



CNR: KAHC010230922021

NC: 2026:KHC:40078
MFA No. 4353 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 4353 OF 2021 (CPC)

BETWEEN:

1. SRI A JOSEPH
S/O LATE ANTHONIYAPPA
AGED ABOUT 78 YEARS
R/AT NO.180, KANAKAPURA MAIN ROAD,
NEAR CHURCH, TATTAGUPPE
2ND BLOCK, BENGALURU SOUTH TALUK
BENGALURU - 560 085
2. SRI ANTHONY RAJ
S/O SRI A JOSEPH
AGED ABOUT 50 YEARS
R/AT TATTAGUPPE,
2ND BLOCK (THOTADA MANE),
BENGALURU SOUTH TALUK
BENGALURU - 560 082
3. SRI LURDUSWAMY (KUMAR)
S/O SRI A JOSEPH
AGED ABOUT 48 YEARS,
R/AT NO.180, KANAKAPURA MAIN ROAD
NEAR CHURCH, TATTAGUPPE
2ND BLOCK
BENGALURU SOUTH TALUK
BENGALURU - 560 085


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



NC: 2026:KHC:40078
MFA No. 4353 of 2021

CNR: KAHC010230922021

4. SRI CHINNARAJ
S/O SRI A JOSEPH
AGED ABOUT 46 YEARS
R/AT CARMEL STUDIO
KANAKAPURA MAIN ROAD
NEAR CHURCH, TATTAGUPPE
2ND BLOCK, BENGALURU SOUTH TALUK
BENGALURU - 560 082
5. MARIYA DAS
D/O SRI A JOSEPH
AGED ABOUT 46 YEARS
R/AT NO.180, KANAKAPURA MAIN ROAD
NEAR CHURCH, TATTAGUPPE
2ND BLOCK, BENGALURU SOUTH TALUK
BENGALURU - 560 082
6. KUM CARMEL MARY
D/O SRI A JOSEPH
AGED ABOUT 46 YEARS
R/AT NO.180, KANAKAPURA MAIN ROAD
NEAR CHURCH, TATTAGUPPE
2ND BLOCK, BENGALURU SOUTH TALUK
BENGALURU - 560 082

...APPELLANTS

(BY SRI. CHENNAKESHA B.S., ADVOCATE)

AND:

1. SMT. SUSHEELA
W/O SRI SUNDAR RAJ
D/O SRI A JOSEPH
AGED ABOUT 51 YEARS



NC: 2026:KHC:40078
MFA No. 4353 of 2021

CNR: KAHC010230922021

2. SMT SEEJAN PREM KUMARI
D/O SRI A JOSEPH
AGED ABOUT 41 YEARS

BOTH RESPONDENTS NO.1 AND 2 ARE
RESIDING AT TATTAGUPPE VILLAGE
UTTARAHALLI HOBLI
BENGALURU SOUTH TALUK
BENGALURU - 560 082

3. SRI LAMACK
S/O SRI ISSAC
AGED ABOUT 57 YEARS
R/AT NO.11, 2ND A CROSS
CASHIER LAYOUT
BTM 1ST STAGE
D R COLLEGE POST
BENGALURU - 560 029

4. SRI ANTHONY RAJ (LIC)
S/O SRI MARIAPPA
AGED ABOUT 54 YEARS
R/AT NO.219,
THATTAGUPPE 2ND BLOCK
THATTAGUPPE POST
BENGALURU - 560 082

5. SRI SANTHOSH CHINNAPPA
S/O SRI MARIAPPA
AGED ABOUT 55 YEARS
R/AT NO.219
THATTAGUPPE 2ND BLOCK
THATTAGUPPE POST
BENGALURU - 560 082



NC: 2026:KHC:40078
MFA No. 4353 of 2021

CNR: KAHC010230922021

6. SRI THOBIAS
S/O LATE BALAYYA
AGED ABOUT 56 YEARS
R/AT NO.192, THATTAGUPPE 2ND BLOCK
BACK SIDE CHURCH
BENGALURU - 560 082
7. SRI DEVARAJ
S/O LATE CHINNAPPA
AGED ABOUT 57 YEARS
R/AT THATTAGUPPE
2ND BLOCK, NEAR CHURCH
BENGALURU - 560 082
8. SRI DEVARAJ
S/O LATE GABRIAL
AGED ABOUT 52 YEARS
R/AT THATTAGUPPE
2ND BLOCK, CHURCH BACK SIDE
BENGALURU - 560 082
9. SRI A JOSEPH
S/O SMT REETA (TEACHER)
AGED ABOUT 58 YEARS
R/AT THATTAGUPPE
2ND BLOCK, NEAR CHURCH
BENGALURU - 560 082

...RESPONDENTS

(BY SRI. C.R. VENKATESH, ADVOCATE FOR C/R1 AND C/R2
VIDE ORDER DATED 26.03.2024,
NOTICE TO R3 TO R9 IS DISPENSED WITH)



CNR: KAHC010230922021

NC: 2026:KHC:40078
MFA No. 4353 of 2021

THIS MFA IS FILED UNDER ORDER 43 RULE 1(r) OF CPC, 1908 AGAINST THE ORDER DATED 07.06.2021 PASSED ON I.A. NO. II IN O.S.NO.06/2018 ON THE FILE OF THE III ADDITIONAL SENIOR CIVIL JUDGE, BENGALURU (R) DISTRICT, BENGALURU, ALLOWING I.A. NO.II FILED UNDER ORDER 39 RULE 1 AND 2 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 appellants who are defendant Nos.1 to 6 in OS.No.6/2018, challenging the order dated 07.06.2021 passed by the III Additional Senior Civil Judge, Bengaluru Rural District, Bengaluru.

2. Respondent Nos.1 and 2 are the plaintiffs before the trial Court. Respondent Nos.3 to 9 are the co-defendant Nos.7 to 13 before the trial Court.

3. Parties to the proceedings shall be referred to as the plaintiffs and defendants for the sake of brevity.



CNR: KAHC010230922021

4. The facts of the case are as follows.

Plaintiffs filed a suit against the defendants seeking the relief of partition of 2/8 equal share in the suit schedule properties and for other consequential reliefs. Along with the suit, an application came to be filed under Order XXXIX Rule 1 and 2 read with Section 151 of CPC in IA.No.II, seeking an order of temporary injunction restraining the defendants from alienating the application schedule properties. The said application came to be allowed. The defendants were restrained from alienating the application schedule properties to any third parties till the disposal of the suit. It is this order passed on IA.No.II 2 under Order XXXIX Rule 1 and 2 read with Section 151 of CPC, which is questioned by the appellants who are defendant Nos.1 to 6.

5. The notice to the other defendants who are respondents herein has been dispensed, as no relief is sought by the appellants against them.



CNR: KAHC010230922021

6. It is the vehement contention of learned counsel for the appellants/defendant Nos.1 to 6 that the impugned order passed by the learned trial judge is perverse, illegal, arbitrary and unsustainable and the same is liable to be dismissed at the very first instance. Learned counsel contends that preliminarily the suit itself is not maintainable, which the trial Court has failed to see and has proceeded to pass an order on temporary injunction of entertaining an application under Order XXXIX Rule 1 and 2 read with Section 151 of CPC.

7. Learned counsel for the appellants/defendant Nos.1 to 6 further contends that admittedly the parties to the proceedings - plaintiffs and defendants are Christians by religion, and they are governed by the Indian Succession Act and not under the Hindu Succession Act. It is also contended that there is no concept of joint family status under the Christians, so also joint family property nor ancestral property. Therefore, the suit itself is not maintainable.



CNR: KAHC010230922021

8. It is further contended by the learned counsel for the appellants/defendant Nos.1 to 6 that respondent Nos.1 and 2/ plaintiffs are estopped from claiming shares in the suit schedule property, as there is no joint family concept under the Indian Succession Act, which would govern the appellants or the respondents. Learned counsel further contends that these being the facts and circumstances of the case, the question of the trial Court entertaining an application under Order XXXIX, Rule 1 and 2 read with Section 151 of CPC is far-fetched and is an abusive process of Court.

9. The fundamental requirements and basic essential elements for considering an application filed under Order XXXIX Rule 1 and 2 read with Section 151 of CPC is for the plaintiff to come before the Court with clean hands thereafter to make out a prima facie case, and upon establishing a prima facie case, the other two elements are required to be established for the grant of an interim order of injunction, which, according to the appellants, has



CNR: KAHC010230922021

NC: 2026:KHC:40078
MFA No. 4353 of 2021

not been made out by the plaintiffs for the grant of an interim order of temporary injunction. Therefore, the impugned order is perverse, illegal and the same requires to be set aside. Accordingly, he seeks to allow his appeal and set aside the impugned order.

10. Learned counsel for the appellants/defendant Nos.1 to 6 has relied upon the following judgments in support of his case.

- Judgment of the *Co-ordinate Bench* of this Court in the case of *Mrs.Estrida Lucy Janet Vaz V/s Nil in MFA.No.3127/2024(ISA)*.
- Judgment of the *Co-ordinate Bench* of this Court in the case of the *Sri.Alwyn Steven D'souza V/s Smt. Juliana D'souza in RSA.No.1318/2013 (PAR)*.
- Judgment passed by the *Hon'ble Apex Court* in the case of *Kashi Math Samsthan and Others V/s Sudhindra*



CNR: KAHC010230922021

NC: 2026:KHC:40078
MFA No. 4353 of 2021

*Thirtha Swamy and Others reported in
AIR 2010 SC 296.*

11. Per contra, learned counsel for the respondent Nos.1 and 2/plaintiffs vehemently contends that there is no illegality or perversity in the impugned order, as the relationship of parties is admitted; it is joint family property. There is every likelihood of the appellants creating third party rights, alienating the suit schedule property, thereby frustrating the claim of the respondent Nos.1 and 2/plaintiffs, which would create multiplicity of proceedings, and looking into the same, the trial Court has rightly granted the temporary injunction not to alienate the suit schedule properties or create any third party rights, which does not call for interference.

12. I have heard learned counsel Sri.Chennakeshava.B.S for the appellants/defendant Nos.1 to 6 and learned counsel Sri.C.R.Venkatesh for the respondent Nos.1 and 2/plaintiffs.



CNR: KAHC010230922021

13. The point that arises for consideration before this Court is:

"Whether there is any perversity or illegality in the impugned order passed by the trial Court and, if so, whether interference is called for."

14. Apparently there is no dispute to the fact that the appellants and the respondents are Christians by religion, and they are governed under the Indian Succession Act and not under the Hindu Succession Act. It is also not in dispute that there is no concept of joint family under the Christians. Nevertheless, a suit has been filed by the respondent Nos.1 and 2/plaintiffs seeking partition and separate possession and for other consequential reliefs. On the application filed by the plaintiffs in IA No.II under Order XXXIX Rule 1 and 2 read with Section 151 of CPC, the trial Court has granted an order of temporary injunction. The primary requirement of satisfaction while appreciating an application under Order



CNR: KAHC010230922021

**NC: 2026:KHC:40078
MFA No. 4353 of 2021**

XXXIX Rule 1 and 2 read with Section 151 of CPC is to see whether the plaintiff has approached the Court with clean hands and made out a prima facie case, balance of convenience and hardship that would be caused more to one of the parties. When the Court decides an application, it is required to see whether a prima facie case is made out by the plaintiffs to go in for trial. The prima facie case would also include whether the suit as brought by the plaintiff would be sustainable without going into further details or conducting a mini trial, and thereafter the other two elements will come into play.

15. In the present case on hand, the parties to the proceedings are Christians. The question of the joint family concept does not arise under the Indian Succession Act so also for the Christians, which has been conveniently ignored by the learned trial judge and has come to the conclusion that a prima facie case is made out by the plaintiffs and also the balance of convenience and the hardship would be caused more to the plaintiffs, and



CNR: KAHC010230922021

NC: 2026:KHC:40078
MFA No. 4353 of 2021

therefore has allowed the application. In my opinion, the said order passed is perverse, illegal and unsustainable in law.

16. It is relevant to extract the portion of the order passed by the Hon'ble Apex Court in the case of ***Kashi Math Samsthan and Others V/s Sudhindra Thirtha Swamy and Others*** reported in ***AIR 2010 SC 296***.

"13. It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted. Therefore, keeping this principle in mind, let us now see, whether the appellant has been able to prove prima facie case to get an order of



CNR: KAHC010230922021

NC: 2026:KHC:40078
MFA No. 4353 of 2021

injunction during the pendency of the two appeals in the High Court."

17. It is also relevant to extract paragraph Nos.8 and 9 of the judgment of a Co-ordinate Bench of this Court in the case of ***Sri.Alwyn Steven D'souza V/s Smt. Juliana D'souza in RSA.No.1318/2013 (PAR)***.

"8. The concept of a joint family is largely unknown to the Christian community. As observed above, the parties are Christians and the provisions of the Indian Succession Act, 1925 governed them. On the perusal of the judgments and decrees passed by the courts below, it appears that the courts below have dealt with this matter, as if the parties are Hindus. Further, defendant No.2, to prove that item Nos. 3 and 4 are self-acquired properties, has produced the sale deeds marked as Ex.D1, Ex.D4 and Ex.D7, wherein defendant No.2 has purchased the properties in item Nos. 3 and 4 of the suit schedule properties.

9. As observed above, there is no joint family concept in Christian community, and it is not the case that, the plaintiff and the other defendants have contributed for purchasing items Nos.3 and 4 of the suit schedule properties. The said aspect was not correctly considered by either of the courts below, and



CNR: KAHC010230922021

the trial Court decreed the suit, only on the grounds that defendant Nos.2 and 3 were not doing any business jointly, or had no such joint avocation, so as to purchase the properties jointly in their names."

18. It is needless to mention that when the application is being considered under Order XXXIX Rule 1 and 2 read with Section 151 of CPC, the question of the prima facie case first will have to be seen, only then will the other two elements come into play. When prima facie case is not made out by the plaintiffs, the question of going further to deal with the balance of convenience and irreparable hardship or inconvenience would not arise at all, as it is only when the first element is satisfactorily proved or established, the other two elements can be gone into. In the case on hand, the respondent Nos.1 and 2/plaintiffs have not made out a prima facie case to go in for trial. Therefore, the impugned order passed by the learned trial judge suffers from serious perversity and illegality. Hence, I pass the following order.



CNR: KAHC010230922021

NC: 2026:KHC:40078
MFA No. 4353 of 2021

ORDER

- 1) The appeal is ***allowed.***
- 2) The impugned order dated 07.06.2021
passed by the III Additional Senior Civil
Judge, Bengaluru Rural District, Bengaluru
in OS No.6/2018 on IA No.II is hereby set
aside.
- 3) Ordered accordingly.

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

RCK, List No.: 1 Sl No.: 16