



CNR: KAHC010536042026

NC: 2026:KHC:46247
MFA No. 5680 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 5680 OF 2026 (CPC)

BETWEEN:

1. SMT. SUDHAMMA
W/O LATE A.N.JANARDHANA REDDY
AGED ABOUT 65 YEARS
2. J.NANDA KISHORE
S/O LATE A.N.JANARDHANA REDDY
AGED ABOUT 35 YEARS

BOTH ARE R/AT. NO. 174,
NEAR SVT TEMPLE,
AGARA VILLAGE AND POST,
BEGUR HOBLI, BENGALURU-560 034.

...APPELLANTS

(BY SRI. D.R. RAVISHANKAR., SR.ADV. FOR
SRI. MALLAREDDY B.V., ADVOCATE)

AND:

1. SMT. B. RAMAMANI
W/O LATE RANGANATHA REDDY
AGED ABOUT 62 YEARS
2. MADHUSUDHANA REDDY
S/O LATE RANGANATHA REDDY
AGED ABOUT 36 YEARS

BOTH ARE R/AT NO.229,



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AGARA VILLAGE,
HSR LAYOUT,
BENGALURU-560 034.
RESPONENTS ARE REPTD. BY THEIR GPA HOLDER
SRI.M.RAMESH
S/O. MUNIREDDY
AGED ABOUT 55 YEARS
R/AT NO.668, MARUTHI NILAYA,
22ND CROSS, 22ND A MAIN ROAD,
2ND SECTOR HSR LAYOUT,
BENGALURU-560 102.

...RESPONDENTS

(BY SRI. H.S.DWARAKANATH., ADV. A/W;
SRI. R.V. SRINIVASA REDDY FOR C/R1 & R2)

THIS MFA IS FILED U/O 43 RULE 1(r) OF CPC, AGAINST
THE ORDER DATED 28.07.2026 PASSED ON I.A.NO.1 IN
OS.NO. 4750/2026 ON THE FILE OF THE X ADDITIONAL
CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-26),
ALLOWING THE I.A.NO.1 FILED UNDER ORDER 39 RULE 1 AND
2 READ WITH SECTION 151 OF CPC.

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 defendants in O.S.No.4750/2026. The respondents are
the plaintiffs before the trial Court.



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2. Parties shall be referred to as plaintiffs and defendants for the sake of brevity.

3. Plaintiffs filed a suit against the defendants, claiming the relief of declaration and permanent injunction as under:

- I. *Declare that the plaintiff no.1 perfected her title by way of adverse possession and consequently to declare that the plaintiffs no.1 and 2 are the absolute owners of the schedule property.*
- II. *Grant permanent injunction restraining the defendants from interfering with peaceful possession and enjoyment of the schedule property by the plaintiff.*
- III. *Costs and any such other relief or relief's as this Hon'ble court deems fit to grant to the Plaintiff in the circumstances of the case, so as to meet the ends of justice and equity.*

4. Along with the plaint, plaintiffs filed an application under Order XXXIX Rule 1 and 2 read with Section 151 of CPC in IA.No.1 seeking an order of temporary injunction restraining the defendants from



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putting up any further construction and from interfering with the peaceful possession and enjoyment of the plaintiffs over the suit schedule property. The defendants, upon appearance, filed the statement of objections and denied the entire claim so made by the plaintiffs, by taking the plea that the suit itself is not maintainable, much less passing an order of temporary injunction, and also took up the plea that the plaintiffs cannot approbate and reprobate on their own admissions and sought for dismissal of the application.

5. However, the trial Court upon consideration of the application, came to the conclusion by relying upon a previous suit filed by Smt.K.Jayamma in OS.No.7642/1996 and the previous Panchayath records prima facie that the said Ranganatha Reddy and the plaintiffs have been in settled possession of the suit schedule property and also came to the conclusion that the defendants have not stated in their objection statement as to when and how they came into possession and Jayamma lawfully regained



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the possession of the suit schedule property, which was lost prior to 1996 as admitted by Jayamma in the previous suit. The trial Court also held that merely because the defendants are carrying on construction of the building in the suit property by itself would not lead to a conclusion at the stage that the plaintiffs are out of their settled possession and accordingly came to the conclusion that a prima facie case is made out by the plaintiffs, allowed the application - IA.No.1 and granted an order of temporary injunction restraining the defendants from putting up further construction in the suit schedule property. It is this order that is questioned by the appellants/defendants.

6. It is the vehement contention of learned senior counsel Sri.D.R.Ravishankar for the appellants/defendants that primarily the suit itself is not maintainable. The question of granting a temporary injunction, which is ancillary to the main proceedings, would not have arisen, and the trial Court has committed perversity and illegality in passing the impugned order.



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7. It is further contended by learned senior counsel that in the very case of the plaintiffs, that plaintiff No.1 has perfected her title by way of adverse possession and to consequently declare her as owner by way of adverse possession. It is also claimed by the plaintiffs that they are in a peaceful possession and enjoyment of the suit schedule property at the initial stage in the plaint itself. At the same time, learned senior counsel contends that a diametrically opposite contention is taken, which is destructive to the extent that the defendants, by demolishing the existing structure, are illegally putting up construction over the suit schedule property.

8. Learned senior counsel for the appellants/defendants further contends that once the plaintiffs have made a claim with regard to adverse possession, apparently the plaintiffs admit the defendants to be the owners of the suit schedule property. It is also contended by learned senior counsel that in the plaint itself the plaintiffs have made a claim that on 20.04.2026



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the defendants have illegally entered into the suit schedule property and have illegally dug a bore well in the suit schedule property, and thereafter the plaintiffs, after coming to know of the same illegal acts of defendants through neighbours, have approached the Court for filing the suit on hand.

9. It is further contended by learned senior counsel that there was a dispute with regard to the revenue entries in the earlier litigation before the revenue courts. The entire dispute started with regard to the entry made after computerization of the revenue entries in the revenue department, whereby the extent of 10 guntas and 8 annas of the defendants was wrongly shown as 1 gunta and 8 annas in the computerized entry, whereas in the manual entry prior to the computerization, there was a clear depiction of the defendants being owners to the extent of 10 guntas and 8 annas. This matter was agitated by the plaintiffs before the revenue authorities. Ultimately, plaintiffs were unsuccessful. The defendants succeeded



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before the Deputy Commissioner in the regular appeal, which was challenged before this Court and the plaintiffs were again unsuccessful; thereby, the defendants have succeeded to that extent as well.

10. It is further contended by learned senior counsel that the revenue entries, e-katha conversion, sanction plan, license etc., are in the name of the defendants, which is not disputed by the plaintiffs. It is also contended that the essential requirements of the adverse possession are not specifically pleaded in the plaint by the plaintiffs, so also the defendants have continuously exercised their rights over the written statement schedule property, and they are admittedly in possession, having constructed a building in the suit schedule property, which has been conveniently ignored by the learned trial judge while passing the impugned order.



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11. It is further contended by learned senior counsel that when such litigations are filed, it is the duty and obligation of the learned trial judge to look into the prayer sought in the suit and the application so made, apply its judicial mind to the facts and circumstances of the case, and thereafter look into whether a prima facie case is made out, so also the balance of convenience and the irreparable injury and hardship which may cause more to which of the party and take a decision thereafter, keeping in mind these three essential requirements and also the precedents of the Courts, and come to a conclusion. Whereas in the present case on hand, the said basic fundamental principles of the suit of adverse possession and the essential requirements therein, though not pleaded, is not even considered. Secondly, the application for temporary injunction the essential requirements though taken into consideration but not applied its judicial mind and neither passed a reasoned



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order. Therefore, he seeks to allow the appeal and set aside the impugned order.

12. Per contra, learned counsel Sri.H.S.Dwarakanath for the respondents/plaintiffs vehemently contends that there is absolutely no illegality or perversity in the impugned order passed by the learned trial judge. It is well within the purview and limitation of the plaintiffs to file the necessary suit for seeking adverse possession against the defendants over the suit schedule property. According to him, it is the plaintiffs who are the absolute owners of the suit schedule property, and thereafter the defendants having illegally entered into the suit schedule property do not convey any right, title or interest by merely entering into the suit schedule property as they claim it is adverse to the interest of the defendants. Therefore, the prayer made is not unlawful or illegal and which cannot be granted. Based on the said suit, an application is filed to show that in case the defendants put up further construction and develops the



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property, the plaintiffs would be put to multiplicity of proceedings as the irreparable injury and hardship would be caused and the balance of convenience also would tilt in his favour for the reason that the revenue entries per se alone will not decide the title of the property and plaintiffs have sufficient records to prove that they are the absolute owners of the suit schedule property.

13. It is further contention of learned counsel for the respondents/plaintiffs that the trial Court has considered all these aspects and has come to a conclusion that the defendants have not clearly stated as to when the defendants and Smt.Jayamma lawfully regained the possession of the suit schedule property which was lost prior to 1996 as admitted by Smt.Jayamma and merely for the reason that the defendants started putting up the small construction of a building in the suit schedule property that itself would not lead to a conclusion that the plaintiffs are out of the settled possession giving any liberty or leeway to the defendants. The question of



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whether the plaintiffs should have claimed relief of possession instead of permanent injunction cannot be decided at the preliminary stage of granting temporary injunction. The trial Court upon consideration of all these aspects have prima facie come to a conclusion that the plaintiffs having made out a case and also pleaded sufficient ingredients with regard to adverse possession so also the plaintiffs have made out balance of convenience to have tilted in their favour and so also much hardship would be caused to the plaintiffs rather than the defendants if further construction is put up which may lead to multiplicity of proceedings accordingly he contends there is no illegality or perversity in the order.

14. Learned counsel further contends that this Court, while dealing in the first appeal on an order passed by the trial Court under Order 39 Rule 1 and 2 read with Section 151 of CPC, even if it were to take a different opinion as expressed by the trial Court, cannot impose its



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own opinion when the order is passed by the trial Court upon appreciation of the materials placed before it.

15. Learned counsel for the respondents/plaintiffs has relied upon the judgment of the Hon'ble Apex Court in the case of ***Ramakant Ambalal Choksi V/s Harish Ambalal Choksi and Others¹***, more specifically, to canvas his argument on this aspect. Under such circumstances, he seeks dismissal of this appeal, seeking no interference with the order.

16. Having heard learned senior counsel for the appellants and learned counsel for the respondents, the point that arises for consideration before this Court is:

- *Whether the impugned order passed by the learned trial judge calls for interference?*
- *Whether the impugned order is perverse and what order?*

¹ 2025(265)AIC255



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17. Apparently there is no dispute to the fact that the plaintiffs have filed the suit seeking for the relief of declaration for having perfected the right by way of adverse possession. Consequently, to declare the plaintiff Nos.1 and 2 as absolute owners of the suit schedule property. It is also not in dispute that though the plaintiffs claim to be absolute owner of the suit schedule property in the plaint at paragraph No.3, but have taken a plea at paragraph No.18 that the defendants have entered into the suit schedule property on 20.04.2026 and are illegally digging up a bore well in the suit schedule property. It is also seen that several averments are made in the plaint itself by the plaintiffs at paragraph No.19 once again that the defendants have no manner of right, title or interest over the suit schedule property but have been putting up illegal construction on the suit schedule property by demolishing the existing structure. Apparently, it is seen that plaintiffs claim to be the owner of the suit schedule property by way of certain documents and at the same



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time have claimed the relief of adverse possession, which invariably would mean the plaintiffs admit the defendants to be the owner of the suit schedule property.

18. It is also admitted that the defendants are in possession and enjoyment of the suit schedule property and have put up construction and have dug up a bore well in the suit schedule property by demolishing the earlier structure put up in the suit schedule property and such being the facts, stated by the plaintiffs themselves in the plaint, the trial Court has to take all these aspects into consideration of the averments made in the plaint, the averments made in the application and the defence taken by the defendants in the objection statement as well as the written statement and decide the matter.

19. Upon carefully perusing the plaint averments, the affidavit, the application, the objection statement, the written statement, and the impugned order, this is a classic case of absolute perversity in passing the impugned



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order. There is absolutely no application of mind. There is no judicial mind applied in considering the application. The trial Court ought to have applied the basic principles of law of adverse possession primarily, at least to decide the interim application. Secondly, while deciding the application under Order XXXIX Rule 1 and 2 read with Section 151 of CPC, even though the trial Court is not called upon to conduct a mini trial, the fundamental requirements are pre-essential. Basically prima facie case, balance of convenience and irreparable hardship that would be caused more to which aggrieved party. A prima facie case, of course, means to go into trial. The prima facie case also would mean whether the suit itself is maintainable on the facts as brought in by the plaintiffs and the defence taken up by the defendants in the objection statement, so also on the pleadings. Apparently when the plaintiff No.1 herself has stated that the defendants are in possession, put up construction, demolished the earliest construction of the plaintiffs, there



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should have been no doubt in the mind of the court that the defendants are in possession and enjoyment of the property having put up construction. Whether the plaintiffs succeed later on and whether the defendants fail is a matter to be decided in the course of trial. Therefore, when the plaintiffs have not made out a prima facie case with regard to the grant of injunction, the trial Court could not have proceeded further to decide the other elements of balance of convenience and irreparable hardship.

20. The trial Court has also failed to take into consideration the revenue litigations having come to an end in favour of the defendants. All these aspects have been conveniently ignored by the trial Court while passing the impugned order. Under the circumstances, even though learned counsel for the respondents/plaintiffs has relied upon the case of Hon'ble Apex Court's judgment in the case of ***Ramakant Ambalal Choksi*** as stated supra, which this Court does respectfully agree with, it does not mean that this Court cannot interfere with an order which



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is absolutely perverse and illegal and arbitrary when materials are placed before the Court which is clearly evident on the basis of the admissions made by the plaintiff herself that the defendants are in possession and enjoyment and the plaintiffs seeks adverse possession against the defendants which would mean the defendants are the owner of the suit schedule property. Therefore, I am in agreement with the learned senior counsel for the appellants/defendants with regard to the contentions taken up that the order passed by the trial Court is perverse, arbitrary and illegal. I am afraid this Court cannot agree with the submissions of learned counsel for the respondents/plaintiffs to sustain the order. Accordingly, I pass the following order.

ORDER

1. The appeal is ***allowed.***
2. The impugned order passed by the learned trial Judge dated 28.07.2026 on



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IA No. 1 filed under Order XXXIX Rule 1 and 2 read with section 151 of CPC in O.S.No.4750/2026 is hereby set aside.

3. It is made clear this Court has not expressed any opinion with regard to the merits of the matter. The trial Court is at liberty to proceed further on the merits of the matter.

4. The trial Court shall keep in mind the essential requirements of the principles of law of adverse possession while dealing with the matter.

5. Ordered accordingly.

Sd/-
(PRADEEP SINGH YERUR)
JUDGE