

KABG300003712026



**IN THE COURT OF THE SENIOR CIVIL JUDGE,
BAILHONGAL, AT: BAILHONGAL**

Dated this the 16th Day of June 2026

PRESENT:

**Sri. Ravi Babu Chawan
B.A. LL.B.,
Senior Civil Judge, Bailhongal.**

R.A. No.13/2026

1) Mr. Mugutkhan Devalaya,
and others,

..... Appellants

(By Shri. M.M.K./M.M.S., Advocates)

- Vs. -

1) Mr. Javeed S/o Mohammadali Jamadar,
and others,

..... Respondents

(By Shri. J.V.P., Advocate for R3 to R7)

PARTIES TO IA No.II

1) Mr. Mugutkhan Devalaya,
M.K. Hubli, Tq: Bailhongal,
Dist: Belagavi, Represented by
Trustees/Mutawallis:

2) Mr. Sayed Mugutsha S/o Abdulsattar Peerzade,
Age: 68 years, Occ: Business,
R/o: H.. No.4167/B, Chandu Galli,
Kakatives Road, Belagavi.

3) Mr. Riyazahmed S/o Imamhussain Peerzade,
Age: 64 years, Occ: Service,
R/o: Makan Galli, M.K. Hubli,,
Tq: Kittur, Dist: Belagavi.

4) Mr. Mohammadkabir S/o Mohammadali Peerjade,
Age: 48 years, Occ: Business,
R/o: Makan Galli, M.K. Hubli,
Tq: Kittur, Dist: Belagavi.

5) Mr.Shakilahamad S/o Kashisha Peerzade,
Age: 56 years, Occ: Service,
R/o: Peerzade Galli, M.K. Hubli,
Tq: Kittur, Dist: Belagavi.

6) Mr. Shakilahamad S/o Mugutsab Peerzade,
Age: 47 years, Occ: Business,
R/o: Naya Mohalla, Near Marksa Masjid,
Tq: Kittur, Dist: Belagavi.

**.....Applicants/
Appellants**

(By Shri. M.M.S., Advocate)

- Vs-

1) Mr. Javeed S/o Mohammadali Jamadar,
Age: 49 years, Occ: Business,
R/o: Khanapur Road, Saw Mill, M.K. Hubli,
Tq: Kittur, Dist: Belagavi.

2) Mr. Gouse S/o Maqtaumsab Kudari,
Age: 46 years, Occ: Nil,
R/o: Gouthana, M.K. Hubli,
Tq: Kittur, Dist: Belagavi.

3) Mr. Jahangeer S/o Mugutsab Nabowale,
Age: 53 years, Occ: Business,
R/o: Sangoda Galli, M.K. Hubli,
Tq: Kittur, Dist: Belagavi.

4) Mr. Akbar Sayyed,
Age: 58 years, Occ: Driver,
R/o: Gouthana, M.K. Hubli,
Tq: Kittur, Dist: Belagavi.

5) Mr. Mustaq Shikandar Patel,
Age: 45 years, Occ: Goundi,
R/o: Patel Galli, M.K. Hubli,
Tq: Kittur, Dist: Belagavi.

6) Mr. Azad Khazi,
Age: 60 years, Occ: Nil,
R/o: Khazi Galli, M.K. Hubli,
Tq: Kittur, Dist: Belagavi.

7) Mr. Saleem Sahebkhani,
Age: 48 years, Occ: Business,
R/o: Gouthana, M.K. Hubli,
Tq: Kittur, Dist: Belagavi.

8) Mr. Muneer S/o Gafarsab Jamadar,
Age: 44 years, Occ: Agriculture,
R/o: Mujawar Galli, M.K. Hubli,
Tq: Kittur, Dist: Belagavi.

9) Mr. Dastagir Mugutsab Hongal,
Age: 60 years, Occ: Nil,
R/o: Patel Galli, M.K. Hubli,
Tq: Kittur, Dist: Belagavi.

10) Mr. Ayaz Abdulmazid Patel,
Age: 48 years, Occ: Business,
R/o: Besude I.B. Bungala, P.B. Road,
M.K. Hubli, Tq: Kittur,
Dist: Belagvi.

11) Mr. Altaf Pathan,
Age: 58 years, Occ: Mason,
R/o: Makan Galli, M.K. Hubli,
Tq: Kittur, Dist: Belagavi.

**..... Opponents/
Respondents**

(By Shri. J.V.P., Advocate for R3 to R7)

ORDER ON IA No. II

The appellants have filed the present application under Order XXXIX Rule 1 & 2 R/w Section 151 of CPC seeking an order of ad-interim injunction restraining the respondents, their agents, servants or any other persons acting on their behalf from obstructing the peaceful

management and administration of appellant No.1 institution by appellant Nos.1(a) to 1(c) pending disposal of the present appeal.

2. In the affidavit filed in support of the application, the appellant No.1 has contended that the present appeal has been preferred challenging the judgment and decree dated on 06-04-2026 passed by the learned Civil Judge and JMFC, Kittur in O.S. No.51/2019. It is stated that the averments made in the memorandum of appeal may be read as part and parcel of the affidavit so as to avoid repetition of facts. It is further contended that the appellant No.1 institution along with its property was registered as a trust under provisions of Bombay Public Trusts acts, 1950 bearing registration No.B-87. The predecessors-in-title of the appellants, who were hereditary trustees and lineal descendants of the holly saint, had filed an application before the Assistant Charity Commissioner, Belagavi for registration of appellant No.1 institution and its properties. The said application was registered as Application No.1196/1952. It is stated that the said application was clubbed with another rival Application bearing No.3191/1952 filed by rival claimants. After considering the matter on merits, the Assistant

Charity Commissioner, Belagavi, by order dated 27-12-1955, allowed Application No.96/1952 and recognize the predecessors-in-title of the appellants as hereditary trustees of the institution. The rival application bearing No.3191/1952 came to be rejected.

3. It is further contended that the rival claimants challenged the order of Assistant Charity Commissioner, before the Assistant Charity Commissioner, Bengaluru in Appeal No.4/1960. The said appeal came to be dismissed with costs by order dated 08-06-1961. According to the appellants, both the Assistant Charity Commissioner and the Charity Commissioner recognized and upheld the status of the predecessors of the appellants as trustees of appellant No.1 institution. It is further stated that the status of the predecessors of the appellants as trustees was also recognized and upheld by the competent Civil Court in Regular Civil Suit Nos.133/1952, 134/1952, 135/1952 and 136/1952. It is further contended that the trusts governed under the Bombay Public Trusts Act, 1950 were exempted from the operation of the said act with effect from 01-12-1961 and the provisions of the Wakf Act, 1954 became applicable to Muslim Trust in the territories which now form part of the State of Karnataka.

According to the appellants, appellant No.1 institution which had been registered under the Bombay Public Trusts Act, 1950 stood deemed to be registered under the Wakf Act, 1954 by virtue of statutory provisions.

4. It is further contended that the despite recognition of the appellants' predecessors by competent authorities and Civil Courts, the rival claimants managed to secure entry of their names in the Kitab-ul-Auqaf by misleading the Karnataka State Board of Auqaf. Upon coming no of the said fact, the predecessors of the appellants initiated the proceedings before the Law Committee of the Karnataka State Board Auqaf in LCC No.16/1984. The law Committee, after considering the matters on merits, passed on order dated 22-11-1986 setting aside the order dated 17-10-1984 passed in favour of the rival claimants.

5. It is further stated that though the Law Committee had passed orders in favour of the predecessors of the appellants, corresponding entries were not made in the Kitab-ul-Auqaf. Therefore, appellant No.1(a) to (e), being the successors of their ancestors, submitted representation before the Karnataka State Board Aquaf seeking entry of their names in Kitab-ul-Auqaf. Since no

action was taken, the appellants approached the Hon'ble High Court of Karnataka, Dharwad Bench, by filing WP. No.77286/2013. The Hon'ble High Court by order dated 08-10-2013 directed the Karnataka State Board of Aquaf to consider the representation submitted by the appellants. Pursuance to the direction of the Hon'ble High court, the Law Committee of the Karnataka State Board of Aquaf conducted an enquiry in case No.KBW(CMC/6/BGM/10-11 LCC No.1/2016. After considering the orders passed by competent authorities and Civil Courts, the Law Committee by order dated 20-12-2017 upheld the status of the appellants as Trustees/Mutawallis of appellant No.1 institution on directed entry of their names in the Kitub-ul-Aquaf. Thereafter, the Karnataka State Board of Auqaf by order No. No.KBW(CMC)/6/BGM/10-11 dated 31-11-2018 entered the names of the appellants in the Kitab-ul-Auqaf as Mutwallis.

6. It is further contended that the appellants are hereditary Trustees of appellant No.1 institution and are in management and administration of the affairs of the Dargah. Prior to them, their predecessors-in-title, had been administrating the affairs of the institution

throughout their life time. It is also stated that the learned Civil Judge (Jr. Dvn), Bailhongal, in Regular Civil Suit No.102/1954 granted a decree of perpetual injunction in favour of the predecessors of the appellants in respect of Management of the Dargah and its properties and the said judgment was confirmed in Civil Appeal No.33/1956 by the learned Senior Civil Judge, Belagavi.

7. It is further contended that the appellants intended to undertake developments works in the Dargah such as fixing marble gallery surrounding the tomb of the holly saint and other allied works. Bing trustees/Mutwallis of the institution, the appellants entrusted the said work to respondent Nos.1 to 11. Initially respondent Nos.1 to 11 behaved properly on undertook the entrusted work. However, subsequently they started acting they contrary to the institutions of the appellants. It is alleged that through they were authorized only to undertake marble work, they illegally damaged certain graves situated within the Dargah premises. The said acts were objected to by the appellants and devotees. According to the appellants, respondent Nos.1 to 11 who have no right whatsoever over the management and administration of appellant No.1 institution, started creating hurdles in the

administration of the institution. It is alleged that the respondent Nos.1 to 11 have been circulating pamphlets amongst devotees and member of the public requesting donations in the name of the institution and have been interfering with the day-to-day administration and management of the Dargah. It is further alleged that the respondents have been extending threats of the appellants without any lawful authority. It is further stated that appellants lodged complaints before the jurisdictional police regarding the conduct of respondent Nos.1 to 11. However, the police authorities did not entertain the complaints. Taking advantage of the same, respondent Nos.1 to 11 allegedly continued their acts of the interference.

8. It is further contended that under such circumstance the appellants instituted O.S. No.51/2019 seeking relief of perpetual injunction. During the pendency of the suit, temporary injunction was granted in favour of the appellants and remained enforce through out the pendency of the proceedings. According to the appellants, after disposal of the suit, respondent Nos.1 to 11 have once again started interfering with the management and administration of the institution.

Therefore, it is just and necessary to restrain the respondents from obstructing physical management and administration of appellant No.1 institution pending disposal of the present appeal. It is contended that if the injunction sought is granted no prejudice will be caused to the respondents, whereas refusal of the relief would result in irreparable loss, hardship and multiplicity of proceedings. Hence, the appellants have prayed for allowing the application.

9. Per contra, the respondents have filed objections contending that the application is not maintainable either in law or on facts and is liable to be dismissed. It is contended that the application has been filed with mala fide intention only to harass the respondents. The respondents denied all allegations made in the affidavit and contend that the same are false and baseless. The respondent specifically contended that the allegations contained in paragraph No.15 of the affidavit alleging interference by respondent Nos.1 to 11 in the administration and management of the institution have not been establish by the appellants before the Trial Court. It is further contended that the appellants have fail to prove that the respondents are indulging in any acts of

the obstruction as alleged. The respondents further contended that the appellants have not approached the Court with clean hands and have suppressed material facts. It is also contended that all necessary parties who had appeared before the Trial Court have not been impleaded in the present appeal. The respondents further contend that O.S. No.51/2019 and O.S. No.42/2021 were tried together and disposed of by a common judgment and decree. According to them, the present application is speculative, devoid on merit and unsupported by any acceptable material. On these grounds the respondents have sought dismissal of the application with exemplary costs.

10. Heard both sides. Perused the material available on record.

11. The points that arise for consideration are as under:

POINTS

1) Whether the appellants have made out a prima faice case for granting of temporary injunction pending disposal of the appeal?

2) Whether the balance of convenience lies in favour of the appellants ?

3) Whether the appellants will suffer irreparable loss and injury if the relief sought is refused ?

4) What order ?

12. My findings on the above points are as follows:

Point No.1: In the Affirmative

Point No.2: In the Affirmative

Point No.3: In the Affirmative

Point No.4: As per final order, for the following:

REASONS

13. **Point Nos.1 to 3:-** Since all these points are inter connected and overlap with each other, they are taken up together for common discussion in order to avoid repetition of facts and evidence.

14. The records disclose that the appellants have preferred the present appeal challenging the judgment and decree dated 06-04-2026 passed in O.S. No.51/2019 by the learned Civil Judge and JMFC, Kittur. The appellants

claim that the appellant No.1 institution was duly registered under the provisions of Bombay Public Trusts Act, 1950 and that their predecessors-in-title were recognized as hereditary trustees by the Assistant Charity Commissioner, Belagavi in Application No.1196/1952. The materials placed on record further discloses that the said order came to be conformed by the Charity Commissioner, Bengaluru in Appeal No.4/1960. The appellants have also relied upon various judgments of competent Civil courts as well as proceedings before the Karnataka State Board of Auqaf in support of their claim of hereditary trusteeship and management over the institution.

15. The appellants have further produce materials to show that pursuance to the directions issued by the Hon'ble High Court of Karnataka in WP No.77286/2013, the Karnataka State Board Auqaf conduct an enquiry by an order dated 20-12-2017 recognized the status of the appellants as trustees/Mutawallis and directed entry of their names in Kitab-ul-Auqaf. The Board thereafter entered the names of the appellants as Mutawallis. These material prima facie indicates that the appellants have been asserting management and administration over the

institution on the basis of orders passed by competent authorities.

16. Further, the specific case of the appellants is that the respondent Nos.1 to 11 were entrusted only with certain developmental works relating to the Dargah premises and that subsequently they started interfering with the management and administration of the institution. It is alleged that the respondents have been creating hurdles in the administration of the Dargah, collecting donations and interfering with day-to-day affairs of the institution. The appellants therefore, instituted O.S. No.51/2019 seeking relief of perpetual injunction.

17. The appellants shall produced copy of entire order sheet in O.S. No.51/2019. On perusal of the said entire order sheet it reveals that the Trial Court had granted temporary injunction dated 20-08-2019 against the respondents restraining them obstructing the peaceful management and administration. The said interim order granted was enforced till disposal of the suit. A significant circumstances which cannot be ignored is that during the pendency of O.S. No.51/2019, the learned Trial Court had granted temporary injunction in favour of the appellants.

The said order remained in force through out the pendency of the suit till its final disposal. The fact that interim protection continued during the entire trial proceedings clearly indicates that the Trial Court had found existence of a prima facie case and necessity to preserve the existing state of affairs pending adjudication of the dispute. Though, the suit ultimately came to be dismissed, the findings record therein are presently under challenge before this Court and have not attained finality.

18. It is a settled principle of law that an appeal is continuation of the original proceedings. While considering an application for temporary injunction during pendency of an appeal, the Appellate Court is not required to conduct a detailed examination of the merits of the case nor record conclusive finding regarding the rights of the parties. Thus, the Court is only required to ascertain whether the applicant has established a prima facie case, balance of convenience and irreparable injury.

19. Upon perusal of the pleadings and documents produced by the appellants, this Court is of the opinion that the appellants have raised substantial and arguable grounds requiring consideration at the time of final

hearing of the appeal. The documents relied upon by them disclose long-standing assertions of hereditary trusteeship and management over the institution. Therefore, the appeal cannot be said to be frivolous or devoid of merits. Consequently, the appellants have established a prima facie case.

20. So far as the balance of convenience is concerned, institution involved in the present proceedings is a religious institution and the dispute pertains to its management and administration. The temporary injunction granted during pendency of the suit had preserved the existing arrangement for several years. If such arrangement is disturbed during pendency of the appeal, there is every likelihood of fresh disputes arising between the parties regarding management of the institution. Hence, such disturbance may adversely effect the administration of the Dargah and may also confusion among devotees and members of the public. On the other hand, the continuation of the interim protection which was already operating during the pendency of the suit would merely preserve the existing state of affairs till final adjudication of the appeal. Hence, this Court is of the view that, no serious prejudice would be caused to the

respondents if the existing arrangement is maintain during the pendency of the appeal. Therefore, the balance of convenience overwhelmingly lies in favour of the appellants.

21. Further, the appellants have also established the likelihood of irreparable injury. Because as already recorded the dispute relates to management and administration of a religious institution and the rights claimed by the appellants cannot be adequately compensated in terms of money. If the respondents are permitted to interfere with the management of the institution during the pendency of the appeal and if ultimately the appellants succeed, restoration of the earlier position may become difficult and may result in multiplicity of proceeding and that the such injuries cannot be adequately remedied by monitory compensation.

22. The objections filed by the respondents mainly raise disputed questions of facts regarding the rights of parties. Such disputed questions required detailed examination at the stage of final hearing of the appeal and cannot be conclusively decided while considering an

interlocutory application. Therefore, this Court is of the consider opinion that at the stage, the preservation of the subject matter of the appeal assumes greater importance.

23. Having regard to the overall facts and circumstances of the case, the long-standing claim of management asserted by the appellants, the recognition allegedly granted by various authority, the fact that temporary injunction remained in force throughout the pendency of the suit and the necessity of preserving the subject matter of the appeal, this court is of the considered opinion that the appellants have successfully established prima faice case, balance of convenience and irreparable loss warranting grant of temporary injunction pending disposal of the appeal. Hence, I answer point Nos.1 to 3 in the Affirmative.

24. **Point No.4:-** In view of the above my findings and discussion made on point Nos.1 to 3, I proceed to pass the following:

ORDER

IA No.2 filed by the Appellants
under Order XXXIX Rule 1 and 2 R/w
Section 151 of CPC is hereby allowed.

The respondents, their agents, servants, supporters or anybody claiming through or under them are hereby temporarily restrained from obstructing or interfering with the peaceful management and administration of appellant No.1 institution by appellant Nos.1(a) to 1(e) pending disposal of the appeal.

No order as to cost.

Office is directed to call for TCR from concerned Trial Court.

(Dictated to the stenographer transcribed by him, and corrected by me, then pronounced in the open Court on this the 16th Day of June, 2026)

(Ravi Babu Chawan)
Senior Civil Judge, Bailhongal.

