



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 1982 OF 2021 (CPC)

BETWEEN:

SRI.CHIKKE GOWDA
S/O NANJUNDE GOWDA
AGED ABOUT 47 YEARS
R/AT NO.356/6, VBHCS
5TH MAIN, 3RD CROSS
B E M L 5TH STAGE
SACHIDANANDA NAGAR
RAJARAJESHWARI NAGAR
BENGALURU-560 098

...APPELLANT

(BY SRI.BHARATH M., FOR
SRI. C SHANKAR REDDY., ADVOCATES)

AND:

1. D VIJAYALAKSHMI JANET
W/O D RAJA BABU
AGED ABOUT 56 YEARS
R/AT NO.676, 18TH CROSS
IDEAL HOMES TOWNSHIP

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



RAJARAJESHWARI NAGAR
BENGALURU-560 098

2. V HANUMANTHA SHETTY
S/O VENKATAPPA SHETTY
AGED ABOUT 50 YEARS
R/AT NO.3, 5TH CROSS
KENCHENAHALLI
RAJAJRAJESHWARI NAGAR
BENGALURU-560 098

...RESPONDENTS

(BY SRI.GAJENDRA S ., ADVOCATE FOR R-1;
NOTICE TO R-2 IS DISPENSED WITH V.O.D 17.09.2025)

THIS MISCELLANEOUS FIRST APPEAL IS FILED U/S.43
RULE 1(R) OF CPC, AGAINST THE ORDER DT.03.04.2021
PASSED ON IA NO.4 IN O.S.NO.8098/2019 ON THE FILE OF
THE XXXIV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE,
BENGALURU, ALLOWING IA NO.4 FILED U/O.39 RULE 1 AND 2
R/W SEC.151 OF CPC.

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 defendant No.1 in O.S.No.8098/2019 challenging the impugned order dated 03.04.2021 passed on IA No.4 filed by the respondent-plaintiff seeking to restrain the appellant-defendant No.1 from putting up further construction of the building in the suit schedule property pending disposal of the suit.

2. Parties to the proceedings shall be referred to as the plaintiff and the defendants, for the sake of easy understanding.

3. Plaintiff filed a suit for permanent injunction against the defendants in respect of property bearing No.365/S, in the layout formed by Vishwabharathi House Building Co-operative Society Ltd., V phase Vishwabharathi Housing Complex Layout, Sachidanandanagar, Halagevaderahalli, R.R.Nagar, Kengeri Hobli, Bengaluru, South Taluk. Along with the plaint, an application-I.A.No.1 came to be filed seeking for an order of temporary injunction restraining the defendants from interfering with the plaintiff's peaceful possession and



enjoyment of the suit schedule property. An ad-interim order was granted by the learned trial Judge. Pursuant to which, notice was issued and the matter was heard. At the time of hearing of I.A No.1, application-I.A.No.4 came to be filed by the plaintiff. The said application came to be filed in the year 2020 by the plaintiff seeking for an order to restrain the defendants No.1 for putting up further construction in the suit schedule property pending disposal of the suit. Upon hearing these two applications, I.A.No.1 filed by the plaintiff came to be rejected, whereas I.A.No.4 filed by the plaintiff came to be allowed with costs. However, I.A.No.1 is not questioned by the plaintiff and the same is accepted by him. Whereas, I.A.No.4 allowing the application of the plaintiff is questioned by defendant No.1.

4. It is a vehement contention of learned counsel for the appellant-defendant No.1 that the impugned order passed on I.A.No.4 is illegal, perverse and arbitrary and the learned trial Judge has not applied his mind while passing the impugned order as the suit schedule property of the plaintiff is different from the one of defendant No.1 and since there is no relief



sought for with regard to declaration, the present suit itself was not maintainable, much less the application is ancillary to the main proceedings. It is further contended by learned counsel that the trial Court has ignored the essential requirements that the plaintiff has not made out prima facie case to show that he has any right over the property of defendant No.1, which is not the suit schedule property, but a property bearing No.356/6, whereas the plaintiff is claiming relief in property bearing No.365/S.

5. Learned counsel further contends that the trial Court has arrived at a right conclusion in dismissing I.A.No.1, which was filed by the plaintiff for restraining the defendants from interfering, as the plaintiff did not make out a valid case of his possession and there being no interference by defendant No.1. Under such circumstances, when the trial Court has dismissed I.A.No.1, the question of allowing I.A.No.4 would not have arisen and ought not to have been allowed by the learned trial Judge. It is the case of the appellant-defendant No.1 that the suit schedule property is totally different from the property in which defendant No.1 has put up construction as he is the



absolute owner and has produced relevant documents of his title and possession of the said property and if at all the plaintiff was to file a comprehensive suit, then he could have maintained an application in I.A.No.4. When there is no comprehensive suit filed for declaration or possession, the plaintiff could not have maintained an application seeking for restraintment of defendant No.1 from putting up further construction in the suit schedule property and the trial Court ought not to have granted such a relief as admittedly defendant No.1 has put up construction in his own property.

6. Learned counsel contends that the impugned order passed by the trial Court is perverse, illegal and the same requires to be set aside as the primary requirement of the plaintiff is to prove that he is the owner of the property in which defendant No.1 has put up construction, which has not been established.

7. *Per contra*, learned counsel for the respondent-plaintiff vehemently contends that there is no illegality or perversity in the order passed by the trial judge as the learned trial Judge has come to a *prima facie* conclusion that defendant



No.1 is putting up construction in the suit schedule property without obtaining license and approved building plan and therefore, further construction, if any, would cause irreparable injury and hardship and therefore, restrain defendant No.1 from putting up further construction. On these grounds, learned counsel for the plaintiff contends that when there is no illegality or perversity in the order and when the trial Court has come to a conclusion that it may cause multiplicity of proceedings and that the *prima facie* case has been made out by the plaintiff, the trial Court has rightfully granted an interim order restraining the defendants from putting up further construction in the suit schedule property. Therefore, he sustains the order and seeks dismissal of the appeal.

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

9. The fact remains that as on date of filing of the suit, the suit was a bare injunction suit seeking for the relief of permanent injunction restraining the defendants from putting up any kind of construction activity in the suit schedule



property or in any way trespassing into the suit schedule property as an additional relief.

10. Apparently along with the plaint, an application-I.A.No.1 was filed restraining the defendants not to interfere, which was initially granted as an ad-interim measure prior to issuance of notice to the defendants, but later while this application was heard along with I.A.No.4, I.A.No.1 came to be rejected, which is not questioned by the plaintiff and the same has attained finality.

11. It is also not in dispute that I.A.No.4 is filed somewhere in the year 2000 by the plaintiff seeking an order from the Court to restrain defendant No.1 from putting up further construction. Therefore, there is no dispute and it is apparent on the averments made by the plaintiff and the order passed by the trial Court that defendant No.1 has already put up construction in the property. According to defendant No.1, the construction that he has put up is in property bearing No.356/6, whereas it is the claim and plea of the respondent-plaintiff that the construction activities has been put up in suit



schedule property i.e., site No.365/S. Therefore, the identity of the property is in serious dispute.

12. Apparently, the suit is not filed for a comprehensive relief of declaration or possession by the plaintiff at the initial instance. As on the date of passing of the orders on I.A.No.4, the suit was only for bare injunction. Therefore, there was no question of the trial Court passing an order of restraining defendant No.1 from putting up further construction in the property when defendant No.1 had already put up construction in the property.

13. It is now submitted across the bar by learned counsel for the respondent-plaintiff that pursuant to the order impugned, the plaintiff has amended the suit seeking comprehensive relief of declaration and possession of suit schedule property at site bearing No.365/S.

14. It is also the case of the appellant-defendant No.1 that he has not put up any construction in site No.365/S, but he has put up construction in his property, which is site No.356/6, as he is the owner and in absolute possession of the



same. There is an identity crisis which has not been established. The trial Court ought not to have granted this relief restraining the defendants from putting up construction as no relief was sought initially by the plaintiff for putting up any construction by way of an interim application.

15. Under the circumstances, I find that the trial Court has exceeded its jurisdiction in passing the impugned order.

16. Accordingly, I pass the following:

ORDER

- i) The appeal is ***allowed***.
- ii) The impugned order passed on I.A.No.4 dated 03.04.2021 is hereby set aside. Consequently, I.A.No.4 is dismissed.
- iii) It is made clear that this Court has not expressed any opinion on the merits of the matter.

Ordered accordingly.

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