NC: 2026:KHC:23770
MFA No. 9333 of 2025

HC-KAR

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.9333 OF 2025 (CPC)

BETWEEN:

SRI M. MOHAN KUMAR
S/O LATE SRI P. MADDAPPA,
AGED ABOUT 50 YEARS,
R/AT NO.166, ASWATHA KATTE ROAD,
CHIKKALLASANDRA,
BENGALURU-560061.

...APPELLANT

(BY SRI PRASANNA KUMAR P., ADVOCATE)

AND:

1. SRI M. RAVIKUMAR
S/O LATE SRI P. MADDAPPA,
AGED ABOUT 53 YEARS,
R/AT NO.128, SEVANTIGE ROAD,
KARISHMA HILLS, GUBBALALA,
SUBRAMANYAPURA,
BENGALURU-560061.

2. SRI M. PRASANNA KUMAR
S/O LATE SRI P. MADDAPPA,
AGED ABOUT 47 YEARS,
R/AT NO.196, SEVANTIGE ROAD,
KARISHMA HILLS, GUBBALALA,
SUBRAMANYAPURA,
BENGALURU-560061.

...RESPONDENTS

(BY SRI VIGNESHWAR S. SHASTRI, SENIOR ADVOCATE FOR
SRI RAGHU HULIKAL, ADVOCATE FOR R-1;
SMT. HEMALATHA V., ADVOCATE FOR R-2)

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

THIS MFA IS FILED UNDER ORDER 43 RULE 1(r) OF THE CPC., AGAINST THE ORDER DATED 23.08.2025 PASSED ON I.A.NO.1 IN O.S.NO.1396/2024 ON THE FILE OF THE XXXV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-36), DISMISSING THE I.A.NO.1 FILED UNDER ORDER 39 RULE 1 AND 2 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

This miscellaneous first appeal is directed against the order dated 23.08.2025 passed on I.A. No.1 in O.S. No.1396/2024 by the XXXV Additional City Civil and Sessions Judge, Bengaluru (CCH-36) ('Trial Court' for short), whereby I.A. No.1 filed by the plaintiff under Order XXXIX Rules 1 and 2 CPC, seeking temporary injunction came to be rejected.

Brief facts:

2. The plaintiff instituted suit in O.S. No.1396/2024 seeking partition and separate possession of the suit schedule properties, contending that the plaintiff and the defendants are brothers constituting members of a joint Hindu family. It is the case of the

plaintiff that their father died intestate and that several properties were acquired out of the joint family funds and joint family activities. Though some properties stand in the name of individual names of the parties and in the name of the company, claiming 1/3rd share in the suit schedule properties. The plaintiff sought interim protection by filing I.A.No.1 to restrain alienation and alteration of the properties.

3. Learned counsel for the appellant submits that the suit schedule properties are the joint business properties acquired, from common funds. Though, they stand in individual or company names, they are beneficially jointly owned and the defendants are attempting to alienate the properties and change the nature of the properties by construction and development. That the plaintiff has made out a *prima facie* case, and if no injunction is granted, it would result in irreparable injury and the multiplicity of proceedings.

4. *Per contra*, Sri Vigneshwar S. Shastri, learned senior counsel appearing on behalf of Sri Raghu Hulikal, learned counsel for respondent No.1 submits that in respect of schedule 'B' properties, particularly having regard to the documents evidencing acquisition and deed of partition (Document No.5), the properties are not individual properties but are traceable to the partnership firm and therefore, the said firm is a necessary and proper party to the proceedings. It is further contended that the partnership is still in existence and the deed contains an arbitration clause, thereby, also raising issues of maintainability as well.

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

"Whether the impugned order passed by the trial Court warrants any interference?"

6. On consideration of the rival submission, this Court is of the view that the Trial Court has proceeded to reject the application under Order XXXIX Rules 1 and 2 of CPC, on the ground that the plaintiff has not impleaded the partnership firm / company in whose name certain properties stand and whose rights are directly affected. In a suit seeking partition, whenever "properties are asserted to be derived from or held through a entity, such as a partnership firm or a company, the said entity becomes a necessary party, and in its absence, any finding as to *prima-facie* right or balance of convenience would be incomplete and inconclusive."

7. Further, the contention regarding the existence of an arbitration clause in the partnership deed and the subsistence of a partnership, are aspects which require consideration by the Trial Court after affording opportunity to all the necessary parties.

8. In that view of the matter, this Court is of the opinion that impugned order suffers from procedural infirmity. Therefore, the order of the Trial Court is liable to be set aside. The matter requires to be remanded for fresh consideration and the point framed for consideration is answered and this Court pass the following:

ORDER

i. The Miscellaneous First Appeal is ***allowed***.

ii. The impugned order dated 23.08.2025 passed on I.A. No.1 in O.S. No.1396/2024 by the XXXV Additional City Civil and Sessions Judge, Bengaluru (CCH-36) is hereby ***set aside.***

iii. The matter is remitted back to the Trial Court for fresh consideration of I.A. No.1 in accordance with law.

iv. The appellant is granted liberty to implead the partnership firm / company as party to the suit, if so advised. Upon such impleadment, the Trial Court shall reconsider the application afresh, after

affording opportunity to all the parties, in accordance with law.

v. All the contentions of the parties are kept open.

vi. The Trial Court shall dispose of the application expeditiously.

Sd/-

JUSTICE K.S. HEMALEKHA

MBM
List No.: 1 Sl No.: 68