HC-KAR

CNR: KAHC010668262026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 7052 OF 2026 (CPC)

BETWEEN:

1. SMT. KAVITHA R
   W/O SRI. M.G. LOKESH,
   AGED ABOUT 49 YEARS,
   R/AT NO. 169A/1, GANESH KAMAL NILAYA,
   MADHUVANA BLOCK, WARD NO. 15,
   MANGO GARDEN, SAMRUDHI BOYS PG,
   CHRISTIAN COLONY,
   CHIKKAMAGALUR - 577 101.

2. SRI. VISHWASAGARA SARANGAMATH,
   S/O. SHANTHAVEERAIAH,
   AGED ABOUT 28 YEARS,
   R/AT NO. 1252/31, 2ND FLOOR,
   1ST A MAIN ROAD, MC LAYOUT,
   RAHEJA PARK, VIJAYANAGARA,
   BENGALURU - 560 040.

3. SMT. S. ANITHA SRINIVAS,
   W/O. SRI. S.V. SRINIVAS,
   AGED ABOUT 42 YEARS,
   R/AT BEVINAMARADA ROAD,
   VEDAVATHINAGARA,
   SHUGAR FACTORY, HIRIYURU,
   CHITRADURGA - 577 599.

Digitally signed by VINUTHA M
Location: HIGH COURT OF KARNATAKA

4. SRI. MALLESHAPPA THUNGALA,
S/O. SRI. LAKSHMAN,
AGED ABOUT 64 YEARS,
R/AT NO. 993, WARD NO. 26,
KUMBARGALLI, RABAKAVI,
BAGALKOTE - 587 314.

…APPELLANTS

(BY SRI. SHARATH S. GOWDA, ADVOCATE)

AND:

1. K.C. SHASHIKANTH
S/O K.C CHANDRASHEKAR,
AGED ABOUT 61 YEARS,
R/AT NO.422522, PRESTIGE FALCON CITY,
KONANAKUNTE CROSS,
KANAKAPURA ROAD,
BENGALURU - 560 062.

2. SMT. LALITHAMMA,
W/O. LATE. NARAYANAPPA,
AGED ABOUT 53 YEARS,
R/AT MYLASANDRA VILLAGE,
R.V. COLLEGE POST, KENGERI HOBLI,
BANGALORE - 560 059.

3. SRI. MUNIRAJU. N,
S/O. LATE. NARAYANAPPA,
AGED ABOUT 33 YEARS,
R/AT MYLASANDRA VILLAGE,
R.V. COLLEGE POST, KENGERI HOBLI,
BANGALORE - 560 059.

4. SRI. NAGARAJ. N,
S/O. LATE. NARAYANAPPA,
AGED ABOUT 29 YEARS,
R/AT MYLASANDRA VILLAGE,
R.V. COLLEGE POST, KENGERI HOBLI,
BANGALORE - 560 059.

5. SRI. VENUGOPAL. V,
S/O. LATE. NARAYANAPPA,
AGED ABOUT 27 YEARS,
R/AT MYLASANDRA VILLAGE,
R.V. COLLEGE POST, KENGERI HOBLI,
BANGALORE - 560 059.

…RESPONDENTS

(BY SRI. B.E. SREEDHARA, ADVOCATE FOR C/R1;
VIDE ORDER DATED 01.10.2026, NOTICE TO R2 TO R5 IS DISPENSED WITH)

THIS MFA FILED U/O.43 RULE 1(r) OF THE CPC, AGAINST THE ORDER DT. 27.08.2026 PASSED ON IA NO.6 IN O.S.NO.3742/2023 ON THE FILE OF THE LI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, C/C XXXVII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU CCH-38, REJECTING IA.6/2026 FILED U/O.39 RULE 4 R/W SEC.151 OF CPC, 1908.

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 defendant Nos.5, 6, 7 and 8 before the trial Court in OS.No.3742/2023, challenging the orders passed on IA.No.6 by the LI Additional City Civil and Sessions Judge, C/c XXXVII Additional City Civil and Sessions Judge, Bengaluru. The respondent No.1 is the plaintiff. Respondent Nos.2 to 5 are the co-defendants before the trial Court.

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

3. Plaintiff filed the suit against the defendants initially for permanent injunction. Along with the suit, he filed an application-IA.No.1 under Order XXXIX Rule 1 and 2 read with Section 151 of CPC restraining the defendants from interfering with the peaceful possession and enjoyment of the suit schedule property. Initially there were four defendants i.e., respondent Nos.2 to 5. The trial

Court being satisfied, granted an order of temporary injunction, restraining the original defendants from interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property.

4. It is seen that subsequently the plaintiff got the plaint amended by incorporating paragraph 14 (a) to (i) and also the main prayer in the suit. Thereby adding-

> *"prayer-(a) - for the relief of declaration to declare the plaintiff to be the absolute owner of the suit schedule property.*
>
> *Prayer - (b) - to direct the defendants to hand over the physical possession of the suit schedule property to the plaintiffs. Prayer - (c) - to declare the sale deed dated:31-01-2025 is registered as Document No.JPN-1-08849-2024-25, Book - 1, stored in centralized CD, registered in the office of the Sub - Registrar, Jayanagara (J.P.Nagara), Bengaluru, registered on 03-02-2025 executed by the Defendants No.1 to 4 in respect of Defendant No.1 to 4 created Schedule Property in favour of Smt.Kavitha.B, Sri.Vishwasagar Sarangamath,*

Smt.S.Anitha Sreenivasa and Sri.Malleshappa Tungala is not binding to the plaintiff.

Prayer -(d) - restraining the Defendants either from interfering with or from meddling with the suit property in any manner or otherwise from disturbing the Plaintiff's peaceful, lawful, physical, actual and exclusive possession and enjoyment of suit schedule property either by the Defendants or themselves or through their workers, henchmen, Authorized Agents, General Power of Attorney Holders, servants or any person or persons claiming any right or rights in any manner whatsoever under or through the Defendants by granting Permanent Injunction.

Prayer - (e) - Directing the Defendants to pay the cost of the suit.

Prayer - (f) - Granting any other relief/s as this Hon'ble Court deem fit under the circumstances of the case, in the interest of justice and equity. "

Thereby the plaintiff converted the suit for permanent injunction into a suit for declaration and for handing over of possession of suit schedule property by the defendants to the plaintiff.

5. It is the case of the plaintiff that during the pendency of the suit for bare injunction, the suit schedule property was sold in favour of defendant Nos.5 to 8 who are the appellants herein, by the defendant Nos.1 to 4 despite the order of temporary injunction operating as against the defendants to not to interfere.

6. It is the case of the plaintiff that subsequent to the purchase by the defendant Nos.5 to 8, they have already put up construction in portion of the suit schedule property, and further constructions are being put up by the defendant Nos.5 to 8 in the suit schedule property which is the reason why the plaintiff sought for amendment and amended the plaint incorporating the prayer for declaration and possession. This being the facts of the case, defendant Nos.5 to 8 are being impleaded in the suit proceedings and filed an application - IA.No.6 under Order XXXIX Rule 4 under Section 151 of CPC to vacate the order of temporary injunction dated

30.05.2024. The said application was seriously contested by the plaintiff.

7. The trial Court, upon hearing the learned counsel for the plaintiff and the contesting defendant Nos.5 to 8 did not find favour with the defendant Nos.5 to 8 and agreed with the contentions of the plaintiff and consequently rejected the application - IA No.6 filed under Order XXXIX Rule 4 read with Section 151 of CPC by the defendant Nos.5 to 8, who are the appellants herein, which is the subject matter of the appeal herein.

8. Learned counsel for the appellants/defendant Nos.5 to 8 vehemently contends that the impugned order passed by the learned trial Judge rejecting the application-IA.No.6 is perverse, illegal and arbitrary and the same requires to be set aside. It is contended by the learned counsel for the appellants/defendant Nos.5 to 8 that the plaintiff had filed the suit for temporary injunction initially, and subsequently he has filed the suit for declaration and

possession from the defendants and recovery of the possession from the appellants/defendant Nos.5 to 8.

8.1 It is further contended by learned counsel for the appellants/defendant Nos.5 to 8 that the temporary injunction was initially granted in favour of the plaintiff on the assertion that the plaintiff was in lawful possession. However, the plaintiff was not in lawful possession. The original defendants were in possession, and they have transferred the property in favour of the defendant Nos.5 to 8 by way of registered sale deed. The defendant Nos.5 to 8 are pendente lite purchasers, and the trial Court has also come to a conclusion that it is a matter of trial to be decided over the period of evidence being recorded that whether the defendant Nos. 5 to 8 are bonafide purchasers and whether they will be bound by the ultimate outcome of the suit, and the trial Court has misinterpreted the object of Section 52 of the Transfer of Property Act and has passed the impugned order rejecting the

application -IA.No.6 filed by the defendant Nos.5 to 8 for vacating the order of temporary injunction granted in favour of the original defendants, i.e., defendant Nos.1 to 4.

8.2 It is further contended that it is an admitted fact that defendant Nos.5 to 8 are now in possession and enjoyment of the suit schedule property by virtue of a registered sale deed. It is further contended that they have obtained e-Khatha and building licence, which would enable them to put up construction on the suit schedule property.

8.3 It is further contended that the trial Court has held that defendant Nos.5 to 8 have not produced any documents to show that they have entered into a Joint Development Agreement, nor have they produced any documents to establish their ownership and title over the suit schedule property. It is further contended that there is no dispute that defendant Nos.5 to 8 have purchased the

suit schedule property during the pendency of the suit. However, defendant Nos.1 to 4 are admittedly in possession and enjoyment of the suit schedule property.

8.4 It is further contended that subsequent to the purchase of the suit schedule property during the pendency of the suit, defendant Nos.5 to 8 have obtained a sanctioned plan for putting up construction and are in the process of putting up construction on the suit schedule property. Therefore, learned counsel contends that the plaintiff has now amended the suit seeking a declaration and the relief of restoration of possession from defendant Nos.5 to 8. Apparently, there is no dispute that the plaintiff is not in possession of the suit schedule property and that the suit is no longer one for permanent injunction, but has been amended to seek relief of declaration and recovery of possession. In that view of the matter, eventually, if the plaintiff succeeds in the suit, the trial Court will have to pass an appropriate decree

directing the defendants to hand over possession of the suit schedule property or if the Court deems it appropriate, to demolish the structure put up thereon at the cost of the defendants.

8.5 It is further contended that, in view of the fact that defendant Nos.5 to 8 have become the absolute owners of the suit schedule property by virtue of a registered sale deed and have obtained a sanctioned plan for putting up construction from the Statutory Authorities, they may be permitted to proceed with the construction. It is submitted that, in the event of the plaintiff succeeding in the suit, they would not claim any equity and would abide by such terms and conditions as may be imposed by this Court. Therefore, learned counsel contends that the appeal be allowed and the impugned order be set aside.

9. *Per contra*, learned counsel for respondent No.1-plaintiff vehemently contends that defendant Nos.5 to 8 have not produced any documents before the trial Court to

establish that they have obtained sanctioned plan or have commenced construction on the suit schedule property or any portion thereof.

9.1 It is further contended that the portion of the suit schedule property is still vacant and no construction has been put up thereon. No doubt, during the pendency of the suit, defendant Nos.5 to 8 have ventured into an adventurous act of purchasing the property despite having knowledge of the pendency of the suit and the subsisting order restraining the original defendant Nos.1 to 4 from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property. Therefore, defendant Nos.5 to 8 have taken the risk of purchasing a property which is the subject matter of a pending dispute and litigation before the Court. The plaintiff was left with no option but to amend the plaint by seeking relief of declaration of ownership and recovery of possession of the suit schedule property.

9.2 It is the apprehension and grievance of learned counsel for respondent No.1-plaintiff that, in the event defendant Nos.5 to 8 put up construction and the plaintiff ultimately succeeds in the suit, defendant Nos.5 to 8 should not be permitted to claim any equity and should be directed to demolish the structure put up by them at their own cost, so as to avoid multiplicity of proceedings. Therefore, learned counsel seeks dismissal of the appeal and sustains the impugned order on the ground that there is no illegality or perversity in the order passed by the trial Court.

10. Having heard learned counsel for appellant-defendant Nos.5 to 8 and learned counsel for respondent No.1-plaintiff, the point that arise for consideration is as follows:

"1. Whether the impugned order passed by the trial Court calls for interference? and

2. If so, what order?"

11. It is not in dispute that initially, the suit was filed by the plaintiff seeking relief of permanent injunction. Subsequently, in view of defendant Nos.1 to 4 alienating a portion of the suit schedule property in favour of the appellant-defendant Nos.5 to 8, the plaintiff amended the suit. Ultimately, during the course of the trial, the trial Court will have to consider whether, in the event of the plaintiff succeeding in the suit, defendant Nos. 5 to 8 would be required to demolish the construction put up on the suit schedule property or whether they would be entitled to claim any equity in respect of such construction.

12. In view of the fact that defendant Nos.5 to 8 are in possession and enjoyment of the suit schedule property, having obtained the necessary sanctioned plan and having commenced construction over the larger extent of the property, while the plaintiff is claiming a portion of the larger extent, measuring 2,400 square feet, the rights of

the parties will have to be adjudicated by the trial Court after a full-fledged trial.

13. In the event the plaintiff does not succeed in the suit, defendant Nos.5 to 8 cannot be put to hardship for having purchased the property and invested substantial amounts in putting up construction. Therefore, apart from examining the existence of a *prima facie* case, the Court will also have to consider the other two essential requirements, namely, the balance of convenience and irreparable injury, as well as the hardship that may be caused to the parties either by granting or rejecting the order of temporary injunction. Ultimately, the Court will have to assess which of the compelling considerations outweighs the other, having regard to the facts and circumstances of each case.

14. Admittedly, in the present suit, the plaintiff has amended the plaint seeking declaratory relief and recovery of possession. The very fact that the plaintiff is seeking

recovery of possession indicates that he is not in possession of the suit schedule property, whereas the defendants are in possession and enjoyment thereof. Therefore, the trial Court ought to have analysed these aspects, particularly the balance of convenience and irreparable injury, while considering the application filed under Order XXXIX Rule 4 of CPC seeking vacation of the order of temporary injunction. However, these relevant aspects have not been taken into consideration by the trial Court while deciding the said application.

15. It is also vehemently contended by learned counsel for appellant-defendant Nos.5 to 8 that the plaintiff does not have any right, title or interest over the suit schedule property, particularly when the registered sale deed relied upon by the plaintiff is based on an unregistered Power of Attorney and an unregistered Agreement of Sale. All these are matters that require consideration and adjudication during the course of trial.

16. It would not be appropriate for this Court to delve into these aspects, as it would affect the rights of both parties during the trial. Hence, it would suffice to hold that the trial Court has committed an illegality and perversity in dismissing I.A.No.6 filed under Order XXXIX Rule 4 of CPC, despite the fact that defendant Nos.5 to 8 are in possession and enjoyment of the suit schedule property by virtue of a registered sale deed and have proceeded with construction after obtaining the sanctioned plan and necessary permissions from the Statutory Authorities. Of course, appropriate conditions can be imposed on defendant Nos.5 to 8 to safeguard the interests of the plaintiff in the event of the plaintiff succeeding in the suit.

17. Accordingly, I pass the following:

ORDER

i. The appeal is ***allowed***;

ii. The impugned Order dated 27.08.2026 passed on I.A.No.6 in O.S.No.3742/2023 by XXXVII Additional City Civil and Sessions Judge, Bengaluru, is hereby set aside;

iii. Consequently, the order passed on the application filed by respondent No.1-plaintiff under Order XXXIX Rules 1 and 2 of CPC, granting temporary injunction, is hereby set aside;

iv. It is made clear that this Court has not expressed any opinion on the merits of the matter;

v. It is also made clear that appellant-defendant Nos.5 to 8 shall not claim any equity in the event the plaintiff succeeds in the suit. It is further made clear that, in such an eventuality, defendant Nos.5 to 8 shall, if so required at the instance of the plaintiff,

demolish any structure put up on the suit schedule property at their own cost;

vi. In view of the fact that the suit is of the year 2023, the trial Court shall endeavour to dispose of the suit expeditiously, preferably within a period of one (1) year from the date of receipt of a copy of this order;

vii. All contentions of the parties are kept open.

Sd/-
(PRADEEP SINGH YERUR)
JUDGE

paragraphs 1 to 8.1.. RCK
paragraphs 8.2 to end ..CPN
List No.: 1 Sl No.: 52