



CNR: KAHC010210252026

NC: 2026:KHC:36604
MFA No. 2126 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO.2126 OF 2026 (CPC)

BETWEEN:

SRI. RAGHU H K
S/O KRISHNAPPA,
AGED ABOUT 39 YEARS,
RESIDING AT NO.576,
10TH CROSS, 7TH BLOCK, JAYANAGAR,
BANASHANKARI 2ND STAGE,
BENGALURU - 560 070.

...APPELLANT

(BY SRI. K. VIJAYA KUMAR, ADVOCATE)

AND:

1. SRI. M G GANGAIAH
S/O LATE GANGEOWDA @
GANGADHARAIHAH,
AGED ABOUT 81 YEARS,
R/AT NO.110, RMV 2ND STAGE,
4TH BLOCK, MLA LAYOUT,
BENGALURU - 560 094.
2. SRI. R. GIRISH
AGED ABOUT 44 YEARS,
S/O G.RAMAKRISHNA,

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



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3. SRI. RAMAKRISHNA
S/O LATE GIRIYAPPA,
AGED ABOUT 78 YEARS,

RESPONDENTS NO.2 AND 3 ARE
R/AT NO.1344,
3RD CROSS, KHB COLONY,
BENGALURU - 560 079.

...RESPONDENTS

(BY SRI. D.R.RAVISHANKAR., SENIOR COUNSEL A/W
SRI. N.SHIVAKUMAR, ADVOCATE FOR R1;
SRI. M.R.RAJAGOPAL, SENIOR COUNSEL A/W
SRI. THILAK RAJ S.V., ADVOCATE FOR R2 & R3)

THIS MFA IS FILED UNDER ORDER 43 RULE 1(r) OF THE
CPC, PRAYING TO SET ASIDE THE ORDER DATED 10.02.2026
ON THE FILE OF THE HON'BLE XII ADDITIONAL CITY CIVIL AND
SESSIONS JUDGE AT BENGALURU (CCH NO.27), IN PARTLY
ALLOWING ON IA NOS.1 & 2 FILED BY THE PLAINTIFF/
RESPONDENT NO.1 UNDER ORDER XXXIX RULES 1 AND 2
READ WITH SECTION 151 OF CPC AND DISMISS IA NOS.1 & 2,
BY ALLOWING THIS APPEAL.

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-defendant No.1 challenging the impugned order dated 10.02.2026 passed on I.A.Nos.1 and 2 filed by respondent No.1-plaintiff under Order XXXIX Rule 1 and 2 of CPC in O.S.No.5262/2025 by the XII Additional City Civil and Sessions Judge at Bangalore (CCH-27), whereby learned trial Judge partly allowed the applications and both the plaintiff and defendant No.1 were directed to maintain *status quo* with regard to the suit schedule property pending disposal of the suit.

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

3. 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.



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4. The facts of the case are as follows:

The plaintiff filed a suit against the defendants for the relief of declaration to declare the plaintiff to be the absolute owner of suit schedule property and direct the defendants to deliver possession of the suit schedule property to the plaintiff by removing the illegal construction made in the suit schedule property, so also to direct the defendants to restore vacant physical possession of the suit schedule property, for grant of permanent injunction and other consequential reliefs.

4.1. Along with the plaint, the plaintiff filed I.A.No.2 under Order 39 Rule 1 and 2 seeking to restrain defendant No.1 or anyone claiming through him from putting up further construction over the suit schedule property as Site No.69 in any manner pending disposal of the suit. This application was seriously objected to by defendant No.1 and upon contest, a trial Court based on the pleadings framed the following points for consideration:

"1. Whether the plaintiff/applicant has made out a prima facie case against the defendants?"



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2. *Where does the balance of convenience lies upon?*

3. *If the applications are allowed, who will be put to irreparable loss and injustice?*

4. *What order?*

4.2. After hearing the parties, the learned trial Judge came to the conclusion holding that the subject matter of the present suit i.e., Site No.135 and Site No.69 ought to have been properly adjudicated regarding the title, possession, ownership over such property. So also came to a conclusion that if any of the party have changed the nature of the suit property or Site No.69, definitely it would be very difficult to adjudicate the dispute in accordance with law. Therefore, when such being the case, if both parties are directed to maintain *status quo* will definitely meet the ends of justice and accordingly, partly allowed the applications and granted an order of *status quo* to be maintained by both the plaintiff and defendant No.1.

4.3. It is this order that is questioned by defendant No.1 in this appeal.



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CONTENTIONS OF LEARNED COUNSEL FOR THE
APPELLANT-DEFENDANT NO.1

5. It is vehemently contended that the trial Court has committed a serious error in allowing the applications-I.A.Nos.1 and 2 and directing both the plaintiff and defendantNo.1 to maintain *status quo* over the suit schedule property. He further contends that the plaintiff has pleaded that the suit schedule property is measuring East to West 40 feet and North to South 55 feet i.e., Site No.135, carved out of Survey Nos.33/1, 33/2 and 33/3. Whereas, it is a contention of learned counsel for defendant No.1 that the Site No.69 is purchased by defendant No.1 by way of a registered sale deed dated 18.12.2024 measuring East to West 40 feet and North to South 60 feet. Therefore, he contends that when the site numbers and the measurements are not one and the same, the question of granting any injunction in favour of the plaintiff or the plaintiff having made out a *prima facie* case for indulgence of the Court to provide any relief to the plaintiff did not arise.

5.1. It is further contended that admittedly the plaintiff has filed a suit for the relief of declaration of possession over



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the suit schedule property seeking vacant physical possession of the suit schedule property and when such being the case, the plaintiff has sought for a temporary injunction in respect of Site No.135 alleging that defendant No.1 in the guise of Site No.69 is trying to alienate and dispossess the plaintiff, it is further contended that the plaintiff himself has failed to challenge the sale deed dated 14.01.2004, subsequent sale deed and rectification deeds dated 07.03.2013 and 13.03.2016. Therefore, he contends that the plaintiff is not at all entitled to any orders much less a discretionary order in his favour for the reason that the suit itself is not maintainable. When the suit itself is not maintainable, the question of granting an interim relief or temporary injunction would not arise as the balance of convenience and hardship would not arise in favour of the plaintiff.

5.2. It is further contended that the trial Court has failed to notice that Munianjinappa filed application for conversion in respect of Survey No.33/2, measuring 35 guntas. Subsequently, Deputy Commissioner converted the above said land on 24.01.2001. Thereafter, children of Munianjinappa



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executed a General Power of Attorney (GPA) in favour of G.Ramakrishna on 27.07.2002 in respect of the above said land. The GPA holder has executed sale deed dated 14.01.2004 measuring to an extent of 40 x 40 feet in respect of Site No.69 formed in Survey No.33/2. The said layout has been formed by the Dayalan Gruhanirmana Sahakara Sangha.

5.3. It is further contended that when this being the facts of the case, the plaintiff himself admits that defendant No.1 is in possession, enjoyment, putting up construction, seeking restraint of defendant No.1 from putting up further construction, the question of plaintiff making a *prima facie* case, balance of convenience tilting in his favour or for that matter, hardship being caused more to the plaintiff is absolutely absurd and cannot be comprehended, much less granting an order in his favour. Therefore, he seeks to set aside the impugned order.

5.4. It is further contended that even according to the plaintiff, the suit schedule property is not a vacant site, there is construction activities which is going on and to a large extent,



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construction is completed. Therefore, at this stage, when the construction is almost complete, admittedly by defendant No.1 who is in possession of the suit schedule property, it cannot be said that defendant No.1 is not in possession or should not continue to put up construction when he has already expended huge amount of money for putting up further construction on the basis of the layout made in the suit schedule property. All the documents are in favour of defendant No.1, namely khata, tax paid receipt, encumbrance and the Municipal Records.

5.5. It is further contended by learned counsel that the suit itself is a frivolous suit and is not maintainable, filed deliberately with an intention to stall the construction activities of defendant No.1. Learned counsel further contends that the plaintiff himself has not established any right over the suit schedule property and defendant No.1 has an independent title based on the registered document of sale. There is a presumption in law that once the registered document is placed, it is a proof of a valid registration and so also the contents therein, and he is in absolute possession. He has already put up construction in the suit schedule property.



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5.6. Learned counsel further contends that even according to the plaintiff, defendant No.1 is in possession and enjoyment of Site No.69, but in the guise of Site No.69, he is trying to put up construction in Site No.135. Therefore, he contends that all these aspects are question of fact which will have to be proved by way of trial. At this stage, by way of affidavits and documents, it cannot be discerned as to who is the owner and who is not the owner. The fact remains according to the learned counsel that admittedly defendant No.1 is in possession and enjoyment of the suit schedule property and is putting up construction in the suit schedule property so also the plaintiff is seeking vacant possession of the suit schedule property from defendant No.1.

5.7. It is also the contention of learned counsel that defendant No.1 has finished all civil works exterior and only interior works are pending, which would not take much time to complete and all works are going on in Site No.69, which belongs to defendant No.1 and not to the plaintiff as claimed.



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5.8. It is vehemently contended by learned counsel that the impugned order cannot be sustained at any stretch of imagination and the same requires to be set aside.

5.9. Learned counsel for the appellant-defendant No.1 relies upon the following judgments in support of his case:

- i) ***ECE Industries Limited (2) vs. S.P.Real Estate Developers Private Limited and another*** reported in ***(2009) 12 SCC 776;***
- ii) ***Kethaki vs. Kamalamma and others*** reported in ***2020 SCC OnLine Kar 1885;***
- iii) ***T.S.Nagaraja vs. Radhamma and others*** reported in ***2021 SCC OnLine Kar 16249;***
and
- iii) ***Malar Veni vs. Ramamurthy*** reported in ***2023 SCC OnLine Kar 1421***

5.10. It is further contended that the entire claim of the plaintiff is based on the gift deed dated 16.12.2009 executed by one Honnagangaiah, but the record clearly show that one Honnagangaiah had purchased only 5 guntas (5445 square feet in survey No.33/2 under the sale deed dated 01.09.2001 and



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had already alienated two sites measuring 2400 square feet, totally 4800 square feet) under registered sale deed dated 23.04.2005 in favour of Jagadish and Manjunath. He further contends that after these alienations, what remained is only 645 square feet. Therefore, Honnagangaiah had no subsisting extent of 4600 square feet to execute the alleged gift deed in favour of plaintiff in the year 2009 and hence, he contends that the very foundation of the plaintiff's case with regard to title is legally unsustainable and would fall flat on the ground.

CONTENTIONS OF LEARNED COUNSEL FOR THE
RESPONDENT-PLAINTIFF

6. *Per contra*, learned Senior counsel Sri D.R.Ravishankar appearing on behalf of learned counsel Sri N.Shivakumar vehemently contends that the suit is filed by the plaintiff for the relief of declaration and also for vacant possession from defendant No.1, which is no doubt admitted, but defendant No.1 is in illegal possession and occupation of the suit schedule property, as he is not the absolute owner and does not derive any title over the suit schedule property and in the guise of trying to put up construction and staking claim in



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Site No.69, is trying to encroach Site No.135, which belongs to the plaintiff. Learned Senior counsel further contends that there is no illegality or perversity in the order passed by the learned trial Judge as it is only after going through the materials on record and also coming to a conclusion that defendant No.1 is putting up construction in the suit schedule property, has directed to maintain *status quo* pending disposal of the suit. Despite this order of status quo, in blatant violation, defendant No.1 has continued to put up construction of a building in an urgent manner without obeying the order passed by the Court.

6.1. Learned Senior counsel further contends that Sri Honnagangaiah originally purchased the properties measuring to an extent of 2 acres 27 guntas in survey No.33/1, 0.05 guntas in Sy.No.33/2 as per the survey sketch report produced. Sri Honnagangaiah had purchased 1 acre 5.50 guntas and 0.5 guntas, totally 1 acre 10.50 guntas, out of the said land, he got converted 38 guntas and in Survey No.33/3 measuring 0.23 guntas, totally 3 acres 20 guntas vide registered sale deed dated 01.09.2001 from one Munirangamma. Thereafter, he converted the entire land for residential purpose vide



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conversion order, formed layout and then said Honnagangaiah gifted Site No.135 measuring to an extent of East to West 40 feet and North to South 115 feet, altogether 4600 square feet to his brother M.G.Gangaiah-plaintiff. Thereafter, M.G.Gangaiah had gifted southern portion of Site No.135 measuring East to West 40 feet and North to South 60 feet, totally 2400 square feet to his brother M.G.Lingappa by way of a registered gift deed. Thereafter, M.G.Lingappa gifted the southern portion measuring East to West 40 feet and North to South 30 feet, totally 1200 square feet out of the southern portion of Site No.135, measuring totally 2400 square feet to his son M.L.Jagadeesh by way of a gift deed. This being the state of affairs, it is contended by learned counsel for respondent No.1-plaintiff that defendant No.1 was trying to interfere with the said property, making hectic efforts to put up construction in the suit schedule property.

6.2. It is further contended that initially a suit came to be filed in O.S.No.3343/2023 against defendant No.1 herein for the relief of permanent injunction, in which case status quo was ordered. Another suit also came to be filed in



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O.S.No.3344/2024 against the very same defendant No.1 and others for permanent injunction. Even in this case, an order of status quo came to be passed. Therefore, it is the contention of learned Senior counsel that defendant No.1 has no manner of right, title or interest with regard to the suit schedule property and in the guise of Site No.69, on the basis of a sale deed, has been trying to put up construction in the suit schedule property encroaching into Site No.135, which does not belong to defendant No.1. Hence, it is his contention that when the plaintiff has made out a valid case and defendant No.1 does not have proper title over the suit schedule property more specifically Site No.135 and the boundaries of the property of defendant No.1 does not match with that of the boundaries shown by respondent No.1-plaintiff, the impugned order passed by the trial Court does not call for interference and the same is perfectly in order. It is for defendant No.1 to establish before the trial Court as to how he came into possession and whether his sale deed is valid in accordance with law.

6.3. Learned Senior counsel for respondent No.1-plaintiff has relied upon the following judgments in support of his case:



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- i) ***Chandrakanthaben vs. Vadilal Bapalal Modi and ors.*** reported in ***(1989) 2 SCC 630;***
- ii) ***Pandurang Krishnaji vs. Markandeya Tukaram and ors.*** reported in ***(1922) 42 MLJ 436;*** and
- iii) ***Backiammal vs. Vasantha & ors.*** reported in ***CDJ 2022 MHC 4046.***

CONTENTIONS OF LEARNED COUNSEL FOR RESPONDENT NOS.2 AND 3-DEFENDANT NOS.2 AND 3

7. Learned Senior counsel Sri M.R.Rajagopal has appeared on behalf of learned counsel Sri Thilak Raj.S.V., for respondent Nos.2 and 3 and has supported the case of the appellant-defendant No.1 as he is the vendor of defendant No.1. He contends that he has already sold Site No.69 to defendant No.1 and he is putting up construction and he has nothing further to say apart from stating that the impugned order is not sustainable, as defendant No.1 is putting up construction in his own site bearing Site No.69.

8. I have heard learned counsel for the appellant and learned Senior counsel for the respective respondents.



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9. It is not in dispute that the plaintiff has filed a suit against defendants for the relief of declaration and also seeking vacant possession of the suit schedule property, which is clearly evident in the prayer made in the suit. When such a prayer is made in the suit for declaratory relief, to declare the plaintiff to be the absolute owner and also seeking defendant No.1 to deliver the vacant possession of the suit schedule property and also for removing the illegal construction made in the suit schedule property and to deliver vacant physical possession, it is apparently clear that the plaintiff is not in possession and enjoyment of the suit schedule property.

10. Apparently, plaintiff has admitted that defendant No.1 to be in possession and enjoyment over the suit schedule property and that defendant No.1 has put up construction in the suit schedule property, which according to the plaintiff is illegal. Thereby, he is seeking to remove illegal construction put up in the suit schedule property and so also seeking restoration of vacant physical possession of the suit schedule property to the plaintiff. It would be no rocket science for this Court to discern or for that matter, the trial Court to discern and make



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an order on the application under Order XXXIX Rule 1 and Rule 2 as the prayer made in the suit itself should be enough for the trial Court to decide the application without much difficulty.

11. While deciding an application under Order XXXIX Rule 1 and 2, there are three essential requirements i.e., *prima facie* case, balance of convenience, and hardship that would be caused to the aggrieved party, which are to be only seen by the trial Court.

12. Now in order to see whether the plaintiff has made out a *prima facie* case and also whether the balance of convenience tilts in his favour and hardship would be caused to him, the onus is always on the plaintiff to place sufficient cogent material before the trial Court to show that an order, if not granted in favour of the plaintiff by restraining the defendant from putting a further construction, irreparable injury and hardship would be caused to the plaintiff and in the present case, the plaintiff has sought for an injunction restraining defendant No.1 from putting up further construction over the suit schedule property in the guise of construction in



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schedule property as Site No.69 in any manner. Therefore, the plaintiff has also sought for a relief in the application that defendant No.1 is putting up some construction in Site bearing No.69, but in the guise of putting up the construction in Site No.69 is misrepresenting the suit schedule property of the plaintiff to be that of Site No.69, whereas the suit schedule property is Site No.135.

13. Undoubtedly, the trial Court will have to decide the application based on the materials available on record which are placed by the plaintiff and the defendants to see whether the *prima facie* case is made out by the plaintiff, the balance of convenience has tilted in whose favour and whether hardship would be caused to which of the parties more.

14. It is no more *res integra* that *prima facie* case need not be confused with *prima facie* title. While deciding an application under Order XXXIX Rule 1 and 2, what is to be seen is *prima facie* case and not a *prima facie* title. Even if the Court were to come to a conclusion later on that the plaintiff would succeed in the suit but that is not what is to be discerned or



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decided at the initial stage of considering the application under Order XXXIX Rule 1 and 2 as the trial Court is not supposed to conduct a mini trial while deciding the application under Order XXXIX Rule 1 and 2.

15. Under the circumstances, the trial Court will have to only look into these three essential requirements for deciding the application and not get swayed away with various arguments or materials placed on the merits of the matter and whether the plaintiff would succeed or the defendant would lose in the suit.

16. On careful perusal of the impugned order, it is seen that the trial Court has gone on the basis of the contentions put forth by the plaintiff with regard to Site No.69 being misrepresented to be Site No.135 and the contention that Site No.135 and Site No.69 are portrayed to be one and the same and that Site No.69 is not at all in existence, but defendant No.1 in the guise of Site No.69 is making an attempt to construct a building in Site No.135. But the fact remains that defendant No.1 is the absolute owner by way of registered sale



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deed dated 18.12.2024, which was executed by defendant No.2 clearly conveying Site No.69 measuring 40 X 60 feet. Whereupon, the appellant i.e. defendant No.1 has obtained BBMP Khata, he also availed a housing loan of ₹1,70,00,000/-, obtained a BESCOM electricity connection and has commenced construction on the said property. Under the circumstances, the trial Court is required to rational and see the legalities of the contentions and the materials that are placed and the admitted facts.

17. Admittedly, even according to the plaintiff, defendant No.1 putting up construction by virtue of a registered sale deed in Site No.69. But it is the grievance of the plaintiff that in the guise of putting up construction in Site No.69, he has put up construction in Site No.135 and it is a contention that Site No.69 is not in existence. All these matters, apparently as stated earlier, is a matter of trial as to whether Site No.69 and Site No.135 are in existence and whether defendant No.1 is the owner of Site No.69 and despite being the owner of Site No.69, whether he is putting up construction in Site No.135. All these matters cannot be decided at the



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preliminary stage of deciding the application under Order XXXIX Rule 1 and 2. This is precisely the reason why it is said in catena of judgements of the Hon'ble Apex Court that while deciding application under Order XXXIX Rule 1 and 2, the Court need not conduct a mini trial and delve into the merits of the matter. What is required to be considered is only a *prima facie* case to go into trial. Secondly, the balance of convenience and thirdly, the irreparable hardship that would be caused.

18. Having heard learned counsel for both the parties and having perused the voluminous materials placed before the Court, apparently there is no dispute to the fact that defendant No.1 is in possession and enjoyment of the suit schedule property. The documents and sale deeds are in favour of defendant No.1 showing Site No.69. Photographs are produced to show that the construction of the building is completed. Defendant No.1 has also secured the several Municipal Records, Revenue Records and the BESCO connection to the Site No.69. Under the circumstances, when defendant No.1 is in possession and enjoyment of the said Site No.69, he cannot be stopped from putting up construction or for that matter, an



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order of '*status quo*'. There is no absolute material or for that matter, any record from any Court to show that Site No.69 is Site No.135 or that defendant No.1 is putting up construction in the property of plaintiff.

19. It is needless to mention that in case the plaintiff were to succeed later on, the trial Court, however, is always at liberty to impose costs and the defendant No.1 cannot claim equity on the construction so put up by him, if at all the trial Court were to come to a conclusion that Site No.69 never existed and that defendant No.1 in the guise of Site No.69 has always been putting up construction in Site No.135.

20. Under the circumstances, the *prima facie* case has been not made out by the plaintiff for grant of an order of status quo, so also the balance of convenience does not tilt in favour of plaintiff at any stretch of imagination considering the admitted facts of the case and the clear admission by the plaintiff himself that defendant No.1 is putting up construction and he is in physical possession and enjoyment of the property, namely Site No. 69. Thirdly, the hardship that would be caused.



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It is necessary for the Court to see that along with establishing a *prima facie* case for temporary injunction to be granted. Other two essential requirements i.e., the balance of convenience and hardship, would have to be made out.

21. In the present case on hand, admittedly defendant No.1 is in physical possession, enjoyment and has put up four floor building, which is apparently evident by the documents produced by both parties. Defendant No.1 cannot be restrained for that matter by way of an order of '*status quo*', which is opposed to the principles of grant of injunction. It is a different matter that the plaintiff may succeed and the defendant may have to deliver possession or pay costs, which may be detrimental to the interest of defendant No.1, if such eventuality arises.

22. Be that as it may, all these need not be delved into by this Court at this stage. It is better to be left open for the trial Court to decide all these issues as it may go against either of the parties in the trial. The third question of hardship



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definitely will be caused more to defendant No.1 than to the plaintiff.

23. Under the circumstances, the impugned order passed by the learned trial Judge does not stand the test of reasonableness for grant of a discretionary relief under Order XXXIX Rule 1 and 2 for *status quo* to be maintained by both the plaintiff and defendant No.1.

24. It is also brought to the notice of this Court that during the pendency of the order of *status quo* on the application I.A.Nos.1 and 2, defendant No.1 in blatant violation and disobedience of the order has put up further construction and the plaintiff has filed a necessary application under Order XXXIX Rule 2A, which is pending adjudication before the trial Court. It is needless to mention that the trial Court shall examine the application on its own merits. This Court need not delve into that matter as that is not the subject matter before this Court.



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

ORDER

- i) The appeal is allowed.
- ii) The impugned order dated 10.02.2026 passed on I.A.Nos.1 and 2 in O.S.No.5262/2025 is set aside.
- iii) It is needless to mention that this Court has not expressed any opinion on the merits of the matter.

Pending applications, if any, stand disposed of.

Order accordingly.

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

VM
List No.: 1 Sl No.: 17