



**IN THE COURT OF I ADDL SENIOR CIVIL JUDGE & JMFC,
DEVANAHALLI.**

Present: Sri Lokesha M.G., B.A.L.,LL.B.,

Dated this the 10th day of April, 2026.

M.A.No.2/2026

APPELLANTS:

1. Sri. Allha Bakash,
S/o. Late Syed Basha,
Aged about 43 years.

2. Sri. Mueer,
S/o. Late Syed Basha,
Aged about 41 years.

3. Sri. Malan,
S/o. Late Syed Basha,
Aged about 40 years.

4. Smt. Shaheena,
D/o. Late Syed Basha,
Aged about 37 years.

5. Sri. Baba Jan,
S/o. Late Syed Basha,
Aged about 30 years.

6. Sri. Khaleel,
S/o. Late Syed Basha,
Aged about 31 years.



7. Sri. Ismail,
S/o. Late Syed Basha,
Aged about 29 years.

8. Sri. Rafiq,
S/o. Late Syed Basha,
Aged about 27 years.

9. Sri. Khaliq,
S/o. Late Syed Basha,
Aged about 25 years.

All are R/at: B.Palya,
Jala Hobli,
Bengaluru North Taluk.

(By Sri. A.R.S.R., Advocate)

Vs.

RESPONDENTS:

1. Sri. Mehaboob,
S/o. Late Kala Basha,
Aged about 45 years.

2. Smt. Munni,
D/o. Late Kala Basha,
Aged about 39 years.

3. Sri. Fakruddin,
S/o. Late Kala Basha,
Aged about 36 years.



4. Sri. Amer Jan,
S/o. Late Kala Basha,
Aged about 34 years.

5. Smt. Shahasad Bi,
D/o. Late Hussain Sab @
Buden Sab,
W/o. Munner Basha,
Aged about 54 years.

6. Smt. Rahamatunnisa,
D/o. Late Hussain Sab @
Buden Sab,
W/o. Munner Basha,
Aged about 53 years.

7. Smt. Zareena Bi,
D/o. Late Hussain Sab @
Buden Sab,
W/o. Sami Khan Basha,
Aged about 52 years.

8. Smt. Jubeda,
D/o. Late Hussain Sab @
Buden Sab,
W/o. Syed Pasha,
Aged about 51 years.

9. Smt. Mehabbob Jan,
D/o. Late Hussain Sab @
Buden Sab,
W/o. Khaleel,
Aged about 50 years.



10. Smt. Safoora,
D/o. Late Hussain Sab @
Buden Sab,
W/o. Hidayath,
Aged about 46 years.

11. Sri. Ameer Jan,
S/o. Late Hussain Sab @
Buden Sab,
Aged about 48 years.

12. Smt. Gulab Jan,
D/o. Late Sheik Masthan,
W/o. Kala Basha,
Aged about 60 years.

13. Smt. Mubeena,
D/o. Late Sheik Masthan,
W/o. Babu,
Aged about 40 years.

14. Sri. Yarab,
S/o. Late Sheik Masthan,
Aged about 35 years.

15. Smt. Tahasina,
D/o. Late Sheik Masthan,
W/o. Babu,
Aged about 33 years.

16. Smt. Tahasima
D/o. Late Sheik Masthan,
W/o. Basha,



Aged about 32 years.

17. Smt. Mubarrak,
D/o. Late Sheik Masthan,
Aged about 22 years.

18. Smt. Simran,
D/o. Late Sheik Masthan,
Aged about 20 years.

19. Sri. Sheik Payre Jan,
S/o. Late Sheik Masthan,
Aged about 55 years.

All are R/at. Razzak Sab
Palya, Bagalur Circle, Jala
Hobli, Bangalore North
Taluk.

(By Sri. A.R.P., Advocate)

JUDGMENT

This is an appeal preferred by the appellants U/O XLIII Rule-1 of CPC against the impugned order dated 16.12.2025 passed on I.A.No.8 filed U/O XXXIX Rule 1 and 2 of CPC, in O.S.No.192/2009 by the 1st Additional Civil Judge, Devanahalli.



2. The appellants were the defendants and the respondents were the plaintiffs before the Trial Court. For the sake of convenience this court refers the parties in their original ranking in the Trial Court.

3. On 16.12.2025 the Trial Court allowed the I.A.No.8 filed by the plaintiffs U/O XXXIX Rule 1 & 2 of CPC.

4. Being aggrieved by the said order, the appellants have preferred this appeal contending the grounds urged in the appeal memorandum.

5. The impugned order is opposed to facts and probabilities of the case. It has been passed without proper appreciation of the documents filed by the legal representatives of defendant No.3. Trial Court has failed to consider documents and appreciate the defense. Plaintiffs have admitted the Sale Deed for the year 1973 and sought for cancellation of the Sale Deed after lapse of 41 years. The Trial Court has not appreciated the said contention and came to wrong conclusion. The Trial Court has erred in accepting the documents of the plaintiffs. There is no concept of joint family as per



Mohammedan Law. Kathedar during his lifetime, sold the suit property. Hence, heirs of such person are not entitled to claim partition. The Trial Court has not considered the aspect that legal representatives of defendant No.3 will be put to great loss and injury.

6. Respondent No.1 to 11 have filed objection to the appeal stating that appeal is not maintainable. The Trial Court order is correct. The appellants have not obeyed the interim order passed by the Trial Court. They have not stopped the present construction work in the suit property. The plaintiffs are entitled to the specific shares in the suit property and they are in joint possession and enjoyment of suit property. The Trial is required to determine the contentions of both. Appeal is frivolous and there are no grounds in the appeal. There are no issues like maintainability of suit. No party has any right to change the nature of the suit property. The construction of building is unauthorized without any sanctioned plan and without any license and without any conversion. It is against the Municipal Laws. Allowing permanent construction amounts to granting the final relief at interim stage. The respondents have



good case on merits and balance of convenience lies in their favour. Hence, appeal can't be allowed. On the other hand no hardship will be caused to the appellants.

7. The plaintiffs filed the suit against the defendants for partition and declaration. Along with the suit, plaintiffs filed I.A.No.8 under Order XXXIX Rule 1 and 2 of CPC restraining the defendant No.3 legal representatives and their agents from changing the nature of suit property by putting up any construction in any manner during the pendency of the suit.

8. Plaintiffs have filed the suit for the relief of Declaration that plaintiffs and defendants are co-owners of suit property and for Partition and to declare Sale Deed dated 04.01.1973 and 15.08.1977 in respect of suit property are illegal. The plaintiffs have stated that suit property was originally belonging to their father Hussain Sab @ Buden Sab. Said Hussain Sab got 6 daughters and 3 sons. They are the plaintiffs and defendant No.1 and 2. He acquired the said property



through Sale Deed in the year 1961. He was in possession and enjoyment of the said property. He died long back leaving behind plaintiffs and defendant No.1 and 2 as his legal heirs. Thereafter, they have succeeded the suit property and they are in joint possession and enjoyment of suit property. During his lifetime, he performed the marriages of plaintiff No.1 to 3 and they were living separately in their respective houses. After his death, the marriage of plaintiff No.4 to 8 were celebrated. Suit property was under the management of the defendant No.1 and 2. It was given on wara basis to defendant No.3. Accordingly, defendant No.1 to 3 were cultivating the suit property. Yearly once defendant No.1 and 2 used to share the crops among the plaintiffs till 2000. Thereafter, they have not given the sharing. The plaintiffs have not asked for partition of schedule property. The plaintiffs learnt from their Villagers on 05.01.2007 that defendant No.3 is making attempt to alienate suit property in favour of third parties. Accordingly, plaintiffs have suspected the attitude of defendant No.1 and 2 and they have asked for partition on 09.01.2009. Defendants acted in a manner prejudicial to the interest of the plaintiffs and refused to



allot share. They applied and obtained the documents and they came to know that the name of defendant No.3 is forthcoming in respect of suit property without any basis. The plaintiffs and defendant No.1 and 2 are Mohammedans and they are governed by the provisions of Mohammedan Law. They are tenants in common. They are co-sharers. They have definite share. They are entitled to share in the suit property. For the first time, plaintiffs came to know that defendant No.3 has filed written statement and taken contention that father of plaintiffs was in need of money and for family necessity, he sold suit property in favour of defendant No.1 and he sold it in favour of defendant No.3. Sale Deed is created by way of misrepresentation. At no point of time, father of plaintiffs received any consideration. Defendant No.1 has never paid any consideration to his father. Accordingly, defendant No.3 has not derived any right, title and interest over the suit property. The transactions are illegal. Revenue documents are created without knowledge and consent of the father of the plaintiffs.



9. After the institution of the above appeal, this Court issued notice to the respondents and they have appeared through their advocate and filed objection.

10. Defendant No.3 and his legal representatives have contended that suit is not maintainable. Suit is barred by Law of limitation. Plaintiffs have not paid proper Court Fee. Defendant No.3 is not aware of the fact that schedule property was belonging to father of plaintiffs. Plaint averments are denied. It is stated that suit property was purchased by Hussain Sab in the year 1961. He was in need of money and for family necessity, he sold suit property in favour of defendant No.1 on 04.01.1973. Thereafter, plaintiffs father didn't hold any right over the suit property. Defendant No.1 and 2 already sold the suit property in favour of defendant No.3 since they were in need of fund for their family necessity and to discharge family debts and to celebrate the marriage of their sisters on 15.08.1977. Thereafter, revenue documents are transferred in his name. Defendant No.3 has been in uninterrupted possession and enjoyment of suit property by paying revenue to the



concerned department and by exercising all rights of ownership. There is no cause of action to file the suit. The plaintiffs have not come before the Court with clean hands. Defendant No.3 purchased the suit property out of hard earned money. From the date of purchase, he is maintaining the family. He has been personally cultivating the suit property. It is also stated that plaintiffs are very well aware of the sale of suit property in the year 1973 and suit is not filed in time. The brother of plaintiffs sold suit property in the year 1977 in favour of defendant No.3 who has been cultivating the suit property and revenue records are standing in his name. Suit is liable to be dismissed. To harass the defendants, suit is filed.

11. Heard the arguments of appellants and respondents and perused the materials on the record.

12. From the appreciation of contention of rival parties following points that arise for my consideration.

- 1. Whether the order passed by the trial court on IA.No.VIII in**



**O.S.No.192/2009 dated 16.12.2025
is perverse, capricious and not
sustainable in the eye of Law?**

2. What Order ?

13. Upon hearing the learned counsel for the appellants and respondents and having regard to provision of Law my findings on the above points are as follows:

Point No.1 : In the Affirmative;
Point No.2 : As per final order
for the following:

REASONS

14. POINT No.1: The order which is challenged by the appellants is one passed by the Trial Court on the application filed by the plaintiffs U/O XXXIX Rule 1 and 2 of CPC, restraining the defendant No.3 legal representatives and their agents from changing the nature of suit property by putting up any construction in any manner during the pendency of the suit.

15. The appellants have challenged the order of Trial Court on I.A.No.VIII in O.S.No.192/2009. The plaintiffs



have filed the suit for the relief of declaration and partition in respect of suit property. They have also challenged the Sale Deeds for the year 1973 and 1977. They have pleaded that their father Hussain Sab purchased the suit property in the year 1961. He was in possession and enjoyment of suit property. After his death, plaintiffs and defendant No.1 and 2 are in joint possession and enjoyment of suit property. It is also stated that suit property was given to defendant No.3 on wara basis. It is also stated that defendant No.1 to 3 in collusion with each other, are trying to alienate the suit property. The plaintiffs came to know about the sale transaction later when defendant No.3 filed written statement. It is also stated that the father of plaintiffs has never executed any such document in favour of defendant No.1. It is also pleaded that the Sale Deed in favour of defendant No.3 is created one. Defendant No.3 and his legal representatives have denied the case of the plaintiffs. They have stated that the plaintiffs were aware of the sale transaction in the year 1973 itself and suit is filed at belated stage and suit is barred by Law of limitation and there is no cause of action and plaintiffs have not come before the Court with clean hands. It is



also contended that the defendant No.3 has been in uninterrupted possession and enjoyment of suit property by paying revenue to the concerned department and by exercising all rights of ownership. Application has been filed by the plaintiffs under Order 39 Rule 1 and 2 of C.P.C restraining the defendant No.3 legal representatives and their agents from changing the nature of suit property by putting up any construction in any manner during the pendency of the suit. Application came to be filed on 28.11.2025. Suit was filed in the year 2009. It is fact that plaintiffs have challenged the Sale Deeds for the year 1973 and 1977. As per their version, they were not having knowledge of Sale Deed in the year 1973. But, defendant No.3 contends that plaintiffs were having knowledge of Sale Deed in the year 1973 itself. The point of limitation is mixed question of Law and Fact and it has to be shown during the trial. It requires trial. At this stage, only prima facie case is to be looked into. On the basis of application filed by the plaintiffs, the Trial Court has passed Temporary Injunction order restraining the legal representatives of defendant No.3 from changing nature of suit property and it has ordered to both parties to



maintain status-quo of suit property pertaining to alleged construction. Aggrieved by the said order, the appellants are before this Court. Objection was also filed by defendant No.3 to the said application opposing to grant Temporary Injunction order.

16. The Trial Court has considered the materials on the record and passed the order. It has observed that point of limitation is mixed question of Law and Fact and it requires some adjudication before passing any order. It is also observed that plaintiffs have challenged the validity of Sale Deed executed by father of plaintiffs in favour of defendant No.1 and in turn Sale Deed executed by defendant No.1 and 2 in favour of defendant No.3 as forged document. It is also observed that the contentions and aspects can't be adjudicated at this stage and it can consider only prima facie case. It is also mentioned about Partition Deed in the year 2012 between the defendant No.3 legal representatives. It is also noted about photographs and they show that some construction has been made in the suit property. It is apparent that nature of suit property has been changed



by the legal heirs of defendant No.3 by putting up construction in the suit property. It is also observed that consequences of putting up construction would definitely cause inconvenience not only to the plaintiffs but also to the legal heirs of defendant No.3. To avoid multiplicity of proceedings and to safeguard the interest of both the parties, restraint order is passed.

17. Sale Deed for the year 1973 and 1977 are produced. Record of Rights are also produced in respect of suit property. They are standing in the name of defendant No.3 legal representatives. They are in respect of suit property. They show the partition between them.

18. Advocate for appellants has argued that there are grounds in the appeal and the order of Trial Court has to be set aside. He has also argued that the order passed on I.A.No.8 is executable order. The plaintiffs have admitted the fact that their father has executed Sale Deed in the year 1973 in favour of defendant No.1 and thereafter further sale in the year 1977 in favour of



defendant No.3. It is also argued by him that suit is filed by the plaintiffs after lapse of 36 years from the date of first Sale Deed. He has also argued that the Court has to consider the basic elements to grant Temporary Injunction order and it includes maintainability of the suit. He has also argued that the suit is barred by limitation. Although the point of limitation is mixed question of Law and Fact, the Trial Court has to consider the maintainability of the suit since Sale Deed was executed in the year 1973. He has also referred the principles of Muslim Law and it doesn't recognize the concept of co-parcenary or joint ownership. He has also argued that Hussain Sab who is the father of plaintiffs during his lifetime sold the suit property and hence his children can't reclaim the property which was sold by their father. He has also argued that there was partition in the family members of defendant No.3 and hence there is no prima facie case in favour of plaintiffs. He has also argued that the legal heirs of defendant No.3 undertake before this Court that in the event the plaintiffs succeed their claim made in the original suit, legal heirs of defendant No.3 will not claim any equity if the work is allowed. It is also argued that if the work is



stopped, it would cause more harm to the appellants than the plaintiffs. It is also argued that defendant No.3 is in possession and enjoyment of suit property, Photographs produced also prove the same and construction has already been completed and only minor work is left. It is also argued and mentioned in the written argument that legal representatives of defendant No.3 are ready to remove the structures at their own cost without claiming any equity in the event if plaintiffs succeed their claim. The said undertaking has to be taken into consideration. The Trial Court has restrained the legal heirs of defendant No.3 from putting up any construction in the suit property and it has passed order of status-quo to maintain the suit property in the same condition.

19. In support of his arguments, advocate for appellants has produced the rulings reported in **1. AIR 2008 SC 2291 in between Mandali Rangappa & Others Vs. T.Ramachandra & Others, 2. NC 2025 KHC 15958 in M.F.A.No.8364/2024 in between Sri. Siddagangaiah & Others Vs. B.S.Vishwas & Others, 3.**



Misc. First Appeal No.4817/2013 in between Muniyappa VS. Geetha, 4. R.S.A.No.1324/2022 in between Mohammed Ismail Vs. Mohammed Akbar and 5. Misc. First Appral No.8225/2024 in between K.Dharmendra Vs. Gopinath Muppiri. It is held that rightly or wrongly constructions have come up. They can't be directed to be demolished at this stage. Hence, it would not be proper to stop further construction. It is also held that in the interest of justice, while allowing the applicants to carryout the construction of building, the same is made subject to the ultimate decision of the suit. It is also held that if any third party interest is created upon completion of the construction, the Deeds in question shall clearly stipulate that the matter is subjudice and all sales shall be subject to the ultimate decision of the suit. All parties must co-operate in the early hearing and disposal of the suit and the applicants must furnish sufficient security before the Court. It is also held that if the construction work is halted, then it would cause more harm to the applicants than the plaintiffs. It is also held that if there is undertaking that they would not claim any equity if the construction work is allowed, then the order passed restraining the



defendants from putting up construction is to be interfered with. It is also held that the construction work is subject to result of the suit and in case the suit is decreed, the defendants can't claim equity. It is also held that by considering the factual aspects of the case, the suit was filed in the year 2016 after 58 years challenging the Sale Deed for the year 1938 contending that Sale Deed was obtained by fraud and there was no any sale consideration, in such a case, the delay has to be taken into consideration. It is also held that unless prima facie case is made out for having possession of the suit property as on the date of filing of the suit, question of granting the relief doesn't arise. The principles and observations made in the above said Judgments are helpful to the appellants in this case at this stage. The photographs are produced by the appellants. They show that almost the construction work is completed and minor work is to be completed. At this stage, if the construction work is halted/stopped, definitely it would cause irreparable loss and hardship to the appellants. At the time of granting Temporary Injunction order, the irreparable loss and hardship to be caused to both parties have to



be taken into consideration. In this case, if construction is stopped at this stage, definitely it would cause more hardship than the respondents. While granting the Temporary Injunction order, maintainability of the suit is also to be taken into consideration. The appellants have taken contention that the suit itself is not maintainable since there was sale in the year 1973 and 1977 and defendant No.3 legal representatives are in possession and enjoyment of suit property. Therefore, on perusal of entire materials on the record, I am of the opinion that there are grounds in the appeal. Objection is not sustainable.

20. Advocate for respondents has produced the rulings reported in **1. 2004 AIR SCW 6333 in between Maharwal Khewaji Trust (Regd.) Faridkot Vs. Baldev Dass, 2. 2021 (3) KCCR 2699 in between Shivaraj & Another Vs. A.Rangaswamy & Others, 3. AIR 2024 Karnataka 46 in between P.Laxminarayana Bhat Vs. Shanthi Bhat & Others and 4. AIR 2022 Allahabad 198 in between Satya Prakash & Another Vs. 1st Additional District Judge, Etah & Others.** It is held



that allowing changes of status-quo of property during pendency of litigation is not justified except in exceptional circumstances. The ground that legal proceedings are likely to take long time is not exceptional circumstance to allow changes by imposing conditions. The respondents can't take advantages of the principles laid down in the said Judgment. Because, on perusal of entire materials on the record including plaint averments, prayer and sale transactions for the year 1973 and 1977, I am of the opinion that there is no prima facie case in favour of the plaintiffs. Hence, only on the basis of delay, no opinion is expressed. It is also held that unless and until a case of irreparable loss or damages made out by a party to the suit, Court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party. In this case also, irreparable loss will be caused to the appellants if they are restrained from putting up construction in the suit property. There are materials on the record to show that appellants are in possession and enjoyment of suit property. It is also held that if any party to the suit either just before or



after filing of the suit, does something hurriedly in order to change the nature of the property with an ulterior motive for defeating the interest of his opponent in the suit, the Court can take note of it for granting an order of Temporary Injunction. The principle is not applicable to the case on hand. Because, suit is of the year 2009. Application came to be filed in the year 2025. Immediately, after the suit, there is no construction by the appellants and there are no documents to show that immediately after filing of suit, the appellants have started construction. The respondents can't take advantage of the principles laid down in the said Judgments. Because, plaintiffs have approached the Court challenging the Sale Deeds for the year 1973 and 1977 in the year 2009. Defendant No.3 purchased the suit property in the year 1977 and the legal heirs of defendant No.3 have partitioned the suit property and they have started to put up construction over the suit property. The advocate for respondents has produced the documents. They are the acknowledgments, photographs, applications. They show that the plaintiffs have filed the application before the Trial Court seeking mandatory Injunction to demolish the entire further



construction. If grounds are made out, it can be considered before the Trial Court. This Court can't express any opinion with respect to said application. At this time, this Court can only look into the prima facie documents and other materials on the record to know the prima facie case, balance of convenience and irreparable loss to be caused. *Hence, on perusal of entire materials on the record, I am of the opinion that the appellants are bound by their undertaking and they have to obey the undertaking and they shall not claim any equity in case of success of the plaintiffs in the original suit. Apart from this, appellants shall not alienate the suit property during the pendency of suit.* With such observation, I am of the opinion that it is necessary to interfere with the order passed by the Trial Court on I.A.No.8. At this time, only prima facie case is to be considered. On perusal of entire materials on record, I am of the opinion that, there is no prima facie case and balance of convenience in favour of the plaintiffs. Therefore, by considering the contentions and circumstances of the case, I am of the opinion that, there is no prima-facie case in favour of the



respondents. Therefore, the impugned order warrants interference by this court.

21. Hence, I am of the opinion that the trial court has not passed the order correctly on the basis of materials available on record at that stage. Therefore, order of the trial court needs to be interfered with. By considering the entire materials on record, according to the reasons assigned above, I am of the opinion that, the Trial Court has not passed Order in accordance with law and there is error committed by the Trial Court and hence the Order is called for interference by this court. Hence, I answer Point No.1 in the **"AFFIRMATIVE"**.

22. POINT No.2:- In view of my findings on Point No.1, I proceed to pass the following;

ORDER

The Miscellaneous Appeal filed by the appellants U/O XLIII Rule-1 of CPC against the order passed in O.S.No.192/2009 by the 1st Additional Civil Judge, Devanahalli, on I.A.No.VIII U/O XXXIX Rule 1 and 2 of CPC, dated 16.12.2025 is hereby allowed.



The order passed in O.S.No.192/2009 by the 1st Additional Civil Judge, Devanahalli, on on I.A.No.VIII U/O XXXIX Rule 1 and 2 of CPC, dated 16.12.2025 is hereby set aside.

Office to send the copy of this Judgment to the Trial Court forthwith.

Parties to bear their own costs.

(Dictated to the Stenographer, transcribed and computerized by her, transcript revised, corrected and pronounced by me, in the Open Court, dated this the **10th** day of **April, 2026**).

Sd/-
(Loksha.M.G.)
I Addl Sr.Civil Judge & Jmfc.,
Devanahalli.