HC-KAR



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 7TH DAY OF APRIL, 2026**

**BEFORE**

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

**MISCELLANEOUS FIRST APPEAL NO.6505 OF 2025 (CPC)**

**BETWEEN:**

1. SRI BALAKRISHNA .N
S/O LATE K. NAGARAJU,
AGED ABOUT 52 YEARS,
R/AT MOORBAND VILLAGE,
ANTHARASANTHE HOBLI,
H.D. KOTE TALUK,
MYSURU DISTRICT-571114.

2. SRI KIRAN KUMAR .N
S/O LATE K. NAGARAJU,
AGED ABOUT 50 YEARS,
R/AT DOOR NO.83/110,
4TH MAIN, H.V.R. LAYOUT,
BENGALURU-560079.

3. SMT. N. BHAGYALAKSHMI,
W/O M.N. NATARAJ
D/O LATE K. NAGARAJU,
AGED ABOUT 46 YEARS,
R/AT DOOR NO.3650,
8TH MAIN, DATTAGALLI 3RD STAGE,
KANAKADASANAGARA,
MYSURU CITY-570023.

...APPELLANTS

(BY SRI AJIT P.B., ADVOCATE AND
SRI R.K. THONTADHARYA, ADVOCATE)

Digitally signed by
MAHALAKSHMI B M
Location: HIGH
COURT OF
KARNATAKA

**AND:**

1. SRI D. SUNDAR DAS
S/O LATE DODDAPPA @ DODDEGOWDA,
AGED ABOUT 78 YEARS,

2. SMT. JAYAMMA,
W/O LATE DASAPPA,
D/O. LATE DODDAPPA @ DODDEGOWDA,
AGED ABOUT 80 YEARS,

BOTH R-1 AND R-2 ARE R/AT
ANTHARASANTHE VILLAGE AND HOBLI,
H.D. KOTE TALUK,
MYSURU DISTRICT-571114.

3. SRI R. RAGHU,
S/O LATE J. RANGANNA,
AGED ABOUT 57 YEARS,
R/AT DOOR NO.71, "SRIRANGA",
CHAMUNDI VIHAR LAYOUT,
NAZARBAD MOHALLA,
MYSURU CITY-570010.

4. SRI B.P. MANJUNATH,
S/O LATE PUTTALINGAIAH,
AGED ABOUT 67 YEARS,
R/AT DOOR NO.438,
OPP. GEETHA SCHOOL,
SIDDARTHANAGAR,
NAZARBAD MOHALLA,
MYSURU-570010.

5. INFINITY DEVELOPERS,
B.N. PLAZA, OPP. RAVI
CHILDREN HOSPITAL,
GIRIJAMMA SUBBANNAIAH LAYOUT,
GANDI CIRCLE, HOSADURGA TOWN,
KASABA HOBLI, HOSADURGA TALUK,
CHITRADURGA DISTRICT.

REPRESENTED BY ITS PARTERNS.
SRI B.L. JYOTHISH CHOWDARI,
S/O B.N. LAKSHMIPATHI,
AGED ABOUT 45 YEARS,
R/AT BALLALA SAMUDRA,
HOSADURGA TALUK,
CHITRADURGA DISTRICT-577527.

SRI GURUMURTHY M.P.
S/O PARAPPA,
AGED ABOUT 50 YEARS,
R/AT MADHURE VILLAGE,
HOSADURGA TALUK,
CHITRADURGA DISTRICT-577527.

…RESPONDENTS

(BY SRI M.D. RAGHUNATH, ADVOCATE FOR R-1;
SRI GOPALAKRISHNAMURTHY C., ADVOCATE FOR R-2;
SRI A. BALAKRISHNAN, ADVOCATE FOR R-4;
SRI D. MANJUNATH, ADVOCATE FOR R-5;
NOTICE TO R-3 IS SERVED & UNREPRESENTED)

THIS MFA IS FILED UNDER ORDER 43 RULE 1(r) OF CPC., AGAINST THE ORDER DATED 25.07.2025 PASSED ON I.A.NO.III IN O.S.NO.6/2025 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC, H.D. KOTE, DISMISSING THE I.A.NO.III FILED UNDER ORDER 39 RULES 1 AND 2 READ WITH SECTION 151 OF CPC.

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

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

## ORAL JUDGMENT

The present miscellaneous first appeal is filed calling in question the order dated 25.07.2025 passed on I.A. No.III in O.S. No.6/2025 on the file of the Senior Civil Judge and JMFC, H.D. Kote, ('Trial Court' for short), whereby the application filed by the plaintiffs under Order XXXIX Rules 1 and 2 read with Section 151 CPC seeking temporary injunction has been dismissed.

**Brief facts:**

2. The appellants/plaintiffs instituted suit in O.S. No.6/2025 seeking partition and separate possession of the suit schedule properties and for declaration that the sale deeds and the Joint Development Agreement are not binding on their share. It is the case of the plaintiffs that the suit properties are the ancestral and joint family properties and they are entitled to 1/3rd share. It is contended that defendant No.1 has mutated his name in the revenue records and has proceeded to alienate portions of the schedule properties and has entered into Joint Development Agreement dated 20.04.2022. Pending suit, the plaintiffs filed I.A. No.III seeking an order of temporary injunction restraining the defendants from alienating the suit schedule properties.

3. The Trial Court, upon consideration of the pleadings and documents, held that:

a. The plaintiffs have failed to establish a *prima facie* case.

b. The documents disclose that the properties stand in the name of defendant No.1 and are not shown to be ancestral.

c. Once *prima facie* case is not established, the question of balance of convenience and irreparable injury does not arise and accordingly, I.A. No.III was dismissed.

4. Learned counsel for the appellants would contend that the Trial Court has erred in entering into the disputed questions of title at the interlocutory stage. It is submitted that even if the properties stand in the name of defendant No.1, the question as to whether they are ancestral or self-acquired is a matter to be decided at trial. It is further contended that in a suit for partition, the Court ought to preserve the subject matter of the suit and prevent the creating of third party rights. It is submitted that defendant No.1 has already alienated portions of the property and entered into a Joint Development Agreement and unless protected, the plaintiffs' share would be seriously prejudiced.

5. *Per contra,* learned counsel for respondent No.1 would contend that the suit itself is not maintainable and the relief of declaration is barred by limitation. It is contended that the properties are the self-acquired properties having been derived from the compensation and covered under the settlement deed dated 28.10.1965. It is further contended that the substantial development has taken place pursuant to the Joint Development Agreement and several sites have been formed and alienated. It is contended that the plaintiffs have approached the Court belatedly by the suppression of material facts.

6. Learned counsel for respondent No.5 would contend that respondent No.5 is a *bona fide* developer, who entered into a Joint Development Agreement dated 20.04.2022 with defendant No.1, the absolute owner of the property. It is submitted that pursuant to the said agreement, defendant No.5 has invested a substantial

amount and has already undertaken development activities, including the formation of layout and sites. It is further contended that several sites have already been formed and certain portions have been alienated to the third parties, who have acquired rights in good faith. Therefore, an order of injunction at this stage would seriously prejudice not only respondent No.5/defendant No.5 but also the third party purchasers. It is submitted that respondent No.5 has acted strictly in accordance with the terms of Joint Development Agreement, and on basis of title held out by defendant No.1, and that the plaintiffs, having approached the Court belatedly, are not entitled to equitable relief.

7. This Court has carefully considered the rival submission and perused the material on record. The point that arises for consideration is:

> *"Whether the Trial Court was justified in rejecting I.A. No.III and whether interference is warranted?"*

8. The suit is one for partition and separate possession. The question as to whether the suit properties are the ancestral or the self-acquired property is a matter requiring a full-fledged trial and cannot be conclusively decided at the stage of considering an application for temporary injunction. This Court is of the considered view that the Trial Court has proceeded to examine the title of the parties in detail, which is impermissible at the interlocutory stage. The existence of rival claims itself gives rise to a triable issue and satisfies the requirement of a *prima facie* case.

9. It is not in dispute that defendant No.1 has entered into a Joint Development Agreement and that development has commenced. At the same time, the plaintiffs claim a share in the suit properties. If further alienations are permitted, the same would result in the creation of third party rights, thereby complicating the proceedings. Therefore, the balance of convenience lies in preserving the property to the extent necessary to protect

the claim of the plaintiffs, while at the same time taking note of the development already undertaken. Accordingly, this Court is of the considered view that the order of the Trial Court is liable to be interfered with a limited protection, requiring to be granted and accordingly, the point framed for consideration is answered and this Court pass the following:

**ORDER**

i. The miscellaneous first appeal is ***allowed-in-part***.

ii. The impugned order dated 25.07.2025 passed on I.A. No.III in O.S. No.6/2025 on the file of the Senior Civil Judge and JMFC, H.D. Kote, is hereby ***set aside.*** I.A. No.III stands ***allowed-in-part***.

iii. Respondent No.5 shall file an affidavit before the Trial Court within four (4) weeks, indicating the total number of sites formed, the sites falling to the share of defendant No.1 and the sites already alienated by respondent No.5/defendant No.5.

iv. Defendant No.1, his agents or any person claiming through him, shall not alienate sites to the extent

of 1/3rd share claimed by the plaintiffs until disposal of the suit.

v. Having regard to the nature of dispute, the suit is exempted from strict application of case flow management rules, as contended by defendant No.1/respondent No.1. However, the Trial Court shall dispose of the suit as expeditiously as possible, preferably within a period of one year.

vi. All the observations made herein are *prima facie* in nature and shall not influence the Trial Court while considering the suit on its own merits.

vii. Defendant No.1/respondent No.1 is directed not to alienate Item Nos.4 to 10 of the suit schedule properties pending consideration of the suit.

**Sd/-**

**JUSTICE K.S. HEMALEKHA**

MBM
List No.: 1 Sl No.: 66