

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

**:PRESENT:**

**SRI. NANJEGOWDA M.C, B.A.L., L.L.M.,**  
V Addl. District & Sessions Judge, Mandya.

Dated **15<sup>th</sup>** Day of **June, 2026**

**M.A.No.01/2024**

**APPELLANT/S:**

1. Smt. Mahadevamma,  
W/o Late Mahalingaiah,  
Aged about 60 years,
2. Smt. M Manjula,  
D/o Late Mahalingaiah,  
W/o Jayaramu,  
Aged about 44 years,  
Both are R/at behind Kaveri High  
School, 2<sup>nd</sup> Cross, Shivananjappa  
Layout, Mandya city.

(By Sri. H.P.S., Advocate)

**Vs.**

**RESPONDENT/S:**

1. The State of Karnataka,  
represented by its Chief Secretary,  
Vidhana Soudha,  
Dr. BR Ambedkar Road,  
Bangalore – 560001.2.

2. The Deputy Commissioner,  
Mandya District,  
Mandya – 571401.
3. The Assistant Commissioner,  
Mandya Sub division,  
Mandya – 571401.
4. The Tahsildar/Asst. Director of  
Land Records, Mandya Taluk,  
Mandya – 571401.
5. The Revenue Inspector,  
Kasaba 1<sup>st</sup> Circle,  
Mandya Taluk, Mandya.
6. The Special Land Acquisition Officer,  
Mandya District, Mandya – 571401.
7. The Mandya City Municipality,  
represented by its commissioner,  
Mandya - 571401.
8. The Mandya Urban Development  
Authority, represented by its  
Commissioner, Mandya – 571401.
9. The Mandya District Ganga  
Mathasthara (Besthara) Sangha,  
represented by its Secretary  
/Manager or any designated officer,  
3<sup>rd</sup> floor, on the MVG bakery  
building, Beside K.S.R.T.C Bus  
Stand, Mandya – 571401.

10. The President/in-charge of the  
President Office,  
Mandya District,  
Ganga Mathasthara  
(Besthara) Sangha,  
3<sup>rd</sup> floor, on the MVG  
bakery building,  
Beside K.S.R.T.C bus stand,  
Mandya – 571401.

(R.9 and 10 by Sri. M.B.R., Advocate)

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**ORDER ON APPEAL UNDER ORDER 43 RULE 1 OF  
CPC.**

This Miscellaneous Appeal is preferred by the appellants-plaintiffs against respondents-defendants challenging the orders passed by the learned I Addl.Senior Civil Judge and CJM, Mandya in OS.No.177/2021 dated 19.12.2023.

2. **Background:** The Appellant-plaintiffs filed suit against the present respondents/defendants for the relief of declaration of their ownership and such other reliefs including injunction in respect of the suit schedule property. Along with the suit, appellants/plaintiffs also filed an interim application, i.e., IA.No.1 seeking temporary injunction restraining defendants No.9 and 10 from putting up and proceeding with any kind of construction over any portion of the suit schedule property pending disposal of the suit in the trial court. It is further case of the plaintiff/appellants that the Trial Court initially allowed the application filed by the appellants/plaintiffs and granted an order of temporary injunction on 19.04.2023. But subsequently, the said orders came to be vacated by the said court on 19.12.2023 in pursuance to an application filed by the respondents/defendants No. 9 and 10 under Order 39 Rule 4 of CPC. Therefore, being aggrieved by said order,

the appellants/plaintiffs have filed this Miscellaneous Appeal and have prayed for setting aside the said order.

3. The epitomized contents of the affidavit annexed to I.A.No.1 and plaint are that the plaintiffs are the absolute owner in possession and enjoyment of the suit property. Originally it belongs to their ancestor one Kalegowda. The revenue documents were standing in his name. He never sold the said property during his lifetime. He died leaving his only son Hombichenna. Therefore, Hombichenna becomes the absolute owner of the suit property. Consequently, revenue records were changed in his name. Even the said Hombichenna never sold the suit property to the third party during his lifetime. Said Hombichenna also expired about 50-60 years back and the revenue entries continued in his name till 2010. After the death of Hombichenna, the property seceded by his son Mahalingaiah. He did not

get the revenue entries in his name as he is innocent, having no worldly knowledge. But the respondent No.8-Muda got the revenue entries in its name illegally and unauthorizedly and without any basis in the year 2010. But the said Mahalingaiah also died about three years before filing the suit before the trial court. The plaintiffs, being the wife and children of the deceased Mahalingaiah have succeeded to the property and have become the absolute owners and in possession of the same.

4. It is further case of the plaintiffs before the trial court that suit schedule property is not acquired for any public purpose by competent authorities at any point in time. There are no preliminary or final notifications for acquisition of suit schedule land. No value is fixed and no compensation is paid. It is never taken into possession of any authority. After knowing

about the illegal entries, the husband of the first plaintiff-Mahalingaiah had challenged the same in R. Misc., No. 52/200-11. But it was dismissed by AC without appreciating the case in proper manner and against the said dismissal order, he preferred a revision petition in RP No. 19/2014. But the said revision petition was also dismissed. The appellants have challenged the said orders before the Hon'ble High court and same is pending for consideration. It is further case of the appellants that for the last 9 months, the defendants No.2 to 9 are trying to enter the suit property and put defendant No.9 into the possession of the same. To defeat and defraud the rights of the appellants, the respondents are making hectic efforts to take the law into their hands. The defendants persistently increasing the illegal and unwarranted attempts to meddle with the peaceful possession and enjoyment of the suit property by the appellants. Hence, the plaintiff/appellants filed

the suit for declaration and permanent injunction etc., and the applications for interim reliefs.

5. On the other hand, in pursuance to the summons issued by the trial court the respondents/defendants No. 9 and 10 have appeared through their advocate and filed a detailed written statement. It appears the other defendants have not chosen to appear and contest the suit. In the written statement, defendants 9 and 10 have contended that the suit of the plaintiffs-appellants is false, frivolous, vexatious, tinted with malafide objects and made with an intention to grab the suit land. The plaintiffs have not disclosed the true facts. There is no cause of action for the suit and hence it is liable to be dismissed. It is specific contention of the defendants that the suit land and other adjacent lands were acquired under the purpose of development of Mandya town on 3/11/1955.

After the acquisition the land was handed over the defendant No.7 through revenue inspector. Then TMC prepared a layout by forming sites and allotted the site No.9 to defendant No. 9 and 10. A sale deed was also executed on 6/9/1974 and since then the defendants are in actual physical possession and enjoyment of the said property. By considering the sale deed and physical possession of the property Khatha was also changed to the defendants and they are paying the tax to the government/D7. Other sites formed in the suit land were allotted to other associations like Mandya junior chambers, Muslim Sangha etc., The adjacent owner of the suit land ie., Sy. No. 847/7 measuring 19 guntas by name Sunita also had challenged mutations made in favour of the defendants in R. Misc. 259/2009-10 and revision petition No. 313/2018. But both the petition and revision petitions were dismissed. Even the said Sunita had filed a suit in O.S. No. 96/2007 before the civil court

Mandya for permanent injunction against these defendants. But it was dismissed. Even the challenge made under RA No. 21/2009 was also dismissed. The said Sunita had challenged the judgment in RA.21/2009 as per RSA No. 1354/2013 before the Hon'ble High court of Karnataka. But the said RSA was also dismissed, and it has remained unchallenged. Said Sunitha also challenged the allotment of site No.9 to the defendants in W.P No. 19677/2009 before the Hon'ble High court and said petition was also dismissed which has again remained unchallenged. She also had challenged issuance of the license in W.P No. 6277/2011 before the Hon'ble High court. But said petition was also dismissed and same is not challenged.

6. It is further contentions of the respondents-defendants No.9 and 10 that the plaintiff No.1- Mahadevamma in this case is Pw2 in O.S. No. 96/2007

filed by the said Sunitha. She is aware about the entire chain of litigations. But still has filed a false suit by suppressing the true and material facts. Sale deed in favour of the defendants is also not challenged. The defendants are in possession since the date of sale deed. The suit property has lost its character as agricultural land long back. Court fee paid is not correct. The defendants are making construction of Sumudaya Bavan and Hostel by spending huge amount. The attempt of the plaintiffs is nothing but the abuse of process of law. The plaintiffs have not produced the RTC of as on the date of suit. The suit is not maintainable under section 135 of land revenue act. The suit land is not identifiable. It is filed without proper and necessary parties. The defendants have constructed the office very long back. And now undertaken construction of community hall and hostel. The suit is barred by limitation. On these grounds the appellants-defendants

have sought dismissal of the suit as well as interim applications in the trial court.

7. It is significant to note that initially the trial court, as the defendants were placed exparte, has granted an ad-interim exparte order of temporary injunction against the defendants from making construction in the suit property on 19/4/23. But subsequently defendants No.9 and 10 have got set aside the exparte order placed against them and contested the suit by filing written statement and objections. They have also filed an application under order 39 rule 4 of CPC for setting aside the exparte ad-interim order of injunction. The plaintiff has filed the objections.

8. The trial Court, on hearing both the sides, has raised the following points for it's consideration.

### **P O I N T S**

1. Whether the defendant No.9 and 10 have made out grounds to vacate an order of ex-parte temporary injunction dated 19/4/23?

2. What order or decree?

9. On hearing the arguments and perusal of the necessary materials on record, the Trial court answered the above point in the Affirmative and thereby allowed the application filed by the defendants No.9 and 10 on 19/12/23 and set aside the order of temporary granted by it dated 19/4/23.

10. Being aggrieved by the impugned judgment and decree passed by the Trial Court, appellant being the plaintiff has preferred the instant appeal against the respondent who was the defendant on the following:

### **GROUND OF APPEAL**

11. The appellants have contended that the order passed by the Trial Court of learned I Addl.Senior Civil Judge and CJM, Mandya in vacating the T.I orders is not sustainable either in law or facts. The Trial Court basically erred in not considering the T.I orders granted by the said Court on 19.04.2023. The said order was not at all an order of T.I in granted ex parte nor it was an order passed in the absence of defendant No.9 and 10. Therefore, the Trial Court prima facie error in not considering the said order dated 19.04.2023 as an ex parte order. Therefore, by vacating the said orders, the Trial Court has committed. The order dated 19.04.2023 is concluded and final orders passed on merits. After passing such orders, the application was not pending for further consideration by the very same Court. Therefore, there was no jurisdiction vested with the said Court to meddle in the orders and allowing the

application filed by the defendants. Therefore, it was not open to the Court to hear the said concluded application once again. The Trial Court erred in not considering the effect of the orders dated 19.04.2023. Keeping open the only one option, the defendant No.9 and 10 have approached the very same Court seeking reconsideration of T.I order dated 19.04.2023 only, in the event of acquisition of suit land in accordance with law, the option was available to the defendants. When the Trial Court to reconsider the order dated 19.04.2023. The only point that arises for the consideration of Court is, Whether the defendant No.9 and 10 have proved that the land in question has been acquired. The Trial Court Judge committed error in considering the order under 39 Rule 1 and 2 of CPC. The said order was not an ex parte order nor was it an order passed by keeping pendency of application filed under order 39 Rule 1 and 2 of CPC. Therefore, the order dated 19.04.2023 being an

appealable order has to be challenged before the very same Court which granted T.I on 14.04.2023 and hence, permitting them to approach the very same Court on the guise of the compliance of under Order 39 Rule 4 of CPC by the I Addl.Senior Civil Judge and CJM, Mandya itself is not without jurisdiction and hence, on this score alone, in the orders dated 19.12.2023 has to be set-aside. The Trial Court ignored the very same Court in passing the impugned order and it had no power to reconsider the order passed by it. Defendants No.9 and 10 are strangers to the suit property, they do not have any right, title or interest. Since, the suit property was never acquired validly by the concerned authorities. The Trial Court also further erred in understand the balance of convenience to enjoy the T.I orders till their right property is decided on merits. The Trial Court has erred and failed to notice the lawful entries made in the revenue documents till 2009-10. The Trial Court has

failed to understand the nature of declaratory reliefs sought by the plaintiff. It also failed to understand the fact that Government and its functionaries have not acquired the suit schedule land. Defendants No.9 and 10 have falsely contended that there is an acquisition of the suit land by the Government. The Trial Court failed to note that defendants No.9 and 10 did not reply to the statutory notice and did not appear before the Court even though the summons and IA were served. The Trial Court failed to understand the effect of the impugned orders of vacating T.I order and permitting in the respondents/ defendants for construction on the suit property. On these grounds, appellants have sought for set-aside order dated 19.12.2023 and allow the injunction application granted by the plaintiffs against the respondents/defendants.

12. Per-contra, respondents No.9 and 10 appeared and contested the appeal. As no steps were taken at the right time, the petition is dismissed against the other respondents.

13. Heard appellants as well as the respondents.

14. Based on the factual matrix available on record and grounds of appeal, the following points arise for consideration of this court:

### **P O I N T S**

1. Whether the Trial Court is justified in vacating the order of ad-interim injunction dated 19/4/23 granted in favour of the plaintiffs.?
2. What order or decree?

15. On hearing both and perusal of the necessary materials on records, this court answers the above point are as below:

Point No.1: In the **Affirmative**.

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

## **REASONS**

16. **Point No.1:** The status/rankings assigned in the Trial Court to the plaintiffs and defendant No.9 and 10 are being adopted and adhered-to in the instant discussion also for the purpose of brevity and convenience and to avoid confoundation and perplexity.

17. Instant suit has been filed by the plaintiffs in the trial court seeking declaration and consequential relief of restoration of revenue entries in their favour and for permanent injunction restraining the defendants No.9 and 10 from interfering in the possession and enjoyment of plaintiffs over the suit property. They have filed an APPLICATION seeking temporary injunction restraining the present defendants No.9 and 10 from interfering in their possession and enjoyment over the suit property during the pendency of the suit. The trial court initially has allowed it and granted an ad-interim temporary injunction. But subsequently, based on the

application filed by defendant No.9 and 10 under Order 39 Rule 4 of CPC, the trial court has vacated the order of temporary injunction as per the order dated 19.12.2023 and same challenged by the plaintiffs before this court by way of this appeal.

18. At the outset, it is to be noted that while adjudicating an application filed for vacating an order of temporary injunction, though the trial court was not required to raise points with regard to prima-facia case, balance of convenience and hard ship, it is significant to note that ultimately such application has to be decided based on those standards only. Whether there is prima facia case or not had to be considered based on the basic contentions of the parties in the pleadings and by examining the sanctity and validity of the documents produced before it. In the present case, it is significant to note that this is a clear case of title dispute, wherein

the plaintiffs and defendants No.9 and 10 are equally claiming the title over the disputed land. Therefore, there is equal burden on both the parties to convince their case to the court. Basically, trial court had to give prima facie findings as to the title and their possession by correctly appreciating the documents placed before it in the light of the contentions raised by them in the pleadings.

19. The plaintiffs in this case claim that they have acquired the suit land by inheritance by their ancestors. According to them one Kalegowda being the propositus of their family was the original owner of the suit land. After his death, his only son Hombichenna become the absolute owner of the suit property. After the death of Hombichenna, the property was succeeded by his only son Mahalingaiah and said Mahalingaiah also died about three years before filing the suit. Therefore, the

plaintiffs, being the wife and children of the deceased Mahalingaiah have succeeded the suit property and have become the absolute owners and they are in possession and enjoyment of the same. On the other hand, it is the defense of the defendants No. 9 and 10 that the suit land and adjacent lands were acquired by government as per the notification dated 3/11/1955 issued by Mysore state. The government after acquiring the lands has handed over the same to defendant No.7- Mandya Municipality. The Mandya Municipality had formed the sites and allotted site No.9 to the defendants 9 and 10 and other sites to other beneficiaries. It is also say by the defendants that in pursuance of the allotment, the Municipality also has executed the sale deed and handed over the possession to them and since then they have been in possession and enjoyment of the disputed property and hence, they are the owners in

possession and enjoyment of the suit property/disputed property.

20. But, it is to be noted that the plaintiffs in the plaint itself, have denied the acquisition of the suit schedule land by the government and formation of sites and allotment of the same to the defendants and such other beneficiaries. In addition and in alternatively, they have also denied validity and sanctity of the alleged acquisition. In support of the same, the plaintiffs have also produced the revenue records, which show that till the year 2010, the revenue entries were standing in the name of plaintiffs' ancestors. Therefore, basically there is heavy burden upon defendants No.9 and to 10 to prima facia show and prove by material documents that there is acquisition of the suit land by the government and allotment of the same to the defendants and that they have acquired title in the disputed land. But, it is most significant to note that the defendants, except for

producing one page copy of the alleged notification dated 3/11/1995, have not placed any other document before this court regarding acquisition. Plaintiffs in the arguments contended that the said document is not a notification of acquisition. It is only a document which has been proposed for acquisition and there is no proof of acquisition of the suit land is produced by the defendants. Now, therefore, a crucial question before this court is, whether the said document is proof of a notification issued for acquisition of the suit schedule property as contended by the defendants. For the sake of this purpose and for clarity and for better understanding, the relevant portion of the said notification is extracted, and it reads as below.

***“In exercise of the powers conferred by section 6 of the Mysore land acquisition Act 1894. His Highness the Rajapramukh of Mysore hereby declares that the lands specified below, be the same a little more or less, are needed for a public purpose wit town improvement: and in exercise of the powers conferred***

**by clause (e) of section 3 and 7 of the said act, the Assistant Commissioner in charge of Mandya Subdivision, is appointed to perform the functions of Deputy commissioner under the act, and directed to take the orders for the acquisition of the said lands.**

**In exercise of the powers conferred by sub-section (1) of section 17 of the said act, His Highness the Rajapramukh of Mysore further directs that the possession of the said lands may be taken on the expiry of fifteen days from the date of publication of the notice mentioned in sub-section (1) of section 9 of the said act.**

**A plan of the lands is kept in the office of the sub-division officer, for inspection”.**

21. It is to be noted that as rightly contended by the counsel for the plaintiffs, nowhere in the said notification, it is said that the suit or any other lands are acquired by the then State Government of Mysore. It only indicates that the Assistant commissioner of the subdivision, Mysore was appointed to take the order of acquisition. It also indicates that the possession of the lands stated in the said notification shall be taken on the

expiry of fifteen days from the **date of publication of the notice mentioned in sub-section (1) of section 9 of the said act.** But, it is most significant to note that the defendants are nowhere in the pleadings or in the arguments stated as to whether such orders of acquisition were taken by the Assistant Commissioner and whether notice under section 9 of the act was published and whether the possession of the suit land is taken in pursuance of such notice. And if at all it is done, when such notification was issued and when exactly the suit land was taken into possession. No supportive documents are produced by defendants No. 9 and 10 to substantiate these factual requirements. Unfortunately, even though this court posed questions about these aspects, the counsel for the defendants failed to give a convincing and satisfactory answer. In fact, this court also suggested issuing the summons to the government to produce the documents relevant for this purpose. But

the counsel for the defendants did not show any inclination for the same, instead he insisted on an urgent/early order. It is to be noted that the defendant No.1 to 8 being the government instrumentalities and organs which play pivotal role in the acquisition of land and allotment of the same to the beneficiaries, have not chosen to appear and contest the suit. Defendants No.9 and 10 being beneficiaries of the acquisition, do not want this court to call documents from the proper authorities for the reasons best known to them. Such being the case, this court has no other alternative except to decide the appeal based on the materials placed by the parties at this stage before this court. If this court must take the decision based on the notification stated above, the maximum inference that can be drawn by this court is that the said document/notification is only a proposal for acquisition and for taking possession of the suit land and adjacent

lands, that too after issuance of notice under section 9 of the act and no actual and real acquisition of the suit schedule land is taken place. If that inference is drawn by this court, naturally this court will have to form an opinion that after the death of Hombichenna his son Mahalingaih had become the owner and after the death of Mahalingaiah, the plaintiffs being his legal heirs have become the owners by inheritance. It is significant to note that defendants No.9 and 10 have not disputed that the suit schedule land originally belonged to the family of the plaintiffs. In fact, very notification dated 3/11/1955 clearly shows that on the date of alleged notification, the suit land was standing in the name of Hombichenna, who is the grandfather of the plaintiff No.2. Therefore, under these circumstances, at this stage, this court is of the opinion that alleged notification relied by defendants No.9 and 10 is not

useful to them to prove the acquisition and to prove their title prima faica.

22. Next much argued documents by the learned counsel for the defendants are, the judgments rendered in O.S.No. 96/2007, RA No.21/2009 and RSA No. 1354/2013. But it is to be noted that in none of these proceedings the present plaintiffs were parties. They were initiated by one Sunitha against the present defendants. Even the present suit property was not the subject matter of those proceedings. The counsel learned for the defendants contended that plaintiff No.1 had given evidence as Pw2 in O.S. No. 96/2007 and therefore it is binding on the plaintiffs. But this contention of the defendants is not acceptable. No doubt, the present plaintiffs and the plaintiff in those proceedings stand in same footing as far as alleged notification is concerned. But unless the plaintiffs are

parties and their property is involved in those proceedings, the findings recorded by the courts in those proceedings, cannot bind the present plaintiffs. Therefore, these documents also would not be any helpful to the defendants in any manner. However, from the said proceedings one thing is very clear that the plaintiff No.1 was aware that their property was also involved in the alleged notification and it was also in dispute.

23. The other documents which are relied on by the learned counsel for the defendants No. 9 and 10 are the orders passed by the Assistant Commissioner in R.Mis No. 52/2010-11 and R. Mis No. 259/2009-10 and orders passed by Deputy Commissioner in RP No. 19/24 and 313/2018. Based on these documents, the learned counsel for the defendants contended that already the AC and DC have rejected the plea of the plaintiffs that they are the owners of the suit lands and observed that

already the suit land has been acquired by the government as per the notification dated 3/11/1955. Therefore, the plaintiffs cannot claim any right over suit property. But this contention of the defendants is also not acceptable. The AC and DC also have not referred to any notification which acquired the suit land in their orders. There is no mention in their order on what basis they have concluded that the suit land has been acquired. This court has opined that the notification dated 3/11/1955 is not a notification of actual acquisition of the suit land. It is only a proposal for the acquisition and as per section 9 of the Mysore land acquisition act there is no notification issued about acquiring the suit schedule land and no such document is produced before this court. Moreover, it is well settled principle of law that the findings of a revenue court are not binding on the civil court. Therefore, at this stage no importance can be attached to the copies of the orders

passed by the learned AC and DC and hence they are not useful to the defendants in any manner.

24. The defendants also argued that the defendants have purchased the site claimed by them as per the sale deed dated 6/9/74. The said document has come into existence at undisputed point of time. Therefore, this court must rely upon the same. But, it is to be noted that as mentioned above the defendants have failed to produce any valid document to show that at any point of time there is acquisition of suit schedule property by the defendants. Unless and until a valid document for having acquired the suit land is produced this court cannot attach any sanctity to the sale deed relied on by the defendants, just because it has come into existence long back. Because, basically the executant must have right and title in the suit schedule property. At this stage no such proof is produced. Therefore, at this stage, from the above discussion, this

court is of the opinion that by the alleged notification dated 3/11/1995 or by the sale deed dated 6/9/74 produced by the defendants before this court, the defendants have failed to prove that title of the plaintiffs over the suit land is not divested and on the other hand it is proved prima-facia by the plaintiffs that on the date of filing the suit the title lies with them only.

25. However, it is most significant to note that the prima facie title should not be confused with the prima facia case. Always prima facia title would not entitle a party for an order of temporary injunction, if he does not make out a prima facia case. To claim an order for temporary injunction the plaintiffs must prove prima faica case in their favour. Admittedly, in this case plaintiff No.1 had given evidence in O.S. No. 96/2007 filed by one Sunitha and she was aware about involvement of their property in dispute. This shows that

Plaintiff No.1 had all knowledge about the land acquisition claimed by defendants No.9 and 10 in the year 2007-08 itself. Even her husband was aware of it in the year 2010 when he filed R.Mis., No. 52/10-11 and RP No. 19/24. But no suit is filed before any civil court and no action was initiated by the plaintiffs for last more than 10 years. Only in the year 2021, such proceedings were initiated. The plaintiffs have not stated why no suit was filed for such long time. Suit is filed only when the plaintiff in O.S. No. 96/2007 became unsuccessful in her attempts even after the support by the plaintiff No.1 before the trial court, first appellate court and before the Hon'ble High court of Karnataka.

26. Similarly, it is to be noted that admittedly the suit land has not remained as agricultural land. As admitted by the plaintiffs themselves, suit land is situated in the heart of Mandya City. Not only is site

No.9 claimed by the defendants located therein, even the Mandya Bus stand is located adjacently. The defendants in support of their case have produced the khatha extract, construction license issued by the competent authority, power supply letter issued by the CESCO and construction photographs of the disputed land. These documents clearly show that suit property is not at all agricultural land but has become commercial land. It is to be noted that khatha extract, construction permission, power supply permission will be issued only after visiting the spot and ascertaining who is in actual physical possession. The photographs produced by the defendants also show that they are making construction in the suit schedule land being in physical possession. This shows and proves that on the date of filing the suit, the plaintiffs had only a nominal possession and not the actual and real possession and such actual and real possession lie with the defendants. Under these

circumstances, this court has no other option except to come to the conclusion that, though the plaintiffs have made out prima facie title, they have failed to make out a prima facie case in their favour.

27. The plaintiffs' counsel relied upon following decisions and contended that the plaintiffs are entitled for reliefs as sought.

**1). 1999(1) Kar.L.J.577, Smt.Rathnamma V/s B.A.Srinivasa Gupta and Others.**

**2). 1999(1) Kar.L.J.578 (DB), V.Shafeeque Ahmed V/s State of Karnataka and Others.**

**3). ILR 1985 KAR 3872 (DB), Stumpp Scheule & Somappa (P) Ltd V/s Chandrappa.**

**4). Shree Bhimeshwara Swami Varu ... V/s Padapudi Krishna Murthi and Others, on 27 March, 1972.**

**Equivalent Citations: AIR 1973 SC 1299,  
(1973) 2 SCC 261.**

**5). 1964 Mys L.J Supp.74 (DB), Ramakrishiah V/s Madhavakrishniah.**

**6). ILR 1988 KAR 554, Narasimha Shastry V/s Mangesha Devaru.**

**7). 2019 SAR (Civil) 1061, Krishan Chander and another V/s State of Haryana and others.**

**8). 2017 SAR (Civil) 160, Delhi Development Authority V/s Islamuddin and others.**

**9). 2015 SAR (Civl) 280, Sita Ram V/s State of Haryana and another.**

**10). ILR 1982 Kar 1 (DB), Holy Saint Education Society V/s Venkataramana .P and others.**

**11). ILR 1991 Kar 3556 (DB), Mrs.Behroze Ramyar Batha V/s Special Land Acquisition Officer.**

**12). ILR 2013 Kar 3539, K.L. Ramesh V/s Bangalore Development Authority and others.**

**13). ILR 1991 Kar 2248 (DB), Narayana Reddy  
V/s State of Karnataka.**

28. But it is to be noted that as mentioned above the plaintiffs have failed to prove the prima faica case in their favour. The facts and circumstances of the present case, and cases referred above are distinguishable. Therefore, the decisions relied on by the plaintiffs would not be useful to the plaintiffs and they cannot be made appliable to the case on hand in favour of the plaintiffs. If the defendants had made out prima facia case, this court could have applied the principles stated in those decisions.

29. When it comes to the question of balance of convenience and hardship, it is to be noted that it is well settled principle of law that if the plaintiffs fail to prove the prima facia case, the question of considering the balance convenience and hardship would not arise. Moreover, as rightly observed by the trial court, it is to be noted that the defendants are making the

construction with all the necessary documents. Admittedly, the construction has reached roof level. The defendants have also stored all necessary materials in the construction site. Under these circumstancesm if the work is stopped, it would be causing serious inconvenience and hardship to the defendants. However, under such circumstances, a serious question which would also come for consideration of this court is whether this court can permit a person who does not have a title over the disputed land for making a construction. And if so constructed and if the plaintiffs succeeded in the suit what would be the consequence of such construction. Therefore, what is to be mentioned herein is that if such construction is made, in the opinion of this court, the defendants will be making such construction at their risk and the defendants cannot claim equity. **However, it is made clear that, any of the observations made herein shall not bind Trial**

**Court and Trial court shall not be influenced by any of these observations while deciding the case on merits in accordance with law.** Accordingly, **point No.1 is held in Affirmative.**

30. **Point No.2:** For the reasons and discussions made above at much-length and answers to above points as supra, this court is inclined to proceed to pass the following:

**O R D E R**

The instant appeal preferred by the appellants / plaintiffs against the respondents / defendants under Order 43 Rule 1 of CPC challenging the impugned order passed by the court of Learned Additional Senior Civil Judge and CJM, Mandya in O.S.No.177/2021 dated 19/12/23 is hereby rejected.

Consequently, said order passed by the trial court is hereby confirmed.

However, it is made clear that the construction, if any, made by defendants No. 9 and 10 is subject to the result of the suit and defendants No.9 and 10 cannot claim any equity.

(Dictation Typed by the Stenographer directly in the Computer, corrected and then pronounced by me in the Open Court, this the **15<sup>th</sup> day of June, 2026**)

**(NANGEGOWDA M.C)**  
V Addl.District & Sessions Judge,  
Mandya.