



CNR: KAHC010111042026

NC: 2026:KHC:38796
MFA No. 1210 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 1210 OF 2026 (CPC)

BETWEEN:

SMT.RENUKA
D/O SRINIVAS
AGED ABOUT 32 YEARS
R/AT CHINAPPA BUILDING,
1ST FLOOR, H.NO.18,
ANEKAL ROAD,
SHADASHIVA NAGAR
ATTIBELE
BENGALURU -562 107

...APPELLANT

(BY SRI.ANANDA V., ADVOCATE)

AND:

1. SRI.K.HARIKUMAR
S/O SRI.R.KARTHIKEYAN
AGED ABOUT 54 YEARS
R/AT ABHISHEK, T.C. 52/226,
OLD KARAKAMANADAPAM
NEMON POST
TRIVANDRUM DISTRICT
KERALA STATE-695 020
2. SMT. R. MEENA
W/O K.BABU
AGED ABOUT 51 YEARS

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



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R/AT NO.17, 1ST CROSS,
1ST MAIN, SRIRAMPURAM
BENGALURU -560 021

3. SRI.G.S.SHIVA KUMAR
S/O LATE G.C. SHADAKSHARAPPA
AGED ABOUT 32 YEARS
R/AT CHINAPPA BUILDING
1ST FLOOR, H.NO.18
ANEKAL ROAD,
SHADASHIVA NAGAR
ATTIBELE
BENGALURU -562 107

...RESPONDENTS

(BY SRI.RAMESHA M.N., ADVOCATE)

THIS MFA IS FILED U/S 43 RULE 1(R) OF CPC, AGAINST
THE ORDER DATED 16.12.2025 PASSED ON I.A.NO.I, II AND
III IN OS.NO. 2319/2024 ON THE FILE OF THE IV
ADDITIONAL SENIOR CIVIL JUDGE, BENGALURU RURAL
DISTRICT, BENGALURU, ALLOWING THE I.A.NO.1 AND 2 FILED
UNDER ORDER 39 RULE 1 AND 2 OF CPC AND DISMISSING
THE I.A.NO. III FILED UNDER ORDER 39 RULE 1 AND 2 OF
CPC.

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 appellant, who is defendant No.3 before the trial Court in O.S.No.2319/2024, questioning the order passed on I.A.No.3, whereby the appellant-defendant No.3 filed an application under Order XXXIX Rule 1 and 2 of CPC seeking for an ad-interim order of temporary injunction with regard to the written statement/counter claim schedule properties against the plaintiff from interfering over the said written statement schedule properties, till the disposal of the suit. The said application, upon consideration, came to be rejected by the trial Court. Hence being aggrieved, the appellant-defendant No.3 is before this Court.

2. The Respondent No.1 is the plaintiff and respondent Nos.2 and 3 are defendant Nos.1 and 2 before the trial Court.

3. Respondent No.1-plaintiff is on caveat and hence, he is before the Court. This Court does not find need or necessity to issue notice to respondent Nos.2 and 3, who are



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defendant Nos.1 and 2 before the trial Court, as no relief is sought as against them.

4. The parties to the proceedings shall be referred to as per their status in the trial Court as plaintiff and defendants, for the sake of brevity.

5. Plaintiff filed a suit against the defendants for the relief of declaration and for mandatory injunction directing defendant No.3 to deliver vacant possession of the suit schedule property.

6. Along with the suit, plaintiff filed two applications-I.A.Nos.1 and 2 restraining defendant No.3 from alienating the suit schedule property and from putting up construction in the suit schedule property. The said applications were allowed in favour of the plaintiff and in the meanwhile, after defendant No.3 filed his written statement/counter claim, he filed an application under Order XXXIX Rule 1 and 2 of CPC restraining the plaintiff from interfering with his peaceful possession and enjoyment over the written statement schedule properties, where he has also filed counter claim.



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7. The trial Court though allowed I.A.Nos.1 and 2 in favour of the plaintiff, dismissed I.A.No.3 filed by defendant No.3 seeking an order of injunction restraining the plaintiff from interfering with his peaceful possession over the written statement scheduled properties.

8. It is a vehement contention of learned counsel appearing for the appellant-defendant No.3 that the trial Court has committed a serious error, illegality and infirmity in the impugned order. It is contended by learned counsel that the trial Court has committed an error in coming to a conclusion that the plaint schedule property and the written statement schedule properties are one and the same. It is his contention that these two properties are different properties and admittedly, defendant No.3 is in possession, enjoyment and putting up construction in the schedule property. It is also his vehement contention that even according to the plaintiff, as per the prayer made in the plaint, he has sought for the relief of declaration to declare the plaintiff to be the absolute owner of suit schedule property pursuant to the registered sale deed dated 24.08.2004 and has sought for mandatory injunction



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directing defendant No.3 to deliver the vacate possession of the suit schedule property by declaring the sale deed dated 23.02.2024 executed by defendant No.1 in favour of defendant No.3 to be void, illegal and not binding on the plaintiff. Therefore, he contends that when such a prayer is made admittedly, the plaintiff is not having any quarrel with regard to there being a registered sale deed in favour of defendant No.3 executed by defendant No.1, which is sought to be nullified by the plaintiff by way of filing the suit.

9. It is also contended by learned counsel that the plaintiff has also sought to deliver the vacant possession from defendant No.3, which admittedly would mean that the plaintiff has accepted that defendant No.3 to be in possession of the suit schedule property. Therefore, when such a prayer is made and such pleadings are made, the question of rejecting the application-I.A.No.3 filed by defendant No.3 may not be sustainable as it is an admitted fact.

10. It is contended by learned counsel and what is sought is only directing the plaintiff not to interfere with the



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peaceful possession and enjoyment of defendant No.3 over the written statement schedule properties. Therefore, this aspect has not been properly considered by the learned trial judge and has mechanically rejected the application-I.A.No.3 without applying its mind, and without proper reasoning. On these grounds, he seeks to allow the appeal and consequently, set aside the impugned order passed on I.A.No.3 and allow the said application.

11. *Per contra*, learned counsel appearing for respondent No.1-plaintiff contends that the property belongs to the plaintiff. He sustains the impugned order by contending that there is no illegality or perversity in the impugned order and consequently, he seeks rejection of the appeal.

12. I have heard learned counsel for the appellant-defendant No.3 and learned counsel for respondent No.1-plaintiff.

13. There is no dispute to the fact that the plaintiff filed a suit against the defendants for the relief of declaration, for mandatory injunction of handing over possession and for



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cancellation or nullification of the sale deed executed in favour of defendant No.3. It is also not in dispute that the plaintiff has admitted the registration of the sale deed by defendant No.1 in favour of defendant No.3, which is sought to be nullified. So also the plaintiff is seeking to deliver the vacant possession of the suit schedule property from defendant No.3. The applications filed by the plaintiff under Order XXXIX Rule 1 and 2 against defendant No.3 not to alienate the suit schedule property and not to put up further construction over the suit schedule property, which has been granted. Therefore, these two applications would not come in the way of the application-I.A.No.3 filed by defendant No.3 being allowed as admittedly it is not the case of the plaintiff that defendant No.3 is not in possession of the suit schedule property.

14. Though the plaint schedule property is one and the written statement schedule properties are two in numbers, the same will have to be decided during the course of trial. In view of the admission of the plaintiff, defendant No.3 to be in possession and enjoyment of the property, which is claimed to be one and the same. There may not be any legal impediment



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or hardship that would be caused to the plaintiff if the application-I.A.No.3 is allowed.

15. What is to be seen by the trial Court while deciding an application under Order XXXIX Rule 1 and 2, whether such an application is maintainable by defendant No.3 in the suit filed by the plaintiff and whether defendant No.3 has made out a case for grant of temporary injunction.

16. It is no more *res integra* that while deciding the application under Order XXXIX Rule 1 and 2, three essential requirements to be considered that are *prima facie* case, balance of convenience and more hardship that would be caused to the party.

17. In the present case on hand, the plaintiff has admitted defendant No.3 to be in possession of the schedule property. It would be all the more necessary for the Court to have intervened, protected the right of defendant No.3 and his possession over the suit schedule property so that the same does not cause any damage or threat to his dispossession from the written statement schedule properties. Therefore, *prima*



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facie case is made out, balance of convenience tilts in favour of defendant No.3 and so also, much hardship would be caused to defendant No.3 in case the plaintiff interfered in his peaceful possession and enjoyment of the written statement schedule properties. All these points having been established by the appellant-defendant No.3, the trial Court ought to have granted the relief. Having not done so, this Court is of the opinion that there is a perversity in the order, which calls for interference at the hands of this Court.

18. Accordingly, in view of the discussions made herein above, I pass the following:

ORDER

- i) This appeal is ***allowed***.
- ii) The impugned order dated 16.12.2025 passed on I.A.No.3 in O.S.No.2319/2024 is hereby set aside.
- iii) Consequently, I.A.No.3 filed by the appellant-defendant No.3 is allowed.
- iv) There shall be an order of temporary injunction restraining the plaintiff from interfering with



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the peaceful possession and enjoyment of defendant No.3 over the written statement schedule properties, till the disposal of the suit.

- v) It is made clear that this Court has not expressed any opinion on the merits of the matter.
- vi) The observations made herein are strictly for the purpose of deciding I.A.No.3.

Pending applications, if any, stand disposed of.

Sd/-
(PRADEEP SINGH YERUR)
JUDGE

VM
List No.: 1 SI No.: 27