



**IN THE COURT OF SENIOR CIVIL JUDGE &
JMFC, TIPTUR.**

DATED THIS THE 07th DAY OF JULY-2026

PRESENT

Sri. Varadaraj.B., B.Sc., LL.B., M.L
Senior Civil Judge & JMFC.,
Tiptur.

M.A. No.19/2025

Appellants:

1. Tabasum Banu @ Tabarsum Banu
W/o Khalandar Sab,
Aged about 49 years,
R/o.Kalkere Village, Kalkere Post,
Honnavalli Hobli, Tiptur Taluk,
Tumkur District.
2. Mhaboob Sab S/o Late Basha Sab,
Aged about 40 years,
R/o.Kalkere Village, Kalkere Post,
Honnavalli Hobli, Tiptur Taluk,
Tumkur District.

V/s

Respondents:

1. Surendra Singh.R S/o Ram Singh,
Aged about 64 years,
R/o.No.200, 73rd Cross,



Kumaraswamy Layout,
Bangalore North,
Bangaluru-560078.

2. Lakshman Singh S/o
Surendra Singh,
Aged about 31 years,
R/o.No.200, 73rd Cross,
Kumaraswamy Layout,
Bangalore North,
Bangaluru-560078.
3. Bharath Singh S/o
Surendra Singh,
Aged about 31 years,
R/o.No.200, 73rd Cross,
Kumaraswamy Layout,
Bangalore North,
Bangaluru-560078.
4. Jamiya Masjid,
By Its President,
Sri Vajeer Ahamed
S/o Khalandar Sab,
R/o.Kalkere Village,
Honnavalli Hobli,
Tiptur Taluk, Tumkur District.

(R.1 to 3-Absent)

(R.4 By Sri.M.C.N., Advocate)

Date and nature of the decree or order appealed against	Order for allowing IA-II dated 13.09.2025 filed under Order 39 Rule 1 and 2 r/w/section 151 of
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	CPC O.S.No. 455/2024 on the file of Prl.Civil Judge and JMFC, Tiptur is appealed.
Date of institution of appeal	20-11-2025
Date of Judgment	07-07-2026
Duration of the appeal	Year/s Month/s Day/s 00 07 17

ORDER

Appellant has preferred this appeal under Order XLIII Rule 1 of CPC, being aggrieved with the order dated 13.09.2025 passed by the Learned Principal Civil Judge and JMFC Tiptur in OS No. 455/2024, wherein the court had allowed IA No. 1 filed under Order XXXIX Rule No. 192 read with Section 151 of CPC, which was filed praying to restrain the defendant no. 4 from alienating or creating any encumbrance over the suit schedule property. The Trial Court has very well accepted the contention of the plaintiff and has passed orders directing



defendant no. 4 not to create any encumbrance with respect to suit schedule property. But in the order portion, the Court has also made a observation that the injunction granted is only to restrain the defendant no. 4 from alinating the suit schedule property but no injunction has been granted from conducting development works in the suit schedule property. The appellant herein has questioned this order portion only.

2. The appellate herein is the plaintiff and respondents are the defendants in the trial Court. For the sake of convenience the parties to this appeal are hereinafter referred to in their ranks in the original suit.

3. The suit of the plaintiff before the trial Court was one for specific performance of contract dated 06.02.2024 and consequential injunction



restraining the defendants from alienating the suit schedule property in any manner.

4. The sum and substance of the pleadings of the plaintiff is that plaintiffs have entered into an unregistered sale agreement with defendant No.1 for a valuable sale consideration of ₹2,50,000 on 02.02.2024. Thereafter defendant No.1 went back from his promise. The plaintiff got issued a legal notice to the defendant on 06.07.2004. Subsequently the plaintiffs came to know that the defendant No.1 has created encumbrance over the suit schedule property and has sold the suit schedule property in favour of defendant No.4 during the persistence of the said agreement. Hence, the suit as narrated above, came to be filed. Along with the suit, the plaintiff has also filed IA.No.1 under Order No.XXXIX Rule No. 1 and Rule No. 2 of CPC, praying to restrain



the defendant No.4 from creating any alienation or charge over the suit schedule property.

5. After filing of the suit, the suit summons was issued to the defendants and the defendants appeared before the court through their counsels and filed written statement. Defendant No.1 filed independent written statement whereas defendant No.4 also filed independent written statement along with objections to IA. Thereafter, hearing the arguments and considering the materials, the trial court has passed Order on IA No.II restraining defendant No.4 from alienating the suit schedule property to any third party. But an order was made restricting the injunction order only with respect to alienation but giving free hand to the defendant no 4 with respect to any development in the suit schedule property.



6. The appellant Has contented in his appeal that while passing the orders on IA No.2, the trial court has granted the relief in favour of defendant No.4 by making the observation with regard to the relief which has not been sought for. Hence, the said observation is liable to be set aside.

7. It is also contended that the trial Court has erred in granting the relief to the defendant No.4 by way of an observation, in the absence of any application from the relief, hence the said observation is liable to be set aside. The trial court has erred in making the observation without even discussing about the said relief and hence the said observation is liable to be set aside. The trial court has exercised the jurisdiction to grant the relief by way of an observation which has not been sought for. Hence, the interim order to an extent of making the



observation is not sustainable enough and the same is liable to be set aside.

8. After filing of the appeal, the notice was issued to the respondents. In spite of service of notice, respondent No.1 to 3 have kept themselves absent. But, the contesting respondent No.4 has appeared before the court through his counsel.

9. Certified copies of impugned order and other relevant pleadings is produced along with the appeal and hence heard the argument of both the counsels. Both the appellant and respondent have reiterated what is stated by them in their respective application and objections thereto before the trial court and they have canvassed their arguments.

10. Heard. Perused the record.



11. The points that arise for my consideration are;

1. Whether the plaintiff shows that the impugned order of the trial Court is capricious, perverse, illegal and against the principles of natural justice and not sustainable in law ?
2. Whether the plaintiff has made out any ground to interfere with the impugned order of the trial Court on IA.No.2 filed by him before the trial Court? What are they?
3. What order?

12. My answers to the aforesaid points are as under:

Point No.1: In the Affirmative
Point No.2: In the Affirmative
Point No.3: As per the final order for the following:



REASONS

13.Point No.1 and 2: Since both these points are interrelated to each other and requires similar type of appreciation of facts and documents, I have taken up both the points together for consideration to avoid repetition of discussion.

14. Upon hearing both the learned counsels for appellant and the respondent and on appreciating the pleadings filed before the trial court and also the orders passed by the trial court, one thing is very clear. So far as the plaintiff therein that the defendant No.4 has to be restrained from eliminating the property is concerned there is no dispute. The defendant No.4 who has filed objections to this application has very well accepted that he is not going to sell the suit schedule property to anyone. But, he claims in the objections that the plaintiff in the case is obstructing the laying of CC road. It is the



case of the Objective No.4 that the suit schedule legal property is obtained for the purpose of better use of a Masjid.

15. After appreciating the application and the objection, it is incumbent upon me to analyze the suit schedule property. The suit schedule property is an agricultural land bearing Survey No.46 measuring to an extent of 27 guntas. It is the case of defendant No.4 that the plaintiff is trying to interfere with the Laying of CC Road which is the main access to the villagers who are residing therein and who are members of minority community. When I go through the written statement of defendant No.4, he has not described anything regarding this fact that any road is intended to be put up over the suit schedule property or that the Panchayat has proceeded in accordance with law for the purpose of acquiring the said property. Such being the case, the assertion of



the defendant No.4 that the plaintiff is trying to resisit the laying of CC road appears to be unconnected to the case in hand.

16. Now coming to the orders of the trial court, it has very well made the order of restraining the defendant No.4 from alienating the suit schedule property which is not at all opposed by the defendant No 4. However, when there was no prayer made by the defendant No. 4 nor without appreciating the fact that the suit schedule property is an agricultural property measuring to an extent of 24 guntas no development activities can be taken place in the said agricultural property without there being any appropriate stamp of the concerned authority. The trial court has made observation that defendant No.4 is not restrained from conducting development works in the agricultural property. This is apparently erroneous, which requires to be interfered. The portion of the order passed by the



trial court is certainly capricious, arbitrary and devoid of merit which prima-facie requires to be interfered with exercising the powers of the court under order 41 r 33 R/w order 43 R 2 of CPC. **Hence I answer both point No.1 and 2 in the Affirmative.**

17. Point No.3: For the aforesaid reasons, I pass the following;

ORDER

The appeal filed by the plaintiff under Order XLIII Rule 1(r) of CPC is hereby allowed.

Consequently, the order passed by the trial Court on IA No.2 is modified.

The portion of the order on IA.No.2, which permit the defendant No.4 from conducting



development works in the suit
schedule property is set aside. The
other portion of the order stands
intact.

Office to send the copy of this
judgment to the trial court
forthwith.

(Dictated in adalath AI app transcribed by steno, corrected and
signed by me, Pronounced in the open court on this the 07th day of
July-2026).

Sd/-
(Varadaraj.B)
Senior Civil Judge & JMFC.,
Tiptur.