



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 2006 OF 2025 (CPC)

BETWEEN:

SRI.LOKESHA.M.
S/O. LATE MUNIANJANAPPA
AGED ABOUT 45 YEARS
RESIDING AT NO.18,
JANATHA EXTENSION,
GIDADAKONENAHALLI,
VISHWANEEDAM POST,
YESHWANTHPURA HOBLI,
BENGALURU - 560 091

...APPELLANT

(BY SRI. SHARATH KUMAR SHETTY, ADVOCATE)

AND:

1. SRI.M. RAMU
S/O. LATE MUNIYAPPA
AGED ABOUT 71 YEARS,
RESIDING AT NO.189,
5TH MAIN ROAD, ITI LAYOUT,
MARATHAHALLI,
BENGALURU - 560 050.
2. SMT. KASTHURI
D/O. SRI. MUNIYAPPA
AGED ABOUT 57 YEARS,
RESIDING AT NO.9, 18TH CROSS,
7TH 'D' MAIN ROAD, THANAPPA GARDEN,

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



SAMPANGIRAMANAGARA,
BENGALURU - 560 027.

3. SRI. C. SHIVASHANKAR
S/O. G.CHANDRASHEKAR
AGED ABOUT 34 YEARS,
RESIDING AT NO.57,
NEAR VINAYAKA THEATER,
MSB LINE, MYSURU ROAD,
CAR POLICE QUARTERS,
BENGALURU - 560 018.
4. SRI. A.J. ROY
S/O. SRI. ALEX
AGED ABOUT 53 YEARS,
RESIDING AT NO.39, 8TH MAIN,
NEAR BY GOVERNMENT ELECTRIC FACTORY,
8TH CROSS, K.B. NAGARA, PIPELINE ROAD,
CHAMARAJAPETE, BENGALURU SOUTH,
BENGALURU - 560 026.
5. SRI. GANGADHAR
S/O. SRI. RAMALINGAPPA
AGED ABOUT 65 YEARS,
RESIDING AT NO.12, 1ST MAIN,
P.P. LAYOUT, 3RD PHASE,
BANASHANKARI,
BENGALURU - 560 085.
6. SMT. ANUPAMA S.A.
D/O. M. SHANKARAPPA
AGED ABOUT 37 YEARS,
RESIDING AT NO.679,
2ND FLOOR, 6TH CROSS,
16TH MAIN, SRINIVASA NAGARA,



BANASHANKARI 3RD PHASE,
BENGALURU - 560 085.

...RESPONDENTS

(BY SRI. MANU SHANKAR S.S., ADVOCATE FOR C/R-5 AND R-6
NOTICE TO R1 TO R4 IS D/W, V/O DATED 28.01.2026)

THIS MFA IS FILED U/O 43 RULE 1(r) R/W SECTION 151
OF CPC, AGAINST THE ORDER DATED 01.03.2025 PASSED ON
I.A.NO.1 IN OS.NO.9200/2024 ON THE FILE OF THE XL
ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU,
SCCH-41 , DISMISSING THE IA.NO.1 FILED UNDER ORDER 39
RULE 1 AND 2 R/W SECTION 151 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 appellant, who is the
plaintiff in the original suit O.S.No.9200/2024 challenging
the impugned order dated 01.03.2025 passed by the XL
Additional City Civil and Sessions Judge, Bengaluru City,
on IA No.1 filed under order XXXIX Rule 1 and 2 read with
section 151 of CPC.



2. It is the case of the appellant/plaintiff that he filed a suit against respondents/defendants for the relief of declaration and permanent injunction. Along with the plaint, an application-IA.No.1 came to be filed under Order XXXIX Rule 1 and 2 read with Section 151 of CPC. Initially, an ad-interim ex-parte temporary injunction order was granted against respondent Nos.5 and 6. On the appearance of respondent Nos.5 and 6 and on their filing the written statement and objections, application - IA No.1 was heard on merits, and the same came to be dismissed vide order dated 01.03.2025.

3. It is the contention of learned counsel for the appellant that land measuring 5 acres 15 guntas situated at old Survey No.38/2, New Survey No.48 of Gidadakonenahalli Village, Yeshwanthpura Hobli, Bengaluru, was originally granted to one Yalliga, S/o. Ningappa. Out of the total extent of land, sale deed has been executed in respect of 1 acre 22 guntas in favour of grandfather of the appellant, one Kenchaiah @ kenchappa



and after the demise of Kenchaiah @ Kenchappa, the plaintiff succeeded to the total 1 acre 22 guntas. It is further contended there is a notification issued by the Government of Karnataka in favour of the Bangalore Development Authority for acquiring the land measuring to an extent of 2 acres out of 5 acres 15 guntas and that the matter is pending before the Land Acquisition Court, whereas 1 acre of land is already taken possession by BDA and the remaining 22 guntas is in the possession of the appellant.

4. It is further contended by learned counsel for the appellant that he is in possession of the portion of the land and one, Mylarappa was trying to interfere with the 22 guntas of land, for which, a original suit has been filed in O.S.No. 2554/2007 and a decree for permanent injunction has been obtained on 24.09.2009. Against which, an appeal was filed in R.A.No.171/2004-2005 same came to be dismissed on 20.04.2015. Aggrieved by which also a second appeal came to be filed, which also has been



dismissed on 11.10.2023. It is further contended by learned counsel for the appellant that there is further dispute with regard to compensation and apportionment of compensation in LAC No.11/2012 which is pending adjudication. This being the state of affairs, the appellant came to know that a certain general power of attorney was executed on 09.05.1991 by the grandfather of the appellant in respect of 1 acre 22 guntas in favour of the first respondent. Even though the land measuring 1 acre was not available for claiming right over the property. It is also contended that the first respondent sold the property in favour of respondent No.3 on 30.10.2009, and once again this property was sold on 25.06.2021 in favour of respondent Nos.4 and 5 on 08.11.2024.

5. It is further contention of learned counsel for the appellant that in pursuance of the creation of these documents, stated herein above, the respondents are interfering with the 22 guntas of land in occupation and possession of the appellant. Constrained by the same, he



has preferred the original suit for seeking the reliefs mentioned above.

6. Learned counsel for the appellant contends that along with the plaint, an application came to be filed. Though initially an ad- interim ex-parte order was granted. Upon contest, the said application came to be rejected thereafter, which is in challenge before this Court.

7. Learned counsel for the appellant contends that the impugned order passed by the trial Court is perverse, illegal, arbitrary, and the same requires to be set aside. Learned counsel for the appellant also contends that there is a serious dispute with regard to the identification of the property and a mere filing of the application to dismiss the application by the respondents would not suffice, as they have not made out a good case to set aside or vacate their ad-interim ex-parte order. It is also contended that the vendors of respondent Nos. 5 and 6 were not having possession, as no layout was formed, but under the presumption, they have claimed right over the property.



On this ground also the interim order requires to be vacated.

8. It is further contended by learned counsel for the appellant that there were no cogent reasons or good grounds made out by the respondents to dismiss the application filed by the appellant under Order XXXIX Rule 1 and 2 read with Section 151 of CPC. On these grounds, he seeks to allow this appeal and consequently set aside the impugned order passed by the learned trial Judge.

9. Per contra, learned counsel appearing for the respondents vehemently contends that there is no perversity or illegality in the impugned order passed by the trial Judge, as the learned trial judge has considered the materials placed on record and has come to a conclusion that the plaintiff does not have locus standi to file the suit, as the defendants have already started construction and put up a residential building on the suit schedule property.



10. Learned counsel for the respondents also submits that while entertaining an application filed under Order XXXIX Rule 1 and 2 read with Section 151 of CPC, the onus is heavy on the plaintiff to show that he has made out a prima facie case, balance of convenience and hardship would be caused to him more than the respondents/defendants to allow the application, and it is not for the trial Court to decide the prima facie title while deciding the application for grant of injunction. Learned trial Judge has also come to a conclusion that on the basis of documents produced by the respondents/defendants, it is shown that the respondents are in possession of the property on the date of purchase and they have put up construction on the suit schedule property and construction has been completed in pursuance of their valid registered title documents. Therefore, the question of interfering with the well-reasoned order does not arise. Accordingly, he seeks dismissal of the appeal.



11. I have heard learned counsel for the appellant and learned counsel for the respondents.

12. The point that arises for consideration is:

"Whether the impugned order passed by the learned trial Judge calls for interference on the ground of perversity or illegality"?

13. Apparently there is no dispute to the fact that the respondent Nos.5 and 6 have purchased the suit schedule property by virtue of registered documents. It is also submitted across the bar during the course of arguments that the constructions that were started have already been completed on the suit schedule property by the respondent Nos.5 and 6, and it is also not disputed that they are in possession and enjoyment of the same. It is also not in dispute that respondent Nos.5 and 6 are in possession on the basis of title deeds. The question that is to be decided by the trial Court is whether the GPA in the agreement of sale was concocted and created by the defendant No.1 by taking advantage of the innocence of



Kenchaiiah @ Kenchappa or by any fraudulent method, which will have to be decided in the course of trial. Though several contentions are taken by the plaintiff, that all these documents of GPA and the sale deeds are concocted and fabricated behind his back, the said fact will have to be proved and established before the trial Court.

14. Primarily while considering an application filed under Order XXXIX Rule 1 and 2 read with Section 151 of CPC, the Court is required to see the prima facie case and balance of convenience and the hardship that would be caused to the aggrieved party. It is also relevant to see that the trial Court need not delve into the prima facie title, as the same is not required to be considered while deciding the application for grant or rejection of temporary injunction. Apparently in the present case, IA.No.1 is filed by the appellant/plaintiff to restrain the respondent Nos.5 and 6/defendant Nos. 5 and 6 from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property. When it is the specific case of the



appellant that several documents have been executed and the title has changed and so also the possession and respondent Nos.5 and 6 are in possession and have constructed on the suit schedule property.

15. The title has changed, and so also the possession and also a fact that the appellant is not in possession of the suit schedule property, the question of the grant of injunction in favour of the appellant would not arise with regard to the suit schedule property. The learned trial Judge has rightly come to the conclusion that respondent Nos.5 and 6 are in possession and enjoyment of the suit schedule property in their own independent right. Therefore, the three essential requirements have been satisfied by the respondent Nos.5 and 6/defendant Nos.5 and 6 for dismissing the application filed under Order XXXIX Rule 1 and 2 read with Section 151 of CPC. Point for consideration is answered in the negative. Accordingly, I pass the following order.



ORDER

- 1) The appeal is ***dismissed***.
- 2) I do not find any good ground or cogent reason to interfere with the well-reasoned order passed by the learned trial Judge.
- 3) All contentions of the learned counsel for the appellant on the merits of the matter are kept open.
- 4) Observations made herein are restricted for disposal of the application filed under Order XXXIX Rule 1 and 2 read with Section 151 of CPC.

Ordered accordingly.

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

RCK
List No.: 1 Sl No.: 29