



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 4946 OF 2026 (CPC)

BETWEEN:

1. SRI. L. ESHWARAIAH
S/O. LATE LINGAPPA,
AGED ABOUT 66 YEARS,
2. SRI. S.L. UMESH,
S/O. LATE LINGAPPA,
AGED ABOUT 56 YEARS,
3. SRI. SIDDALINGAIAH S.N,
S/O. LATE NARASAPPA,
AGED ABOUT 67 YEARS,
4. SRI. KEMPANNA,
S/O. LATE NARASAPPA,
AGED ABOUT 54 YEARS,
5. SRI. S. KEMPANNA
S/O. LATE SEEBILINGAIAH,
AGED ABOUT 62 YEARS,
6. SRI. NATARAJU
S/O. LATE SEEBILINGAIAH,
AGED ABOUT 55 YEARS,

ALL ARE R/AT. SINGIPURA VILLAGE,
BELLAVI HOBLI, TUMAKURU TALUK
AND DISTRICT - 572 107

...APPELLANTS

(BY SRI. V.B. SIDDARAMAIAH, ADVOCATE)



AND:

1. SRI. B.J. ANJANAMURTHY
S/O. B.P. JAYARAM,
AGED ABOUT 45 YEARS
2. SRI. B.P. KRISHNAPPA
S/O. PUTTARAMAIAH,
AGED ABOUT 52 YEARS
3. SRI. RAMU B.P,
S/O. PUTTARAMAIAH,
AGED ABOUT 50 YEARS
RESPONDENT NO.1 TO 3 ARE
ARE R/AT. SINGIPURA VILLAGE,
BELLAVI HOBLI, TUMAKURU TALUK
AND DISTRICT, KARNATAKA - 572 107.
4. SRI. S.C. AMARESH
S/O. CHALUVAIAH SETTY,
AGED ABOUT 46 YEARS,
5. SRI. DAYANANADA
S/O. DODDAIAH,
AGED ABOUT 43 YEARS
RESPONDENT NO.4 AND 5
ARE R/AT. BELLAVI AT AND POST,
BELLAVI HOBLI, TUMAKURU TALUK
AND DISTRICT - 572 107.

... RESPONDENTS

THIS IS MFA FILED U/O.43 RULE 1(r) OF THE CPC,
AGAINST THE ORDER DT.30.05.2026. PASSED ON IA NO.1 IN
O.S.NO. 315/2026 (OLD O.S.NO.179/2026) PASSED BY
VACATION JUDGE AND VI ADDITIONAL DISTRICT AND
SESSIONS JUDGE, TUMAKURU.,DISMISSING THE IA NO.2
FILED U/O.39 RULE 1 AND 2 R/W SEC.151 OF CPC, 1908.



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 preferred by the plaintiffs in O.S No.315/2026 (old O.S numbered as O.S No.179/2026).

2. The appellants are the plaintiffs who filed a suit for declaration to declare themselves to be the absolute owners, physical possession and enjoyment of the suit schedule property and for other consequential reliefs. Along with the plaint, they filed three applications. What is questioned here is the orders passed on I.A No.2/2026. This I.A No.2/2026 came to be filed by the plaintiffs for restraining the defendants from alienating or creating any charge over the suit schedule property by way of sale, mortgage in whatsoever manner pending disposal of the suit. This application came to be rejected by the impugned order by the learned trial judge while passing an ad



interim ex parte order prior to issuances of notice to the respondent/defendants. The relevant portion of the order of the learned trial judge in the impugned order is at paragraph No.3 which reads as under:-

".I have completely gone through the entire documents and after hearing the counsel for plaintiff it is noticed that the plaintiff has filed this suit for the relief of declaration and injunction. The plaintiffs have relied upon the old RTC and have not filed the recent RTC to show their alleged possession and interference. Hence in a case like this in hand before passing any orders it is just and necessary to hear the other side and hence the plaintiff is not entitled for the relief claimed. The plaintiff has not made out prima-facie case to issue ad-interim exparte injunction order at this stage as claimed and I proceed to pass the following".

ORDER

The I.A No.2 filed by the plaintiff under order 39 Rule 1 and 2 of CPC is hereby dismissed on without costs".



2. On careful perusal of the impugned order, the learned trial judge has gone on to hold that the plaintiffs have not filed recent RTC to show their alleged possession and interference. Further, the trial Court has gone on to say "hence in a case like this in hand before passing any orders it is just and necessary to hear the other side and hence the plaintiff is not entitled to the relief claimed". Further, the trial Court has gone on to say that the plaintiff has not made a *prima facie* case to issue ad-interim ex parte injunction order at this stage, as claimed and proceeds to pass the order by dismissing the application I.A No.2.

3. This Court does not find the need or necessity to issue notice to respondent as the notice to the respondent/defendant has not been served before the trial Court and there is no appearance by the defendant before the trial Court.



4. On careful perusal of the impugned order the trial Court at one stage has held that the plaintiff has not filed the recent RTC to show his alleged possession and interference. Whereas, I.A No.2 is filed for restraining the defendants from alienating or creating any charge over the suit schedule property either by way of sale or mortgage or in whatsoever manner. The trial Court has misdirected itself by holding that, the plaintiff has not produced any document to show alleged possession and interference. Further, it is relevant to mention that the trial Court has come to a conclusion that on the basis of the facts it would not be possible for the trial Court to pass an order before hearing the other side that is the defendant and again comes to a conclusion that plaintiff is not entitled to the relief claimed and not made out *prima facie* case and consequently dismissed the application I.A No.2.

5. When an application under Order 39 Rule 1 and 2 of CPC is filed, the trial Court is at liberty to either issue notice or if the trial Court finds the need or necessity that



by issuance of notice and delay thereby it can exercise its option under discretion to dispense with the Notice, as the delay may cause hardship and inconvenience and damage to the property and threat to the plaintiff, can pass an ad-interim ex parte order by dispensing notice to the defendant which is permissible as per the provisions of Order 39 Rule 3 proviso.

6. In the present case on hand, the trial Court comes to a conclusion that it would be necessary to hear the other side before passing any order and by saying so instead of issuing notice and hearing the defendant before passing any order has dismissed the application without applying its mind.

7. Under the circumstances, the impugned order is devoid of merits and the same requires to be set aside. However, since it is an order that was passed ad-interim ex parte and notice is not served to the defendant yet this Court deems it appropriate that the trial Court may



reconsider the application I.A. No.2 and pass fresh orders either ad-interim prior to notice being served if not received by the defendant or if already served pass suitable orders on the application afresh within a period of 15 days from the date of receipt of copy of this order.

8. Accordingly, I pass the following:-

ORDER

- i. This appeal is allowed.
- ii. The impugned order passed on I.A. No.2 and Order 39 Rule 1 and 2 of CPC dated 30.05.2025 is hereby set aside.
- iii. The learned trial judge is directed to reconsider the application afresh for either grant of an ad-interim order ex parte prior to issuance of notice or if a notice is served to the defendant and appearance is made to consider the application on merits within a



period of 15 days from the date of receipt of
copy of the order.

- iv. It is made clear that this Court has not
expressed any opinion on the merits of the
application.

Ordered accordingly.

Sd/-
(PRADEEP SINGH YERUR)
JUDGE

VS
List No.: 1 Sl No.: 16