

KADK200014812025



Presented on : 10-11-2025
Registered on : 10-11-2025
Decided on : 17-06-2026
Duration : 00 year, 07 months, 07 days

**IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC
AT BANTWAL, DAKSHINA KANNADA**

Presided over by ANIL PRAKASH M.P., B.A.L., L.L.B., M.B.A.
Senior Civil Judge & J.M.F.C., Bantwal, D.K.

Dated this the 17th day of June, 2026

M.A./12/2025`

APPELLANTS:-

- 1.** Ganesh Suvarna
S/o. Jayananda Kirodian,
Aged about 51 years,
R/at. Bollari House,
Thumbe Village and Post,
Bantwal Taluk, D.K.,
- 2.** Somappa Kotyan (dead)
S/o. Jarappa Poojary,
Aged about 65 years,
R/at. Jayashree Nivasa,
Thumbe Village and Post,
Bantwal Taluk, D.K.,
- 3.** Smt. Shobha Gopal Maindan
W/o. Gopal Maindan,
Aged about 52 years,
R/at. Shrinidhi Nilaya,
Thumbe Village and Post,
Bantwal Taluk, D.K.,

**(Appellants No.1 and 3 by Sri. K. Vighnaraja Bhat,
Advocate)**
(Appellant No.2 - Dead)

V/s.

RESPONDENT:

Sri. Praveen B Thumbay
S/o. Babu Devadiga
R/at. Bollary House,
Thumbe Village and Post,
Bantwal Taluk, D.K.,

(By Sri. M.Sudarshan Kumar, Advocate,)

J U D G M E N T

This miscellaneous appeal is filed by the defendants under Order 43 Rule 1(r) of CPC., challenging the order dated 23.09.2025 passed by learned Prl. Civil Judge and JMFC., Bantwal on I.A.No.II filed under Order 39 Rule 1 & 2 of CPC., in 'O.S.No.279/2025' for dismissing the application for Temporary Injunction.

2. The appellants were the defendants and the respondent was the plaintiff before the trial court. For the sake of convenience, parties will be referred to as per the ranks held by them before the trial court.

3. The brief facts of the plaintiffs' case are as under:

The plaintiff himself, defendants and 'T Seetharama Belchada' formed Trust named and styled as 'Shri Sharada Seva Prathistana' Thumbe Bantwal D.K with an intention of spreading Hindu Religion, helping the needy people and doing several other activities for the upliftment of Hindu Religion and

poor people and the said Trust was registered in the office of Bantwal SRO as 'Document No.68/2006-07' in Book No.IV and I on 05.03.2007.

4. Further he has submitted that, he has been doing several activities being trustee of the Trust and even from his childhood for the upliftment of the Hindu Religion and the members of the trust with the help of other members of public have formed 'Shri Sharada Seva Samithi' for the purpose of celebrating 'Shri Sharadha Mahosthava' at Thumbe, every year to which he became General Secretary and has involved in the affairs of the committee every year and he has been obtaining permission from the Police Authorities for the purpose of using Mic every year and also collecting donations from public at large for the purpose of 'Sharadha Pooja' every year.

5. Further he has submitted that by conducting all these activities under his leadership, a property was also purchased in the name of Trust and subsequent to purchase, put up building therein and he has been looking after all documents and also maintain a book pertaining to income and expenses of the Trust every year and on considering involvement and contribution for improvements of Trust, he was honored with certificate of appreciation on 19.10.2015 by the defendants and 'T.Seetharama Belchada'.

6. Further he has submitted and the defendant no.1 has started to develop jealousy with the name and fame of plaintiff

and with an intention to throw out of the Trust he is intending to use the building constructed in the property of Trust for his personal use and benefit and the same was opposed by him.

7. Further he has submitted that on 25.06.2025 the 1st defendant abused him in filthy language in the meeting of the Trust and again that on 03.07.2025 one Sanath & Tharanath Kottary, at the instigation of the 1st defendant, issued threat to him and his family and in this regard, he approached the Bantwal Rural Police Station with complaint dated 04.07.2025 but the police did not take any action.

8. Further he has submitted that he had received a letter dated 04.07.2025 from the 1st defendant stating that, he has been removed from the Trusteeship of "Shri Sharada Seva Prathistana (R)" by making several baseless allegations and the removal from the trusteeship is one sided, high-handed, illegal and opposed to principles of natural justice and in fact no such resolution was passed on 03.07.2025.

9. Further he has submitted that the defendants are now making attempts to form a new committee by excluding plaintiff on the strength of the removal letter dated on 04.07.2025 and in view of unilateral removal from the Trusteeship, he will be put to mental agony and hardship and accordingly he submits to allow the suit.

10. On the other hand the defendant No.1 has filed written statement, wherein he has submitted that the defendant No.1 is the president and remaining defendants are Trustee's of 'Shri Sharada Seva Prathistana' and the relief claimed in the suit is pertaining to 'Shri Sharada Seva Prathistana' Thumbe Bantwal D.K and the application is not maintainable and in view of the admission made in the plaint that, plaintiff has been removed from the Trusteeship, the question of granting relief sought in the application do not arise and it has become infructuous.

11. Further he has submitted that it is true that, 'Shri Sharada Seva Prathistana ® Trust', was formed and registered by Late T Seetharama Belchada, Ganesh Suvarna. Somappa Kotyan (D2), Shobha Gopal Maindan (D3) and (5) the plaintiff and himself and said deed was registered one before Sub-Registered Bantwal.

12. Further he has submitted that, 'Sarvajanika Sharada Mahothsava Samithi' is a Samithi created by the Trust with the members of the public for the celebration of 'Sharada Mahothsava' Thumbe every year and this year being 25th year of Sharada cerebration committee named as "Shri Sharada Rajathamahothsava Samithi" is formed by the 'Shri Sharada Seva Prathistana' and he denied the averments of plaint that, on 25.06.2025 plaintiff has been abused in filthy language by the defendant in the Trust meeting and that on 03.07.2025

Sanath and Tharanath Kottari at the instigation of 1st defendant issued threat to the plaintiff and his family members

13. Further he has submitted that, being president of 'Shri Sharada Seva Prathistana' he has issued letter dated 04.07.2025 in his official capacity relating to acts of trust and not in individual capacity and the plaintiff has taken away documents relating to the Trust from the Trust office and he has not returning it to trust inspite of repeated instructions from the Trust and in the meeting held on 24.06.2025 resolution was passed directing the plaintiff to produce original documents of trust and the plaintiff attended the said meeting but has not complied the resolution passed regarding return of original documents of the Trust and the plaintiff is in illegal possession of original 'Registered Sale deed' pertaining to properties of land by the Trust and other documents of Trust.

14. Further he has submitted that, by continuing in illegal possession of the same, inspite of decisions by the trust to return the same, the plaintiff has violated the Section 48 and 51 of the Indian Trust Act 1882 in a Trust meeting held on 26.06.2025 received complaint from the office bearer Sri.Tharanatha Kottari of 'Shri Sharada Rajathostava Committee' that the plaintiff has telephonically abused him and threatened and the Trust committee in its meeting held on 03.07.2025 discussed in detailed about complaint and act of the plaintiff in not returning the original documents of trust and his behavior as against the aims and objectives of the

Trust and decided to remove him from Trusteeship as laid down in the Rule 6(h) of the Trust Deed and the removal of plaintiff is act of the Trust by majority decision of the trustees and the plaintiff did not attend the meeting.

15. Further he has submitted that, Trust has already selected a new Secretary to the Trust in its meeting held on 05.08.2025 and the plaintiff is a convicted person in a case registered under Section 353, 504, 506, 509 of the IPC in '**C.C.No. 1509/2021**' he trust as per its resolution in the joint meeting held with 'Shri Sharada Rajathamahostava Samithi' on 12.08.2025 has already decided to release the invitation card of the 'Rajathamahostava of Sharada Devi' on 24.08.2025 and necessary preparations are already made for the Rajathamahostava and guests are invited for this event and in this connection, card is already printed.

16. Further he has submitted that at this belated stage, plaintiff has come up with this suit with an intention to creating impediments in the activities of the trust and the Trust will be put to great loss and hardship if this application is allowed and for that reason submits to dismiss the suit.

17. The learned trial court after considering rival pleadings has raised points for consideration and has answered **Point No.1 to 3 in the affirmative** and has allowed application for Temporary Injunction.

18. The appellants have challenged the orders of trial court on following grounds.

1. The impugned order passed by the Trial Court is capricious and perverse and illegal, unsustainable both in question of law and on facts.

2. The Trial Court ought to have held that, the Plaintiff has failed to make out any prima facie case and the balance of convenience and irreparable injury and hardship lies in refusing an order of injunction and thus ought to have dismissed I.A.No.II.

3. The various reasons assigned by the Trial Court to allow I.A.No.II is illegal, ill founded, capricious, wrong and perverse.

4. The Trial Court has failed to consider the defence raised by the Defendant in its true and proper sphere and passed the impugned order, which resulted in miscarriage of justice.

5. The Trial Court had referred inconsequential matters and allowed I.A.No.II.

6. The Trial Court ought to have appreciated the various objections raised in the Counter Affidavit filed by the Defendant No.1, which is adopted as Counter to I.A.No.II by other Defendants. The Court ought to have dismissed I.A.No.II filed by the Plaintiff.

7. That on the basis of the materials produced and circumstance of the case, the Trial Court ought to have disbelieved the entire case of the Plaintiff and

ought to have refused discretionary relief of injunction, as sought by the Plaintiff before the Trial Court.

8. The Trial Court ought to have opined that, set of facts on I.A.No.II does not require interference by the Court.

9. The Trial Court should have dismissed the I.A.No.II because the Trust was not made as a Party. The Defendants were not sued in their capacity as the Trustees of the Trust. The Lower Court failed to consider the provisions of Article 54 of the Karnataka Stamp Act. and also failed to understand the scope of Sec.3(42) of the General clauses of Act.

10. The Plaint itself is not maintainable because of the provisions of Sec.92 of the Civil Procedure Code.

11. The Trial Court failed to take into account the misdeeds of the Respondent and the resolution of the Trustees as per the provisions of the Trust Deed.

12. The Trial Court failed to properly appreciate the documents and rulings placed before it by the Appellants.

13. The various observations/reasons assigned by the Trial Court in Para No.10, 11, 12, 13, 14, 15, 16 & 17 of the impugned Order is against the well settled principles of law and facts placed before the Court.

14. The Trial Court has failed to apply the correct principles of law to the facts on the hand.

15. The Order on I.A.No.II was passed by the Prl. Civil Judge & JMFC Bantwal on 23-09-2025 and Application for certified copy was filed on 24-09-2025. The certified copy was obtained on 10-10-2025. The Court was closed on 8th & 9th November 2025 because of public holiday. Hence the Appeal is within prescribed period and accordingly submits to allow the appeal.

19. After service of notice the respondent appeared through Sri. M.S.K. Advocate.

20. Further during the pendency of appeal, appellant No.2 died and since the suit is pertaining to Trust property and for that reason question of bringing Legal heirs of appellant No.2 does not survive and for that reason appeal abated only against appellant No.2.

21. Further the learned counsel for appellant along with memo dated 5.02.2026 has produced 2 true copies of resolutions of the 'Shri Sharada Seva Prathistana Trust (R)' and 'Shri Sharada Rajatha Mahotsava Samithi' dated 24.06.2025 and 12.08.2025, 2 true copies of resolutions of the 'Shri Sharada Seva Prathistana Trust (R)' dated 3.07.2025 and 5.08.2025, copy of complaint by Tharanatha Kottary dated 26.06.2025, copy of Doc. No.2610/2006-07 dated 5.03.2007, copy of order in CC No.1509/2021 dated

29.02.2024, invitation card of 'Sharada Mahotsava – 2025' and 4 copies of 'Sharada Seva Prathistana' Building constructions.

22. Further the counsel for respondent along with memo dated 5.02.2026 has filed copy of Complaint, copy of IA No.2, copy of Served copy of letter dated 14.07.2025, copy of Trust Deed, copy of Account Book in respect of the Trust for the year 2023, copy of permissions obtained by the plaintiff from the Circle Inspector of Bantwal in the year 2014 & 2016, RTC of the land bearing 'Sy.No.39/4A1A1' of Thumbbe Village, copy of Invitation pertaining to Sharada Mahotsava, copy of Appreciation Certificate, copy of the complaint given by plaintiff on 4.07.2025, copy of receipt issued by Bantwal Rural P.S, copy of the complaint given by plaintiff to Executive Officer Bantwal Taluk Panchayath, copy of Order of stay passed in 'Criminal Appeal No.76/2024', copy of Agreement between plaintiff & D.C Mangalore, copy of appreciation letter, copy of Account Book for the year 2024, copy of Trust Deed dated 05.03.2007 bearing document No.68/2006-07 of Bantwal SRO, copy of Sale Deed bearing Document No.2610/2006-07 of Bantwal SRO dated 05/03/2007.

23. Heard the arguments of both the counsels and perused the materials on record, the following points that arise for my consideration:

1. **Whether the learned trial court has committed error in allowing I.A.No.II under**

Order 39 rule 1 and 2 of CPC and has wrongly granted Temporary Injunction against the defendants?

2. Whether the order of learned trial court call for interference by this court?

3. What order?

24. My findings to the above points are as under:

Point No.1: In the Negative

Point No.2: In the Negative

**Point No.3: As per final order
for the following:-**

REASONS

25. **Point No.1** : The learned counsel for Appellants has argued that the plaintiff has filed this suit against the defendants without making Trust as party in this suit and inspite of that the learned trial court granted Temporary Injunction and when suit itself is not maintainable the learned trial court has not granted Temporary Injunction and also the plaintiff has not complied mandate of Sec.92 of C.P.C and thereby committed mistake in granting Temporary Injunction and for that reason submits to allow the appeal and dismiss the IA No.II.

26. Per contra, learned counsel for respondent has argued that the Trust is not a separate entity and the plaintiff is challenging by this suit from removal of himself from the Trust as Trustee and has filed this suit against the defendants

who are Trustees of the Trust and for that reason no question of impleading the Trust in the suit survives for consideration and in support of his argument he has relied on Judgment of Hon'ble Supreme Court reported in **2025 Live Law (SC) 991 between Sankar Padam Thapa v/s. Vijay Kumar Dineshchandra Agarwal.**

27. Further the learned counsel has argued that the plaintiff is not seeking any relief against the Trust and he is only challenging illegal removal of himself as Trustee and for that reason Sec.92 of C.P.C has no application and for that reason the learned trial court has rightly granted Temporary Injunction and in support of his argument he has relied on a **Judgment of Hon'ble Karnataka High court in 2012(2) KCCR 1186 (DB) between Sri. C.R. Shivananda and another v/s. Sri. H.C Gurusiddappa and others** and another judgment reported in **2007(5) Kar. L.J 625 between L. Shivalingaiah v/s. Panchajanya Vidya Peetha Welfare Trust** and **Judgment of Hon'ble Bombay High Court reported in 2007(4) Mh.L.J 77 between Kedar Shivkumar Kale v/s. Digamber Shridhar Mhapsekar and Company** and accordingly submits to allow the appeal.

28. The plaintiff has filed this suit to declare the resolution dated 3.07.2025 and letter dated 4.07.2025 removing himself as Trustee from 'Shri Sharada Seva Prathistana Trust (R)' Thumbe, Bantwal Taluk, D.K., is illegal and not enforceable and also in support of his claim he has

filed IA No.II U/o. 39 Rule 1 and 2 to restrain the defendants from excluding him from activities of 'Shri Sharada Seva Prathistana Trust (R)' Thumbbe, Bantwal Taluk, D.K., till disposal of suit and same was objected by defendants and after appreciating materials on record learned trial court has allowed IA No.II and has restrained defendants from excluding the plaintiff in the Trust activities.

29. The appellant along with memo dated 5.02.2026 has produced resolution dated 3.07.2025 signed the defendants of this suit which goes to show that as per the resolution they have removed the plaintiff from Trust activities and have produced photocopy of Judgment in '**CC No.1509/2021**' on the file of learned Addl. Civil Judge and JMFC, at Bantwal, wherein the operative portion goes to show that the plaintiff of this suit who is the accused in the above proceedings is convicted for offences punishable U/sec.353, 504, 506 and 509 of IPC, but however as per the resolution stated above, he was not removed from the Trust based on the conviction, but not for furnishing the original documents pertaining to Trust.

30. Further at this stage, if we peruse the Trust Deed produced by counsel for respondent same goes to show that apart from appellants there are other Trustees and for that reason the resolution dated 03.07.2025 is valid and removal of plaintiff from the Trust activity only by the concurrence of some of the Trustees is valid under law has to be decided only after trial and regarding criminal proceedings stated above

counsel for respondent has produced photocopy of order of Hon'ble Prl. District and Sessions Judge, at Mangaluru in '**Crl. Appeal No.76/2024**' goes to show suspension of order of imprisonment and for that reason at this stage, much importance cannot be attached to conviction and for that reason there is a triable case made out by the plaintiff.

31. Further regarding the contention of counsel for appellant that the Trust is not included in this suit and the defendants were not sued in the capacity of Trustee and it is pertinent to note that the learned counsel for appellant has relied on Judgment of **Hon'ble Supreme Court reported in 2025 Live Law (SC) 991(Supra.)**, wherein it is held:

26. Ergo, it is clear that though a Trust may act or even be treated as an entity for certain legal purposes and not all legal purposes, a Trust is an obligation imposed on the ostensible owner of the property to use the same for a particular object - for the benefit of a named beneficiary or charity, and it is the Trustee(s) who are bound to maintain and defend all suits and to take such other steps with regard to the nature, land or the value of the Trust property, that may be reasonably required for the preservation of the Trust property, and the assertion of protection of title thereto, subject to the provisions of the instructions of Trust to take such other steps.

27. There exists no ambiguity about there being no legal requirement for a Trust to be made a party in a proceeding before a Court of Law since it is only a/the Trustee(s) who are liable and answerable for acts CRIMINAL APPEAL NO.____ OF 2025 [@ SPECIAL LEAVE TO APPEAL (CRIMINAL) NO.4459/2023] done or

alleged to have been done for and on behalf of the said Trust. From a perusal of Orion's Deed of Trust, of which the Respondent is the Chairman/Authorized Signatory, it emerges clearly that the relevant clauses deal with the Trustee insofar as administering and holding the funds and properties of the Trust are concerned. Which is to say that the Trust (i.e., Orion) operates only through the Trustee(s) and that the objects thereof were for charitable purposes. The Deed of Trust also provides for permitting one or more Trustees to operate a bank account. It becomes all the more apparent that it is the Trustees alone, through whom the Trust funds/property(ies) are managed and dealt with. The Trust itself is without any independent legal status".

and in view of the above ratio it is clear that the Trust is not legal entity and it is an obligation and for that reason the Trust does not have separate existence and impleading the Trustees itself sufficient to maintain the suit and to the case on hand the plaintiff has filed this court against the person, who are the parties to the resolution and for that reason the suit with respect to private right of plaintiff from removal of him from Trust activity is maintainable without suing the defendants as Trustees is a question of fact and law which has to be decided after trial and at this stage, it is not proper to go on merits of the case including maintainability of the suit and at this stage it is worthwhile to rely on Judgment of Hon'ble Supreme Court reported in **2014(16) SCC 680 between Babu Lal and others v/s. Vijay Solvex Limited and others**, wherein it is held that;

"7. We have heard the learned counsel for the parties and have perused the record. In the

present case, the parties have raised similar pleas which were taken before the High Court. However, we are of the opinion that while dealing with a matter relating to vacation of order of temporary injunction, it was not open for the High Court to give a finding on the main issue relating to maintainability of the suit and the family settlement reached between the parties”.

and in view of the above ratio it is clear that while dealing matter relating to vacation of order of Temporary Injunction appellate court cannot give findings with respect to maintainability of suit.

32. Further, it is pertinent to note that, if suit is exfacie barred under the provisions of Trust act, then no doubt the trial court is wrong in granting Temporary Injunction, but however on perusal of pleadings and materials placed by the parties, the suit does not goes to show that the same is exfacie barred under the provision of law and for that reason the learned trial court has rightly granted Temporary Injunction.

33. Further regarding the contention of the learned counsel for appellants suit is bad for not issuance of notice u/sec.92 of C.P.C., it is worthwhile to rely on Judgment of Hon’ble Supreme court reported in **2008 (3) SCR 569 between Vidyodaya Trust vs. Mohan Prasad R. & Others** wherein it is held,

“18. Prior to legislative change made by the Code of Civil Procedure (Amendment) Act, 104 of 1976 the expression used was "consent in writing of the Advocate-General".

This expression has been substituted by the words "leave of the Court". Sub-Section (3) has also been inserted by the Amendment Act. The object of Section 92 CPC is to protect the public Trust of a charitable and religious nature from being subjected to harassment by suits filed against them. Public Trusts for charitable and religious purpose are run for the benefit of the public. No individual should take benefit from them. If the persons in management of the Trusts are subjected to multiplicity of legal proceedings, funds which are to be used for charitable or religious purposes would be wasted on litigation. The harassment might dissuade respectable and honest people from becoming Trustees of public Trusts. Thus, there is need for scrutiny. In the suit against public Trusts, if on analysis of the averments contained in the plaint it transpires that the primary object behind the suit was the vindication of individual or personal rights of some persons an action under the provision does not lie. As noted in Swami Parmatmanand's case (supra) a suit under Section 92 CPC is a suit of special nature, which pre-supposes the existence of a public Trust of religious or charitable character. When the plaintiffs do not sue to vindicate the right of the public but seek a declaration of their individual or personal rights or the individual or personal rights of any other persons or persons in whom they are interested, Section 92 has no application."

and in view of the above ratio it is clear that object of Sec.92 of CPC is to protect public Trust of charitable and religious nature from harassment by filing false suit and if the plaintiff does not file the suit to vindicate the right of public,

but to seek declaration of his individual or personal right or individual right of any person then Sec.92 of CPC is applicable or not to the case on hand has to be decided in this suit.

34. Further it is pertinent to note that at this stage, court can only go through aspect whether prima-facie suit is not maintainable and in view of the same, at this stage, I do not find that suit is not maintainable u/sec.92 of C.P.C. and for that reason the trial court has not committed any error while granting Temporary Injunction U/o.39 Rule 1 and 2 of C.P.C and accordingly, I have answered **Point No.1 in the Negative.**

35. **POINT NO.2:** The learned trial court in para No.14 of the judgment has relied on the Judgment of Hon'ble Karnataka High Court reported in **2012(2) KCCR 1186 (Supra.)** and in para No.15 of the order has observed that, plaintiff is seeking relief against individual rights against removal of himself as Trustee and as per Sec.92 of C.P.C same deals with suit with respect to public charities and at this stage the suit is with respect to public charitable Trust or not or the plaintiff has filed this suit to vindicate his personal right cannot be decided and same requires for trial and accordingly has allowed IA No.II and for that reason I do not find any reason to interfere with the order of learned trial court.

36. Further at this stage it is worthwhile to rely on judgment of Hon'ble Supreme Court reported in **2010 (2) SCC**

between Skyline Education Institute (India) (p) Ltd V S.L. Vaswani wherein it is held:

“22. The ratio of the above-noted judgments is that once the court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter it is possible for the appellate court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity”.

and in view of above ratio it is clear that the learned trial court after appreciating material on record has granted interim order then the appellate court cannot interfere with such order and accordingly I have answered **Point No.2 in the Negative.**

37. **Point No.3:** In view of my findings on Points No.1 and 2, I proceed to pass the following:-

ORDER

The Appeal filed by the Appellants/ defendants Under Order 43 Rule 1(r) of CPC, is hereby dismissed.

The impugned order dated 23.09.2025 passed in ‘O.S.No.279/2025’ on the file of Prl. Civil Judge and JMFC., Bantwal on I.A.No.II is hereby confirmed.

Transmit the copy of order to the trial court and return the original documents submitted by the Advocate for defendants in accordance with law.

(Dictated to the stenographer directly on computer, computerized by her, corrected and then pronounced by me in the open court on this the 17th day of June, 2026).

(ANIL PRAKASH M.P.)
Senior Civil Judge & JMFC.,
Bantwal, D.K.