



NC: 2026:KHC:34798
MFA No. 1232 of 2026
C/W MFA No. 1261 of 2026
MFA No. 1262 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 1232 OF 2026 (CPC)

C/W

MISCELLANEOUS FIRST APPEAL NO. 1261 OF 2026 (CPC)

MISCELLANEOUS FIRST APPEAL NO. 1262 OF 2026 (CPC)

IN MFA No. 1232/2026

BETWEEN:

1. SRI H.N. SURESH KUMAR
SON OF H.P.NAGAPPA
AGED ABOUT 54 YEARS
RESIDING AT NO.1806
"SUMUKHA", 24TH MAIN ROAD
25TH 'B' CROSS, SECTOR 2
HSR LAYOUT
BENGALURU - 560 102.

2. SRI P. ASHOK KUMAR
PARTNER
HITISHAA DEVELOPERS
NO.70, PREM CHAMBERS
2ND FLOOR KORAMANGALA
INDUSTRIAL AREA
NEAR JYOTHI NIVAS COLLEGE
BENGALURU - 560 034
(SINCE V. SRINIVAS REDDY IS DECEASED)

...APPELLANTS

(BY SRI V. LAKSHMINARAYANA, SENIOR COUNSEL FOR
SRI SHAIK ISMAIL ZABIULLA, ADVOCATE)


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



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AND:

1. SRI MADAPPA
SON OF LATE DODDA SIDDAPPA
AGED ABOUT 85 YEARS
REPRESENTED BY HIS GPA HOLDER
SMT. USHA, W/O. MADAPPA.
2. SMT. USHA
W/O. SRI MADAPPA
AGED ABOUT 65 YEARS.
3. SRI NAGARAJU
SON OF SRI MADAPPA
AGED ABOUT 41 YEARS.
4. SMT. NAGARATHNA
D/O. SRI MADAPPA
AGED ABOUT 67 YEARS.
5. SRI GIRISH
S/O. SRI MADAPPA
AGED ABOUT 35 YEARS.
6. SRI VISHWANATH
S/O. SRI MADAPPA
AGED ABOUT 30 YEARS
REPRESENTED BY
NATURAL GUARDIAN
FRIEND AND MOTHER SMT. USHA
SRI VISHWANATH MENTALLY
RETARDED PERSON.

RESPONDENT NO.1 TO 6 ARE
RESIDING AT HOUSE IN SY.NO.13
NOSENUR VILLAGE, JIGANI HOBLI
ANEKAL TALUK
BENGALURU RURAL DISTRICT - 562 106

...RESPONDENTS

(BY SRI R.P.SOMASHEKHARAIHAH, ADVOCATE)



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THIS MFA IS FILED UNDER ORDER LXIII RULE 1(R) OF CPC, PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 22.11.2025 PASSED ON I.A.NO.2 IN OS.NO.1441/2024 BY THE PRINCIPAL SENIOR CIVIL JUDGE AND JMFC, ANEKAL.

IN MFA NO. 1261/2026

BETWEEN:

1. SRI H.N.SURESH KUMAR
SON OF H.P.NAGAPPA
AGED ABOUT 54 YEARS
RESIDING AT NO.1806
"SUMUKHA", 24TH MAIN ROAD
25TH 'B' CROSS
SECTOR 2, HSR LAYOUT
BENGALURU - 560 102.
 2. SRI P. ASHOK KUMAR
PARTNER
HITISHAA DEVELOPERS
NO.70, PREM CHAMBERS
2ND FLOOR KORAMANGALA
INDUSTRIAL AREA
NEAR JYOTHI NIVAS COLLEGE
BENGALURU - 560 034
(SINCE V.SRINIVAS REDDY IS DECEASED)
- ...APPELLANTS
- (BY SRI V. LAKSHMINARAYANA, SENIOR COUNSEL FOR
SRI SHAIK ISMAIL ZABIULLA, ADVOCATE)

AND:

1. SRI MADAPPA
SON OF LATE DODDA SIDDAPPA
AGED ABOUT 85 YEARS
REPRESENTED BY HIS GPA HOLDER
SMT. USHA, W/O. MADAPPA.
2. SMT. USHA
W/O. SRI MADAPPA



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AGED ABOUT 65 YEARS.

3. SRI NAGARAJU
SON OF SRI MADAPPA
AGED ABOUT 41 YEARS.
4. SMT. NAGARATHNA
D/O. SRI MADAPPA
AGED ABOUT 67 YEARS.
5. SRI GIRISH
S/O. SRI MADAPPA
AGED ABOUT 35 YEARS.
6. SRI VISHWANATH
S/O. SRI MADAPPA
AGED ABOUT 30 YEARS
REPRESENTED BY
NATURAL GUARDIAN FRIEND
FATHER SRI. MADAPPA AND SMT. USHA
SRI VISHWANATH MENTALLY
RETARDED PERSON.

RESPONDENT NO.1 TO 6 ARE
RESIDING AT HOUSE IN SY. NO.13
NOSENUR VILLAGE, JIGANI HOBLI
ANEKAL TALUK
BENGALURU RURAL DISTRICT - 562 106

...RESPONDENTS

(BY SRI R.P.SOMASHEKHARAIHAH, ADVOCATE)

THIS MFA IS FILED UNDER ORDER LXIII RULE 1 OF CPC,
PRAYING TO SET ASIDE THE ORDER DATED 22.11.2025
PASSED ON IA.NO.3 IN O.S.NO.1441/2024 BY THE PRINCIPAL
SENIOR CIVIL JUDGE AND JMFC ANEKAL.

IN MFA NO. 1262/2026

BETWEEN:

1. SRI H.N. SURESH KUMAR



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SON OF H.P .NAGAPPA
AGED ABOUT 54 YEARS
RESIDING AT NO.1806
"SUMUKHA", 24TH MAIN ROAD
25TH 'B' CROSS, SECTOR 2
HSR LAYOUT
BENGALURU - 560 102.

2. SRI P. ASHOK KUMAR
PARTNER
HITISHAA DEVELOPERS
NO.70, PREM CHAMBERS
2ND FLOOR, KORAMANGALA
INDUSTRIAL AREA
NEAR JYOTHI NIVAS COLLEGE
BENGALURU - 560 034.
(SINCE V. SRINIVAS REDDY IS DECEASED)

...APPELLANTS

(BY SRI V. LAKSHMINARAYANA, SENIOR COUNSEL FOR
SRI SHAIK ISMAIL ZABIULLA, ADVOCATE)

AND:

1. SRI MADAPPA
SON OF LATE DODDA SIDDAPPA
AGED ABOUT 85 YEARS
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SMT. USHA, W/O. MADAPPA.
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W/O. SRI MADAPPA
AGED ABOUT 65 YEARS.
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SON OF SRI MADAPPA
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D/O. SRI MADAPPA
AGED ABOUT 67 YEARS.



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5. SRI GIRISH
S/O. SRI MADAPPA
AGED ABOUT 35 YEARS.
6. SRI VISHWANATH
S/O. SRI MADAPPA
AGED ABOUT 30 YEARS
REPRESENTED BY
NATURAL GUARDIAN FRIEND
FATHER SRI MADAPPA AND
MOTHER SMT. USHA
SRI VISHWANATH MENTALLY
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RESPONDENT NO.1 TO 6 ARE
RESIDING AT HOUSE IN SY.NO.13
NOSENUR VILLAGE, JIGANI HOBLI
ANEKAL TALUK
BENGALURU RURAL DISTRICT - 562 106.

...RESPONDENTS

(BY SRI R.P.SOMASHEKHARAIHAH, ADVOCATE)

THIS MFA IS FILED UNDER ORDER LXIII RULE 1(R) OF
CPC, PRAYING TO SET ASIDE THE ORDER DATED 22.11.2025
PASSED ON IA.NO.4 IN O.S.NO.1441/2024 BY THE PRINCIPAL
SENIOR CIVIL JUDGE AND JMFC ANEKAL.

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

CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

ORAL JUDGMENT

These appeals are preferred by the appellants-
defendants challenging the common order dated
22.11.2025 passed on I.A.Nos.2, 3 and 4 in



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O.S.No.1441/2024 by the Principal Senior Civil Judge and JMFC, Anekal, whereby I.A. Nos.2 and 3 filed by the respondents–plaintiffs are allowed and I.A. No.4 filed by appellant No.1–defendant No.1 is rejected.

2. It is submitted that, prior to the filing of the appeal, appellant No.2–defendant No.2 had died.

3. For the sake of brevity and convenience, parties shall be referred to as per their ranking before the trial Court, namely, as the plaintiffs and defendant No.1.

4. The plaintiffs instituted the suit seeking relief of declaration and permanent injunction. Along with the suit, the plaintiffs filed I.A.No.2 under Order XXXIX Rules 1 and 2 read with Section 151 of CPC seeking an order of temporary injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit schedule property pending disposal of the suit and I.A.No.3 under Order XXXIX Rules 1 and 2 read with Section 151 of CPC seeking an order of



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temporary injunction restraining the defendants from alienating the suit schedule property or creating any third-party rights therein pending disposal of the suit. Subsequently, defendant No.1 filed I.A.No.4 under Order XXXIX Rule 4 of CPC seeking to vacate the *ex parte* ad interim order of temporary injunction granted on 07.11.2023.

4.1 Upon consideration of the said applications, the trial Court, by a common order dated 22.11.2025, allowed I.A.Nos.2 and 3 filed by the plaintiffs and dismissed I.A.No.4 filed by defendant No.1. Consequently, the trial Court granted an order of temporary injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit schedule property and further restrained them from alienating or creating any kind of third-party interest over the suit schedule property pending disposal of the suit. It was further ordered that the interim order shall remain in force until



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the plaintiffs pay the deficit Court fee on the consideration amount mentioned in the sale deed dated 26.03.2019.

(i) CONTENTIONS OF LEARNED COUNSEL FOR APPELLANTS-DEFENDANTS

5. It is the vehement contention of Sri V.Lakshminarayana, learned Senior Counsel appearing on behalf of Sri Shaik Ismail Zabiulla for appellants that the impugned order passed by the trial Court on the said applications is illegal, perverse, arbitrary, contrary to the material available on record and has resulted in grave miscarriage of justice.

5.1 Learned Senior Counsel further contends that the plaintiffs, through their General Power of Attorney holder, executed a registered agreement of sale dated 30.01.2008 in favour of defendant No.1. On the very same day, i.e., 30.01.2008, they also executed a registered General Power of Attorney in favour of defendant No.1. Thereafter, by virtue of a registered sale deed dated 10.09.2018, the suit schedule property was conveyed in favour of



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defendant No.1. Learned Senior Counsel contended that there exists a registered sale deed in favour of defendant No.1 in respect of the suit schedule property. He further submits that under the said registered sale deed dated 10.09.2018, possession of the suit schedule property was also delivered to defendant No.1.

5.2 Learned Senior Counsel further contends that even according to the terms of the registered agreement of sale dated 30.01.2008 executed by the plaintiffs, Clause 3 thereof specifically stipulates that the vendors had agreed to deliver vacant possession of the suit schedule property to the purchasers on the date of execution and registration of the sale deed.

5.3 Learned Senior Counsel further contends that, pursuant to the said registered agreement of sale and the registered General Power of Attorney, a registered sale deed came to be executed on 10.09.2018. It is submitted that, in furtherance of the undertaking contained in the



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agreement of sale to deliver vacant possession of the suit schedule property, vacant physical possession was handed over to defendant No.1 under the said registered Sale Deed. Learned Senior Counsel further points out that the very first recital in the registered sale deed categorically records that the vendors had put the purchaser in vacant physical possession of the suit schedule property.

5.4 Learned Senior Counsel contends that all these relevant and crucial aspects have been completely overlooked by the trial Court while considering the applications filed under Order XXXIX Rules 1 and 2 of CPC. It is further contended that the trial Court has erroneously concluded that the plaintiffs are in possession of the suit schedule property, while overlooking the material recitals and covenants contained in the registered agreement of sale and the registered sale deed. According to the learned Senior Counsel, under the agreement of sale, the vendors had expressly agreed to deliver vacant possession of the suit schedule property on the date of execution and



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registration of the sale deed. It is further submitted that, upon the execution and registration of the sale deed, vacant physical possession of the suit schedule property was in fact handed over to the purchaser, as evidenced by the recitals contained therein.

5.5 Learned Senior Counsel further contends that the principal relief sought in the suit is one of declaration, whereby the plaintiffs seek a declaration that they are the absolute owners of the suit schedule property. The plaintiffs have also sought a declaration that the sale deed dated 26.03.2019 executed by defendant No.2 in favour of defendant No.1 is null and void and have consequently sought its cancellation. Learned Senior Counsel vehemently contends that the very suit is not maintainable, as the principal relief sought therein is hopelessly barred by limitation.

5.6 Learned Senior Counsel contends that admittedly, the suit is one seeking a declaration of the



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plaintiffs' ownership over the suit schedule property and a further declaration that the sale deed dated 26.03.2019 is null and void, coupled with the consequential relief of cancellation of the said sale deed. He contends that, even assuming, without admitting, that the date of the sale deed is correctly stated as 26.03.2019, the suit is nevertheless hopelessly barred by limitation. According to him, a suit seeking such declaratory and consequential reliefs is required to be instituted within the period of limitation prescribed under the Limitation Act, 1963, which, in the facts of the present case, could not exceed three years.

5.7 Learned Senior Counsel further contends that when the principal relief sought by the plaintiffs is itself not maintainable, question of granting any ancillary or consequential relief does not arise. He submits that once the substantive relief is found to be unsustainable, the consequential and ancillary reliefs sought by the plaintiffs must also necessarily fail and cannot be granted.



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5.8 Learned Senior Counsel further contends that the trial Court, while considering the applications filed under Order XXXIX Rules 1 and 2 of CPC, has failed to consider the issue of maintainability of the suit, particularly with regard to the declaratory relief sought by the plaintiffs.

5.9 Learned Senior Counsel vehemently contends that the registered documents produced by the defendants before the learned trial Court constitute *prima facie* evidence of the transactions recorded therein. It is his submission that a registered document carries a presumption in law as to its due execution and registration and due weight ought to have been accorded to the recitals and covenants contained therein while considering the application for temporary injunction.

5.10 Learned Senior Counsel further contends that despite the registered documents produced by the defendants, the trial Court has failed to consider their evidentiary value and has proceeded solely on the



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erroneous premise that the plaintiffs are in continuous and peaceful possession of the suit schedule property. Learned Senior Counsel further contends that the trial Court has placed undue reliance on a stray averment contained in the written statement of defendant No.1 to the effect that the plaintiffs had entered upon the suit schedule property, trespassed into the same and high-handedly constructed a small residential structure thereon. According to the learned Senior Counsel, the said isolated averment, by itself, cannot constitute a valid or sufficient ground for granting an order of temporary injunction in favour of the plaintiffs, particularly in face of the registered documents evidencing the defendants' title and possession.

5.11 Learned Senior Counsel further contends that any alleged entry into or possession of the suit schedule property by the plaintiffs, pursuant to the order passed by the Disability Commissioner, cannot enure to their benefit, inasmuch as the said order was subsequently set aside by



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this Court in W.P.No.15425/2020. He submits that the plaintiffs cannot assert or claim lawful possession on the strength of an order that has since been annulled. According to him, if the plaintiffs have re-entered or continued in possession of the suit schedule property pursuant to the said order, such possession cannot be recognised in law, as it is contrary to the judgment rendered by this Court in W.P.No.15425/2020, whereby the order of the Disability Commissioner was set aside. Consequently, such alleged possession cannot form the basis for grant of an order of temporary injunction in favour of the plaintiffs.

5.12 Learned Senior Counsel further submits that this Court, in W.P. No.15425/2020, set aside the order passed by the Commissioner for Rights of Persons with Disabilities. He also draws the attention of this Court to para-6 of the order passed in W.P.No.15425/2020, wherein this Court observed as follows:



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*"6. Accepting the submission of the learned Counsel for respondents No.2 and 3, while allowing the writ petition and setting aside the impugned orders dated 10.11.2020 at Annexure 'J' and 01.12.2020 at Annexure 'K', liberty is reserved to respondents No.2 and 3 and other family members to approach a competent Civil Court to redress their grievance. **In the interregnum, if any additional orders are passed by the Commissioner placing respondents No.2 and 3 in possession of the lands in question, the same also stands sets aside.** No precipitative action shall be taken by either of the parties before this Court for a period of eight weeks from today to enable respondents no.2 and 3 and other family members to approach the competent Civil Court and get appropriate orders to protect their interest."*

5.13 It is further contended by learned Senior Counsel that the impugned order passed by the trial Court is illegal and perverse, inasmuch as the trial Court has failed to properly appreciate the material placed on record. It is submitted that in the absence of any material produced by the plaintiffs to establish their lawful possession and enjoyment of the suit schedule property,



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the trial Court has erroneously concluded that the plaintiffs have made out a *prima facie* case and have established their possession over the suit schedule property. Learned Senior Counsel submits that no material whatsoever has been placed before the trial Court to demonstrate that the plaintiffs are in peaceful possession and enjoyment of the suit schedule property. Therefore, it is contended that the impugned order is arbitrary and perverse and consequently, liable to be set aside.

(ii) CONTENTIONS OF LEARNED COUNSEL FOR RESPONDENTS-PLAINTIFFS

6. Per contra, learned counsel - Sri Somashekharaiyah R.P. for respondents/plaintiffs vehemently contends that there is no illegality or perversity in the impugned order passed by the learned trial judge on the applications filed under Order XXXIX Rules 1 and 2 of CPC. It is a well reasoned order and the trial court, upon careful analysis of the materials placed on record and the submissions of learned counsels for both parties, rightly came to the conclusion that the plaintiffs



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have made out a *prima facie* case for grant of an interim order and so also the balance of convenience lies in their favour and irreparable injury would be caused more to the plaintiffs and accordingly granted the interim order, which does not call for interference.

6.1 Learned counsel contends that it is the specific case of the plaintiffs that the suit schedule property bearing old Sy.No.13, new Sy.No.13/1 measuring 3 acres situated at Nosenor village, Jigani Hobli, Anekal taluk, originally belonged to plaintiff No.1 - Madappa and the Special Tahasildar granted the same in his favour. It is further contended that the plaintiffs are in possession and enjoyment of the suit schedule property, whereas the defendant no. 2 in the guise of developing the suit schedule property without disclosing the contents of the documents got created the sale agreement and GPA on the very same day i.e. 30.01.2008 and as on date of execution of the said two documents, plaintiff no. 2 was a minor and also mentally retarded person. It is also



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contended that other family members are uneducated and on the basis of the GPA stated supra, the defendants got the sale deed behind the back of the plaintiffs fraudulently.

6.2 It is further contended by learned counsel that on the basis of the fraudulent documents so created, the plaintiffs were aggrieved and they filed a petition before the Commissioner for Rights of Persons with Disabilities and also filed a complaint before the Jigani Police Station stating that the defendants got created and concocted the GPA dated 30.1.2008, which was registered on 24.03.2015. The Commissioner for Rights of persons With Disabilities by an order dated 1.3.2019 entertained the petition by cancelling the sale deed and directed the authorities to transfer the revenue records in the name of plaintiffs. Subsequently, the defendants challenged the said order before this Court in W.P. No.15425/2020.

6.3 Learned counsel further contends that the defendant No.2 got created the sale agreement dated



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30.01.2008 stating that they have paid a sum of Rs.30,00,000/-, however the said amount was not received by the plaintiffs. The plaintiffs have got the GPA dated 30.01.2008 cancelled. However, the defendant No.2 behind the back of the plaintiffs got executed the sale deed dated 10.9.2018 in favour of defendant No.1 for consideration of Rs.60,00,000/-. Learned counsel contends that the question of receiving the sale consideration amount of ₹ 60,00,000/- does not arise as the market value of the property is more than ₹ 6 to ₹ 7 crores. There was absolutely no intent to sell the property or register the sale deed in favour of defendant no. 1, muchless handing over the possession of the suit schedule property to the defendant no. 1.

6.4 Learned counsel further contends that the plaintiffs are cultivating the land in the suit schedule property, which is an agricultural land and infact they are growing ragi crop in the suit schedule property. The plaintiffs have also constructed a small residential shed in



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the suit schedule property and are residing in the same. Thus, the suit schedule property continues to be in possession and enjoyment of the plaintiffs.

6.5 Learned counsel for respondents/plaintiffs also contends that pursuant to the W.P. No. 15425 of 2020 filed by the defendant no. 1, disposed of by this Court vide Order dated 14.12.2023, where liberty was given to the plaintiffs to move the Civil Court, the plaintiffs filed the present suit for the necessary reliefs and also filed applications for temporary injunction which were allowed and the same does not call for interference.

6.6 Learned counsel further contends that the defendants have categorically admitted in paragraph No.12 of the written statement that the plaintiffs have high handedly trespassed into a suit schedule property and constructed a small residential house and that they have no right to remain in possession of the suit schedule property. Therefore, this averment in the written



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statement is a material fact to show that the plaintiffs are in possession and enjoyment of the suit schedule property. Learned counsel also contends that all these aspects have been taken into consideration by learned trial judge and has come to a conclusion that *prima facie* case is made out by the plaintiffs, so also the balance of convenience tilts in favour of the plaintiffs and accordingly an interim order is passed in their favour, which does not call for interference.

6.7 Learned counsel for respondents/plaintiffs further contends that though several pleas are taken by the defendant no. 1 with regard to suit not being maintainable, all these aspects will have to be decided in the course of trial. It is not for this Court to venture into the merits of the matter at this point of time. Hence, learned counsel contends that the appeal requires to be dismissed affirming the order passed by the learned trial judge.



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7. I have given my thoughtful consideration to the arguments advanced by learned senior counsel - Sri V. Lakshminarayana on behalf of learned counsel - Sri Shaikh Ismail Zabiulla for appellants/defendants as well as learned counsel - Sri R.P. Somashekharaiyah for respondents/defendants.

(iii) POINT FOR CONSIDERATION

8. Having heard learned counsels on either side, the point that would arise for consideration in the present appeal is :

"Whether the impugned order passed by learned trial Court calls for interference and if so, what order? "

(iv) CONSIDERATION

9. Apparently, there is no dispute with regard to the fact that the suit is filed by the plaintiffs for the relief of declaration to declare plaintiffs to be the absolute owners in possession of the suit schedule property and to declare



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the sale deed dated 26.03.2019 executed by defendant No.2 in favour of defendant N.1 in respect of suit schedule property to be null and void and cancel the same and consequently for grant of permanent injunction restraining the defendants from interfering with peaceful possession and enjoyment of the suit schedule property.

10. Along with the suit, the plaintiffs have filed I.A. NO.2 under Order - XXXIX Rules 1 & 2 to restrain the defendants from interfering with the peaceful possession and enjoyment of the suit schedule property and I.A No. 3 under Order - XXXIX Rules 1 & 2 of CPC to restrain the defendants from alienating or creating any kind of charge over the suit schedule property. Consequently, the defendant No.4 filed I.A. No.4 under Order - XXXIX Rule 4 of CPC to vacate *exparte* order of Temporary Injunction granted on 07.11.2023.

11. Admittedly, it is the case of the plaintiffs that they are the erstwhile owners of the suit schedule property



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bearing old Sy.No.13, new Sy.13/1 measuring 3 acres situated at Nosenor village, Jigani Hobli, Anekal taluk, which was granted in favour of plaintiff No.1 - Madappa by the Special Tahsildar. It is also the case of the plaintiffs that they are in possession and enjoyment of the suit schedule property. The defendant no. 2 in the guise of developing the property got created an agreement of sale dated 30.01.2008 and also a general power of attorney on 30.01.2008, which are registered before the concerned Sub-registrar Office. In pursuance to the said registered agreement of sale and GPA, defendant No.2 executed the sale deed in favour of defendant No.2 on 10.9.2018, but the same was registered on 26.03.2019 in view of certain objections that were raised with regard to stamp duty. It is this very sale deed dated 10.9.2018, which is registered on 26.03.2019 that is sought to be now nullified by way of a declaration.

12. Apparently, it is the case of the plaintiffs that the defendant No.2 in the guise of developing the property,



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got created and registered the sale agreement and the GPA in his favour. It is also not in dispute that subsequently a registered sale deed has come into existence where the property is conveyed to defendant no.1 by the defendant no. 2 by way of a registered sale deed. The contents of the document which is placed before this Court reveals that the possession has been handed over in favour of defendant no. 1.

13. While considering an application under Order XXXIX Rule 1 and Rule 2, the three fundamental essential requirements to be seen are prima facie case, balance of convenience, and the more hardship would be caused to which of the parties. After perusal of the materials placed by the parties, the trial Court has come to a conclusion that the plaintiffs have established their possession over the suit schedule property on the basis of certain recitals made by the defendants in their written statement at paragraph No.12. Primarily, it is for the plaintiffs who come before the Court to establish, plead and show



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sufficient cogent material to satisfy the Court that they are in lawful possession and enjoyment of the suit schedule property for grant of an ad interim temporary injunction. Merely a stray sentence of the defendants in the written statement that the plaintiffs have high-handedly trespassed into the suit schedule property and has constructed a small residential house, would not be a lawful possession for the plaintiffs for grant of an ad-interim order of temporary injunction.

14. Apparently, the plaintiffs are seeking cancellation of the agreement of sale, the GPA and the registered sale deed dated 26.03.2019 and to declare them to be the owners of the suit schedule property. This Court at this stage does not want to delve into whether the suit of the plaintiffs is maintainable or not which is vehemently argued by the learned Senior Counsel for the appellant/defendant no. 1. Nevertheless it is one of the considerations to be taken into by the trial Court while considering an application for interim order of temporary



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injunction, which is ancillary to the main relief. Though it is a fundamental rule that the trial Court should not conduct a mini trial while deciding an application under Order XXXIX Rule 1 and Rule 2, but the Court is obligated to look into the plaint averments, the relief sought and the submissions of learned counsels while considering an application for grant of temporary injunction, which is ancillary to the main relief. Therefore, the trial Court ought to have looked into these aspects.

15. Apparently in the case on hand, plaintiffs have not placed any material to show their possession and enjoyment of the suit schedule property by any documentary evidence. The trial Court has come to the conclusion that the plaintiffs are in possession of the suit schedule property on the basis of the stray sentence made by the defendants in the written statement, but that again does not clearly state that the plaintiffs have been in possession and enjoyment of the suit schedule property from the date of initiation of the suit proceedings. Whereas



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it is stated that plaintiffs have high handedly trespassed into the suit schedule property and have constructed a small residential house. It is also to be kept in mind that the plaintiffs have instituted proceedings before the Commissioner for Rights of Persons with Disabilities challenging the sale deed in question and the same was allowed and the sale deed was cancelled. The same was taken up by the appellant/defendant no. 1 by filing a writ petition before this court in Writ petition No. 15425 of 2020. The said orders of the Commissioner for Rights of Persons with Disabilities has been set aside by this Court vide order dated 14.12.2023 and pursuant to the said order passed by this Court, the present suit is filed. Therefore the plaintiffs are required to establish and prove that as on date of filing of the suit, they were in lawful possession and enjoyment of the suit schedule property to the satisfaction of the trial Court for grant of order of temporary injunction.



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16. Even if the plaintiffs are able to establish and prove these aspects, what is required to be seen while deciding an application under Order XXXIX Rule 1 and Rule 2 is whether a prima facie case has been made out by the plaintiffs and the balance of convenience tilts in favour of plaintiffs, so also the hardship. It is also to be established whether plaintiffs have come to Court with clean hands.

17. Apparently, even according to the plaintiffs, there is a registered agreement of sale and the GPA, both dated 30.01.2008. There is a registered sale deed on 10.09.2018 in favour of defendant no. 1. Therefore, once there is a registered document of sale, the presumption is in favour of the person holding the property by way of sale deed, that is defendant no. 1. Therefore, this aspect has been ignored and not looked into by the trial judge while passing the impugned order. The consideration has been paid to the plaintiffs and the possession has been handed over as per the averments in the sale deed. Therefore, there is a clear presumption in favour of defendant no. 1



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with regard to the consideration having been paid to the plaintiffs and the possession having been delivered in his favour in pursuance of the sale deed. To rebut the same, the plaintiffs have not placed any material to show that they are in cultivation of the agricultural land. Pursuant to the registered sale deed dated 10.09.2018, the name of the defendant no. 1 is also shown in the RTC extracts. Nevertheless, all these matters are required to be agitated and tried before the trial Court on a detailed trial to be conducted. *Prima facie*, the plaintiffs have failed to prove their lawful possession and enjoyment of the suit schedule property. The balance of convenience will certainly not tilt in favour of the plaintiffs, on the contrary, it tilts in favour of defendant no. 1, who is holding a registered sale deed in his favour by paying the sale consideration amount and having been the recipient of the delivery of possession from the vendor. Therefore the defendant no. 1 having paid sale consideration amount and having taken possession by virtue of the registered sale deed and there



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being a presumption, more hardship will be caused to the defendant no. 1 rather than the plaintiffs. These aspects have been ignored by the learned trial judge while passing the impugned order. Under the circumstances, this Court deems it appropriate to interfere with the impugned order passed by the trial Court.

18. Accordingly, I pass the following:

ORDER

- i) The appeals are **allowed**.
- ii) The impugned order dated 22.11.2025 passed on I.A. No.2 to 4 in O.S. No.1441/2024 on the file of the Prl. Senior Civil Judge & JMFC, Anekal, is hereby set aside.
- iii) I.A. No.4 filed by appellant/defendant No.1 under Order - XXXIX Rule-4 of CPC in O.S. No.1441/2024, is hereby allowed.



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- iv) Any alienation made by defendant No.1 would be subject to the outcome and result of the suit and defendant No.1 shall not claim any equity.
- v) It is made clear this Court has not expressed any opinion on merits of the matter.
- vi) Parties to bear their own costs.

Sd/-
(PRADEEP SINGH YERUR)
JUDGE

paragraphs 1 to 5.. CPN
paragraphs 6 to end ..GSS
List No.: 1 SI No.: 24