



CNR: KAHC010572542026

NC: 2026:KHC:54098
MFA No. 6104 of 2026
C/W MFA No. 6105 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 6104 OF 2026 (CPC)

C/W

MISCELLANEOUS FIRST APPEAL NO. 6105 OF 2026 (CPC)

IN MFA No. 6104/2026

BETWEEN:

SMT.RENUKA R
S/O SRI M.SRINIVAS
AGED ABOUT 57 YEARS
R/AT NO.262, 3RD CROSS
NEAR BASAVANNA TEMPLE
AREHALLI
BENGALURU-560 061

...APPELLANT

(BY SRI. H.MANJUNATH., ADVOCATE)

AND:

1. SRI.NAGARAJA
S/O LATE MUNIYAPPA
AGED ABOUT 59 YEARS
R/AT NO.69,
CHOWDESHWARI NILAYA
AREHALLI MAIN ROAD, AREHALLI
OPP.MARAMMA TEMPLE
BENGALURU-560 061


Digitally
signed by
VINUTHA M
Location:
HIGH
COURT OF
KARNATAKA



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2. SMT.SUNANDAMMA,
W/O SRI NAGARAJ
AGED ABOUT 53 YEARS
R/AT NO 69,
CHOWDESHWARI NILAYA
AREHALLI MAIN ROAD
OPP. MARAMMA TEMPLE
BENGALURU-560 061
3. SMT.GAYATHRI. H.S,
W/O LATE SHANKARAPPA
AGED ABOUT 52 YEARS,
4. SRI.RAHUL. S,
S/O LATE SHANKARAPPA
AGED ABOUT 31 YEARS,
RESPONDENTS 3 & 4 ARE
R/AT NO.5,
NEAR RENUKA PROVISION STORE,
AREHALLI, BENGALURU -560 061
5. SRI.HEMASHEKAR
AGED ABOUT 40 YEARS
R/AT 4TH FLOOR
SHIVAGANGA,
S.M.SYMPHONY APARTMENT
CLUSTER- AREHALLI
AREHALLI
BENGALURU - 560 061

...RESPONDENTS

(BY SRI. S.NAGARAJA., ADVOCATE FOR C/R-1 TO C/R-4)

THIS MFA IS FILED U/S.43 RULE 1(r) OF THE CPC,
AGAINST THE ORDER DT.10-07-2026 PASSED ON IA NO.2 IN
O.S.NO.3460/2026ON THE FILE OF THE VI ADDITIONAL CITY
CIVIL AND SESSIONS JUDGE AT BENGALURU CITY DISMISSED
THE IA NO.2 FILED U/O.39 RULE 1 AND 2 R/W SEC.151 OF
CPC, 1908.



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IN MFA NO. 6105/2026

BETWEEN:

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S/O SRI M.SRINIVAS
AGED ABOUT 57 YEARS
R/AT NO 262, 3RD CROSS
NEAR BASAVANNA TEMPLE
AREHALLI
BENGALURU-560 061

...APPELLANT

(BY SRI. H MANJUNATH., ADVOCATE)

AND:

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S/O LATE MUNIYAPPA
AGED ABOUT 59 YEARS
R/AT NO.69, CHOWDESHWARI NILAYA
AREHALLI MAIN ROAD, AREHALLI
OPP.MARAMMA TEMPLE
BENGALURU-560 061
2. SMT.SUNANDAMMA,
W/O SRI NAGARAJ
AGED ABOUT 53 YEARS
R/AT NO 69, CHOWDESHWARI NILAYA
AREHALLI MAIN ROAD
AREHALLI, OPP. MARAMMA TEMPLE
BENGALURU-560 061
3. SMT.GAYATHRI.H.S,
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AGED ABOUT 52 YEARS,
4. SRI RAHUL.S,
S/O LATE SHANKARAPPA
AGED ABOUT 31 YEARS,



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RESPONDENTS 3 & 4 ARE
R/AT NO.58,
NEAR RENUKA PROVISION STORE,
AREHALLI
BENGALURU-560 061

5. SRI HEMASHEKAR,
AGED ABOUT 40 YEARS
R/AT 4TH FLOOR
SHIVAGANGA,
S.M.SYMPHONY APARTMENT
CLUSTER-AREHALLI,
AREHALLI
BENGALURU-560 061

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CIVIL AND SESSIONS JUDGE AT BENGALURU CITY DISMISSED
THE IA NO.2 FILED U/O.39 RULE 1 AND 2 R/W SEC.151 OF
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THESE APPEALS, ARE COMING ON FOR ORDERS, THIS
DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:



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CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

ORAL JUDGMENT

These two appeals are preferred by the plaintiff challenging the common impugned order dated 10.07.2026 passed in O.S.No.3460/2026 by the VI Addl. City Civil & Sessions Judge at Bengaluru City on I.A.No.2 filed under Order 39 Rule 1 and 2 of CPC by the plaintiff and I.A.No.3 filed under Order 39 Rule 4 of CPC by the respondents-defendants.

2. Since the parties are same and the common question of law and facts are involved, with the consent of both parties, these appeals are taken up for common disposal.

3. Parties to the proceeding shall be referred to as plaintiff and defendants, for the sake of brevity.

4. The suit came to be filed by the plaintiff against the defendants for the relief of mandatory injunction and permanent injunction.

5. Along with the suit, plaintiff filed an application-I.A.No.2 under Order 39 Rule 1 and 2 of CPC seeking to



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restrain the defendants from interfering with the peaceful possession and enjoyment of the suit schedule 'C' property, till disposal of the suit.

6. Initially, prior to issuance of notice, an ad-interim temporary injunction was granted in favour of the plaintiff. Upon the defendants entering appearance, defendant Nos.1 to 4 filed an application under Order 39 Rule 4 of CPC seeking to vacate the ad-interim order of injunction. Defendant No.5 was placed ex-parte. Both the plaintiff and the contesting defendants were heard and the trial Court, upon consideration of the materials placed by both the parties, dismissed the application-I.A.No.2 filed by the plaintiff and allowed the application-I.A.No.3 filed by defendant Nos.1 to 4 and vacated the ad-interim order of temporary injunction. The plaintiff being aggrieved by the common order of dismissing the application-I.A.No.2 and allowing the application-I.A.No.3 is before this Court challenging the same in these appeals.

7. It is a vehement contention of learned counsel appearing for the plaintiff that the plaintiff is the absolute



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owner of site bearing No.47 measuring East-West 45 feet North-South 60 feet situated at Arehalli Village, Uttarahalli Hobli, Bangalore South Taluk by way of a registered sale deed dated 05.03.2021. It is further contended that defendant Nos.1 to 5 are the owners of the property which is behind the property of the plaintiff and they are putting up construction of a residential apartment without obtaining proper building plan approval or occupancy certificate from the necessary Authorities. It is further contended that the defendants in the guise of putting up construction of residential apartment in their property, have encroached to an extent of East-West 6 feet and North-South 60 feet belonging to the plaintiff, which is shown as 'B' schedule property and the plaintiff has sought for restoration of possession of the said encroached portion by the defendants. The plaintiff has also sought for an order of injunction as against suit schedule property and the present application-I.A.No.2 is filed restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property as mentioned in the schedule.



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7.1. Learned counsel for the plaintiff contends that 'A' schedule property is secured by the plaintiff by way of a registered sale deed and the defendants have no manner of right, title or interest over the suit schedule property belonging to the plaintiff. It is further contended that since the defendants have partially encroached upon 'B' Schedule property, the plaintiff, by way of prayer 'A' in the suit, seeking restoration of the possession from the defendants. Further, the defendants are also making attempts to encroach 'C' schedule property. Hence, the plaintiff is constrained to file an application-I.A.No.2 seeking to restrain the defendants from encroaching or interfering with the plaintiff over 'C' schedule property.

7.2. The trial Court, by the impugned order, has negative the claim of the plaintiff by holding that the encroachment of the suit schedule property, if any so claimed by the plaintiff, by the defendants is a matter of trial, which shall have to be decided in the course of trial and whether there exists any house or a public road is again a matter of trial and hence, it could not be decided at the stage of grant of temporary injunction as to who is in possession and who is the



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owner of the said portion of 'B' or for that matter, 'C' schedule property. It is also seen that the trial Court has come to a conclusion that the plaintiff has not made a *prima facie* case to show any encroachment having been made in 'B' schedule property or forcible attempts to take possession of 'C' schedule property by the defendants. It is also held that the parties failed to establish proper identification of the suit schedule property and according, the trial Court dismissed the application-I.A.No.2 filed by the plaintiff and allowed the application-I.A.No.3 filed by the defendants and vacated the ex-parte order of temporary injunction.

7.3. Learned counsel for the plaintiff contends that the impugned order passed by the trial Court is illegal, perverse, arbitrary and the same is unsustainable as the trial Court has failed to take into consideration the registered sale deed of the plaintiff, whereby she is the absolute owner of 'A', 'B' and 'C' schedule property and the defendants had sought permission from the plaintiff to dump the material, which was granted and taking advantage of the same, have encroached 'B' schedule property and are now making attempts to put up construction



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in the suit schedule property. It is also contended by learned counsel that it is not the case of the defendants that they are owners of 'B' schedule or 'C' schedule property as their property is behind the property to the western side of 'A' schedule property. Therefore, the defendants do not have any manner of right, title or interest over the suit schedule property of the plaintiff. The trial Court has failed to consider all these aspects and has mechanically passed an order without appreciating the registered document and also the ground realities. Therefore, he seeks to set aside the impugned order by allowing the appeals.

8. *Per contra*, learned counsel appearing for the respondents-defendants vehemently contends that 'A' schedule property belongs to the plaintiff is not in dispute, but the question of the defendants encroaching over 'B' schedule property is seriously disputed. It is also contended by learned counsel that the property shown as 'B' and 'C' schedule property does not belong to the plaintiff. It is a public road and the plaintiff has described 'C' schedule property as belonging to her, which is not correct as the plaintiff herself does not know



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or identify her property as mentioned in the schedule 'A'. Even according to the photographs and the pleadings of the plaintiff, it is shown that in 'A' schedule property, there is a gate and compound wall. Therefore, beyond that it is not a property belonging to the plaintiff and pursuant to obtaining of an order from the hands of the trial Court, she has now blocked the said road by putting up a compound wall. Thereby, she is trying to now encroach upon the road.

8.1. It is contended by learned counsel for the defendants that the trial Court has appreciated all these aspects and has fairly come to the conclusion that the plaintiff does not make out a *prima facie* case, so also the balance of convenience and accordingly, has rejected that the application filed by the plaintiff and vacated the temporary injunction, which does not call for interference, as there is no illegality or perversity. Hence, he seeks to dismissal the appeals.

9. I have heard the learned counsel for the plaintiff and learned counsel for the defendants.



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10. The point that arises for consideration is:

1) *Whether the common impugned order passed by the trial Court calls for interference and if so, what order in these two appeals?*

11. It is seen that the plaintiff is claiming relief of mandatory injunction as against defendant Nos.1 to 5 to remove the construction put up in the 'B' schedule property, which is a portion of 'A' schedule property, which belongs to the plaintiff.

12. Apparently, it is an admitted fact that the plaintiff is seeking for restoration of possession to be delivered by the defendants over 'B' schedule property, which she claims to be belonging to her and also for the relief of permanent injunction over the suit schedule property.

13. When the plaintiff comes to the Court seeking certain relief, the entire onus and burden lies on the plaintiff to establish and prove by cogent and substantial materials with regard to identity of the property and the description and the encroachment, or for that matter, interference by the defendants.



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14. In the present case on hand, the identity of the property is seriously disputed by the defendants. Though the plaintiff has produced the registered sale deed, the proper measurements and identity is yet to be proved and established before the trial Court. The 'B' schedule property admittedly has been in the encroached possession as alleged by the plaintiff with the defendant, which again is a matter of trial to be decided in the course of trial after adducing evidence.

15. Now the application for temporary injunction is filed with regard to 'C' schedule property, which according to the plaintiff belongs to her. However, the defendants have contended that the said property is a public road and it was being used for ingress and egress to access the property of the defendants and the plaintiff had permitted the defendants to store some material and put up construction in the property of the defendants.

16. When an application is filed under Order 39 Rule 1 and 2, it is for the trial Court to see three essential requirements of *prima facie* case, balance of convenience and



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the irreparable hardship that would be caused to which of the party.

17. In the present case on hand, the question boils down to 'C' schedule property. The trial Court, during the course of its order, has come to the conclusion that the plaintiff has not made out a *prima facie* case or established the identify of the 'C' schedule property, which is a public road and what is the location of the property on the northern side of the suit schedule property where the plaintiff claims to be the 'C' schedule property, which is now being encroached or attempts being made by the defendants to encroach. The identity of the property is yet to be proved and established. At this stage, granting an order of temporary injunction is not an equitable order as the plaintiff is yet to establish the identity. The trial Court has taken all these aspects into consideration and did not find favour with the plaintiff and rejected the application of the plaintiff and allowed the application of the defendants by vacating the ad-interim temporary injunction order.



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18. It is now submitted across the bar that in pursuance to the interim order being vacated and in the guise of the status quo order, which was granted earlier, the plaintiff has put up a compound wall blocking the 'C' schedule property, which is the access to the defendants' property. Therefore, now it would not make any difference, if this order is not interfered as there is a change in circumstances with regard to the 'C' schedule property, which was vacant property at the time of the application being filed and the matter being argued, the impugned order being passed is now taken a different turn altogether by the plaintiff by putting up a compound wall.

19. Learned counsel for the defendants contends that he has made an application seeking for demolition of the wall.

20. It is for the trial Court to decide, if any such application is filed, in the manner known to law.

21. At this stage, I do not find any good ground or cogent reason to interfere with the well reasoned discretionary order passed by the trial Judge on these two applications-I.A.Nos.2 and 3.



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22. As I do not find any perversity and illegality in the impugned order passed by the trial Judge, I pass the following:

ORDER

- i) Both the appeals are ***dismissed***.
- ii) It is made clear that this Court has not expressed any opinion on the merits of the matters.
- iii) As stated by the learned counsel for the defendants, if any application is made with regard to the demolition of the wall up in the 'C' schedule property, the trial Court shall decide in accordance with law on its own merits without being influenced by the order passed herein today.

Ordered accordingly.

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

VM
List No.: 1 Sl No.: 12