



CNR: KAHC010390682026

NC: 2026:KHC:42619
MFA No. 4166 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 4166 OF 2026 (CPC)

BETWEEN:

1. SMT M N LATHA
AGED ABOUT 46 YEARS
W/O SRI M V NATARAJ
2. SMT M R SRINANDA
AGED ABOUT 44 YEARS
W/O SRI M V RAVISHANKAR

BOTH ARE R/AT NO 33, 2ND CROSS
OPP UMAMAHESHWARI TEMPLE,
NEW K R ROAD, 7TH BLOCK,
JAYANAGAR WEST
BENGALURU - 560 082
REP. BY HER SPECIAL POWER
OF ATTORNEY HOLDER
MR M.V.RAVISHANKAR

... APPELLANTS

Digitally signed by
GAVRIBIDANUR
SUBRAMANYA GUPTA
SREENATH

Location: HIGH COURT (BY SRI. MANU PRABHAKAR KULKARNI, ADVOCATE)
OF KARNATAKA

AND:

SRI GANGADHARA
S/O LATE ABBANNA
MAJOR,
R/AT NO 25, 4TH CROSS,
CHUNCHANAGHATTA VILLAGE,
BENGALURU - 62

...RESPONDENT

(BY SRI. MANJUNATH S., ADVOCATE)



CNR: KAHC010390682026

NC: 2026:KHC:42619
MFA No. 4166 of 2026

THIS MFA IS FILED U/S 43 RULE 1(R) OF CPC, PRAYING TO SET ASIDE THE ORDER DATED 10.06.2026 PASSED ON I.A.NO.1 IN OS.NO. 3921/2026 ON THE FILE OF THE XVII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU.

THIS APPEAL, COMING ON FOR ADMISISION, 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 the plaintiffs in O.S.No.3921/2026, questioning the order dated 10.06.2026 passed in O.S.No.3921/2026 by XVII Additional City Civil and Sessions Judge, Bangalore.

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

3. Brief facts of the case are as under:

A suit came to be filed by the plaintiffs for the relief of declaration, possession, mandatory injunction, permanent injunction and other consequential reliefs pertaining to the suit schedule properties against the defendant.

3.1. Along with the plaint, an application-I.A.No.1 came to be filed under Order 39 Rule 1 and 2 of CPC seeking for an



CNR: KAHC010390682026

order to restrain the defendant, his agents, henchmen or anybody claiming under him, from undertaking any construction activity or raising any structure on the suit Schedule II or Schedule III and IV properties by way of an ad-interim ex-parte order.

3.2. Upon consideration of the application, by the impugned order dated 10.06.2026, after hearing the learned counsel for the plaintiffs, the trial Court, while noting the facts of the case and the relief claimed on the application, came to the conclusion that the documents produced by the plaintiffs, particularly the GPS map and camera based photographs *prima facie* show that the major part of the construction is already almost completed. Added to this, the plaintiffs at present has not produced any survey document to prove alleged encroachment rather he has placed reliance on the satellite bases photographs and therefore, issued suit summons and notice on I.A.No.1 to the defendant returnable by 01.08.2026.

3.3. It is this order, which came to be challenged, by the appellants-plaintiffs.



CNR: KAHC010390682026

4. This Court upon hearing the appellants, vide order dated 16.06.2026, passed an order directing both the parties to maintain status-quo as regard Schedule Properties-II, III and IV as sought in the application filed before this Court and ordered for compliance of Order 39 Rule 3 of CPC. Subsequently, on appearance of the respondent before this Court, it was brought to the notice of this Court that the appellants though had sought interim injunction and relief pertaining to Schedule Properties-II, III and IV, the contention of the respondent-defendant was that the say of plaintiffs was with regard to the encroached portion of Site bearing No.6, which of course belonged to the plaintiffs measuring to an extent of 400 square feet and that the plaintiff did not make any claim for relief of declaration with regard to Schedule Properties-III and IV and therefore, accepting the submission of learned counsel for the respondent, this Court modified the interim order passed earlier by directing the parties to maintain status-quo as regards to Schedule property-II measuring to an extent of 400 square feet, till the next date of hearing by order dated 04.08.2026.



CNR: KAHC010390682026

5. Matter is listed today. Both the learned counsels have argued briefly.

6. Learned counsel for the appellants contends that the order passed by the trial Court is issuance of notice and the application-I.A.No.1 is kept pending. Therefore, instead of keeping this appeal pending before this Court, the matter could be sent back to the trial Court, where the parties could agitate the matter and the defendant-respondent is yet to file his objection statement to the application and the matter will have to be heard as the trial Court is yet to decide the application-I.A.No.1 on merits.

7. It is the order dated 10.06.2026, whereby the trial Court issued summons and notice, that is challenged in the present appeal. Under the circumstances, there is no merit in the impugned order, whereby the trial Court has not applied its judicial mind by way of reasoned order. Similar submission is made by learned counsel for the respondent. Therefore, this Court accepts the submission of learned counsel for the appellants-plaintiffs and also accepts the submission of learned counsel for the respondent-defendant that he is required to be provided an opportunity to file objection statement to the



CNR: KAHC010390682026

application as well as written statement to the plaint and the matter could be decided by the learned trial Judge upon taking the objections and hearing the learned counsel on both parties.

8. It would also be necessary to retain the order of *status-quo* granted by this Court by the latest order dated 04.08.2026 to continue till the application is decided by a trial Court. It would also be relevant to mention that when an application is filed under Order 39 Rule 1 and 2, it would necessarily have to be filed before the Court of first instance to be decided on merits rather than the Appellate Court deciding the application on hand as it is for the Appellate Court to see whether there is any perversity committed by the trial Court on such application being decided either way. It may not be appropriate for this Court to decide the application to be filed before the Court of first instance, so also it is not the requirement under law for this Court to decide application under Order 39 Rule 1 and 2 unless there is some grave error or perversity in the order passed by the learned trial Judge. Under the circumstances, this Court deems it appropriate to direct the learned trial judge to dispose of the application in a time-bound manner.



CNR: KAHC010390682026

NC: 2026:KHC:42619
MFA No. 4166 of 2026

9. Accordingly, I pass the following:

ORDER

- i) This appeal is ***disposed of***.
- ii) The matter is remitted to the trial Court to decide the application-I.A.No.1 in O.S.No.3921/2026 within a period of 30 days from the date of receipt of copy of this order.
- iii) The order of *status-quo* passed by this Court on 04.08.2026 shall continue until disposal of the application-I.A.No.1 by the trial Court.
- iv) It is made clear that the trial Court is at liberty to deal with the application in accordance to law without being influenced by any observations made herein.
- v) It is needless to mention, this Court has not expressed any opinion with regard to the merits of the application or the suit.

Pending applications, if any, stand disposed of.

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