



NC: 2026:KHC:49603  
MFA No. 4910 of 2026

CNR: KAHC010443262026

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

**DATED THIS THE 10<sup>TH</sup> DAY OF SEPTEMBER, 2026**

**BEFORE**

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

**MISCELLANEOUS FIRST APPEAL NO.4910 OF 2026 (CPC)**

**BETWEEN:**

1. SMT.KUNJAMMA PAUL  
W/O LATE PAUL THEKKAN  
AGED ABOUT 71 YEARS
2. SRI. ANTO PAUL THEKKAN,  
S/O LATE PAUL THEKKAN  
AGED ABOUT 39 YEARS
3. SRI. SEBI PAUL,  
S/O LATE PAUL THEKKAN  
AGED ABOUT 38 YEARS

ALL ARE R/AT NO.224,  
3RD CROSS, 1ST MAIN,  
JAKKASANDRA EXTENSION  
1ST BLOCK, KORAMANGALA  
BENGALURU 560 034

...APPELLANTS

(BY SRI.VENUGOPALA M S., ADVOCATE)

**AND:**

1. SRI.T.RAMACHANDRA  
S/O THIMMAIAH  
AGED ABOUT 65 YEARS  
R/AT 3(RD) MAIN, 4TH CROSS,  
HONGASANDRA, BEGUR ROAD  
BENGALURU- 560 068

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



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2. SRI. H.N. GIRISH,  
S/O H.C. NARAYANA REDDY  
AGED ABOUT 48 YEARS  
R/AT NO.122, HONGASANDRA  
BEGUR ROAD, BENGALURU - 560 068
3. SRI.VEERENDRA SWAMY A.M.,  
S/O CHANNAVEERA SWAMY A.M.  
AGED ABOUT 51 YEARS  
R/AT NO.2, 1(ST) MAIN,  
NGEF LAYOUT, SANJAYA NAGAR  
BENGALURU 560 094
4. SRI. K. MOHAN BABU,  
S/O K. RAJIAH  
AGED ABOUT 44 YEARS  
R/AT NO.38, 5(TH) MAIN  
1 (ST) CROSS, IBBALUR  
SARJAPUR ROAD, NEAR PILLEKAMMA  
TEMPLE ROAD, AGARA  
BENGALURU - 560 102
5. SRI. K. PRAKASH,  
S/O LATE P. GANGULIAH  
AGED ABOUT 41 YEARS  
R/AT FLAT NO.102, 1(ST) FLOOR  
NO.18/101/16,  
OM NILAYA APARTMENT  
DODDAMMA DEVI TEMPLE ROAD  
BELLANDUR, BENGALURU 560 103
6. SRI. M.N. GIRISH,  
S/O B.S. NAGARAJU,  
AGED ABOUT 43 YEARS,  
R/AT NO.36, 4TH MAIN  
VENKATESHWARA LAYOUT  
JAIBHEEMNA NAGAR, MADIWALA  
BENGALURU - 560 068

...RESPONDENTS

(BY SRI.B.SOMASHEKAR NAIDU, ADVOCATE FOR C/R4 & C/R5;  
NOTICE SERVED TO R1 TO R3 IS D/W V/O/DT:20.08.2026)



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THIS MFA IS FILED U/S.43 RULE 1(r) OF THE CPC, AGAINST THE ORDER DT.23.04.2026 PASSED ON IA NO.V IN O.S.NO.3070/2023 ON THE FILE OF THE XV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU DISMISSING THE IA.NO.5 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:

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.3070/2023, questioning the order dated 23.04.2026 passed on I.A.No.5 by the XV Additional City Civil and Sessions Judge at Bengaluru, whereby the trial Court dismissed I.A.No.5 filed under Order 39 Rule 1 and 2 of CPC by the plaintiffs.

2. The respondents are the defendants 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 defendants, for the sake of brevity.



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4. Brief facts of the case are as under:

The plaintiffs filed the suit against the defendants for the relief of declaration to declare that the plaintiffs to be the absolute owner of the suit schedule property. Further, for a direction to the defendants to hand over possession of suit schedule property and for cancellation of three registered sale deeds and for consequential perpetual injunction.

4.1. During the course of the proceedings, plaintiffs filed an application-I.A.No.5 under Order 39 Rule 1 and 2 for a direction to defendant Nos.4 to 6 not to put up any construction, altering or changing the nature of the suit schedule property during the pendency of the suit. This application was filed subsequent to the impleadment of defendant Nos.4 to 6, who were initially not made as parties.

4.2. Upon serving copy of the application, defendant Nos.4 and 5 filed objections to the application denying the contentions made therein and sought for dismissal of the application.



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4.3. The trial Court, upon consideration of the application, framed the following points for consideration:

- "1) Whether the plaintiffs have established prima-facie case for grant of injunction?*
- 2) Whether the balance of convenience lies in favour of plaintiff?*
- 3) Whether the irreparable loss or injury will be caused to the plaintiff if injunction is not granted?*
- 4) What order?"*

4.4. After hearing the learned counsel for the parties, the learned trial Judge did not find favour with the plaintiffs and came to the conclusion that the plaintiffs did not establish a clear *prima facie* case for going into trial so also held the earlier suit filed by the plaintiffs against the defendants came to be dismissed on the apparent discrepancy between the General Power of Attorney and the sale deed not in favour of the plaintiffs and also came to the conclusion that there is a serious dispute with regard to the identity of the suit schedule property. On the contrary, the trial Court came to the conclusion that the defendants have made out a valid case by



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producing relevant documents and also produced materials to show that they are in possession and enjoyment of the property and also have put up construction in the suit schedule property and that the defendants would suffer more hardship and inconvenience rather than the plaintiffs and the balance of convenience tilted in favour of the defendants. Accordingly, rejected I.A.No.5 filed by the plaintiffs.

4.5. It is this order that is challenged by the appellants-plaintiffs before this Court on several grounds.

5. Learned counsel Sri Venugopala.M.S., for the appellants vehemently contends that the impugned order passed by the trial Court is perverse, illegal and arbitrary. The trial Court has come to an erroneous conclusion by dismissing the application without going into the details of the application and the case putforth by the plaintiffs with regard to the suit schedule property in question, which is the absolute property of the plaintiffs. In fact, he contends that the trial Court has conducted a mini trial at the stage of interlocutory application, which is not permissible, as the trial Court is required to see the quality of the materials placed on record rather than



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delving into the merits of the matter to decide the application one way or the other. It is also contended by learned counsel that the trial Court ought not to have ventured into the merits of the matter so also with regard to the alleged cloud so stated and with regard to the identity of the suit schedule property and the General Power of Attorney and the sale deeds boundaries or the veracity of the same, which is ex-facie, perverse and arbitrary. By doing so, the trial Court has already pre-judged the entire suit by conducting a mini-trial.

5.1. Learned counsel further contends that the father of the plaintiffs has purchased the suit schedule property through a General Power of Attorney dated 21.02.1994 and the sale deed dated 31.03.1995 executed in favour of late Paul Thekkan, whose legal heirs are the appellants-plaintiffs. The trial Court has misdirected itself in holding that the earlier suit filed by late Paul Thekkan in O.S.No.5967/2008 came to be dismissed and the Regular First Appeal in RFA No.1232/2016 against the said dismissal order also having been dismissed would act against the plaintiffs' interest may not be correct as the said suit was filed only for bare junction against entirely



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different defendants and not the present defendants. So also the trial Court has ignored the fact that the Regular First Appeal came to be withdrawn by the appellants therein to initiate the present suit on hand with liberty, which was granted.

5.2. It is also vehemently contended by learned counsel for the appellants that the defendants are not the owners of the suit schedule property as it is not the case of the defendants also that they are the owners of the suit schedule property bearing House list No.72, Khata No.54. Therefore, he contends that the property in question is located beside the property of the defendants as shown even in the sale deed of the plaintiffs and in the sale deed of the defendants, the southern side is shown to be a private property though not specifically mentioned to be that of the plaintiffs or their father. When defendants are not claiming right over the suit schedule property, the question of *prima facie* case having been not made out by the plaintiffs as per the impugned order is incomprehensible. Learned counsel further contends that when admittedly the case of the defendants is that they are the owners of two plots bearing House List Nos.27 and 91 and



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when the defendants themselves do not claim right over the suit schedule property, the trial Court ought to have allowed the application.

5.3. It is further contended by learned counsel for the appellants-plaintiffs that the suit schedule property is situated on the southern side of property bearing House List No.27. Therefore, the defendants in the guise of putting up construction and amalgamation of two properties have integrally encroached into the property of the plaintiffs with *mala fide* intention and ulterior motive to knock off the property of the plaintiffs. Hence, the suit came to be filed by the plaintiffs to protect their property. Consequently, an application came to be filed to restrain the defendants from putting up construction in the property. The trial Court has absolutely ignored all these crucial aspects and has relied upon the documents produced by the defendants, so also the Municipal Records and the construction activities having been put up in their property, they have nothing to do with the plaintiffs' property. Therefore, the trial Court has committed a serious error in dismissing the application vide impugned order. Hence,



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he seeks to set aside the impugned order by allowing the appeal.

6. *Per contra*, learned counsel Sri B.Somasekar Naidu appearing on behalf of the caveator/respondent Nos.4 and 5 vehemently contends that there is no illegality or perversity in the impugned order passed by the learned trial Judge. Even according to the plaintiffs, in the application filed by them, they have sought for a direction to defendant Nos.4 to 6 not to put up construction, alteration or changing the nature of the suit schedule property. Therefore, apparently it is the case of the plaintiffs that the defendants are putting up construction and to a large extent, they have completed the construction. It is further contended that the defendants have produced several documents to show their ownership over the property bearing House List Nos.27 and 91 and they are in lawful possession and enjoyment of their property in their own right by way of holding a valid title.

6.1. It is also contended by learned counsel that earlier, Paul Thekkan filed an injunction suit in O.S.5967/2008 against the defendants therein. The said suit came to be dismissed



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holding that the plaintiff therein did not prove his title or established possession over the suit schedule property and having filed the Regular First Appeal, the same was dismissed as withdrawn. Therefore, even in the earlier suit, the father of the plaintiffs was unable to establish his title or possession over the suit schedule property. Having not succeeded in the said suit by the father of the plaintiff, the present suit filed for declaratory relief and the application for injunction cannot be granted when in the earlier suit, the father of the plaintiffs were unable to succeed.

6.2. Therefore, learned counsel contends that the defendants have produced sufficient documents of title with regard to House List Nos.27 and 91 and they have already completed major portion of the construction in the property and even according to the plaintiffs, the construction activities are being carried out by the defendants. The relief sought by the plaintiffs are for handing over possession of the property. Thereby, the plaintiffs are admittedly not in possession of the suit property. Therefore, when the defendants have put up construction in their property and the plaintiffs having failed to



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establish *prima facie* case of their possession and title over the suit schedule property, the balance of convenience and irreparable hardship weighs more in favour of the defendants rather than the plaintiffs as the trial Court has taken into consideration the title documents, the Khatha, tax paid receipts, sanction plan, licence and other documents including the construction activities having been carried out by the defendants and has rightly dismissed the application of the plaintiffs, which does not call for interference.

6.3. Learned counsel further contends that it is a different matter that whether the plaintiffs would succeed or not in the suit, but when the plaintiffs themselves admit that there is construction activities being carried out, the defendants cannot be restrained from putting up construction in their properties, thereby causing irreparable injury and hardship and financial loss. On these grounds, he seeks to dismiss the appeal.

7. I have heard the learned counsel for the appellants-plaintiffs and learned counsel for the caveator-respondent Nos.4 and 5-defendant Nos.4 and 5.



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

1. *Whether the impugned order 23.04.2026 passed on I.A.No.5 in O.S.No.3070/2023 by the XV Additional City Civil and Sessions Judge at Bengaluru calls for interference and if so, what order?*

9. Admittedly, there is no dispute to the fact that the suit is filed by the plaintiffs for the relief of declaration as mentioned earlier and for a direction to the defendants to hand over possession of the suit schedule property. In the application-I.A.No.5 filed by the plaintiffs, the plaintiffs sought to restrain defendant Nos.4 to 6 from not putting up construction, altering and changing the nature of the property. Several rival contentions are made by each of the parties. Both the plaintiffs and the defendants relied upon the registered sale deeds in their favour with regard to their respective properties. The plaintiffs have said that the defendants are putting up construction in the suit schedule property, whereas the defendants claim is that they are putting up construction in their own property and not that of the plaintiffs. It is also a fact



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that the defendants are not claiming any right over the suit schedule property of the plaintiffs, but disputes the identity of the property so claimed by the plaintiffs and their title over the property. All these are matters are to be decided and looked into by the trial Court during the course of trial.

10. Apparently, when the plaintiffs have asked the defendants not to put up construction and the defendants having produced material to show that they have already completed most of the construction, the trial Court is required to see *prima facie* case, balance of convenience and hardship that would be caused more to which of the party while deciding the application under Order 39 Rule 1 and 2. Even if a *prima facie* case is made out by the plaintiffs, the other two essential requirements and elements of balance of convenience and irreparable injury would have to be looked into while granting or rejecting an application for temporary injunction.

11. In the present case on hand, the defendants are admittedly putting up construction and to a large extent, the construction is over. The trial Court would have to probably decide whether the plaintiffs succeed in the suit on the basis of



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trial. Therefore, the trial Court has not committed any error of perversity or illegality in rejecting the application of the plaintiffs for grant of temporary injunction by a considered and reasoned order.

12. It would be relevant to mention at this stage that the plaintiffs have filed the suit for the relief of declaration and handing over possession with regard to suit schedule property based on the title. It is for the plaintiffs to succeed on the basis of their own documents and not on the weakness of the defendants. In case plaintiffs succeed in the suit, it should not be that they are unable to realise the fruits of the decree.

13. At this stage, learned counsel for defendant Nos.4 and 5 contends that the defendants would not alienate the property, till the disposal of the suit.

14. It is for the trial Court to decide during the course of trial as to whether suit schedule property exists, identity is established by the plaintiffs and whether there is any encroachment by the defendants over the suit schedule property, which all requires trial. However, whatever



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construction that is put up by the defendants over the property, they shall not claim equity over the same in case of the plaintiffs succeeding in the matter.

15. In view of the discussions made herein above, I pass the following:

**ORDER**

- i) The appeal is ***disposed of***.
- ii) In case the plaintiffs succeed in the suit, the defendants shall not claim equity on the constructions made in the property.
- iii) The defendants shall not alienate the property, till disposal of the suit.
- iv) All contentions of the parties are kept open.
- v) This Court has not expressed any opinion on the merits of the matter.

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