

**ORDERS ON I.A. No.III FILED BY THE
PLAINTIFF NO.3 UNDER SECTION 151 OF CPC**

The plaintiff No.3 has filed this I.A. No.III U/Sec.151 of CPC seeking direction to the defendants to remove the illegal fence put by the defendants over the suit schedule property.

2. In the accompanying affidavit it is stated that, plaintiffs have filed this suit against the defendants for the relief of Permanent injunction over the suit schedule property. During the pendency of the suit, the plaintiffs had maintained an application U/order 39 Rule 1 & 2 of CPC seeking temporary injunction and this Court granted an ex-parte interim order against the defendants on 15.09.2023 and issued summons to defendants. Later when the defendants came on record and filed their written statement and objection statement to IA No.I and after heard the arguments on both sides, the Court was pleased to pass the order on 12.09.2023 by rejecting the IA No.I filed by the plaintiff U/order 39 Rule 1 & 2. Immediately within the stipulated period for prefer the appeal, the defendants had illegally put up a fence and block the entire passage on the suit schedule property. Upon the illegal act made by the defendants, the plaintiffs lodged complaint against the defendants on 27.09.2024 and also filed one more complaint on 08.10.2025 for their illegal act before the H.D. Kote police station and the said police not at all taken any action against the defendants and had issued endorsement on 20.10.2024, simply stating that the matter is civil in nature and advised both the parties to obey the court order but never removed the illegal fence put on the suit schedule property. Upon said aggrieved order

passed by this Court, we had preferred an appeal before the Hon'ble V Addl. District & Sessions Court, Mysuru (Vacation Court) in MA No.11/2024, then this Court was pleased to pass an order directing both the appellants and the respondents to maintain status-quo with respect to suit schedule property till next date of hearing and later appeal got transferred to the jurisdictional Court at Hon'ble Senior Civil Judge & JMFC at H.D. Kote and renumbered as MA No.15/2024. After heard the arguments on main matter by both the parties the Hon'ble Court was pleased to allow the appeal filed under Order 43 Rule 1 of CPC on 27.03.2025 and order on IA No.I passed by learned Addl. Civil Judge & JMFC, H.D. Kote in OS No.366/2023 dated 12.09.2023 is hereby set aside. Both parties are directed to maintain status-quo in respect of said vacant space (galli) as on the date of filing of the suit.

3. Further it is submitted that, the defendants have not preferred any appeal before the Appellant Court by challenging the order passed by the Hon'ble Senior Civil Judge & JMFC at H.D. Kote in MA No.15/2024 and the appeal period is over. Later the plaintiff approach the defendants on 30.06.2025 through elders of the village to remove the illegal fence put by the defendants but the defendants were adamant and not willing to abide by the orders passed by the Hon'ble Appellant Court, but without the illegal fence getting removed in vacant space (galli) the plaintiffs are unable to move to and fro freely to the cow shed and plaintiff's part of land. Hence this application.

4. Per contra, the defendant No.6 filed objection to the present IA stating that, application filed by the 3rd

plaintiff is not maintainable either in law or on facts. It is true that this Court pleased to reject the IA No.I filed by the plaintiffs U/order 39 Rule 1 & 2 of CPC. It is false to allege that the defendant put up the fence and block the entire passage on the suit schedule property. The plaintiff must put to strict proof of the same. It is true that plaintiffs preferred Miscellaneous Appeal before the Hon'ble V Addl. District and Sessions Court, Mysuru (Vacation Court) in MA No.11/2024. After vacation, the said MA No.11/2024 was transferred to Hon'ble Senior Civil Judge & JMFC, H.D. Kote. The Hon'ble Court passed an order to maintain status-quo by both the parties. The defendants obey the order passed by the Hon'ble V ADJ, Mysuru. Under the instigation of some enimical persons towards the defendants, the plaintiffs filed this false application with an intention to harass the defendant. There is a separate forum to the plaintiffs to urge the same and not by way of filing this application. Hence, the application filed by the 3rd plaintiff is liable to be dismissed. Hence prays to dismiss the application.

5. Heard and perused the materials on record.

6. Admittedly, this Court rejected the IA No.I filed by the 3rd plaintiff U/order 39 Rule 1 & 2 on 12.09.2024. Thereafter 3rd plaintiff preferred an appeal against the said order before Senior Civil Judge & JMFC, H.D. Kote in MA No.15/2024. The said Court passed an order by allowing the appeal filed by the 3rd plaintiff and further directed both the parties to maintain status quo in respect of said vacant space (galli). The said order passed in MA No.15/2024 was not challenged by the opponent. Hence it is final. During the pendency of the said appeal the defendants have closed the galli which has been using by the

plaintiff. And despite the said order, the defendants were closed the said galli. The plaintiff has produced photographs from which it is visible that the defendants have closed the Galli earlier to it, it was open and which was using by the plaintiffs. From the above photographs it is clear that the defendants by closing the said galli obstructed the use of way of plaintiff. Hence, the 3rd plaintiff has filed the instant application seeking direction to remove the illegal fence put by the defendants in the suit schedule property. The reasons stated in the accompanying affidavit are acceptable. If application is allowed no hardship will be caused to other side. Hence, application filed by the plaintiff is liable to be allowed. In view of above discussion I proceed to pass the following:

ORDER

The application filed by the 3rd plaintiff U/Sec.151 of CPC is hereby allowed.

The defendants are hereby directed to remove the illegal fence put by them in the suit schedule property and to comply the order passed in MA No.11/2024 to maintain status-quo in the suit schedule property till disposal of the suit.

Call on

**Addl.Civil Judge & J.M.F.C
Heggadadevanakote.**