



CNR: KAHC010399472026

NC: 2026:KHC:43571
MFA No. 4377 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 4377 OF 2026 (CPC)

BETWEEN:

THE PRECIOUS BLOOD MISSIONARIES
A SOCIETY REGISTERED UNDER
THE KARNATAKA SOCIETIES
REGISTRATION ACT,
HAVING ITS REGISTERED OFFICE
AT GASPER BHAVAN,
DHARMAMARAM COLLEGE POST,
BENGALURU - 560 029
REP. BY ITS PRESENT PRESIDENT
FR. XAVIER BUDHALI DIVIYANATHAN
AGED ABOUT 48 YEARS
S/O.DIVIYANATHAN BUDHALLI
R/AT NO.154, ST GASPAR BHAVAN
POST BOX NO.2905, BHARATHI LAYOUT
BALAJI NAGAR, BEHIND CHRIST SCHOOL
BENGALURU SOUTH
BENGALURU - 560 029

...APPELLANT

(BY SRI. JOSEPH ANILKUMAR A., ADVOCATE)

AND:

1. SMT. SARASWATHI
W/O LATE S.A. LAKSHMANA
AGED ABOUT 67 YEARS

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



CNR: KAHC010399472026

NC: 2026:KHC:43571
MFA No. 4377 of 2026

2. SRI. S.L. SRINIVAS
S/O LATE S.A. LAKSHMANA
AGED ABOUT 53 YEARS
3. SRI. S.L. SRINATH
S/O LATE S.A. LAKSHMANA
AGED ABOUT 50 YEARS
4. SRI. S.L. LOKESH
S/O LATE S.A. LAKSHMANA
AGED ABOUT 39 YEARS
5. SRI. S.L. PRAKASH
S/O LATE S.A. LAKSHMANA
AGED ABOUT 53 YEARS

ALL ARE R/AT NO. 5
7TH CROSS BHAVANINAGAR
BANNERGHATTA ROAD
BENGALURU - 560 029

...RESPONDENTS

(BY SRI.R.BHADRINATH.,ADVOCATE FOR C/R-1 TO C/R-5)

THIS MFA IS FILED U/S.43 RULE 1(r) OF THE CPC,
AGAINST THE ORDER DT. 02.04.2026 PASSED ON IA NO.1 IN
O.S.NO.26176/2025 ON THE FILE OF THE LXXIII ADDITIONAL
CITY CIVIL AND SESSIONS JUDGE BENGALURU, CCH-74,
DISMISSING THE IA.NO.1 FILED U/O.39 RULE 1 AND 2 R/W
SEC.151 OF CPC, 1908.

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



CNR: KAHC010399472026

NC: 2026:KHC:43571
MFA No. 4377 of 2026

CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

ORAL JUDGMENT

This appeal is preferred by the appellant, who is the plaintiff before the trial Court in O.S.No.26176/2025, being aggrieved by the order dated 02.04.2026 passed on I.A.No.1 in O.S.No.26176/2025 by the LXXII Additional City Civil and Sessions Judge, Mayohall, Bangalore City.

2. The appellant is the plaintiff and the respondents are the defendants.

3. Parties shall be referred to as per their status in the trial Court as plaintiff and defendants, for sake of brevity.

4. Brief facts of the case are as under:

Plaintiff filed the suit against the defendants for the relief of permanent injunction. Along with the plaint, an application came to be filed by the plaintiff seeking an order of temporary injunction restraining the defendants, their men and others from entering or interfering with the peaceful possession or causing obstructions to carry on the construction activity in the suit schedule property.



CNR: KAHC010399472026

4.1. Upon notice being served and accepting the objections of the defendants, the trial Court passed the impugned order dismissing the application of the plaintiff on the ground that the plaintiff is not clear as to how the donor of the plaintiff got right, title in respect of Survey No.75/2 and that the RTC relied on by the plaintiff does not disclose how the plaintiff's donor got right, title with respect of suit schedule property to convey the same to the plaintiff. The document relied by the plaintiff is totally insufficient to establish a *prima-case*. It is also held by the trial Court that there appears to be a dispute with regard to the boundary of the property of defendants and the plaintiff. Therefore, it came to a conclusion that the *prima-facie* case is not made out by the plaintiff so also balance of convenience would not lie in his favour and consequently, the hardship and loss would be caused more to the defendants than to the plaintiff.

4.2. It is this order that is questioned by the appellant before this Court.



CNR: KAHC010399472026

5. It is the vehement contention of learned counsel for the appellant-plaintiff that the trial Court has committed a serious illegality and perversity in dismissing the application-I.A.No.1. It is contended by learned counsel that the plaintiff is the owner of the suit schedule property by way of registered gift deed. Pursuant thereto, a rectification deed has been executed including the boundaries to the gift deed. It is contended by learned counsel that registered gift deed is executed on 14.10.2003 in favour of the plaintiff, which has not been questioned and subsequent thereto, Khata Certificate, Khata Extract are in the name of the plaintiff and building approval plan has also been obtained from the BBMP. The plaintiff is in possession and enjoyment of the suit schedule property. It is further contended by learned counsel that the respondents claimed to be the owners of Survey No.74. The appellant-plaintiff does not have any quarrel with the respondents being the owner of Survey No.74, whereas the appellant-plaintiff claimed title and interest over Survey No.75/2. The trial Court has committed a gross error and perversity in coming to a conclusion that the plaintiff has not



CNR: KAHC010399472026

established his ownership and gone on a tangent to hold that the plaintiff has not produced any material as to how the donor of the plaintiff secured ownership with regard to the property to bequeath the same in favour of the plaintiff.

5.1. It is further contended by the learned counsel that the suit is for bare injunction and it is not a title suit. It is also contended that nobody has challenged the gift deed of the plaintiff neither it is cancelled by any Court of law. On these grounds, he contends that the entire consideration of the application is misconstrued and misconceived by the learned trial Judge while going into the aspect of title as the suit is not for declaration. On these grounds, he seeks to set aside the impugned order.

6. *Per contra*, learned counsel Sri.R.Bhadrinath appearing on behalf of the defendants vehemently contends that there is no illegality or perversity in the impugned order passed by the learned trial Judge. When the plaintiff comes before the Court seeking a relief, it is for him to come before the Court with clean hands by placing all the materials before



CNR: KAHC010399472026

the Court. He has suppressed material facts and the orders that were passed in the earlier round of litigation against the donor of the plaintiff, where the defendants had obtained an interim order of injunction pertaining to Survey No.74. It is further contended by the learned counsel that while the gift deed is executed, it is not clearly forthcoming as to how the donor of the plaintiff secured ownership or title to bequeath the property in favour of the plaintiff to an extent of 6055 square feet. It is also further contended that the plaintiff has not established his ownership, title so also he has not made out a *prima-facie* case for grant of temporary injunction with regard to his ownership and the title of his vendor/donor, who has executed the gift deed.

6.1. It is further contended by the learned counsel that the plaintiff is trying to put up construction in the portion of the property of the defendants namely Survey No.74 for which, he already has an order of injunction against the vendor/donor of the plaintiff, which has been taken into consideration by the learned trial Judge and accordingly, came to the conclusion that the plaintiff having not made out a *prima-facie* case, has



CNR: KAHC010399472026

rightfully dismissed the application, which does not call for interference. On these grounds, he seeks to dismiss the appeal.

7. I have heard learned counsel for the appellant and learned counsel for the respondents.

8. The points that arise for consideration are:

1. *Whether the impugned order passed by the learned trial Judge calls for interference?*
2. *If so, what order?*

9. Apparently, there is no dispute to the fact that the suit is filed for the relief of permanent injunction. The suit schedule property is Old Khata No.75/2, new Khata No.28 situated at Hombegowdanagar measuring to an extent of totally 6055 square feet as per the schedule mentioned in the suit. It is also not in dispute that the plaintiff is not claiming any relief as against Survey No.74, which the defendants claim to be the owner. It is also not in dispute that the defendants had earlier filed suit in O.S.No.No.25859/2009 as against the donor of the plaintiff with respect to Property No.74 which is the neighboring property of the suit schedule property and



CNR: KAHC010399472026

NC: 2026:KHC:43571
MFA No. 4377 of 2026

there is a common boundary wall. It is also not in dispute that the said suit was decreed against the donor of the plaintiff. Thereby, there is a judgment operating as against the donor of the plaintiff so far as Survey No.74 is concerned. Despite that, it is the case of the defendants that the plaintiff is making hectic efforts to put up construction in Survey No.74 rather than the suit schedule property i.e., Survey No.75/2. It is not in dispute with regard to the gift deed executed in favour of the plaintiff and also the fact that there is nobody, who has questioned or challenged the gift deed in any Court of law. The plaintiff accepts the defendants to be the owner with regard to Survey No.74, which is an adjacent property. At the same time, he contends that he is not putting up any construction in Survey No.74 and intends to put up construction in his property i.e., the suit schedule property (Survey No.75/2). This being the case, the trial Court will have to see as to whether plaintiff has made out a *prima-facie* case for grant of temporary injunction.

10. While considering an application under Order 39 Rule 1 and 2 of CPC, three essential requirements are to be



CNR: KAHC010399472026

fulfilled for grant of temporary injunction, namely *prima-facie* case, balance of convenience and hardship that would be caused to the plaintiff in case of non grant of injunction. The *prima-facie* case would also mean whether the plaintiff has brought out sufficient material before the Court to establish any iota of right over the suit schedule property in any manner either lawfully or in settled lawful possession of the suit schedule property. The plaintiff has admittedly produced a registered gift deed executed in his favour on 14.10.2003 and a subsequent rectification deed on 22.03.2004 and on basis of which, he claims right over the suit schedule property. Therefore, the plaintiff has made out a *prima-facie* case to go in for trial to establish his right for grant of permanent injunction during the course of trial.

11. It is not the case of the defendants that the registered gift deed is not executed in favour of the plaintiff. But what is contended is the donor, who executed the gift deed, did not have a valid right, title and interest. This is a question which would have to be decided, if required, during the course of trial, if any such application or amendment is



made for consideration of the validity of the gift deed. For the present, the gift deed is not questioned as the suit is only for permanent injunction. Once a *prima-facie* case is made out, the trial Court will have to see whether the balance of convenience tilts in favour of the plaintiff. In view of the registered gift deed and the plaintiff being the owner, the balance of convenience certainly tilts in his favour so also, much hardship would be caused to the plaintiff in case of non grant of injunction as a *prima-case* is made out by the plaintiff. On the contrary, no cogent material has been placed by the defendants for denying an order of temporary injunction, which would weigh in favour of the defendants and not in favour of the plaintiff.

12. Having gone through the impugned order, it is seen that the trial Court has clearly committed perversity and illegality in not appreciating the registered gift deed in favour of the plaintiff and the fact that all other subsequent revenue records stand in the name of the plaintiff for the purpose of grant of temporary injunction, thereby the order cannot be sustained.



CNR: KAHC010399472026

NC: 2026:KHC:43571
MFA No. 4377 of 2026

13. For the aforesaid reasons and in view of the discussions made herein above, the points for consideration are answered accordingly.

14. Accordingly, I pass the following:

ORDER

- i) The appeal is ***allowed***.
- ii) The impugned order dated 02.04.2026 passed on I.A.No.1 in O.S.No.26176/2025 is hereby set aside.
- iii) Consequently, I.A.No.1 filed under Order 39 Rule 1 and 2 of CPC is allowed.
- iv) The respondents-defendants are hereby restrained from interfering, entering with the peaceful possession and enjoyment or causing obstructions to carry out construction activity by the plaintiff in the suit schedule property.

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