IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

MISCELLANEOUS FIRST APPEAL NO.2522 OF 2026 (CPC)

BETWEEN:

SRI M. VENKATESHAPPA
S/O LATE MUNIVENKATAPPA,
AGED ABOUT 66 YEARS,
OCCUPATION: AGRICULTURIST,
RESIDENT OF HOUSE NO.129/2,
PEDDURU VILLAGE,
MURUGAMALLA HOBLI,
CHINTAMANI TALUK,
CHIKKABALLAPUR DISTRICT-563146.

REPRESENTED BY HIS POWER
OF ATTORNEY HOLDER
SMT. LAKSHMIDEVAMMA
W/O SRI M. VENKATESHAPPA,
AGED ABOUT 56 YEARS,
OCCUPATION: HOMEMAKER AND AGRICULTURIST
RESIDENT OF HOUSE NO.129/2
PEDDURU VILLAGE,
MURUGAMALLA HOBLI,
CHINTAMANI TALUK,
CHIKKABALLAPUR DISTRICT-563146.

...APPELLANT

(BY SRI CHANDRASHEKAR P., ADVOCATE)

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MAHALAKSHMI B M
Location: HIGH
COURT OF
KARNATAKA

AND:

1. SRI M. BACHAPPA
   S/O LATE MUNIVENKATAPPA,
   AGED ABOUT 70 YEARS,
   RETIRED POLICE OFFICIAL

R/AT HOUSE NO.128/2,
PEDDURU VILLAGE,
MURUGAMALLA HOBLI,
CHINTAMANI TALUK,
CHIKKABALLAPUR DISTRICT-563146.

ALSO AT WARD NO.20
PATHY HOSPITAL ROAD
PRASHANTH NAGAR
CHIKKABALLAPUR-562101.

2. SMT. NARAYANAMMA
W/O SRI MUNISHAMAPPA
D/O LATE MUNIVENKATAPPA
AGED ABOUT 61 YEARS,
R/AT HUNASENAHALLI VILLAGE,
KASABA HOBLI, SIDDLAGHATTA TALUK,
CHIKKABALLAPUR DISTRICT-562105.

3. SMT. AMARAVATHAMMA
W/O SRI S.A. NARAYANASWAMY,
AGED ABOUT 54 YEARS,
R/AT SIDDAGHATTA VILLAGE,
KASABA HOBLI, MULBAGAL TALUK,
KOLAR DISTRICT-563101.

…RESPONDENTS

THIS MFA IS FILED UNDER ORDER 43 RULE 1(r) OF CPC., AGAINST THE ORDER DATED 10.03.2026 PASSED ON I.A.NO.1 AND 7 IN O.S.NO.35/2024 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC, CHINTAMANI, REJECTING THE I.A.NO.1 AND 7 FILED UNDER ORDER 39 RULE 1 AND 2 OF CPC.

THIS APPEAL COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

This miscellaneous first appeal is preferred by the plaintiff challenging the order dated 10.03.2026 passed on I.A. Nos.1 and 7 in O.S. No.35/2024 on the file of the Senior Civil Judge and JMFC, Chintamani ('Trial Court' for short), whereby the applications filed under Order XXXIX Rules 1 and 2 CPC seeking temporary injunction came to be rejected.

Brief facts:

2. The appellant/plaintiff instituted suit seeking declaration that the judgment and decree in O.S. No.259/2019 is null and void, on the ground that the same was obtained by fraud and collusion between defendants Nos.1 and 3. The plaintiff also sought for a declaration that the land bearing old Survey No.7 (New Sy. No.7/P5) measuring 4 acres 20 guntas (Item No.1) is the self-acquired property granted in his favour, under the proceedings dated 13.03.1997 and that he is the absolute owner of Item No.2 and for recovery of possession in

respect of Item No.3 (house property) and declaration that defendant No.1 has no right, title or interest over the suit properties in view of the settlement deed dated 26.12.1991, said to have been executed, relinquishing his rights in the joint family properties.

3. It is the case of the plaintiff that he suffered a traumatic brain injury several years ago and because of his medical condition, defendant No.1 took advantage of his innocence and obtained signatures on vakalath and blank papers, under the guise of defending him in a criminal case and thereafter, collusively suffered a decree in O.S. No.259/2019. It is stated that defendant No.3-Amaravathamma was falsely projected as a daughter of late Chinnappa, and on basis of the fabricated documents obtained a decree of partition and separate possession.

4. Pending suit, the plaintiff filed I.A. Nos.1 and 7 under Order XXXIX Rules 1 and 2 CPC seeking temporary injunction restraining the defendants from interfering with

the suit schedule properties and also from putting up construction over Item No.3 property.

5. The said applications were opposed by the defendants, contending that the parties are members of the joint family and are in joint possession of the properties and the plaintiff has suppressed the material facts. It is stated by the defendants, that the plaintiff himself has admitted the nature and character of the properties in the earlier proceedings in O.S. No.259/2019.

6. The Trial Court, by the impugned order, rejected the applications, aggrieved by which the plaintiff is before this Court.

7. Learned counsel for the appellant contends that the Trial Court committed a serious error in rejecting I.A. Nos.1 and 7, without properly hearing the applications on merits. It is contended that the arguments were addressed only in respect of I.A. No.2 relating to the stay of FDP proceedings and not on I.A. Nos.1 and 7. Despite the

same, the Trial Court proceeded to reject the injunction application. It is contended that the documents produced by the plaintiff *prima facie* establish that Item No.1 is the self-acquired property of the plaintiff, having been granted in his favour by the competent authorities. It is further contended that, even in O.S. No.259/2019, defendant No.3 as well as defendant No.1, had admitted that item No.1 was granted to the plaintiff and constituted his self-acquired property, but the Trial Court has failed to consider the material admission while passing the impugned order.

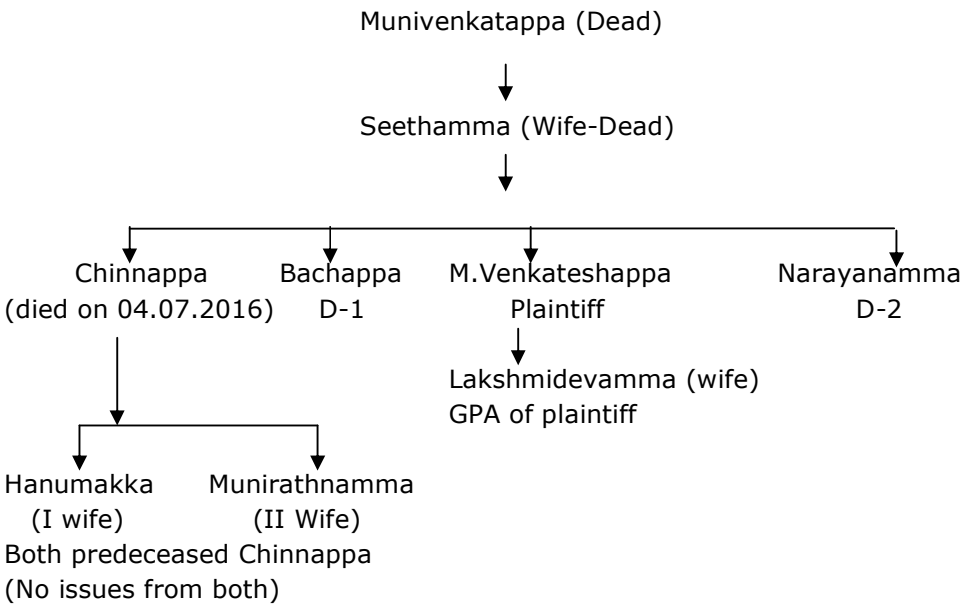
8. This Court has carefully considered the submission. The point that arises for consideration is:

> *"Whether the impugned order passed by the Trial Court warrants any interference by this Court?"*

9. The suit filed by the plaintiff is one for declaration that the judgment and decree in O.S. No.259/2019 is null and void, on the allegation of fraud

and collusion. The records disclose that in O.S. No.259/2019, the present plaintiff was arrayed as defendant No.2 and had admittedly participated in the said proceedings.

10. The Trial Court, while considering the interlocutory applications, has taken note of the pleadings and findings recorded in the earlier suit and observed that the parties admittedly belong to the same family branch and that the nature and character of the properties are seriously disputed. For better understanding, the Family Genealogical Tree is culled out as under:



11. It is relevant to note that the decree passed in O.S. No.259/2019 has attained finality and defendant No.3 (plaintiff therein) has initiated final decree proceedings in FDP No.1/2023. The plaintiff admittedly, entered appearance in the FDP proceedings and only thereafter instituted the present suit seeking declaration that the preliminary decree itself is null and void.

12. The Trial Court has taken note of the fact that, unless the judgment and decree in O.S. No.259/2019 are set aside in accordance with law, the rights flowing from the said decree would continue to operate. Merely because the plaintiff has alleged fraud and collusion in obtaining the decree, the execution and continuation of consequential proceedings, arising out of the decree cannot automatically be interdicted at the interlocutory stage.

13. The records further disclose that the plaintiff had also filed I.A. No.2 seeking stay of the further proceedings in FDP No.1/2023. Further, if injunction as sought by the plaintiff is granted, the same would virtually amount to staying the operation and implementation of the preliminary decree passed in O.S. No.259/2019, through an interlocutory order in a subsequent suit, which is impermissible in law unless a strong *prima facie* case of fraud, irreparable injury and clear exclusive possession is made out. The Trial Court, was therefore, justified in exercising restraint while declining the relief of temporary injunction. The pendency of FDP No.1/2023, also constitutes a relevant circumstance supporting the conclusion arrived at by the Trial Court and that no case is made out for interference at the interlocutory stage. Accordingly, the point framed for consideration is answered and this Court pass the following:

ORDER

i. The miscellaneous first appeal is ***dismissed***.

ii. The impugned order dated 10.03.2026 passed on I.A. Nos.1 and 7 in O.S. No.35/2024 on the file of the Senior Civil Judge and JMFC, Chintamani is hereby ***confirmed***.

Sd/-

JUSTICE K.S. HEMALEKHA

MBM
List No.: 1 Sl No.: 41