/O. LATE B.R. GOPAL
AGED ABOUT 64 YEARS.

14. SRI G. GANESH
S/O. LATE B.R. GOPAL
AGED ABOUT 63 YEARS.

15. SRI G. SHANKAR
S/O. LATE B.R. GOPAL
AGED ABOUT 61 YEARS.

RESPONDENT NO.12 TO 15
R/A NO.254, 4TH MAIN ROAD
K.G. NAGAR, BANGALORE - 560 019.

16. SMT. V. LALITHA
W/O. SRI M.V. PATHY
D/O. LATE B.R. SEETHARARNAPPA SETTY
AGED ABOUT 68 YEARS
R/A. DOOR NO. 51, S.C. ROAD
YESHWANTHPUR, BANGALORE - 560 022.

17. SMT. K. GAYATHRI
W/O. SRI GOVINDAPPA
D/O. LATE B.R. SEETHARARNAPPA SETTY
AGED ABOUT 80 YEARS
PARIGI, HINDUPUR TALUK
ANDHRA PRADESH - 515 261.

18. SRI SANTOSH
S/O. LATE SRI I. GOPAL
AGED ABOUT 50 YEARS
R/A NO. 52, S.C. ROAD
YESHWANTHPUR
BANGALORE - 560 002.

19. SRI PRASHANTH KUMAR B.V.
S/O. LATE B.R. PRASAD
AGED ABOUT 49 YEARS.



NC: 2026:KHC:46502
MFA No. 711 of 2026

CNR: KAHC010062232026

20. SRI PRAVEEN CHANDRA B.V.
S/O LATE B.R. PRASAD
AGED ABOUT 47 YEARS.

RESPONDENT NO.19 TO 20
R/AT NO. 51, SC ROAD
YESHWANTHPUR
BANGALORE - 560 022.

21. SMT. MANGALA MURTHY
W/O. SRI G. KRISHNA MURTHY
D/O LATE B.R. SHAMANNA
AGED ABOUT 70 YEARS
R/A. NO. 632, KARTHIK
H.M.T LAYOUT, R.T. NAGAR
BANGALORE - 560 032.

22. SRI MADHUSUDHAN
S/O. SRI K. NARASIMHALU
AGED ABOUT 46 YEARS
PARIGI, HINDUPUR TALUK
ANDHRA PRADESH - 515 261.

23. SMT. BHARATHI
W/O. SRI CHELUVARAJ
D/O. LATE B.R. SHAMANNA
AGED ABOUT 65 YEARS
R/A. NO. 1-D-12, H.M.T.W.F. COLONY
H.M.T. POST, BANGALORE - 560 031.

24. SMT. THIMMAMMA
W/O. LATE B.R. GOPAL
AGED ABOUT 89 YEARS
R/A. NO.254, 4TH MAIN ROAD
K.G. NAGAR, BANGALORE - 560 019.

25. SMT. K. SARASWATHI @
S ARASWATHAMMA
W/O. SRI K. JAGANNATH
D/O. LATE B.R. GOPAL



NC: 2026:KHC:46502
MFA No. 711 of 2026

CNR: KAHC010062232026

AGED ABOUT 72 YEARS
R/A. BEHIND R.B. CLINIC
KODIGENAHALLI
HINDUPUR TALUK
ANDHRA PRADESH - 515 212.

26. SMT. LAKSHMIDEVAMMA
W/O. LATE K. VENKATARAMAIAH SHETTY
AGED ABOUT 76 YEARS
R/A. NO. 36/5, APPAJI RAO LANE
CHOWDESHWARI TEMPLE STREET
BANGALORE - 560 003.

...RESPONDENTS

(BY SRI M.T. NANAIAH, SR. COUNSEL A/W
SRI VISHNU HEGDE, ADVOCATE FOR
MS. RACHITHA NANAIAH, ADVOCATE FOR R1 AND R2;
NOTICE TO R3 TO R26 IS DISPENSED VIDE ORDER
DATED 12.02.2026)

THIS MFA IS FILED UNDER ORDER XLIII RULE 1(R) OF
CPC, PRAYING TO SET ASIDE THE ORDER DATED 09.01.2026
PASSED ON I.A.NOS. AND 2 IN OS.NO.2410/2025 BY XII
ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU
CITY (CCH NO. 27).

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

CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

ORAL JUDGMENT

This appeal is preferred by the appellants, who were
the defendant Nos.25, 26 and 27 before the trial Court,
challenging the order dated 09.01.2026 passed on
I.A.Nos.1 and 2 in O.S.No.2410/2025 by XII Additional



CNR: KAHC010062232026

NC: 2026:KHC:46502
MFA No. 711 of 2026

City Civil and Sessions Judge, Bengaluru (for short, "trial Court"). Respondent Nos.1 and 2 are the plaintiffs, while respondent Nos.3 to 26 are the co-defendants before the trial Court.

2. Parties shall be referred to as per their ranking before the trial Court.

3. Brief facts of the case are as under:

The suit came to be filed by the plaintiffs against the defendants seeking following reliefs:

- "a) To declare that the plaintiffs are entitled to get 1/3rd share out of 1/17th share in the suit schedule property by way of partition with separate possession and by metes and bounds for each plaintiffs and;*
- b) To declare that the said disputed Trust Deed dated 26/10/1896 registered No.771, Book No.1, Vol. No.126 at Pg. No.177 registered in the office of the Sub-Registrar, Bangalore standing in the name of the 25th defendant is void-in-abnatio and not binding on the plaintiffs and;*



CNR: KAHC010062232026

- c) To declare that the disputed sale deed dated 26/07/2000, registered No.2932/2000-01, Vol No.4701, Book No.1 at Pages-224-248, registered on 04/12/2000 in the Office of the Sub-Registrar Gandhinagar, Bangalore made between defendant Nos.1 to 23 in favour of the husband of the defendant No.24 is void-in-abnatio and not binding on the plaintiffs and;*
- d) To declare that the disputed Special Power of Attorney dated 04/02/2023 is void since it is manipulated sham document and;*
- e) To declare that the disputed Lease Deed dated 06/02/2023 registered No.HBB-1-03508-2022-23, C.D. No.HBBD 1246, Book No.1 in the Office of the Sub-Registrar Gandhinagar (Hebbal), Bangalore is void-in-abnatio and not binding on the plaintiffs and;*
- c) to grant cost and expenses of the suit;*
- d) to grant such other relief/s as this Hon'ble Court deems to fit is the circumstances of the above case in the interest of justice and equity."*

3.1 Along with the plaint, the plaintiffs filed I.A.No.1 under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (for short, 'CPC'), seeking an order of temporary injunction restraining the



CNR: KAHC010062232026

defendants, their representative, successors or legal heirs anybody acting on their behalf from alienating or creating third party encumbrance, including transfer or revenue records in respect of the suit schedule property, pending disposal of the suit and I.A.No.2 was filed under Order XXXIX Rules 1 and 2 read with Section 151 of CPC, seeking an order of temporary injunction to restrain the defendants, their representative, successors or legal heirs anybody acting on their behalf from altering the nature of the suit schedule property, pending disposal of the suit.

3.2 Upon filing of the said applications, defendant Nos.25 to 27 entered appearance before the trial Court. However, defendant Nos.25 to 27 did not choose to file their objections to the said applications or their written statement. Likewise, though the other defendants entered appearance, they also did not file their written statements or objections to the applications. Thus, none of the defendants filed objections to I.A.Nos.1 and 2.



CNR: KAHC010062232026

3.3 The trial Court considered the said applications in the absence of any objections from the defendants and came to the conclusion that the case of the plaintiffs, as set out in the said applications, was undisputed and unchallenged. Accordingly, the trial Court allowed I.A.Nos.1 and 2 and passed an order of temporary injunction restraining the defendants from alienating or creating any third-party encumbrance, including transfer of revenue records in respect of the suit schedule property and further restrained the defendants from altering the nature of the suit schedule property, till disposal of the suit. It is this order passed on I.A.Nos.1 and 2 that are called in question by the appellants, who are defendant Nos.25 to 27 before the trial Court.

4. It is the vehement contention of the learned counsel for appellants-defendant Nos.25 to 27 that the impugned order passed by the trial Court is perverse, arbitrary and erroneous, contrary to the factual foundation



CNR: KAHC010062232026

and therefore, unsustainable in law. It is further contended that the impugned order suffers from serious infirmities and warrants interference at the hands of this Court. It is further contended that the impugned order is in violation of the fundamental principle of *audi alteram partem* and therefore, is unsustainable in law. It is further contended that no fair and reasonable opportunity was afforded to defendant Nos.25 to 27 to contest the matter, file their objections and advance their arguments.

4.1 It is further contended that the impugned order suffers from serious irregularities, non-consideration of the relevant aspects and non-application of mind, thereby disregarding the settled legal principles governing the grant of temporary injunction. It is submitted that the trial Court has failed to consider the essential requirements and well-settled principles governing the grant of temporary injunction.



CNR: KAHC010062232026

4.2 It is further contended that the fundamental requirements for grant of a temporary injunction are the three essential ingredients, namely, the existence of a *prima facie* case, the balance of convenience and the irreparable injury or hardship likely to be caused to the party seeking the injunction. However, none of these essential requirements has been adverted to or considered by the trial Court while passing the impugned order.

4.3 It is further contended that the trial Court has failed to take into consideration the inordinate delay on the part of the plaintiffs in approaching the Court. It is further contended that the very suit filed by the plaintiffs is not maintainable. *Ex facie*, from the nature of the reliefs sought in the suit, it is apparent that the plaintiffs seek partition of one-third share out of the 1/17th share and a declaration that the disputed Trust Deed dated 26.10.1896 is void *ab initio*, null and void and not binding on the plaintiffs. Thus, a document which was executed more



CNR: KAHC010062232026

NC: 2026:KHC:46502
MFA No. 711 of 2026

than 130 years ago is now sought to be challenged, along with the subsequent challenge to the lease deed and the power of attorney executed in favour of defendant Nos.25 to 27. It is further submitted that defendant No.25 is the Trust, defendant No.26 is the lessee and defendant No.27 is the Power of Attorney Holder.

4.4 It is further contended that pursuant to the Trust Deed, lease deed and power of attorney, defendant Nos.25 to 27 have already put up construction of a commercial property over the suit schedule property, which fact is not in dispute. Therefore, it is contended that all these material facts have been suppressed by the plaintiffs before the trial Court.

4.5 It is further contended that though defendant Nos.25 to 27 had appeared and not placed their objections on record or advanced their arguments, it was nevertheless incumbent upon the trial Court to consider the merits of the matter and satisfy itself as to whether



CNR: KAHC010062232026

the plaintiffs had made out a *prima facie* case and established the other essential requirements, namely, balance of convenience and irreparable injury or hardship, for grant of temporary injunction. However, in the present case, the trial Court has failed to undertake such an exercise and has mechanically allowed both the applications by granting an order of temporary injunction. Therefore, learned counsel contends that the impugned order is liable to be set aside even on the basis of the averments made by the plaintiffs themselves, without there being any necessity for the defendants to defend the matter or file their objections. Accordingly, he seeks to allow the appeal and consequently, set aside the impugned order passed by the trial Court.

5. *Per contra*, learned Senior Counsel - Sri M.T.Nanaiah appearing on behalf of learned counsel - Smt.Rachita Nanaiah for respondent Nos.1 and 2 - plaintiffs, vehemently contends that the entire case set up



CNR: KAHC010062232026

by defendant Nos.25 to 27 before this Court is wholly unbelievable. Firstly, there is no Trust deed executed in the year 1896, as contended by the said defendants. Secondly, the lease deed so portrayed and relied upon by defendant No.26 is a fraudulent, concocted, fabricated and created document, which neither conveys any power nor grants any title or for that matter, any right whatsoever over the suit schedule property. It is further contended that no *vakalath* has been filed by the so-called power of attorney holder and that no power of attorney has been executed in favour of defendant No.27.

5.1 It is further contended that the entire transaction has been fabricated and concocted and that the suit schedule property is owned by the parents and ancestors of the plaintiffs. It is submitted that, upon attaining majority, the plaintiffs came to know of the fraud committed and the illegal creation and transfer of the lease, Trust and power of attorney. Hence, the plaintiffs



CNR: KAHC010062232026

NC: 2026:KHC:46502
MFA No. 711 of 2026

have approached the trial Court challenging the validity of the trusteeship, the power of attorney and the lease deed.

5.2 It is further contended that when no right, title or interest is vested in defendant Nos.25 to 27, the question of their putting up any construction over the suit schedule property does not arise. It is submitted that no illegal construction can be sanctified or legitimised by an order of this Court.

5.3 It is further contended that a writ petition was filed before this Court, pursuant to which an order was passed directing the Greater Bengaluru Authority (GBA) to demolish any illegal construction put up over the suit schedule property. Therefore, it is contended that an illegal construction has been put up by defendant Nos.25 to 27. On these grounds, learned Senior Counsel contends that there is no perversity or illegality in the impugned order passed by the trial Court warranting interference by this Court and that the same deserves to be sustained.



CNR: KAHC010062232026

NC: 2026:KHC:46502
MFA No. 711 of 2026

6. Having heard learned counsel for appellants-defendant Nos.25 to 27 and learned counsel for respondent Nos.1 and 2 - plaintiffs, the points that arises for consideration are as follows:

- "1. Whether the impugned order passed by the trial Court on both applications calls for interference?*
- 2. If so what order?"*

7. It is not in dispute that the suit has been instituted by the plaintiffs seeking relief of declaration, along with the other reliefs referred to hereinabove. Apparently, the plaintiffs are seeking partition and also a declaration nullifying the Trust Deed of the year 1896, cancellation of the lease deed and a declaration that the power of attorney is a sham document. It is also not in dispute that defendant Nos.25 to 27 claim rights over the suit schedule property by virtue of the trusteeship and the lease deed, have entered into possession of the property, and have put up certain constructions thereon.



CNR: KAHC010062232026

8. While considering an application under Order XXXIX Rules 1 and 2 of CPC, the trial Court is required to consider three essential requirements, namely, the existence of a *prima facie* case, the balance of convenience and the irreparable injury or hardship that may be caused to the parties. The trial Court is required to assess in whose favour the balance of convenience lies and to which party greater hardship or irreparable injury would be caused if the interim relief is either granted or refused.

9. In the present case, admittedly, the plaintiffs are seeking cancellation of a document which is more than 130 years old, by seeking a declaration that the same is null and void and not binding upon them. The plaintiffs have also sought similar reliefs in respect of the lease deed and the power of attorney. Primarily, this Court is required to examine whether the plaintiffs have approached the Court within a reasonable time. What



CNR: KAHC010062232026

constitutes a reasonable period of time has to be determined by the Court having regard to the facts and circumstances of each case. If a plaintiff has slept over his or her rights, failed to approach the Court within a reasonable time, or has not approached the Court with clean hands, these are relevant considerations which the Court is required to take into account before proceeding further in the matter.

10. It is also an essential and fundamental requirement, while considering an application under Order XXXIX Rules 1 and 2 of CPC, that the plaintiff/s must first establish a *prima facie* case warranting the matter to proceed to trial. Only upon the plaintiff/s making out a *prima facie* case can the Court proceed to consider the other two essential requirements, namely, the balance of convenience and the irreparable injury or hardship that may be caused to either of the parties. Where the plaintiff/s fails to establish a *prima facie* case, the question



CNR: KAHC010062232026

of further considering the other two elements, namely, balance of convenience and hardship, would not arise.

11. This aspect of the matter has been considered by the Hon'ble Apex Court in ***Kashi Math Samsthan and Another v. Shrimad Sudhindra Thirtha Swamy and Another***¹, wherein para-16 held as under:

"16. It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is

¹ (2010) 1 Supreme Court Cases 689



CNR: KAHC010062232026

granted. Therefore, keeping this principle in mind, let us now see whether the appellant has been able to prove prima facie case to get an order of injunction during the pendency of the two appeals in the High Court."

12. On a careful perusal of the plaint averments and the impugned order, it is apparent that there has been a delay on the part of the plaintiffs in approaching the Court seeking an order of temporary injunction. The plaintiffs may or may not ultimately succeed in the suit and likewise, the defendants may or may not succeed. That is a matter to be adjudicated upon at the appropriate stage. However, while considering an application under Order XXXIX Rules 1 and 2 of CPC, the Court is required to take into consideration whether the plaintiffs have approached the Court within a reasonable time for seeking an order of temporary injunction. Where grant of such an order is likely to cause prejudice or adversely affect the defendants by disturbing an existing or settled position, the Court is



CNR: KAHC010062232026

NC: 2026:KHC:46502
MFA No. 711 of 2026

required to exercise greater caution and circumspection before granting such relief.

13. Under the circumstances, this Court is of the opinion that the plaintiffs have belated approached the Court and have failed to make out a *prima facie* case. Therefore, the question of considering the balance of convenience and irreparable injury, would not arise. This view is fortified by the judgment of the Hon'ble Apex Court in ***Mandali Ranganna and Others v/s T. Ramachandra and Others***², wherein it has been held that a person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction.

14. Secondly, in the case of ***Kashi Math Samsthan and Another*** stated *supra*, as referred to and discussed hereinabove, the Hon'ble Apex Court has held that when the plaintiff/s fails to establish a *prima facie* case, the

² (2008) 11 Supreme Court Cases 1



CNR: KAHC010062232026

NC: 2026:KHC:46502
MFA No. 711 of 2026

question of considering the balance of convenience and irreparable hardship, would not arise. Therefore, for the aforesaid reasons and in view of the discussions made hereinabove, this Court is of the considered opinion that the impugned order is unsustainable.

15. Accordingly, I pass the following:

ORDER

- i. The appeal is ***allowed***;
- ii. The impugned order dated 09.01.2026 passed on IA.Nos.1 and 2 under Order XXXIX Rules 1 and 2 read with Section 151 of CPC in O.S.No.2410/2025 by XII Additional City Civil and Sessions Judge, Bengaluru, is hereby set aside;
- iii. It is made clear that this Court has not expressed any opinion on the merits of the matter;
- iv. Secondly, this Court has not expressed any opinion with regard to the maintainability of the suit and the



**NC: 2026:KHC:46502
MFA No. 711 of 2026**

CNR: KAHC010062232026

same shall be considered and decided by the trial Court in accordance with law;

- v. Upon hearing the parties and considering the statements filed by them, the trial Court shall take an independent decision, uninfluenced by any of the observations made hereinabove, which are confined exclusively for the consideration of the present applications.

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

CPN
List No.: 1 Sl No.: 19