



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 8326 OF 2025 (CPC)

BETWEEN:

1. MR ASHOK KUMAR,
AGE ABOUT 63 YEARS,
S/O LATE C JASRAR,
2. MR RAMESH KUMAR,
AGE ABOUT 58 YEARS,
S/O LATE C JASRAR

APPELLANTS NO.1 AND 2 ARE R/AT NO.100/5
CHINMAY, BULL TEMPLE ROAD
NEXT TO ICICI BANK CROSS,
BASAVANAGUDI,
BENGALURU - 560 004

...APPELLANTS

(BY SRI. K. RAMA BHAT, ADVOCATE)

AND:

1. SMT GAYATHRI N.A.
AGE ABOUT 56 YEARS
W/O.T.SATHISH KUMAR PILLAI
D/O LATE AMARNATH RAO,
R/AT NO.37, SOWBAGH GROUND FLOOR
DODDAKATAPPA ROAD, ULSOOR
BENGALURU - 560 008



2. SRI CHANDRASHEKAR N A
AGE ABOUT 50 YEARS
S/O LATE N V AMARNATH RAO

3. SRI HARISH N A
AGE ABOUT 41 YEARS
S/O LATE N V AMARNATH RAO

RESPONDENTS NO.2 AND 3 ARE
R/AT NO.12, ARMSTRONG ROAD,
SHIVAJINAGAR,
BENGALURU - 560 001

4. SMT DEVIKA RANI N A
AGE ABOUT 52 YEARS
W/O SRI.DATTESH B R
D/O LATE N V AMARNTAH RAO
R/A NO 64, HVR LAYOUT
KAMAKSHIPALYA, 6TH MAIN ROAD
MAGADI ROAD,
BENGALURU - 560 079

5. M/S RATHOD DEVELOPERS
A REGISTERED PARTNERSHIP FIRM
HAVING ITS OFFICE AT NO.25/3,
1ST STAGE INDUSTRIAL SUB -URB,
YESHWANTHAPURA,
BENGALURU - 560 022

(REP BY ITS MANAGING PARTNER
MR L JITENDRA JAIN
AGED ABOUT 54 YEARS
S/O SRI H LALCHAND)



6. SRI CHANNABASAPPA S. HOLAGANNANAVAR
AGE ABOUT 48 YEARS
S/O SHIVABASAPPA H HOLAGANNANAVAR
R/A A-302, 3RD FLOOR
BLOCK 'A', RATHOD LAND MARK
NO.25/3,
YESHWANTHPURA INDUSTRIAL SUB - URB,
1ST STAGE, RAJAJINAGARA
BENGALURU - 560 022
7. SMT A.ROOPA
AGED ABOUT 56YEARS
W/O DR K R PILLAPPA
R/AT A 202, 2ND FLOOR, BLOCK 'A
RATHOD LAND MARK
NO.25/3 YESHWANTHPURA INDUSTRIAL SUB - URB
1ST STAGE, RAJAJINAGARA
BENGALURU - 560 022
8. SRI H LALCHAND
AGE ABOUT 85 YEARS
S/O LATE HIRACHAND
R/AT NO.163, 1ST FLOOR, 1ST MAIN ROAD
SHESHADRIPURAM
BENGALURU - 560 020
9. SRI ANANT PAI
AGE ABOUT 51 YEARS
S/O N K PAI
10. SMT. GAYATHRI PAI,
AGED ABOUT 49 YEARS,
W/O. ANANT PAI,

RESPONDENTS NO.9 AND 10 ARE RESIDING AT



NO.001, GROUND FLOOR, BLOCK 'A',
RATHOD LANDMARK, NO.25/3,
YESHWANTHPURA INDUSTRIAL SUB-URB,
1ST STAGE, RAJAJINAGARA,
BENGALURU - 560 022.

11. SRI. CHETHAN. B,
AGED ABOUT 43 YEARS,
S/O. APPAJI GOWDA,
R/AT. A-201, SECOND FLOOR, BLOCK 'A',
RATHOD LANDMARK,
NO.25/3, YESHWANTHPURA INDUSTRIAL SUB-URB,
1ST STAGE, RAJAJINAGARA,
BENGALURU - 560 022.
12. SMT. H.S. ANNAPURNAMMA,
AGED ABOUT 53 YEARS,
W/O. LOKESHWAR,
13. SRI. T.S. KUMARASWAMY,
AGED ABOUT 55 YEARS,
S/O. LATE G. SIDDRAMAIHAH,

RESPONDENTS NO.12 AND 13 ARE RESIDING AT
NO.102, FIRST FLOOR, BLOCK A, RATHOD
LANDMARK, NO.25/3, YESHWANTHPURA
INDUSTRIAL SUB-URB, 1ST STAGE,
RAJAJINAGARA, BENGALURU - 560 022

14. SRI. VENKATARAMANAN,
AGED ABOUT 60 YEARS,
S/O. R. KRISHNAN,
R/AT. COMMERCIAL SPACE C-1, BLOCK 'C',
RATHOD LANDMARK, NO.25/3,
YESHWANTHPURA INDUSTRIAL SUB-URB,



1ST STAGE, RAJAJINAGARA,
BENGALURU - 560 022.

15. SRI. PRANESH. K.S.
AGED ABOUT 42 YEARS,
S/O. K.H. SANJEEVAMURTHY,

16. SMT. SOWMYA. P,
W/O. PRANESH K.S.,
AGED ABOUT 36 YEARS,

RESPONDENTS NO.15 AND 16 ARE
RESIDING AT NO.101, FIRST FLOOR,
BLOCK 'A', RATHOD LANDMARK,
NO.25/3, YESHWANTHPURA INDUSTRIAL SUB-URB,
1ST STAGE, RAJAJINAGARA,
BENGALURU - 560 022

17. SRI. PRAVEEN. D. NAIK,
AGED ABOUT 43 YEARS,
S/O. T.G. DORAISWAMY NAIK,
4TH FLOOR, BLOCK 'A',
RATHOD LANDMARK, NO.25/3,
YESHWANTHPURA INDUSTRIAL SUB-URB,
1ST STAGE, RAJAJINAGARA,
BENGALURU - 560 022.

18. SRI. PRAKASH CHANDRASEKARAPPA ANGADI,
AGED ABOUT 60 YEARS,
R/AT. FLATS 301, 401,402 AND 403,
4TH FLOOR, BLOCK 'A',
RATHOD LANDMARK,
NO.25/3,
YESHWANTHPURA INDUSTRIAL SUB-URB,



1ST STAGE, RAJAJINAGARA,
BENGALURU - 560 022.

19. SRI. H. SRIDHAR HEGDE
AGED ABOUT 67 YEARS,
S/O. H.R. HEGDE,
20. SMT. LATHA S. HEGDE,
AGED ABOUT 53 YEARS,
W/O. SRIDHAR HEGDE,
RESPONDENTS NO.19 AND 20 ARE RESIDING AT
FLAT NO.002, GROUND FLOOR,
BLOCK A, RATHOD LANDMARK,
NO.25/3, YESHWANTHPURA INDUSTRIAL SUB-URB,
1ST STAGE, RAJAJINAGARA,
BENGALURU - 560 022
21. M/S. RATHOD BUILD MARK PVT. LTD.,
HAVING ITS OFFICE AT NO.25/3,
YESHWANTHPURA INDUSTRIAL SUB-URB,
1ST STAGE, RAJAJINAGARA, BENGALURU - 560 022.
REP. BY ITS DIRECTOR
SRI. NARENDRA L. RATHOD.

...RESPONDENTS

(BY SRI. G.A. GOPI, ADVOCATE FOR C/R1
NOTICE TO R2 TO R21 IS D/W, V/O DTD 10.06.2026)

THIS MFA IS FILED U/O.43 RULE 1(r) OF THE CPC,
AGAINST THE ORDER DT. 15.09.2025 PASSED ON I.A.NO. 1
IN O.S.NO.6711/2022 ON THE FILE OF THE XXII ADDITIONAL
CITY CIVIL AND SESSIONS JUDGE, BENGALURU CITY (CCH.7),
ALLOWING IA NO. 1 FILED U/O.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 defendant Nos.4 and 5 before the trial Court in OS.No.6711/2022, being aggrieved by the impugned order dated 15.09.2025 passed on IA.No.1 filed under Order XXXIX Rule 1 and 2 read with Section 151 of CPC, restraining the defendants by way of temporary injunction from alienating or changing the character of item Nos.3 and 4 of the plaint schedule property.

2. Parties to the proceedings shall be referred to as plaintiff and defendant Nos.4 and 5 for the sake of brevity. It is also to be noted that notice to other co-defendants who are respondents herein have been dispensed, as no relief is sought against them.



3. The plaintiff has filed a suit for partition and for the relief of declaration. Along with the plaint, an application-IA.No.1 came to be filed by the plaintiff under Order XXXIX Rule 1 and 2 read with Section 151 of CPC, seeking an order for restraining the defendants from alienating and changing the character of Item Nos.1 to 6 of the suit schedule properties till the disposal of the suit.

4. Defendant Nos.4 and 5, who are the appellants herein, filed their statement of objections, defended the application. Along with it, defendant Nos.4 and 5 also filed an application under Order VII Rule 11(d) read with Section 151 of CPC, to reject the plaint.

5. Applications - IA Nos.1 to 4 and 6 were taken up together, and a common order was passed, which is impugned herein. The subject matter of this appeal is only on IA No.1 filed under Order XXXIX Rule 1 and 2 read with Section 151 of CPC. It is the vehement contention of the learned counsel for the appellants/defendant Nos.4 and 5 that the impugned order is not sustainable in law



and the same is contrary to the materials placed on record, and hence it is liable to be set aside, as it is against the true facts of the case. It is also contented that the trial Court has committed an illegality and error in passing the impugned order as against defendant Nos.4 and 5.

6. It is the contention of learned counsel for the appellants/defendant Nos.4 and 5 that Item Nos.3 and 4 are described as agricultural lands, but as per the revenue documents, the same have been converted for industrial purposes by the Deputy Commissioner, Bengaluru District, vide order No. ALN(S) NR (KEN) 172/10-11 dated 04.06.2011, and the revenue records are entered accordingly.

7. It is also the contention of learned counsel for the defendant Nos.4 and 5 that they have constructed industrial sheds and unable to make use of the same because of the impugned order passed by the learned trial judge. It is the further contention of learned counsel for



the defendant Nos.4 and 5 that the written statement filed along with the documents has not been considered while passing the impugned order.

8. Learned counsel for the defendant Nos.4 and 5 further contends that while passing the impugned order, the trial judge has gone into the merits of the matter and has given a finding which would effect the final outcome of the matter and as it may prejudice the matter in view of the finding while deciding the application whereby the learned trial judge has come to a conclusion that suit Item Nos.1 to 6 are ancestral and joint family properties as per the prima facie made out by the plaintiff. It is the vehement contention of learned counsel for the appellants/defendant Nos.4 and 5 that this very statement, which is forthcoming in the impugned order ought not to have been made while deciding the application filed under Order XXXIX Rule 1 and 2 read with Section 151 of CPC as it is the requirement for the trial Court to make out a prima facie case by the plaintiff



to pass any such an order and not decide prima facie title or venture into the title and merits of the case while passing the interim order on the interim application.

9. Learned counsel for the appellants/defendant Nos.4 and 5 further contends that he is in possession and enjoyment of the suit item Nos. 3 and 4 of the property and he has agreed that he would not sell the suit schedule property of item Nos.3 and 4 till the suit is decided. Therefore, he seeks appropriate orders to set aside the impugned order to this effect.

10. Per contra, learned counsel appearing for the respondent/plaintiff vehemently contends that the impugned order does not call for any interference as the trial Court has come to a finding on a prima facie case having been made out by the plaintiff to show that suit schedule properties are ancestral and joint family properties, and hence, if any alienations are made, the same would lead to a multiplicity of the proceedings and



would affect the rights of the plaintiff if third party rights are created and if the plaintiff had to succeed in the suit.

11. Learned counsel for the respondent/plaintiff also fairly submits that defendant Nos.4 and 5 are in possession and enjoyment of item No.3 and 4 of the suit schedule property; that is precisely the reason they had sought not to alienate and change the character of suit item Nos.1 to 6, which includes item Nos.3 and 4 of the suit schedule property.

12. Learned counsel for the respondent/plaintiff contends that if the appellants/defendants Nos.4 and 5 do not alienate the suit schedule property till disposal of the suit, a slight modification could be made with regard to the finding arrived at by the trial Court in the interim order though he disputes that any finding on merit is made; however, if that is going to cause any hindrance in the disposal of the suit as a bias or prejudice, that aspect could be removed. On these grounds, he seeks to dismiss the appeal.



13. I have heard learned counsel for the appellants/defendant Nos.4 and 5 and learned counsel for the respondent/plaintiff.

14. The point that arises for my consideration is:

"Whether any interference is called for by this Court on the impugned order passed by the trial Court on IA.No.1?"

15. Apparently, there is no dispute to the fact that the suit filed by the plaintiff for partition seeking one-fourth share of the suit schedule properties of item Nos.1 to 6. The defendant Nos.4 and 5 are before this Court challenging the said impugned order only limited to the extent of item Nos.3 and 4 of the suit schedule property. It is also not in dispute that defendant Nos.4 and 5 are in possession and enjoyment of item Nos. 3 and 4 of the suit schedule property. Apparently, it is seen that while deciding the application under Order XXXIX Rule 1 and 2 read with Section 151 of CPC, the trial Court has made an observation at paragraph No.48 that the plaintiff has made



out a prima facie case in her favour to show that suit schedule item Nos.1 to 6 are ancestral and joint family properties. In my opinion, it may not be the correct way to decide the application filed under Order XXXIX Rule 1 and 2 read with Section 151 of CPC as this would prejudice the case of the defendants once the Court comes to a conclusion that it is an ancestral and joint family property, as that is precisely what is objected to and defended by the appellants/defendant Nos.4 and 5.

16. While deciding an application filed under Order XXXIX Rule 1 and 2 read with Section 151 of CPC, the Court has to come to a conclusion of a prima facie case for grant or rejection of the application and not a prima facie title or deciding the merits of the case or, for that matter, conducting a mini trial of the rights of the parties. Under the circumstances, the finding arrived at in paragraph No.48 requires to be set aside only to the limited extent of making an observation that the prima facie case has been



made out by the plaintiff that the suit Item Nos.1 to 6 are ancestral and joint family properties.

17. In the present case with regard to Item Nos.3 and 4, it is only the defendant Nos.4 and 5 who are before this Court challenging the said finding. It is also relevant to note that during the course of the argument, the appellants/defendant Nos.4 and 5 have given an undertaking that they will not sell the suit item Nos.3 and 4 till the disposal of the suit and they be permitted to enjoy the property as they are in peaceful possession and enjoyment of the same.

18. I find sufficient force in the contention of learned counsel for the appellants, and I also do not find any hardship or any adverse inference that would follow out of the findings that would be removed from the impugned order, as the order would still continue in favour of the plaintiff to the limited extent made herein, which is interfered. Accordingly, I pass the following order.



ORDER

- 1) The appeal is ***allowed-in-part.***
- 2) The impugned order passed by the learned trial judge is modified to the following extent.
- 3) The finding given by the trial judge at paragraph No.48 that "*the plaintiff has made out prima-facie case in her favour to show that the suit item Nos.1 to 6 are the ancestral and joint family properties*" is set aside
- 4) The impugned order granted by the learned trial judge on the application IA.No.1 filed under Order XXXIX Rule 1 and 2 read with Section 151 of CPC stands slightly modified so far as defendant Nos.4 and 5 are concerned to the extent that defendant Nos.4 and 5 shall not sell the



suit item Nos.3 and 4 of the property till the disposal of the suit. They shall be permitted to continue enjoyment and possession over the said property till the disposal of the suit.

- 5) It is needless to mention this Court has not expressed any opinion on merits of the matter.

Ordered accordingly.

Sd/-
(PRADEEP SINGH YERUR)
JUDGE

RCK
List No.: 1 Sl No.: 39