



CNR: KAHC010490892026

NC: 2026:KHC:51532
MFA No. 5324 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 5324 OF 2026 (CPC)

BETWEEN:

1. SRI KRISHNA SHET
AGED ABOUT 68 YEARS
S/O. LATE S. SHRINIVAS SHET
R/AT 98/1, 21 WARD, BB STREET
OPP. AYYAPPA TEMPLE
SHIMOGA - 577 201.
2. SRI PANDURANGA S SHET
AGED ABOUT 58 YEARS
S/O. LATE S. SHRINIVAS SHET
R/AT #98-1, BB ROAD
OPP. AYYAPPA TEMPLE
SHIMOGA - 577 201.

...APPELLANTS

(BY SRI NAGENDRA KUMAR K., ADVOCATE)

AND:

1. SRI SUNDHAR SHET S.
AGED ABOUT 86 YEARS
S/O. LATE S. SHRINIVAS SHET
R/AT THIGALARA KERI
LEFT SIDE, GANDHI BAZAR
SHIMOGA - 577 201.
2. SRI RAMESH SHET
AGED ABOUT 82 YEARS
S/O. LATE SHRINIVAS SHET
R/AT JATTAPPA HOUSE
UPPUNDA, BYNDOOR TALUK
UDUPI DISTRICT - 576 214.

Digitally
signed by
VINUTHA M
Location:
HIGH
COURT OF
KARNATAKA



NC: 2026:KHC:51532
MFA No. 5324 of 2026

CNR: KAHC010490892026

3. SRI NAGARAJA SHET
AGED ABOUT 76 YEARS
S/O. LATE SHRINIVAS SHET
R/AT SAGAR ROAD
VINAYAKA NAGARA
GOVATOOR, RIPPONPETE
HOSANAGARA - 577 426.
4. SMT. AMBABAI @ SULOCHANA
AGED ABOUT 82 YEARS
C/O. NAGESH SHET
R/AT NO.229,
37TH CROSS ROAD
11TH A MAIN ROAD
JAYANAGAR, 4TH T BLOCK
BANGALORE SOUTH - 560 041.
5. SMT. SHARADA SHET
AGED ABOUT 73 YEARS
C/O. SRINIVASA
R/AT 1/4/77 A 3C
OM SHRI HAYAGRIVA NILAYA
BELAGARA BETTU, GUNDIBAILU
UDUPI - 576 102.
6. SMT. LAKSHMIBAI
AGED ABOUT 70 YEARS
C/O. P. MANJUNATHA
R/AT #11-1-76B
SHRIBEEDU
BANNANJE
UDUPI - 576 101.
7. SMT. BABY SHET
AGED ABOUT 64 YEARS
W/O. ANANTHA SHET
R/AT #98/1
JAIN TEMPLE ROAD
GANDHI BAZAR
SHIMOGA - 577 202.



NC: 2026:KHC:51532
MFA No. 5324 of 2026

CNR: KAHC010490892026

8. SMT. NAGAMMA SHET
AGED ABOUT 65 YEARS
C/O. GURUNATH KUDTARKAR
JATTAPPA HOUSE, UPPUNDA
BYNDOOR TALUK
UDUPI DISTRICT - 576 214.
9. SMT. M. RATNAMMA
AGED ABOUT 64 YEARS
W/O. G. MOHAN
R/AT 226, 14 WARD
THALVAR ONI KAMPLI
RAMDEVARA GUDI HATTIRA
HOSPETE TALUK
BELLARY - 583 132.
10. SMT. GIRIJA,
AGED ABOUT 61 YEARS
W/O. JAYARAMA V BHAT
R/AT 3-162-A1
EAST BLOCK ROAD
KUNDAPURA
UDUPI - 576 201.
11. SMT. REVATI RAVINDRANATH SHET
AGED ABOUT 54 YEARS
W/O. RAVINDRANATH SHET
R/AT BHARAT GAS GODAN
6TH CROSS, GANDHI NAGAR
SIRSI - 581 403.
12. SMT. GAYATHRI H.S.
AGED ABOUT 53 YEARS
W/O SATISH K.S.
R/AT H-I-100, 7TH CROSS
HEMMADY, KUNDAPURA - 576 230.

...RESPONDENTS

(BY SRI GOVINDARAJ K.JOISA, ADVOCATE FOR R2)



CNR: KAHC010490892026

NC: 2026:KHC:51532
MFA No. 5324 of 2026

THIS MFA IS FILED UNDER ORDER XLIII RULE 1(R) OF CPC, PRAYING TO SET ASIDE THE ORDER DATED 08.07.2026 PASSED ON I.A.NO.2 IN OS.NO.47/2026 BY THE SENIOR CIVIL JUDGE, KUNDAPURA.

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 appellants, who are the plaintiffs before the trial Court, challenging the order dated 08.07.2026 passed in O.S.No.47/2026 by the Senior Civil Judge, Kundapura (for short, "trial Court"). The respondents are the defendants before the trial Court.

2. The suit came to be filed by the plaintiffs seeking relief of partition and separate possession of their respective shares in the suit schedule properties and other consequential reliefs. Along with the plaint, the plaintiffs filed I.A.No.I under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (for short, "CPC"), seeking an order of temporary injunction restraining defendant Nos.2 and 8, their agents, servants,



CNR: KAHC010490892026

representatives, assignees or anybody claiming through or under them from alienating, selling, transferring, gifting, mortgaging, leasing, creating any charge, encumbrance or third party interest in respect of the suit schedule properties or any portion thereof, pending disposal of the suit. The plaintiffs also filed I.A.No.II under Order XXXIX Rules 1 and 2 read with Section 151 of CPC, seeking an order of temporary injunction restraining defendant Nos.2 and 8, their agents, servants, representatives, contractors, labourers, assignees or anybody claiming through or under them from carrying out any further construction, reconstruction, demolition, alteration, addition, improvement or otherwise changing the nature and physical features of the suit schedule properties or any portion thereof, pending disposal of the suit.

3. The matter was taken up by the trial Court on the first date of hearing. The plaintiffs advanced their arguments seeking grant of an ad interim order of



CNR: KAHC010490892026

temporary injunction. Vide order dated 08.07.2026, the trial Court passed the following order:

*"Case called out in the open Court.
Plaintiff is absent.
Defendants are absent.
No grounds made out for grant of ex-parte T.I as
sought in IA NO.I and II.
Issue SS and notice to defendants.
Returnable by 05-08-2026."*

4. It is the vehement contention of learned counsel for appellants-plaintiffs that the trial Court has recorded a finding that no grounds are made out for granting an *ex parte* temporary injunction as sought for in I.A.Nos. I and II. Accordingly, the trial Court directed issuance of suit summons and notice to the defendants. Therefore, according to the learned counsel, the said order would necessarily mean that the trial Court has declined to grant and in effect, rejected the prayer for an *ex parte* ad interim temporary injunction. Hence, the present appeal is maintainable under Order XLIII Rule 1(r) of CPC. However,



CNR: KAHC010490892026

upon approaching this Court, an interim order came to be passed on 23.07.2026 directing the parties to maintain *status quo*. Notice was also ordered to be issued to the respondents.

5. Learned counsel for respondents-defendants, who is present before the Court, contends that the present appeal is not maintainable. He submits that the order passed by the trial Court is one under Order XXXIX Rule 3 of CPC and not an order under Order XXXIX Rules 1 and 2 of CPC, as the trial Court has merely ordered issuance of notice on I.A.Nos.I and II. Therefore, no order has been passed on the said applications and the applications have been kept pending for consideration. On these grounds, learned counsel contends that the present appeal is not maintainable, since an order passed under Order XXXIX Rule 3 of CPC does not fall within the purview of Order XLIII Rule 1(r) of CPC.



CNR: KAHC010490892026

NC: 2026:KHC:51532
MFA No. 5324 of 2026

6. Having heard learned counsel for appellants-plaintiffs and learned counsel for respondents-defendants, the point that arise for consideration is as follows:

"1. Whether the appeal is maintainable in view of the order dated 08.07.2026, whereby the trial Court has issued suit summons and notice to the defendants without either allowing or rejecting the applications?"

7. Apparently, it is not in dispute that when the plaintiffs argued the matter, the trial Court neither granted an *ex parte* order of temporary injunction nor rejected the prayer for grant of *ex parte* temporary injunction. I.A.Nos.I and II are still pending for consideration. The trial Court has ordered issuance of notice to the defendants, returnable by 05.08.2026. Therefore, the applications filed by the plaintiffs have not been disposed of and are kept alive. It is only the notice that has been issued to the defendants under Order XXXIX Rule 3 of CPC, as contemplated thereunder.



8. Under the circumstances, when the trial Court has not adverted to the merits of the applications by either granting an ad interim order of temporary injunction or rejecting the applications, the question of preferring an appeal under Order XLIII Rule 1(r) of CPC would not arise, as there is a bar under Order XLIII Rule 1(r) of CPC, for the reason that an order passed under Order XXXIX Rule 3 of CPC is conspicuously absent from the appealable orders provided under Order XLIII Rule 1(r) of CPC.

9. However, this Court, in the case of ***Sri Suresh Babu J.N. v. Sri Jaganmohan and Others***¹, has already considered a similar issue and held that an appeal would not be maintainable unless a speaking order is passed by the trial Court either expressly granting or rejecting the applications in question, which has not been done in the present case. Therefore, the appeal would not lie against an order passed under Order XXXIX Rule 3 of CPC unless

¹ MFA.No.3477/2026 decided on 30.06.2026



CNR: KAHC010490892026

NC: 2026:KHC:51532
MFA No. 5324 of 2026

an order is passed under Order XXXIX Rules 1 and 2 of CPC.

10. Accordingly, I pass the following:

ORDER

- i. The appeal is ***dismissed*** as not maintainable;
- ii. Liberty is reserved to the appellants-plaintiffs to approach the trial Court seeking appropriate orders on I.A.Nos.I and II, if there is any urgency;
- iii. If any such applications are made, the trial Court shall consider and dispose of the same within a period of fifteen (15) days from the date of receipt of a copy of this order.

In view of dismissal of the appeal, pending interlocutory application, if any, does not survive for consideration and the same pales into insignificance.

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

CPN
List No.: 1 Sl No.: 11