



CNR: KAHC010345782026

NC: 2026:KHC:31781  
MFA No. 3545 of 2026

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 9<sup>TH</sup> DAY OF JULY, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR**

**MISCELLANEOUS FIRST APPEAL NO. 3545 OF 2026 (CPC)**

**BETWEEN:**

1. SMT. QUNJA FATIMA  
W/O, LATE SYED NOOR MOHHMED  
AGED ABOUT 66 YEARS,  
R/AT, CHANCHALGUDA,  
OPP. HOBZ INSTITUTE,  
VTC: SAIDABAD, POST : SAHIFA,  
HYDERABAD, TELANGANA - 500024  
(SENIOR CITIZEN BENEFICIARY NOT CLAIMED)

...APPELLANT

(BY SRI. SHRIRAM ADIGA., ADVOCATE)

**AND:**

1. ANWAR SALH  
D/O, SHA MOHAMMED AZEEZ,  
AGED ABOUT 67 YEARS,  
R/AT, NO.15/4, 4TH CROSS, 7TH MAIN ROAD,  
SYNDICATE BANK COLONY, HOSAKEREHALLI,  
BANGALORE SOUTH -560085  
(SENIOR CITIZEN BENEFICIARY NOT CLAIMED)

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



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2. AFROZ BANU  
W/O, MOHAMMED MAQDOON,  
AGED ABOUT 68 YEARS,  
R/AT, NO.124, 6TH MAIN,  
3RD CROSS, 1ST BLOCK, BSK 3RD STAGE,  
BANGALORE - 560085  
(SENIOR CITIZEN BENEFICIARY NOT CLAIMED)
3. ANSAR BANU  
D/O, SHA MOHAMMED AZEEZ,  
AGED ABOUT 44 YEARS,  
R/AT, NO.228, 4TH MAIN, 6TH BLOCK,  
3RD PHASE, KATTRIGUPE,  
BANASHANKARI, 3RD STAGE,  
BANGALORE 560085
4. SHA AAMIR NIZAMI,  
AGED ABOUT 34 YEARS,  
S/O, SHA ABDUL YAKUB,  
R/AT, NO. 1580/A, SATHNUR CIRCLE,  
SHAHI SAW MIL, CHANNAPATNA
5. SHA ABUL KAREEM  
S/O, SHAH MOHAMMED AZEEZ,  
AGED ABOUT 60 YEARS,  
R/AT, NO.17/1-1, CHURCH ROAD,  
NEAR NEW GENERATION SCHOOL,  
BASAVANAGUDI, BANGALORE SOUTH - 560004  
(SENIOR CITIZEN BENEFICIARY NOT CLAIMED)
6. SHA ABDUL SALEEM,  
S/O, SHAH MOHAMMED AZEEZ,  
AGED ABOUT 50 YEARS,  
R/AT, NO.09, ELEGANT RITZ APARTMENT,



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BALAJI LAYOUT, OPP TO WHEELER ROAD  
EXTENSION, COOKE TOWN,  
BANGALORE NORTH 560084

7. SHAH ABDUL MAJEED  
S/O, SHAH MOHAMMED AZEEZ,  
AGED ABOUT 57 YEARS,  
R/AT, NO.1580/A, SATHNUR CIRCLE,  
SHAHI SAW MIL, CHANNAPATNA
8. SHAH ABDUL HANEEF  
S/O, SHAH MOHAMMED AZEEZ,  
AGED ABOUT 53 YEARS,  
R/AT, NO. 1580/A, SATHNUR CIRCLE,  
SHAHI SAW MIL, CHANNAPATNA
9. FAIROZ BANU,  
W/O, LATE SHAH NIZAM,  
AGED ABOUT 55 YEARS,  
R/AT, NO. 104, 5TH MAIN, 1ST BLOCK,  
3RD PHASE, KATRIGUPPE, WATER TANK,  
BANGALORE - 560085
10. ASGARI BANU,  
D/O, LATE SHA MOHAMMED AZEEZ,  
AGED ABOUT 50 YEARS,  
R/AT, NO. 1580/A,  
SATHNUR CIRCLE, SHAHI SAW MIL,  
CHANNAPATNA
11. ROSHAN MUNAWAR  
D/O, SHA MOHAMMED AZEEZ,  
AGED ABOUT 46 YEARS,



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R/AT, NO. 1580/A, SATHNUR CIRCLE,  
SHAHI SAW MIL, CHANNAPATNA

...RESPONDENTS

THIS MFA IS FILED U/O 43 RULE 1(r) OF CPC, PRAYING  
TO SET ASIDE THE ORDER DATED 02.05.2026 PASSED ON  
I.A.NO.1 IN OS.NO. 140/2026 ON THE FILE OF THE  
ADDITIONAL CIVIL JUDGE AND JMFC, CHANNAPATNA.

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

CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

### **ORAL JUDGMENT**

This appeal is filed by the appellant, who was the  
plaintiff, in O.S.No.140/2026 being aggrieved by the order  
dated 02.05.2026 on I.A.No.1 on the file of the Additional  
Civil Judge and JMFC, Channapatna.

2. The appellant/plaintiff filed the suit against the  
respondents/defendants for the relief of permanent  
injunction and other consequential reliefs. Along with the  
suit, an application came to be filed under Order 39 Rule 1



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and 2 read with Section 151 of CPC, seeking for an ad-interim order of temporary injunction to restrain the defendants from interfering with the plaintiff's peaceful possession and attempting to dispossess her without due process of law. The said application filed before the trial Court was not considered favourably, and the learned trial judge ordered issuance of notice before passing any interim order, as it felt it right to hear the defendants before passing any such order in favour of the appellant/plaintiff. It is submitted by the learned counsel for the appellant that notice is yet to be served to the defendants before the trial Court. In the meanwhile, he has approached this Court against the said impugned order.

3. This Court does not find the need or necessity to issue notice to the defendants for the reason that the appeal is preferred against an order passed before issuance of notice to the respondents/defendants on an



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application filed by the appellant/plaintiff under Order XXXIX Rule 1 and 2 read with Section 151 CPC for issuance of an ad-interim order seeking temporary injunction against the defendants. When there is any delay in the issuance of notice, the plaintiff could be aggrieved if any interference or obstruction is caused or if the damage to the property or if the plaintiff is dispossessed by the defendants. It is borne from the impugned order that the appellant/plaintiff is claiming to be the absolute owner of the suit schedule property by way of a registered sale deed dated 19.03.2025. The khata of the suit schedule property is in the name of the plaintiff, and the appellant/plaintiff is in possession and enjoyment of the same.

4. It is further the case of the appellant/plaintiff that in the last week of March 2026, respondents/defendants have made attempts to interfere with the peaceful possession and enjoyment of the



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appellant over the suit schedule property, trying to obstruct the possession of the appellant/plaintiff with respect to the suit schedule property. The photocopy of the sale deed is produced, and so also the photocopy of the khata and the tax paid receipts and a few photographs of the suit schedule property, which are also annexed here before this Court.

5. The essential ingredients for the grant of an ad-interim order of temporary injunction before issuance of notice is, if the Court comes to a conclusion that by cause of notice and delay in issuance of notice there could be some infringement, interference or obstruction to the appellant/plaintiff and a prima facie being satisfied with the materials placed by the appellant before it, the trial Court is at a discretion, judicially exercisable by perusing the said records, to grant such an ad-interim order before issuance of notice to protect the property, preserve the property and the rights of the appellant/plaintiff so that no



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hardship or inconvenience is caused due to such delay in issuance of notice which is permissible as contemplated under the proviso to Order XXXIX Rule 3 read with Section 151 of CPC which has not been exercised by the learned trial judge, and found it necessary to issue notice to the defendants before granting an ad-interim order.

6. It is noticed at this stage the impugned order passed by the trial Court reads as follows.

**"ORDER ON IA No.I.**

*The plaintiff filed the present suit against the defendants along with application U/o. 39 R 1 and 2 of CPC seeking permission to grant ad-interim ex-parte order in favour of plaintiff. As averred in the plaint the plaintiff purchased the suit schedule property from defendant No.8 under registered sale deed dated 19.03.2025. On the basis of registered sale deed khatha of suit property changed in the name of plaintiff. The plaintiff has been possession in the suit property since the date of purchased suit property. But in the last week of march2026 the defendant unlawfully entered into the suit property and obstruct the possession of plaintiff in respect of the suit property. On the said reasons the plaintiff*



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*constrained the suit against the defendants along with the present application. The plaintiff along with applications furnished photo copy of sale deed dated 19.03.2025, photo copy of E-Khatha, Tax receipts, photographs in A4 size sheets. On perusal of the sale deed its appears that, the sale deed executed in favour of plaintiff and purchased suit property for amount of Rs.45,08,000/- The Khatha of the Suit property also changed in the name of plaintiff. But the question would arises that whether the plaintiff is in possession in the suit property is the triable issue. It is no doubt the title and Khatha is appearing the name of plaintiff, but only on the said ground it can not possible to come with the conclusion that the name of the person appear in the records he is in the possession in the property. Therefore this court opined that before granting interim order the presence of the defendant is required. If any of defendants are in possession in the suit property, the plaintiff knock out the defendants from getting the interim order. Therefore the presence of the defendants is very much needed before passing any order. Therefore I proceed to pass following ORDER Issue emergent notice on IA NO.I and suit summons to the defendants. Call on 23-06-2026 Addl. Civil Judge and JMFC. Channapatna."*



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7. On careful perusal, what the trial Court has done is that the presence of the defendants is very much needed before passing any order on the interim application and therefore has ordered issuance of emergent notice on IA.No.1 and suit summons to the defendants. Therefore, on a bare perusal of the provisions of Order XLIII Rule 1(r), it is seen that the orders that are amenable to appeals are clearly mentioned in the said provision, which reads as follows.

*"(r) an order under rule 1, rule 2  
(rule 2A), rule 4 or rule 10 of Order XXXIX"*

8. It is seen that the legislature in its wisdom has conspicuously left out the Rule 3 of Order XXXIX of CPC from the ambit of Order XLIII Rule 1(r). Under the circumstances when there is no appeal maintainable on issuance of notice under Order XXXIX Rule 3, the question of the appellant/plaintiff maintaining an appeal against the order passed under Order XXXIX Rule 3 would not be



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sustainable. It is needless to mention that the legislature in its wisdom has conspicuously left out Rule 3 of Order XXXIX to be amenable to appeal. In the present order, which is impugned, the application under Order XXXIX Rule 1 and 2 read with Section 151 of CPC is not granted or rejected, whereas only notice is issued on said application to the defendant. The application is still open and yet to be disposed. Therefore, the present appeal is premature and is not maintainable.

9. However, learned counsel for the appellant vehemently contends that he would approach the trial Court for seeking necessary urgent relief in the matter if notice is served for its expeditious disposal of the application. In the meanwhile, he pleads before this Court for at least an order of 'status quo'; to be maintained otherwise, the appellant/plaintiff would be put to irreparable injury and hardship in case of any interference in the suit schedule property. However, this Court deems it appropriate that status quo shall be maintained by the



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parties till the application in IA.No.1 is decided by the learned trial Judge. Accordingly, I pass the following order.

### **ORDER**

- 1) The appeal is ***disposed of.***
- 2) The parties to the proceedings shall maintain status quo as no notice is served yet to the respondent/defendant.
- 3) The application -IA.No.1 shall be decided on appearance of the respondents/defendants within a period of 15 days from the date of receipt of copy of the order.
- 4) It is needless to mention that since notice is already issued, the defendants shall be given an opportunity before passing the said order.



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5) Appellant to communicate this order to  
respondent/defendant by registered  
post.

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

RCK  
List No.: 1 Sl No.: 1