



CNR: KAHC010237652026

NC: 2026:KHC:45984
MFA No. 2410 of 2026
C/W MFA No. 2443 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 2410 OF 2026 (CPC)

C/W

MISCELLANEOUS FIRST APPEAL NO. 2443 OF 2026

IN MFA No. 2410/2026

BETWEEN:

1. SRI LAKSHMINARAYAN NEHRU B S
S/O.SHIVANAND
AGED ABOUT 32 YEARS,.
2. SRI RADHAKRISHNA GANDHI B.S
S/O.SRI SHIVANAND.
AGED ABOUT 30 YEARS,
3. SRI JAYAPRAKASH NARAYAN SUBHASH B.S
S/O.SRI SHIVANAND.
AGED ABOUT 29 YEARS,
4. SMT.SARASWATHI,
W/O. B.H.SHIVANANDA
AGED ABOUT 52 YEARS.
ALL ARE R/AT NO.124
CHIKKABASAVANAPURA
VIRGONAGAR POST, K.R.PURA HOBLI
BENGALURU EAST TALUK.

...APPELLANTS

(BY SRI.NAGARAJA H R., ADVOCATE)


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



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AND:

SRI D K MOHAN BABU
S/O. LATE.KRISHNAPPA
AGED ABOUT 60 YEARS
R/AT DOOR NO.164, NANDANA NILAYA
SIDDAPPA LAYOUT, NEAR BENGALURU ONE,
BENGALURU-560 036.

...RESPONDENT

(BY SRI. C.S PRASANNA KUMAR., ADVOCATE FOR C/R)

THIS MFA IS FILED U/S.43 RULE 1(r) OF THE CPC,
AGAINST THE ORDER DT. 03.03.2026 PASSED ON IA NO.II IN
O.S.NO.4308/2025 ON THE FILE OF THE XLII ADDITIONAL
CITY CIVIL AND SESSIONS JUDGE, BENGALURU CCH-43,
REJECTING THE IA.NO.II FILED U/O.39 RULE 1 AND 2 OF CPC,
1908.

IN MFA NO. 2443/2026

BETWEEN:

1. SRI LAKSHMINARAYAN NEHRU B S
S/O.SHIVANAND
AGED ABOUT 32 YEARS,.
2. SRI RADHAKRISHNA GANDHI B.S
S/O.SRI SHIVANAND.
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ALL ARE R/AT NO.124
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... APPELLANTS

(BY SRI. NAGARAJA H R., ADVOCATE)

AND:

SRI D.K.MOHAN BABU,
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AGED ABOUT 60 YEARS
R/AT DOOR NO.164,
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BENGALURU-560 036

...RESPONDENT

(BY SRI. C.S PRASANNA KUMAR., ADVOCATE)

THIS MFA IS FILED U/S.43 RULE 1(r) OF THE CPC,
AGAINST THE ORDER DT. 03.03.2026 PASSED ON IA NO.1 IN
O.S.NO.4308/2025 ON THE FILE OF THE XLII ADDITIONAL
CITY CIVIL AND SESSIONS JUDGE, BENGALURU CCH-43,
REJECTING THE IA.NO.1FILED U/O.39 RULE 1 AND 2 R/W
SEC.151 OF CPC, 1908.

THESE APPEALS, ARE 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

These two appeals are filed by the appellants, who are the plaintiffs before the trial Court in O.S.No.4308/2025, being aggrieved by the impugned order dated 03.03.2026 passed by the XLII Additional City Civil and Sessions Judge, Bengaluru on I.A.Nos.1 and 2 filed under Order 39 Rule 1 and 2 of CPC, whereby the trial Court rejected I.A.Nos.1 and 2 filed by the plaintiffs.

2. The appellants are the plaintiffs and the respondent is the defendant before the trial Court.

3. The parties to the proceedings shall be referred to as per their status in the trial Court as plaintiffs and defendant, for the sake of brevity.

4. Brief facts of the case are as under:

Plaintiff filed a suit for permanent injunction and other consequential reliefs against the defendant pertaining to item Nos.1 and 2 of the suit schedule properties.



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4.1. Along with the plaint, two applications i.e., I.A.Nos.1 and 2 came to be filed by the plaintiffs seeking an order of temporary injunction. I.A.No.1 came to be filed under Order 39 Rule 1 and 2 of CPC to restrain the defendant from interfering with the peaceful possession of the plaintiffs over item Nos.1 and 2 of the suit schedule properties, pending disposal of the suit. I.A.No.2 is filed to restrain the defendant from putting up any construction by altering or changing the nature of item No.2 of the suit schedule property.

4.2. Upon issuance of notice, the defendant filed his objection statement as well as written statement denying the ownership and possession of the plaintiffs over the suit schedule properties. He also denied that he made any attempts to encroach into the suit schedule properties or put up any construction and contended that it belonged to him as he purchased the property by virtue of a registered sale deed on 15.09.2017 from one S.Haroon, who had acted on behalf of himself and as Power of Attorney Holder of his father. It is also the case of the defendant that his vendor had procured the title by way of a valid registered sale deed from the erstwhile



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owners and pursuant to the registered sale deed, he is in peaceful possession and enjoyment of the property.

4.3. Learned trial Judge, after considering the pleadings of all the parties, did not find favour with the plaintiffs and accordingly dismissed both the applications.

4.4. Aggrieved by the impugned order passed on both these applications, the appellants-plaintiffs are before this Court on the following grounds:

5. It is vehemently contended by learned counsel Sri Nagaraja.H.R., appearing for the appellants-plaintiffs that the impugned order passed by the learned trial Judge is illegal, perverse and arbitrary. He further contends that the trial Court has not taken into consideration the absolute ownership of the property of the plaintiffs having obtained the same by way of a registered gift deed dated 17.10.2023 executed by Smt. Narayanamma and the General Power of Attorney executed by Smt. Narayanamma on 07.03.2017 and the mutation entries have been changed in the name of the plaintiffs. It is also his contention that Smt. Narayanamma was



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in continuous possession and enjoyment of the suit schedule properties and all the revenue records stand in her name. Learned counsel further contends that the trial Court has failed to take into consideration the concocted, illegal sale deed produced by the defendant and has failed to consider the gift deed executed in favour of the plaintiffs and has passed an order mechanically without applying its mind. It is also a contention of learned counsel for the appellants-plaintiffs that the Schedule 'A' property is an agricultural property. The RTC stands in the name of Smt. Narayanamma. Therefore, the impugned order passed by the trial Court is unsustainable and the same requires to be set aside and reversed.

5.1. It is further contended by learned counsel that the trial Court could not have rejected both the applications and it ought to have allowed the application so far as it related to item No.1 of the schedule, which is agricultural land to an extent of 4 acres 39 guntas even if it had come to a conclusion with regard to item No.2 being an illegal construction based on fraudulent document of defendant. On these grounds, he seeks



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to allow the appeal and consequently set aside the impugned order.

6. *Per contra*, learned counsel Sri C.S.Prasanna Kumar appearing on behalf of the respondent-defendant vehemently contends that the suit itself is not maintainable at the first instance, as the suit is filed only for the relief of permanent injunction. It is also vehemently contended that both the applications are not maintainable in law for the reason that the defendant is the absolute owner of the suit schedule properties by virtue of registered sale deed dated 15.09.2017. It is further contended that Survey No.26 was belonging to one R.K.Muthu Krishna, measuring to an extent of 5 acres, who executed a General Power of Attorney in favour of Mohammed Sharief and B.S.Sanaullah. They being the GPA holders of original owner, formed residential layout and formed sites and sold several sites to the purchasers. Item No.2 was purchased by Mr.B.Shafiullah under the sale deed dated 09.04.1987 and he gifted the said property in favour of his son S.Haroon. The defendant purchased suit property under the sale deed dated 15.09.2017 from said S.Haroon on his behalf and also on behalf



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of his father as power of attorney holder and ever since then, the defendant is the absolute owner and his name is appearing in the BBMP records. He has paid the relevant tax to the BBMP.

6.1. It is the further contention of learned counsel that the trial Court has not committed any error, illegality or perversity and the impugned order is sustainable. It is also the contention of learned counsel that once the defendant has filed a statement of objections and the written statement denying the ownership of the plaintiffs, the suit for bear injunction cannot be maintained. He has relied upon the judgment in the case of **Anathulla Sudhakar vs. P.Buchi Reddy (dead) by LRs and others¹** and in the case of **M/s.Patel Enterprises Vs. M.P.Ahuja²** and further contends that there is no illegality or perversity in the impugned orders passed by the trial judge.

6.2. Learned counsel for the respondent further contends that he has purchased the suit schedule property by virtue of a registered sale deed dated 15.09.2017 and the schedule in the said sale deed clearly mentions about the

¹ (2008) 4 SCC 594

² ILR 1992 KAR 3772



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property purchased bearing ITI Notified area Khatha No.44, Assessment No.155, BBMP Khatha No.168/155 situated at Basavanapura Village, K.R.Puram Hobli, Bangalore East Taluk, coming within the Jurisdiction of Bruhath Bangalore Mahanagara Palike, Ward No.53, Bangalore, measuring East to West: 170 feet and North to South: 80 feet, in all measuring 13600 square feet with ten squares constructed RCC roofed building. Therefore, he contends that he is in possession and enjoyment of the said schedule property in his own right as owner of the property. Therefore, he contends that the trial Court has looked into all these aspects and having come to a conclusion that the plaintiffs have not made out good ground or cogent reason of any ownership or possession and for that matter, even a *prima facie* case, hence decided against the plaintiffs for grant of temporary injunction. Therefore, the same does not call for interference.

7. I have heard learned counsel for the appellants-plaintiffs and learned counsel for the respondent-defendant.



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

1. *Whether the impugned order passed by the learned trial judge calls for interference and if so, what order?*

9. Apparently, there is no dispute to the fact that the original suit proceedings is filed by the plaintiffs for the relief of permanent injunction. It is a case of the plaintiffs that they are claiming 4 acres 39 guntas in Survey No.26/2 (item No.1) having acquired the same by way of a registered gift deed on 17.10.2023 executed by one Smt. Narayanamma through her power of attorney holder B.H.Shivananda and pursuant to that, the revenue records have been mutated in the name of the plaintiffs. It is also their case that 14 acres 9 guntas was originally granted to one late Lakshamma, W/o. Late T.N.Mariswamy by the State Government on account of the death of her husband and that out of which, 5 acres 33 guntas identified in Survey No.26/2 and 8 acres 16 guntas identified as Survey No.26/3 and accordingly, the name of Smt. Lakshamma was entered in the revenue records by the ADLR and accordingly, the Phodi and Sketch are furnished to



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show that the plaintiffs are the owner of the property. All these aspects are subject matter of the trial.

10. While considering an application under Order 39 Rule 1 and 2 of CPC in a suit for permanent injunction, what is required to be seen by the trial Court are the three essential requirements of *prima facie* case, balance of convenience and the hardship that would be caused to which of the parties.

11. When the plaintiff comes before the Court, the onus lies upon him to produce and place sufficient, cogent material to the satisfaction of the Court to make out a *prima facie* case to establish for title and possession over the suit schedule property in order to get an order of temporary injunction.

12. In the present case on hand, apart from the sale deeds that are produced and claimed, the defendant has also produced a registered sale deed in his favour to the extent of 13600 square feet belonging to him by virtue of a registered sale deed. The defendant has also taken up a plea that the plaintiffs are not the owners of the suit schedule properties and has disputed the claim of the plaintiffs over the suit schedule properties i.e., item Nos.1 and 2.



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13. The injunction that is sought is to restrain the defendant from interfering with the peaceful possession and enjoyment of item Nos.1 and 2 of the suit schedule properties by the plaintiffs and for temporary injunction to restrain the defendant from putting up any construction or alter or change the nature of the suit schedule properties.

14. When the defendant has denied the ownership of the plaintiffs and he claims ownership by way of registered sale deed and by stating that he has already put up construction to a large extent in item No.2 of the suit schedule property, the question of granting injunction would not arise and no case is made out by the plaintiffs. To that extent, the trial Court is justified in not granting any order of injunction with regard to item No.2 of the suit schedule properties. So far as item No.1 is concerned, the trial Court did not find any good ground or cogent reason or for that matter any material to show indulgence to the plaintiffs for grant of an temporary injunction order more so for the reason that when the defendant has denied the title and the plaintiffs have filed the suit only for the relief of permanent injunction.



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15. That being the case, this Court is not inclined to interfere with the impugned order passed by the trial Court on both the applications primarily for the reason that once the plaintiffs come before the Court, it is the onus upon the plaintiffs to make out a *prima facie* case and upon making out a *prima facie* case, the other two essential elements will come into play i.e., balance of convenience and the hardship that would be caused more to the aggrieved party. Both of these elements would not arise in view of *prima facie* case having been not made out.

16. In the case of ***Wander Ltd. and anr. vs. Antox India P. Ltd.***³, the Hon'ble Apex Court has held that the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions.

³ 1990 SCC (Supp) 727



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17. The case of ***Wander Ltd.*** (supra) is reiterated in the case of ***Ramakant Ambalal Choksi v. Harish Ambalal Choksi***⁴.

18. The Hon'ble Apex Court in the case of ***Kashi Math Samsthan and another vs. Shrimad Sudhindra Thirtha Swamy and another***⁵ has also held 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.

19. Therefore, this Court is not inclined to come to a different opinion than what is arrived by the learned trial Judge in disposing of the applications.

⁴ (2024) 11 SCC 351

⁵ (2010) 1 SCC 689



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20. Accordingly, I pass the following:

ORDER

- i) The appeals filed by the appellants-plaintiffs are ***dismissed***.
- ii) It is made clear this Court has not expressed any opinion on the merits of the matter.
- iii) Liberty is always available to the plaintiffs to seek necessary reliefs, if so advised.
- iv) The trial Court shall not be influenced by any of the opinion expressed by this Court.
- v) It is open to the plaintiffs to place material before the Court to show that they are the owners of item No.1 of the suit schedule properties and if any such material is placed, it is open to the trial Court to look into it and pass suitable orders.

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