

**IN THE COURT OF CIVIL JUDGE AND J.M.F.C.
KRISHNARAJAPURA, BENGALURU RURAL DISTRICT.**

Present

**VISHWANATH SAVADI
B.A., LL.B.(Hon's)
CIVIL JUDGE AND J.M.F.C.,
KRISHNARAJAPURA.**

ORIGINAL SUIT No.1604/2025.

Dated this the 08th day of December 2025

Plaintiffs : 1. Parveen Kaur,
S/o Col. Balvinder Singh,
And 28 others.

V/s

Defendants : 1. Sandeep Vihar Owner's Welfare
Association,
2. Army Welfare Housing Organization
South Hutments, Kashmir House,

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PARTIES TO I.A.No.II AND III

Applicant/ : 1. Parveen Kaur,
S/o Col. Balvinder Singh,
And 28 others.

V/s

Opponent/ : 1. Sandeep Vihar Owner's Welfare
Association,
2. Army Welfare Housing Organization
South Hutments, Kashmir House,

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Sri. C.K. Nandakumar, Advocate for plaintiffs

Sri. Reshma Thammaiah, Advocate for defendant No.1

Sri. Vinayak S. Vastramath, Advocate for defendant No.2

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COMMON ORDERS ON I.A. No.II AND III

I.A. No. II is filed by the plaintiffs under Order XXXIX Rules 1 and 2 of the CPC, seeking an ad-interim temporary injunction restraining the defendant from interfering with the lawful rights of the penthouse owners in matters of tenancy—including induction of tenants, leasing or renting of units, and the use of such units by tenants—in respect of the Deluxe, Super Deluxe, and Luxury Penthouses in the Sandeep Vihar Apartment Complex, Kannamangala Post, Whitefield, Bangalore, pending disposal of the suit.

2. I.A. No. III is filed by the plaintiffs under Order XXXIX Rules 1 and 2 of the CPC, seeking an ad-interim temporary injunction restraining the defendant from interfering with the peaceful use and occupation of the penthouses and the apartment complex by the lawful tenants of the penthouse owners, in respect of the Deluxe, Super Deluxe, and Luxury Penthouses in the Sandeep Vihar Apartment Complex, Kannamangala Post, Whitefield, Bangalore, pending disposal of the suit.

3. The averments in the plaint and the supporting affidavit of I.A.No.II and III are summarized as follows:

a. It is the plaintiffs' case that they are the absolute owners in possession of the penthouses in the defendant No. 1 association. They have been using their respective penthouses for dual occupancy and therefore have every right to use them as two separate dwelling units. However, on 23-11-2019, defendant No. 1 association unilaterally passed a resolution restricting dual occupancy, thereby preventing the plaintiffs from using their penthouses as two units and from renting out one portion to tenants. Consequently, the plaintiffs have filed the present suit seeking a declaration that the penthouses are capable of dual occupancy and may be used as two separate dwelling units, along with a consequential permanent injunction restraining the defendants from interfering with the lawful rights of the penthouse owners regarding tenancy, leasing, and peaceful use and occupation of the penthouses. The plaintiffs therefore pray that the present application be allowed

4. The defendants have entered appearance through counsel. Defendant No. 1 has filed a detailed written statement and a memo adopting its contents as objections to I.A. Nos. II and III. Defendant No. 2, however, has not chosen to contest the matter and has not filed objections or a written statement.

5. The contents of the written statement of defendant No.1 as follows:

a. The defendant No. 1 denies all material allegations made by the plaintiffs. It contends that the Deed of Declaration

executed and registered by defendant No. 2 binds every owner to the deed, bye-laws, and the decisions and resolutions of the apartment owners. The registered bye-laws explicitly provide for the sale of a *single* apartment unit to each owner, conferring exclusive, heritable, and transferable rights. The apartments, including penthouses, are registered as single units and are meant for occupation by a single family. Defendant No. 1 further contends that the residential complex is designed for a limited occupancy load. Its common areas, civic amenities, and infrastructural facilities—such as transformers, the sewage treatment plant, plumbing, and lifts—were planned to support the prescribed occupancy. Any increase in occupancy beyond this limit would endanger both the infrastructure and the health and safety of the residents. It is also contended that dual occupancy of penthouses or division of flats—by internal or external alterations—to create two dwelling units compromises the structural integrity of the building and amounts to a violation of building plans and bye-laws.

b. Further, converting a single unit into dual occupancy places additional burden on water supply, transformers, sewage facilities, and other infrastructure, risking their collapse. Dual occupancy is therefore expressly prohibited under the Deed of Declaration and the Bye-laws. The penthouses also lack separate electrical connections and safety systems to support dual occupancy, making such use unsafe.

c. Clause 43 of the Bye-laws is specifically relied upon:

43.1: All units, including penthouses, shall be used for residential purposes *as a single unit only*.

43.2: Owners shall not make any structural modification or alteration without prior written notice to the Association.

43.3: No allottee or sub-lessee shall make any addition or alteration or encroach upon common areas without written approval of the Management Committee and compliance with applicable building bye-laws and zoning regulations.

d. Defendant No. 1 asserts that it has consistently enforced the bye-laws in the interest of residents' safety. As the complex is exclusively for retired and serving Army personnel, maintaining decorum, safety, and discipline is paramount. It is further contended that permitting dual occupancy would violate the Deed of Declaration, disrupt community harmony, overburden infrastructure, and destroy the peaceful environment intended for the residents. In view of these facts, the defendants pray that the plaintiffs' suit and applications be dismissed in their entirety.

6. I have perused the written arguments of both side and perused the material on record.

7. The points that arise for consideration of this Court are as under:

POINTS

1. Whether the plaintiffs have made out a prima facie case for grant of temporary injunction as prayed in I.A. No. II and III ?
 2. Whether the balance of convenience lies in favour of the plaintiffs?
 3. Whether the plaintiffs will suffer irreparable loss and hardship if the temporary injunction is not granted?
 4. What Order?
- 8.** The findings of this on above Points are as under:
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|--------------|---------------------------------------|
| 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 ::

9. Points No.1 to 3: Since all the three essential elements — *prima facie* case, balance of convenience, and irreparable hardship — are closely interrelated and interconnected, they are being considered together for the purpose of adjudication. The plaintiffs have filed the present suit seeking a decree of declaration and permanent injunction against the defendants. Along with the suit, they have filed interim applications seeking to restrain the defendants from

interfering with their peaceful possession and enjoyment of the penthouses until disposal of the suit.

10. Upon perusal of the pleadings and the documents submitted by both parties, it is not in dispute that the plaintiffs are the owners of their respective penthouses and have been using them for dual occupancy, that is, as two separate dwelling units. Defendant No. 1, being the association of the apartment complex, passed a resolution dated 23-11-2019 restraining the plaintiffs from using their penthouses for dual occupancy.

11. In view of this restriction, the plaintiffs have approached this Court seeking a declaration that their penthouses are capable of dual occupancy and may lawfully be used as two separate dwelling units. They further assert that, as absolute owners, they have every right to lease or rent out a portion of the penthouse by converting it into two independent units.

12. The plaintiffs have produced a copy of the sale deed dated 12-01-2017. Upon perusal of this document, it appears that there is no recital, clause, or condition imposed on the purchasers requiring that the penthouse be used only as a single occupancy unit. The sale deed does not contain any restriction prohibiting dual occupancy or the use of the penthouse as two separate residential units.

13. In the absence of any such express stipulation in the sale deed, the plaintiffs contend that their right to enjoy and utilize the property, including using it as two independent dwelling units, remains intact. They assert that any subsequent restriction imposed by the association cannot override the terms of the registered sale deed or curtail their proprietary rights unless such restriction is expressly provided for in the title documents or supported by law.

14. Defendant No. 1 contends that, under the Deed of Declaration, particularly Clause 43, all units—including penthouses—must be used solely for residential purposes *as a single unit*. It is further asserted that owners are prohibited from making any structural modifications or alterations to their respective units, and that no allottee or sub-lessee may make additions or alterations to the dwelling unit.

15. However, it is pertinent to note that the copy of the sale deed produced by the plaintiffs contains no such restriction. The sale deed does not state that the penthouse must be used only as a single unit, nor does it impose any bar on dual occupancy or internal modifications that do not affect the structural stability of the building. In the absence of explicit restrictions in the sale deed—the primary document conveying title—the plaintiffs argue that their proprietary rights cannot be curtailed by subsequent bye-laws or resolutions of the association unless such restrictions were known to and accepted by them at the time of purchase. his distinction

between the terms of the registered sale deed and the provisions relied upon from the Deed of Declaration forms a significant aspect of the plaintiffs' case.

16. It is further admitted that the plaintiffs are in possession of their respective penthouses and that these penthouses have been constructed with separate and independent entrances, enabling their use as two distinct dwelling units. This factual position is not seriously disputed. Whether the resolution dated 23-11-2019 passed by defendant No. 1 was done unilaterally or after following the due procedure mandated under the bye-laws is an issue that requires a full-fledged trial.

17. Defendant No. 1 relies on Clause 43 of the Deed of Declaration, which states that all units, including penthouses, shall be used for residential purposes as a single unit, and that no owner, allottee or sub-lessee shall carry out structural modifications or alterations without prior approval of the Association. However, on careful consideration at this stage, it appears that:

1. The clause prohibits structural alterations, but does not expressly prohibit *dual use* where no structural change is shown.
2. The sale deed produced by the plaintiffs does not incorporate Clause 43, nor does it contain any recital restricting the penthouse to single occupancy.

3. It is not established, prima facie, that the plaintiffs expressly agreed to be bound by such a restriction at the time of purchase.
4. The existence of two separate entries indicates that the penthouse was designed or modified at some stage to facilitate dual occupancy; whether this amounts to a structural alteration prohibited under Clause 43 is a matter requiring evidence.
5. Even assuming Clause 43 applies, the question remains whether a blanket restriction on dual occupancy—without evidence of structural harm or safety concerns—meets the standards of reasonableness and fairness, or whether the resolution of the Association amounts to an arbitrary and unilateral restriction.

18. In this backdrop, it prima facie appears that the restriction on using the penthouses for dual occupancy—i.e., as two separate dwelling units—may be **contrary to public policy**, especially when no specific condition prohibiting such use is found in the sale deed and when the plaintiffs have been in long-standing enjoyment of such use.

19. The plaintiffs, being retired Army officials, have invested substantial savings into these penthouses with the legitimate expectation of both residence and modest rental income. Preventing them from renting part of their own property would cause financial hardship. If the plaintiffs consume

additional resources such as water or electricity, defendant No.1 is fully entitled to recover proportionate maintenance and usage charges. Therefore, restricting their lawful enjoyment of property at the interim stage does not appear proper.

20. This Court is of the opinion that the plaintiffs have raised a **substantial triable issue**, namely:

- whether the resolution dated 23-11-2019 is valid in light of Clause 43,
- whether the resolution has been passed in accordance with the bye-laws
- whether the plaintiffs were given an opportunity to be heard, and
- whether the clause in question actually prohibits dual occupancy in the absence of structural modifications.

These issues require detailed evidence and can only be conclusively adjudicated after a full trial.

21. Until such determination, it is necessary to protect the plaintiffs' rights by granting an interim injunction. The plaintiffs have established balance of convenience in their favour, and if the injunction is refused, they will suffer irreparable loss, particularly since they have already leased one portion of their penthouses to tenants for bona fide residential use. **With these observation, this Court answers Point No.1 to 3 in the Affirmative.**

22. Point No.4: In light of the above observations, this Court proceeds to pass the following order;

-:: ORDER ::-

I.A. No.II and III filed under Order XXXIX Rules 1 and 2 of the CPC by the plaintiffs, is hereby allowed on cost of Rs.3,000/- each.

The defendants, their agents, henchmen, or any persons acting on their behalf are hereby restrained from interfering with the plaintiffs peaceful possession and enjoyment of the pent houses including their respective tenants, until the disposal of the suit.

(Dictated to the Stenographer directly on computer, typed by her, corrected by me and then pronounced in open Court on this **08th day of December 2025**)

**Vishwanath Savadi
Civil Judge and JMFC,
Krishnarajapuram.**

08-12-2025

Order pronounced in open court vide separate order by passing the following :

ORDER

I.A. No.II and III filed under Order XXXIX Rules 1 and 2 of the CPC by the plaintiffs, is hereby allowed on cost of Rs.3,000/- each.

The defendants, their agents, henchmen, or any persons acting on their behalf are hereby restrained from interfering with the plaintiffs peaceful possession and enjoyment of the pent houses including their respective tenants, until the disposal of the suit.

Vishwanath Savadi
Civil Judge and JMFC,
Krishnarajapuram.

**ORDER ON I.A.No.35 filed U/s 11(2) OF Karnataka
Court fee and suit valuation act R/w section 14
Rule 2 and R/w section 151 of CPC**

The defendant No. 1 has filed the present application seeking a direction for the newly impleaded plaintiffs to deposit the deficit court fee in accordance with the Karnataka Court Fees and Suit Valuation Act

and to treat the issue of court fee as a preliminary issue to be decided at the outset.

2. It is stated in the accompanying affidavit that the present suit was initially filed by plaintiffs No. 1 to 4 seeking a declaration and permanent injunction. Subsequently, on 16-07-2025, twenty-nine new plaintiffs were impleaded. The defendant contends that, in view of their impleadment, these plaintiffs are required to pay court fees in respect of their respective residential units. Based on these averments, the defendant prays that the application be allowed.

3. The plaintiffs, on the other hand, have filed detailed objections. They contend that the suit has been filed in a representative capacity, and therefore, there is no requirement for the newly impleaded plaintiffs to pay additional court fees. They argue that all impleaded plaintiffs stand on the same footing as the original plaintiffs and that the contentions raised by the defendant are without merit. Accordingly, they pray that the application be rejected.

4. I have heard the arguments of both parties and perused the material on record.

5. The present suit is filed by the plaintiffs in a representative capacity, seeking a declaration that their penthouses can be used for dual occupancy, along with

consequential relief in the form of a permanent injunction. The plaintiffs have valued the subject matter of the suit at Rs. 1,000/- for each relief under Sections 24(d) and 26(c) of the Karnataka Court Fees and Suit Valuation Act and have accordingly paid a court fee of Rs. 75/-.

6. The contention of defendant No. 1 that the newly impleaded plaintiffs have not paid additional court fees is noted. However, it is pertinent to observe that: The suit has been filed in a representative capacity, and the relief sought is common and uniform for all penthouse owners. Plaintiffs No. 5 to 35 were impleaded as per the order dated 16-07-2025. Being impleaded in the representative capacity, they stand on the same footing as the original plaintiffs. There is no requirement to pay an additional court fee for the impleaded plaintiffs under the law. There is no necessity to frame a preliminary issue regarding the court fee, as the reliefs sought by the newly impleaded plaintiffs are identical to those claimed by the original plaintiffs.

7. In view of the above, the application filed by defendant No. 1 is bereft of merit and is accordingly dismissed. With these observations, this Court proceeds to pass the following order:

-:: ORDER ::-

I.A.No.35 filed U/s 11(2) OF Karnataka Court fee and suit valuation act R/w section 14 Rule 2 and R/w section 151 of CPC by the defendant No.1 is hereby rejected.

For Issues by 09-01-2026

Savadi

Vishwanath

Civil Judge and JMFC,
Krishnarajapuram.