



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

MISCELLANEOUS FIRST APPEAL NO.2031 OF 2026 (CPC)

BETWEEN:

SRI DINESH
AGED 49 YEARS,
S/O LATE M.C. CHANDRAPPA,
RESIDING AT NO.542,
R.H.C.S. PARK, NEAR APEX BANK,
5TH MAIN ROAD, SRIGANDADAKAVAL,
BENGALURU - 560 091.

...APPELLANT

(BY SMT. MONICA PATIL, ADVOCATE)

AND:

1. SMT. D.N. NETHRAVATHI
AGED ABOUT 48 YEARS,
W/O SRI JAGADEESHA S.E.

2. SRI JAGADEESHA S.E.
AGED ABOUT 48 YEARS,
S/O SRI EREGOWDA,

BOTH ARE RESIDING AT NO.542,
ASHIRWADA NILAYA,
R.H.C.S. LAYOUT,
2ND PHASE, R.H.C.S. PARK,
NEAR APEX BANK, 5TH MAIN ROAD,
SRIGANDADAKAVAL
BENGALURU - 560 091.

3. THE COMMISSIONER
GBA, CORPORATION CIRCLE,
BENGALURU - 560 002.



4. THE ASST. EXECUTIVE ENGINEER
GBA- BENGALURU WEST, REGION NO.1,
SRIGANDADAKAVAL SUB DIVISION
NO.8/11, AMADA BUILDING, NANDA,
BENGALURU - 560 098.

...RESPONDENTS

(BY SRI MAHESH M.R., ADVOCATE FOR R-1 & R-2)

THIS MFA IS FILED UNDER ORDER 43 RULE 1(r) OF THE CPC.,
AGAINST THE ORDER DATED 27.01.2026 PASSED ON I.A.NO.1 IN
O.S.NO.8754/2025 ON THE FILE OF THE XXIX ADDITIONAL CITY
CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-30) ALLOWING THE
I.A.NO.1 FILED UNDER ORDER 39 RULE 1 AND 2 R/W SECTION 151
OF CPC, AND REJECTING I.A.NO.3 FILLED UNDER ORDER 39 RULE 4
OF CPC.

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

CORAM: HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

This Miscellaneous First Appeal is preferred by
defendant No.3 calling in question the order dated
27.01.2026 passed on I.A.Nos.1 and 3 in
O.S.No.8754/2025 on the file of XXIX Additional City Civil
and Sessions Judge, Bengaluru ('Trial Court' for short),
whereby the trial Court has allowed the application filed by
the plaintiffs under Order XXXIX Rules 1 and 2 of CPC and
restrained the appellant from putting up further



construction over the suit schedule property and rejected the application filed by the appellant under Order XXXIX Rule 4 of CPC seeking vacating of the said order. Aggrieved by the same, the appellant is before this Court.

Brief facts:

2. The plaintiffs, who are the owners of the property bearing No.542 instituted suit O.S.No.8754/2025, alleging that the appellant-defendant No.3 has put up construction in violation of the sanction plan, particularly without leaving the required setback, thereby affecting the alleged light and air. On such allegation, the plaintiffs filed I.A.No.1 under Order XXXIX Rules 1 and 2 of CPC seeking an order of temporary injunction restraining the appellant from putting up construction. Appellant-defendant No.3, who is the owner and in possession of the property bearing No.541 (suit property) acquired under a registered sale deed, appeared and filed objections *inter-alia* contending that the construction is in accordance with the sanction plan, and the allegation of violation are baseless.



The appellant also filed I.A.No.3 under Order XXXIX Rule 4 of CPC seeking vacating of the interim order. The Trial Court by the impugned order dated 27.01.2026 allowed I.A.No.1 and restrained the appellant from putting up further construction over the suit schedule property and rejected I.A.No.3 filed by the appellant.

3. Learned counsel for the appellant submits that the impugned order passed by the Trial Court is contrary to law and material on record. It is contended that the appellant is in possession of the suit property and has put up its construction strictly, in accordance with the sanctioned plan obtained from the competent authority. It is further submitted that the entire basis of the plaintiffs' claim is the alleged violation of said plan and building bye-laws, which are matters falling within the exclusive domain of the statutory authority and not for adjudication by the Civil Court. It is submitted that the Trial Court, without determination by the competent authority, has



erroneously proceeded to record a finding of violation at an interlocutory stage.

4. Learned counsel would further contend that the finding of the Trial Court is primarily based on photographs, which cannot form a basis for a conclusive or a palpable finding, regarding violation of sanction plan. It is submitted that at the most, the photographs may indicate certain features but cannot establish technical compliance or deviation. It is also contended that the plaintiffs have not placed any cogent material to demonstrate infringement of any private right such as obstruction to light, air or access, mere assertion in that regard without evidence is insufficient to grant an order of injunction.

5. Learned counsel further submits that in view of Section 172 of the Greater Bangalore Act, 2024 ('the Act of 2024' for short), the jurisdiction of the Civil Court is barred in matters which falls within the domain of



statutory authority and therefore, the Trial Court has exceeded its jurisdiction. The Trial Court has not considered that the respondents have initiated parallel proceedings before the statutory authority on the very same cause of action and therefore, the continuation of civil proceedings for identical relief, amounts to abuse of process of law. It is further submitted that the Trial Court failed to consider that the construction undertaken by the appellant is at an advanced stage, pursuant to the sanction plan and that the appellant would suffer irreparable hardship, if restrained from continuing the construction. Further, it is submitted that in the event of any adverse order is passed by the competent authority with regard to the alleged deviation, the appellant shall not claim any equity, based on the construction put up. On these ground, it is prayed that the appeal be allowed and the impugned order be set aside.

6. *Per contra*, learned counsel for the respondent-plaintiffs sought to justify the impugned order and submits



that the appellant has constructed the building in violation of the sanction plan, without leaving the required setback. Therefore, affecting the plaintiffs' right to light and air. It is contended that the Trial Court, upon consideration of the material on record including photographs has rightly held that the plaintiffs have made out a *prima-facie* case and the balance of convenience lies in their favour. It is further submitted that, if the appellant is not restrained from continuing the construction, the plaintiffs would suffer irreparable injury and therefore, contended that the order passed by the Trial Court does not warrant any interference.

7. Having heard the learned counsel for the parties, the point that arises for consideration is:

"Whether the impugned order passed by the Trial Court warrants any interference?"

8. At the outset, it is to be stated that the civil suit in the present nature is maintainable in limited circumstances where the plaintiff establishes infringement



of a private right such as obstruction to light, air, access or enjoyment of the property. However, where the grievance is essentially one of violation of sanction plan, building bye-laws or set back requirements, such issues fall within the domain of the competent statutory authority, which alone is empowered to inspect, verify and take action. In the present case, the entire basis of the plaintiffs' case is the allegation that the appellant has not left the required setback and has violated the sanction plan. Such an issue is regulatory in nature and cannot be adjudicated by the Civil Court at an interlocutory stage, until it is shown that as such an alleged violation has resulted in clear infringement of a private right.

9. The plaintiffs have made a general allegation regarding obstruction to light and air. However, no cogent material is placed to demonstrate actual obstruction, mere assertion is insufficient to grant injunction. The Trial Court has recorded a finding of violation, primarily based on photographs, this Court observes that photographs, at



best, provide a visual indication and cannot form the sole basis, for recording a conclusive finding regarding violation of a sanctioned plan or setback requirements. Determination of such issues, necessarily requires technical verification and precise measurement by the competent authority.

10. It is not in dispute that the appellant has obtained a sanction plan and building license. There is no material evidence that the competent authority has recorded any finding, regarding violation. Further, Section 172 of the Act of 2024 bars the jurisdiction of the Civil Court in respect of matters which fall within the authority's domain. The Trial Court, by proceeding to record finding on such aspect, has clearly exceeded its jurisdiction.

11. In view of the above, the findings of the Trial Court on *prima-facie* case, balance of convenience and irreparable injury cannot be sustained. It is also placed on record that in the event of any adverse order by the



competent authority, the appellant shall not claim any equity based on the construction put on. Accordingly, the point framed for consideration is answered. For the foregoing reason, this Court pass the following:

ORDER

- i. The Miscellaneous First Appeal is hereby ***allowed***.
- ii. The impugned order dated 27.01.2026 passed on I.A.Nos.1 and 3 in O.S.No.8754/2025 on the file of XXIX Additional City Civil and Sessions Judge, Bengaluru is hereby ***set aside***.
- iii. Consequently, I.A.No.1 filed by the plaintiffs under Order XXXIX Rules 1 and 2 of CPC stands ***rejected***. I.A.No.3 filed by the appellant under Order XXXIX Rule 4 of CPC stands ***allowed***.
- iv. It is made clear that it is open for the competent statutory authority to examine and to take appropriate action in accordance with law with regard to any alleged deviation or violation.



- v. In the event of any adverse orders, the appellant shall not claim any equity based on the construction put up.

Sd/-

JUSTICE K.S. HEMALEKHA

AT
List No.: 1 Sl No.: 31