

KARN020000712025



Presented on :18-01-2025
Registered on : 18-01-2025
Decided on : 26-03-2026
Duration : 01 year, 02 months, 08 days

**IN THE COURT OF THE I ADDL., SENIOR CIVIL JUDGE
AND JMFC., AT RAMANAGARA**

Dated : This the 26th day of March 2026

Present

Smt.Niveditha.T.M.,

BA.L., LL.B.,

I Addl. Senior Civil Judge & JMFC.,
Ramanagara.

M.A.No.2/2025

Appellants :-

1. Sri.Thimmappa,
S/o. Melagiraiah,
Aged about 77 years,
2. Sri.Venkatappa,
S/o. Melagiraiah,
Aged about 74 years,
Both are R/at Melehalli Village
R/at: Melehalli Village,
Kootagal Hobli,
Ramanagara Taluk and District.

(Rep by Sri.SNR., Advocate)



-V/s-

Respondent:-

1. Smt.Sowbhagya,
W/o. Giriyappa,
Aged about 74 years,
R/at: No.113/4, N.K.Farm,
Dubasipalya,
R.V.College Post,
Bengaluru-560 059.

(Rep by Sri.HBS., Advocate)

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J U D G M E N T

(Delivered on 26/03/2026)

The appellants/plaintiffs have preferred this appeal under Order XLIII Rule 1(r) of CPC., challenging the orders dated:06.12.2024 passed on I.A.No.I in OS.No.179/2014 by the Prl.Civil Judge and JMFC., Ramanagara.

2. For the sake of convenience, parties are referred to by their ranking before the Trial Court. Appellants are the



defendants while respondent is the plaintiff before the Trial Court.

3. The plaintiff has instituted the suit before the Trial Court for the relief of permanent injunction against the defendants in respect of the suit schedule property.

4. Case of the plaintiffs is that, the suit property was purchased by her father-in-law and the same was gifted to the plaintiff under a registered gift deed dated:30.04.1988 and from the date of gift deed the plaintiff is in peaceful possession and enjoyment of the suit property and the plaintiff was declared as absolute owner of the suit property in O.S.No.117/1988 and she has taken possession of the suit property in Ex.No.22/1996. Further it is stated that, the defendants have no right, title or interest over the suit property and they are trying to interfere with her peaceful possession and enjoyment of the suit property and the plaintiff has approached the



jurisdiction police but they have not taken action against the defendants by contending that the dispute is in civil in nature. The plaintiff further stated that, the defendants are very power full and influence persons both politically and financially and without an order of this court, she is not in position to resist the illegal interference by the defendants. Hence, the present IA.

5. In response to the service of summons, the defendants have appeared through their counsel and filed their written statement and memo to treat the averments of written statement as objection to I.A.No.1 and they contended that the suit is not maintainable and Melegiraiah, who has purchased the suit property is their father and the plaintiff is the wife of their brother Giriappa and the suit property is the joint family property of the plaintiff and the defendants. Therefore, they contended that there is no cause of action to file the



present suit. They further contended that the plaintiff is not in exclusively possession of the suit property and the present suit is filed based on invalid gift deed by the suppressing the material facts and the plaintiff has no locus-standi to file the present suit. Hence, prays to reject the suit.

6. Inter alia, the plaintiff has filed IA.No.I under Order XXXIX Rules 1 and 2 R/w Sec.151 of C.P.C., seeking an order for temporary injunction. The defendants appeared before the court and filed written statement. After hearing both sides the learned Trial Judge allowed the application.

7. Being aggrieved by the said order, the appellants/defendants have preferred the appeal on the grounds urged in the appeal memo.

8. After service of notice, plaintiff/respondent appeared before the Court through their counsel and filed his detailed objections.



9. Heard the learned counsel representing the appellants and respondent and perused materials on record.

10. The following points would arise for the consideration of this court:-

1. *Whether the impugned order passed by the Trial Court in respect of IA.No.I is arbitrary and not in accordance with law?*
2. *Whether the interference of this court is required?*
3. *What order?*

11. Finding of this Court on the above points are as follows:-

- Point No.1 & 2** :- *In the Negative;*
Point No.3 :- *As per final order for the following:-*

REASONS

12. **Point No.1 & 2:-** As these two points are interconnected, these points are taken together for common discussion to avoid repetition.



13. Before proceeding further, I must point out the scope of this court while sitting in Appeal. It is to ascertain as to whether the Trial Court exercised its discretion arbitrarily, perversely or against settled principles of law. It is settled law that while hearing appeal against the discretion exercised by the Trial Court while deciding the application U/o XXXIX Rule 1 and 2 of CPC., the Appellate Court is not expected to substitute its own discretion except where the discretion is shown to have been exercised arbitrarily, capriciously or perversely or against the settled principles of law. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below, if the one reached by that court was reasonably possible view.

14. It is required to be kept in mind that the present Appeal from the impugned order is filed under the provisions of Order XLIII Rule 1(r) of the CPC and challenge in this appeal is a discretionary order passed by the Trial Court under the



provisions of Order XXXIX Rules 1 and 2 r/w Sec.151 of CPC. Before proceeding further it is required to be noted that the present appeal is against the refusing of interim relief and the main suit is still pending. If this court elaborately deals with the matter on merits it is likely that the same would prejudice the case of either side. Therefore, it is well settled law that this court is not required to go into the merits of the entire matter at this stage and what is required to be seen is whether the Appellant/Plaintiff has made out a prima-facie case or not for grant of interim injunction.

15. In the decision reported in 1990 (Supplement) – S.C.C - 727 (Wonder Ltd., and another V/s Antox India Pvt., Ltd.), the Hon'ble Supreme Court in para 9 of the said decision, after considering the scope of Order XLIII Rule 1(r) of the CPC in an appeal wherein, the discretionary order passed by the Trial Court was under challenge, held as follows:-

“9. Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the



legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the Trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated "...is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the Trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience lies". The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima-facie. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be



prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted”.

16. So in light of the limited powers, the Appellate Court can interfere with the discretionary order passed by the Trial Court only in exceptional circumstances and the Appellate Court cannot interfere with the exercise of discretion of the court of first instance and substitute its own discretion except, where the discretion has been shown to have been exercised arbitrarily, capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. In nutshell, an appeal against exercise of discretion is said to be an appeal on principle. To put it differently, the Appellate Court cannot reassess the entire evidence so as to come to its own



conclusion contrary to the conclusion arrived at by the Trial Court, if two views are possible.

17. In the case on hand, the appellant/plaintiff had approached the learned Trial Court for the relief of permanent injunction against the defendants in respect of the suit schedule property. She has also filed I.A No.I, U/o XXXIX Rule 1 and 2 of CPC., seeking restraint order against the defendants from not to interfering with the suit schedule property, till the disposal of the suit. The learned Trial Court after going through the application and documents available on record, allowed the said application aggrieved by the said order appellants/defendants approached this court for interference of the order passed by the learned Trial Court.

18. In this case it is the contention of the respondent before the Trial Court that, the plaintiff and the defendants are the members of the joint family, wherein one Melegiraiah was the propositus and the defendants are the son of Melegiraiah. The



plaintiff is wife of Giriyappa, who is the another son of Melegiraiah. Further Melegiraiah had purchased the suit property dated:30.04.1988 under the registered sale deed and the said Melegiraiah further had gifted the suit property to the plaintiff under the gift deed dated:30.04.1988 and the said gift deed is not challenged by the defendants. The plaintiff filed a suit in OS.No.117/1988 for declaration and possession of the suit schedule property against the Melegiraiah and others, wherein the defendants of this suit i.e., appellants were the parties in the said suit and the suit was decreed. The plaintiff was declared as absolute owner of the suit schedule property.

19. Further on perusal of the judgment and decree it clearly shows that these appellants were the parties in the said suit and they are well aware of the judgment and decree. Prima-facie shows that, the respondent herein had filed suit for declaration and injunction wherein the judgment is passed in



her favour and also the possession of the suit property was also delivered to the plaintiff and the husband of the plaintiff as Power of Attorney Holder has taken possession of the suit schedule property from the defendants i.e., from the appellants and delivery warrant issued in Ex.No.22/1996. At this juncture, Ex.No.22/1996 clearly goes to show that, the respondent/plaintiff has made-out prima-facie case in her favour. It also shows that, the possession is delivered to the plaintiff/respondent. Therefore, at this stage, the appellant herein failed to prove that prima-facie case they are in possession of the suit schedule property. This suit filed for permanent injunction, wherein it is very important for the appellants to prove they are in possession and enjoyment of the suit schedule property, wherein they failed to prove the same. Therefore, the claim of the appellants/defendants herein, who are the defendants before the learned Trial Court, failed to show the case in their favor. Accordingly, there is no ground made out by the appellants/defendants has sought



for in the present petition. Therefore, the findings arrived by the learned Trial Court in it's order on I.A No.I which is under challenge in this appeal is founded on the right appreciation of documents and it is a well reasoned order. Therefore, there is no ground to interfere with the findings arrived at by the learned Trial Court on I.A.No.I. Therefore, in view of the reasons discussed above, these **Points are answered in the "Negative"**.

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

ORDER

The Miscellaneous Appeal filed by the appellants/defendants is hereby dismissed.

The impugned order passed by the learned Prl.Civil Judge and JMFC., Ramanagara in OS.No.179/2024 dated:06.12.2024 on I.A.No.I is hereby confirmed.

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M.A.No.2/2025 J

Office is hereby directed to send the copy of
this judgment for perusal of the trial court
forthwith.

*(Dictated to the Stenographer in-part and directly on computer, typed by him,
then corrected by me and then pronounced in the open Court on this the 26th day of
March 2026)*

(Smt.Niveditha.T.M)
1st Addl. Senior Civil Judge & JMFC.,
Ramanagaram.