

**IN THE COURT OF THE V ADDL. DISTRICT & SESSIONS
JUDGE, MANDYA**

PRESENT: Smt. Manjula Itty, B.A.L., LL.B.,
C/c V Addl. District & Sessions Judge,
Mandya.

Dated: 27th day of September, 2025

M.A.No.1/2024

APPELLANTS : Smt. Mahadevamma and Another

-VS-

RESPONDENTS : The State of Karnataka and Others

APPLICANTS : 1. Smt. Mahadevamma,
W/o Late Mahalingaiah,
Aged about 60 years,

2. M Manjula,
D/o Late Mahalingaiah,
W/o Jayaramu,
Aged about 44 years,

Both are R/at behind Kaveri
High School, 2nd Cross,
Shivananjappa Layout,
Mandya city.

(By Sri. H P Sadashivappa, Advocate)

-VS-

RESPONDENTS : 1. The State of Karnataka,
represented by its Chief Secretary,
Vidhana Soudha,
Dr. B R Ambedkar road,
Bangalore – 560 001.

2. The Deputy Commissioner,
Mandya District,
Mandya - 571 401.
3. The Assistant Commissioner,
Mandya Sub division,
Mandya - 571 401.
4. The Tahsildar/Asst. Director of
Land Records, Mandya Taluk,
Mandya – 571 401.
5. The Revenue Inspector,
Kasaba 1st Circle,
Mandya Taluk, Mandya.
6. The Special Land Acquisition
Officer, Mandya district,
Mandya – 571 401
7. The Mandya City Municipality
represented by its commissioner,
Mandya – 571 401.
8. The Mandya Urban Development
Authority, represented by its
Commissioner, Mandya – 571 401.
9. The Mandya District Ganga
Mathasthara (Besthara) Sangha,
represented by its Secretary /
Manager or any designated officer,
3rd floor, on the MVG bakery
building, Beside K.S.R.T.C bus
stand, Mandya – 571 401.
10. The President/in-charge of the
President Office, Mandya District
Ganga Mathasthara (Besthara)
Sangha, 3rd floor, on the MVG

bakery building, Beside K.S.R.T.C
bus stand, Mandya – 571 401.

(D.1 to 6 by learned DGP)

(D.8 by Sri. N. Muddappa, Advocate)

(D.7 placed exparte)

(D.9 and 10 – Sri. MB. Rajashekhara-Advocate)

ORDER ON IA.NO.I UNDER ORDER 43 RULE 2 OF CPC

The present Mis.Appeal has been preferred under Order 43 Rule 2 of CPC challenging the order dated 19.12.2023 passed in IA No.6 in OS No.177/2021 pending before the Addl. Senior Civil Judge and CJM, Mandya.

2. For the sake of convenience, parties to the appeal are herein after referred as in the original suit in the Trial Court.

3. The facts in nutshell are that, the appellants/plaintiffs filed OS No.177/2021 seeking a decree of declaration that the plaintiffs are the owners in possession and enjoyment of suit scheduled property and to declare that there was no acquisition of land occurred and the acquisition is non est, ineffective, inoperative and not acted upon, void ab-intio, etc., and consequential relief of rectification and restoration of revenue entries in the name of plaintiffs and to grant permanent injunction against the defendants from interfering with the peaceful possession and enjoyment of

property. Though suit summons was served to the defendants, they did not appear and hence, they were placed *exparte* and the suit was posted for recording *exparte* evidence from plaintiffs side. However, in the meanwhile, the plaintiffs filed an application under Order 39 Rule 1 and 2 of CPC seeking ad-interim order of temporary injunction against the defendants No.9 and 10 restraining them from putting up or proceeding with any kind of construction over or in any portion of the suit schedule property pending disposal of the suit which came to be allowed on 19.04.2023.

4. On intimation of the said order, defendants No.9 and 10 entered appearance and filed IA No.6 under order 39 Rule 4 seeking the vacation of the order passed in IA No.3 by the learned Addl. Civil Judge (Senior Division), Mandya. Upon hearing both the plaintiffs and defendants No.9 and 10, the trial court allowed the IA No.6 and vacated the order of temporary injunction passed restraining the defendants No.9 and 10 from putting up any construction on the suit schedule property. Aggrieved by the said order, the appellants have filed this appeal contending that the trial court has erred in vacating the reasoned order restraining the defendants No.9 and 10 and has sought stay of operation of the

impugned order accordingly, the defendants No.9 and 10 are to be retrained from making any construction pending disposal of this appeal.

5. Learned counsel for defendants No.9 and 10 appeared and have filed objections to the said IA contending that, the trial court has passed a reasoned order vacating the temporary injunction which is not an executable order and hence, this IA is not maintainable and hence, no stay can be ordered.

6. Heard both sides arguments. Perused the materials available on record.

7. The following points are arises for my consideration :

(i) Whether the appellant has made out grounds for stay of the execution and operation of order of the trial court?

(ii) What order?

8. My answer to the above said points are as follows :

Point No.1 : **Negative,**

Point No.2 : As per the final order for the following

REASONS

9. **Point No.(i)** : The learned counsel for appellants strenuously argues that, if the defendants No.9 and 10 are permitted to put up any constructions in the suit schedule

property, the very nature and status of the suit schedule property and the substratum of the suit will be lost causing irreparable loss and injury to the appellants.

10. Per contra, the learned counsel for defendants No.9 and 10 submits that, the trial court after due consideration of the documents and the Gazette notification placed before it with respect to the acquisition of the suit schedule property way back in 1955 and considering the fact that a valid sale deed was executed in favour of defendant No.10 by Mandya Municipality and all the revenue records are standing in the name of respondent No.10 has rightly vacated the order passed in IA No.3 of OS 177/2021 and there are no grounds made out by the appellants for stay.

11. Upon consideration of the rival arguments addressed on behalf of the appellants and respondents No.9 and 10 and considering the records placed along with the application this court it is apparent that though the temporary injunction restraining the defendants No.9 and 10 from putting up construction in the suit schedule property is granted with detailed discussions admittedly, the same is an ex parte order. It is worth to note that on the next date of hearing the defendants No.9 and 10 entered appearance and filed application under Order 9 Rule 7 for setting aside the

exparte order which came to be allowed noting the no objection from the appellants side on payment of costs. Later, this IA No.6 came to be filed by defendants No.9 and 10 for vacating the order passed in IA No.3 restraining them in putting up any constructions in the suit schedule property.

12. From the perusal of the impugned order it *prima-facie* depicts that the trial court has considered the Mysuru Gazette notification dated 3.11.1955 wherein at serial No.13, land in Sy.No.847/9 standing in the name of Hombichanna to an extent of 13 guntas has been acquired and noted the fact that the said suit schedule land is in possession of the respondents No.9 and 10 and also considered the fact that defendants No.9 and 10 have invested huge amount of money and hence stored materials to build *Samudaya Bhavana* and the said materials would go useless, if the restraintment order passed against them is not vacated, irreparable injury and loss would be caused to defendants No.9 and 10 and has found balance of convenience lying in favour of the defendants No.9 and 10. The trial court has assigned reasons for vacating the injunction order and at this stage this court is of the opinion that the findings recorded by the trial court cannot be said to be

perverse or contrary to law and the balance of convenience is not in favour of the appellants.

13. Therefore, it is evident from the impugned order that the trial court has not granted any positive or executable direction against the appellant but has vacated the earlier injunction order granted in favour of the appellants. Now, the impugned order being negative in nature there is no executable order which is operating against the appellant and therefore, the question of granting stay does not arise and this court is of the considered view that, the appellants have not made out any case for staying the operation of the impugned order. Accordingly the prayer for stay of the order dated 19.12.2023 on IA No.6 in OS 177/2021 on the file of Addl. Senior Civil Judge and CJM, Mandya is hereby rejected.

14. However, it is made clear that the observations made herein above shall not affect the merits of the appeal which shall be considered on merit independently. Hence I answer Point No.(i) in the **Negative**.

15. **Point No.(ii)**: In view of the discussion at points No. (i) to (iii), I proceed to pass the following:

ORDER

IA No.1 filed under order 43 Rule 2 R/w Order 41 Rule 5 of CPC by the appellants for stay of execution and operation of order dated 19.12.2023 passed by I.Addl. Senior Civil Judge and CJM, Mandya in IA No.6 of OS No.177/2021 is hereby dismissed.

Case stands posted for final hearing on the appeal.

(Dictated to Stenographer directly on the computer, corrected by me and then pronounced it in open court this the **27th day of September 2025**).

(MANJULA ITTY)

C/c V Additional District & Sessions Judge,
Mandya.