KAVN300022932025

IN THE COURT OF THE CIVIL JUDGE & JMFC.,

AT: HAGARIBOMMANAHALLI

DATED THIS THE 19th DAY OF JANUARY 2026

: **PRESENT**:

SRI.**SAYED MOHIUDDIN URF KHAWAJA PEERAN**., B.A. LL.B.,(Spl.)
CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI.

O.S.No.235/2025

PLAINTIFF/s **:** **Ambigara Basappa S/o Late Ambigara Hanumanthappa,**
Aged about: 65 years, Occ:Agriculturist,
R/o Bannigola Village, H.B.Halli Taluk,
Vijayanagara District.

Vs

DEFENDANT/s **:** 1) **Ambigara Ramappa S/o Late Bullappa,**
Aged about: 68 years, Occ: Agriculturist,

2) **Ambigara Eshappa S/o Late Bullappa,**
Aged about: 70 years, Occ: Agriculturist,

3) **Geeresha S/o Ambigara Eshappa,**
Aged about: 30 years, Occ:Agriculturist,

4) **Raghavendra S/o Ambigara Ramappa,**
Aged about: 40 years,

5) **Karnesha S/o Ambigara Ramappa,**
Aged about: 48 years,

6) **Appanna S/o Eshappa,**
Aged about: 32 years,

7) **Balappa S/o Ambigara Ramappa,**
Aged about: 38 years,

8) **Kariyappa S/o Ramappa,**
Aged about: 37 years,

I.A.No.III

APPLICANT/PLAINTIFF: Ambigara Basappa S/o Late Ambigara Hanumanthappa,

(Rep. by Sri.**S.M.S,** Advocate)

V/s

RESPONDENTS/DEFENDANTS: Ambigara Ramappa S/o Late Bullappa and others,

(Rep. by Sri**.P.R.,** Advocate)

ORDER ON I.A.No.III

The plaintiff has filed the IA No.II under Order 39 Rule 1 and 2 of CPC., seeking the relief of temporary injunction to restrain the defendants for making further construction of building over the suit schedule property bearing property No.116 measuring East-West: 90 feet, North-South: 50 feet situated at Bannigola Village, H.B.Halli Taluk till disposal of the suit.

2. In the accompanying affidavit to the IA., it is stated by the plaintiff that, his grandfather Ambigara Karibasappa had two children by name Ambigara Hanumanthappa and Ambigara Yallappa. The said Ambigara Yellappa died unmarried, Ambigara Hanumanthappa and his wife Ambigara Gangamma are having two children by name Ambigara Yamunavva and Ambigara Basappa

i.e., plaintiff herein. Bannigola village has been sub-merged in T.B.Project during the year 1950. The Government has issued directions to allot the rick-yard sites to the persons who have loose their properties under T.B.Project. The grandfather of the plaintiff is one of the beneficiary of the same. In the year 1955 the Government has granted the suit schedule property to the grandfather of the plaintiff Ambigara Karibasappa in the newly established Bannigola Village. From the date of grant, the grandfather of the plaintiff is in possession and enjoyment of the same. His grandfather died on 01.01.1968. After the death of grandfather of the plaintiff, the father of the plaintiff has succeeded to the suit schedule property and he was in peaceful possession and enjoyment of the same. His father died on 02.02.1999 and his uncle Ambigara Yallappa died on 03.07.1984. From the date of death of his father, he has succeeded to the suit schedule property and he is in possession and enjoyment of the same without any let or hindrance from anybody. But in the demand register extract maintained by the Gramapanchayath, Bannigola the name of his grandfather Ambigara Karibasappa is entered. They have lost their

original title deeds of the suit schedule property. He has applied before the Gramapanchayath, Bannigola requesting them to issue certified copies of the documents with respect of property No.116 from the year 1994-95 to 2024-25, but on 15.12.2025 the Gramapanchayath authorities have issued an endorsement that patta copy site allotment list are not available. It is the duty of the Gramapanchayath authorities to maintain the same, but they have failed to do so. The Gramapanchayath authorities have issued certified copies of demand/Khata Register of the year 1994-95, 2005-06, 2010-11, 2015-16, 2019-20, 2022-23 and 2025-26. Till today he is in possession and enjoyment of the suit schedule property. He is using the suit schedule property for storing of cow dung, fuel, fodder and other agricultural equipments. He has put up a hut in the suit schedule property. The defendants are not the adjacent owners of the suit schedule property and they have no manner of right, title and interest over the same. Without any documents of title they have unnecessarily trespassed over the suit schedule property and forcefully digged the pits to put up pillars and they have constructed basement over the suit schedule

property. The defendants have not obtained any license from the Gramapanchayath, the defendants started to constructed the building over the suit schedule property. He has filed the application dated 06.10.2025 before the concerned Gramapanchayath, but the defendants have not stopped their illegal work. On 16.10.2025 the Grama panchayath, Bannigola has issued the notice to the defendants directing the defendants not to make any construction over the suit schedule property. He has also filed the application before the Assistant Commissioner, Hosapete on 18.10.2025 and before the Tahasildar, H.B.Halli on 10.10.2025 intimating them with respect of construction work under taken by the defendants in the suit schedule property. But till today the concerned authorities have not taken any action against the defendants and they have not provide any documents to the plaintiff. He has approached the concerned police station, but the police authorities have not taken any action against the defendants, but the police have instructed the plaintiff to approach the Civil Court. The defendants are constructing the building in the suit schedule property in day and night. If the defendants are

succeeded in their acts, he will be put to hardship. There is a threat of completion of construction of building over the suit schedule property by the defendants, therefore he has filed second application for temporary injunction. He has made out prima-facie case and balance of convenience lies in his favour. If temporary injunction order is not granted he will be put to irreparable loss and injury. If temporary injunction order is granted no injustice will be caused to the defendants. Hence he prays to allow the I.A.

3. To the said application the defendants have filed the objections and denied the case of the plaintiff and further contended that, the plaintiff has filed the present suit on the basis of false reasons. The reasons assigned in the application are false. The plaintiff has no manner of right, title and interest over the suit schedule property. The suit schedule property shown by the plaintiff in the plaint is belongs to the defendants. Government has granted the plot No.13 measuring 66 feet X 66 feet under T.B.P.Rehabilitation scheme in L.Dis.No.2056/55 dated 22.03.1956 in favour of late Ambigara Balappa S/o Ramappa. The plaintiff is claiming injunction over the defendants property. The defendants

have invested huge amount for construction. If temporary injunction is granted the defendants will be put to hardship. The plaintiff by suppressing the material facts filed the false suit. The plaintiff has not approached the Court with clean hands. He has not made out prima-facie case and balance of convenience not lies in his favour. This Hon'ble court on 10.12.2025 dismiss the I.A.No.II filed by the plaintiff for temporary injunction. The plaintiff has again filed the similar application for same relief, therefore said application is clearly hit by the principles of resjudicata. If temporary injunction is granted they will be put to hardship. Hence they prays to dismiss the I.A.

4. Heard Both the side. Perused the records.

5. The following points arise for my consideration:

1. Whether the plaintiff has made out *prima-facie* case?

2. Whether the balance of convenience lies in favour of plaintiff?

3. Whether the plaintiff will be put to irreparable loss and injury, if the order of Temporary Injunction is not granted?

4. What order?

6. My answers to the above points are as under:

Point No.1 **:** In the **NEGATIVE**
Point No.2 **:** In the **NEGATIVE**
Point No.3 **:** In the **NEGATIVE**
Point No.4 **:** As per final order for the following: -

R E A S O N S

7. Point No.1 to 3:- As the facts involved in point No.1 to 3 are interlinked together, hence they are taken up together for common consideration.

8. The present suit is filed by the plaintiff against the defendants for the relief of permanent injunction with respect of the suit schedule property.

According to the plaintiff, he is the absolute owner and in possession and enjoyment of the suit schedule property. Originally the suit schedule property belongs to Ambigara Karibasappa. The said Ambigara Karibasappa having two children by name Ambigara Hanumanthappa and Ambigara Yallappa. The said Ambigara Yellappa, unmarried died on 03.07.1984 and the Ambigara Hanumanthappa is the father of plaintiff, he died on 02.02.1999. The suit schedule property was granted by the

Government to the said Ambigara Karibasappa under the rehabilitation scheme in the year 1955. From the date of grant, he was in possession and enjoyment of the same. After his death, the father of the plaintiff Ambigara Hanumanthappa and his uncle Ambigara Yallappa were in possession and enjoyment of the same. After their death, the plaintiff is in actual possession and enjoyment of the suit schedule property. The defendants have no manner of right, title and interest over the suit schedule property. He has lot the original title deeds of the suit schedule property. He has filed the application before the concerned Gramapanchayath requesting them to issue certified copies of the documents with respect of suit schedule property, but the concerned Gramapanchayath has not issued the documents to him. He has filed the applications before the Tahasildar, H.B.Halli and Assistant Commissioner, Hosapete with regard to alleged obstructions made by the defendants. The defendants are illegally constructing the building in the suit schedule property. Hence, he has filed the present suit for the relief of permanent injunction.

9. The defendants in the objection they have denied the case of the plaintiff, and further contended that the plaintiff with an intention to harass the defendants filed the false suit against them, and the plaintiff has no right, title and interest over the suit schedule property. The suit schedule property shown by the plaintiff in the plaint schedule is the property of the defendants. Plot No.13 measuring 66 feet X 66 feet was granted by the Government under T.B.Project in the name of late Ambigara Balappa S/o Ramappa. The plaintiff has no manner of right, title and interest over the suit schedule property. With an intention to grab the suit schedule property the plaintiff has filed the false suit against them. Hence they prays to dismiss the suit.

10. I have perused the documents produced by both the parties. At this stage the plaintiff has produced the certified copies of form No.12/tax assessment extract of the suit schedule property No.116 for the year 1994-95, 2005-06, 2010-11, 2015-16, 2019-20, 2022-23 and 2025-26, in the said documents the name of Ambigara Karibasappa is entered for property No.116. The plaintiff has produced the tax paid receipts. The plaintiff has

produced the death certificate of Hanumanthappa and also produced the received copy of the applications dated 06.10.2025, 15.10.2025 and 18.10.2025, on going through the same prima-facie it appears that the plaintiff has filed the said applications before the concerned Gramapanchayath, Bannigola, Tahasildar, H.B.Halli and Assistant Commissioner, Hosapete to obtain the copies of the documents. The plaintiff has produced the received copy of the objections dated 06.10.2025, on going through the same prima-facie it appears that the plaintiff has filed the said objections before the concerned Gramapanchayath requesting them to direct the defendant to stop the illegal construction work in the suit property. The plaintiff has produced the notice copy dated 16.10.2025 issued by the P.D.O., Gramapanchayath, Bannigola, as per the said document prima-facie it appears that the Gramapanchayath has issued the said notice to the plaintiff stating that in the demand register, property No.116 is entered in the name of Ambigara Karibasappa, but original grant certificate and extent sketch of the said property are not available in the office, further stated that if original documents are provided they

will visit the spot and they will issue the boundary certificate after verifying the property. The plaintiff has produced the photographs and medical Certificate. Further the plaintiff has produced the tax paid receipt dated 31.03.2005. The plaintiff has produced the endorsement issued by the concerned Gramapanchayath Tambrahalli dated 04.12.2025, on going through the same prima-facie it appears that the P.D.O., Gramapanchayath, Tambrahalli has issued the said endorsement stating that no any grant copy is available in their office records and in the year 1988-89 the said property No.116 stands in the name of Sri.Ambigara Karibasappa. The plaintiff has produced the photographs, certified copy of tax assessment extract of the suit schedule property of the year 1988-89, in the said document name of Ambigara Karibasappa is entered for property No.116. The plaintiff has produced the copy of the house site grant register.

11. The plaintiff has filed the present suit against the defendants for the relief of permanent injunction with respect of suit schedule property. According to the plaintiff, the suit schedule property rick-yard site No.116 measuring East-West: 90

feet and North-South: 50 feet within the given boundaries towards East: open site of B.Sunandamma, West: open site of Girennara Sanna Hanumanthappa, North: House of Girennara Gangamma and South: C.C. road. The plaintiff at this stage has not produced any documents before the Court to show that the suit schedule property No.116 is measuring East-West: 90 feet, North-South: 50 feet. The plaintiff has produced the certified copies of the tax assessment extract of the year 1994-95, 2005-06, 2010-11, 2015-16, 2019-20, 2022-23 and 2025-26, in the said documents name of grandfather of plaintiff Ambigara Karibasappa is entered, in the said document no extent is mentioned. The plaintiff has produced the copy of the house site grant register, in the said document neither the name of plaintiff nor the name of grandfather of the plaintiff is entered for rick-yard site No.116. Further in the said document name of Karibasappa is entered in House site list in Sl.No.2. But the plaintiff has filed the present suit for alleged rick-yard site No.116. It is the suit for permanent injunction filed by the plaintiff against the defendants. In the suit for permanent injunction for obtaining the order of temporary injunction, the

plaintiff is required to show that as on the date of filing of the suit he is in possession and enjoyment of the suit schedule property within the given extent and boundaries of the plaint schedule. As stated above the plaintiff has not produced any documents before the Court to show that as on the date of filing of the suit he is in possession and enjoyment of the suit schedule rick-yard property No.116 measuring East-West: 90 feet, North-South:50 feet. The plaintiff has not produced any documents before the Court to show that, suit schedule rick-yard property No.116 measuring East-West: 90 feet, North-South: 50 feet is entered in the name of Ambigara Karibasappa.

12. As per the records it discloses that the plaintiff has filed the I.A.No.2 U/o.39 Rule 1 and 2 of CPC, for temporary injunction, to restrain the defendants from trespassing dispossessing, and causing obstruction to his peaceful possession and enjoyment over the suit schedule property. In the said application the plaintiff has contended that the defendants have illegally constructing the building over the suit schedule property. After contest the said I.A. was dismissed on 10.12.2025. In the

orders on I.A.No.2 this Court has clearly observed that the plaintiff has not produced any documents before the Court to show that suit schedule rickyard property no.116, measuring East-West 90 feet, North South 50 feet is entered in the name of Ambigara Basappa and further observed that, plaintiff is fails to produce any documents to show the extent of suit schedule property, the said order has not challenged by the plaintiff till today. The said order is remained unchallenged, now the plaintiff has filed above said I.A.No. 3 to restrain the defendants from making further construction over suit schedule property. Therefore I am of the opinion that, the said I.A.No. 3 is clearly hit by the principles of resjudicata.

In the reported decision **2025 SCC Online SC1218 sulthan said ibrahim V/s prakasn and others in Para No.53, 54, 55, 56 and 57** of the said decision the Hon'ble Supreme Court of India held as hereunder;

> *"53. The High Court, in its impugned order, held the application of the appellant under Order I Rule 10 to be barred by res judicata and thus not maintainable on that ground. We find no infirmity in the said observation mad by the High Court. This Court in Bhanu Kumar Jain v. Archana Kumar reported in (2005) 1 SCC 787 observed that the principles of respondent judicata apply not only*

to two different proceedings but also to different stages of the same proceeding as well. The relevant observations are reproduced hereinbelow:

> *"18. It is now well settled that principles of res judicata apply in different stages of the same proceedings. (See Satyadhyan Ghosal v. Deorajin Debi [AIR 1960 SC 941 : (1960) 3 SCR 590] and Prahlad Singh v. Col. Sukhdev Singh [(1987) 1 SCC 727] .)*
>
> *19. In Y.B. Patil [(1976) 4 SCC 66] it was held: (SCC p. 68, para 4)*
>
> *"4. ... It is well settled that principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceeding."*
>
> *xxx xxx xxx*
>
> *21. Yet again in Hope Plantations Ltd. [(1999) 5 SCC 590] this Court laid down the law in the following terms: (SCC p. 604, para 17)*
>
> *"17. ... One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice.""*
>
> *(Emphasis supplied)*

"54. Thus, as the dictum of the law as extracted aforesaid indicates, the only manner in which a decision arrived at by a court of competent jurisdiction can be interfered with is by modification or reversal by the appellate authorities. In the present case, the order for impleadment of the appellant as a legal heir was made by the Trial Court after due inquiry under Order XXII, as also observed by the Trial Court in its order rejecting the application under Order I Rule 10. Evidently, neither any objection was raised by the appellant before the Trial Court nor any revision was preferred subsequently against the said order. Thus, it could be said that the issue as regards the impleadment of the appellant as a legal heir of the original defendant had attained finality between the parties and thus the subsequent application under Order I Rule 10 seeking to get his name deleted from the array of parties could be said to be barred by res judicata. Undoubtedly, the expression "at any stage of the proceedings" used in Order I Rule 10 allows the court to exercise its power at any stage, however the same cannot be construed to mean that the defendant can keep reagitating the same objection at different stages of the same proceeding, when the issue has been determined conclusively at a previous stage. Allowing the same would run contrary to the considerations of fair play and justice and would amount to keeping the parties in a state of limbo as regards the adjudication of the disputes."

"55. This Court in the case of Satyadhyan Ghosal v. Deorajin Debi reported in [1960] 3 SCR 590, has noted that the principle of res judicata is essential in giving a finality to judicial decisions. The relevant observations are reproduced hereinbelow:

"<u>The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and</u>

future litigation. When a matter — whether on a question of fact or a question of law — has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even where Section 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct. The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. ...”

(Emphasis supplied)

“56. This Court in S. Ramachandra Rao v. S. Nagabhushana Rao reported in 2022 SCC OnLine SC 1460 observed that although a decision may be erroneous, yet it would bind the parties to the same litigation and concerning the same issue, if it is rendered by a court of competent jurisdiction. The observations read thus:

“31. For what has been noticed and discussed in the preceding paragraphs, it remains hardly a matter of doubt that the doctrine of res judicata is fundamental to every well regulated system of jurisprudence, for being founded on the consideration of public policy that a judicial decision must be accepted as correct and that no person should be vexed twice with the same kind of litigation. This doctrine of res judicata is attracted not

only in separate subsequent proceedings but also at the subsequent stage of the same proceedings. Moreover, a binding decision cannot lightly be ignored and even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue, if rendered by a Court of competent jurisdiction. Such a binding decision cannot be ignored even on the principle of per incuriam because that principle applies to the precedents and not to the doctrine of respondent judicata."

"57. A five-Judge Bench of the Calcutta High Court in Tarini Charan Bhattacharya v. Kedar Nath Haldar reported in 1928 SCC OnLine Cal 172 considered the question as regards whether an erroneous decision on a point of law would operate as res judicata between the parties or not. The court inter alia observed that it is not always open to the party to raise a point of law. It further held that Section 11 of the CPC makes the decision of the court conclusive between the parties notwithstanding the reasoning employed by the court in arriving at the said decision. The relevant observations are as under:

> *"(1) The question whether a decision is correct or erroneous has no bearing upon the question Whether it operates or does not operate as res judicata. The doctrine is that in certain circumstances the Court shall not try a suit or issue but shall deal with the matter on the footing that it is a matter no longer open to contest by reason of a previous decision. In these circumstances it must necessarily be wrong for a Court to try the suit or issue, come to its own conclusion thereon, consider whether the previous decision is right and give effect to it or not according as it conceives the previous decision to be right or wrong. To say, as a result of such disorderly procedure, that*

the previous decision was wrong and that it was wrong on a point of law/or on a pure point of law, and that therefore it may be disregarded, is an indefensible form of reasoning. For this purpose, it is not true that a point of law is always open to a party.

(2) In India, at all events, a party who takes a plea of res judicata has to show that the matter directly and substantially in issue has been directly and substantially in issue in the former suit and also that it has been heard and finally decided. This phrase "matter directly and substantially in issue" has to be given a sensible and businesslike meaning, particularly in view of Expl. 4 to sec. 11 of the Code of Civil Procedure which contains the expression "grounds of defence or attack." Sec. 11 of the Code says nothing about causes of action, a phrase which always requires careful handling. Nor does the section say anything about point or points of law, or pure points of law. As a rule parties do not join issue upon academic or abstract questions but upon matters of importance to themselves. The section requires that the doctrine be restricted to matters in issue and of these to matters which are directly as well as substantially in issue.

(3) Questions of law are of all kinds and cannot be dealt with as though they were all the same. Questions of procedure, questions affecting jurisdiction, questions of limitation, may all be questions of law. In such questions the rights, of parties are not the only matter for consideration. The Court and the public have an interest. When a plea of res judicata is raised with reference to such matters, it is at

least a question whether special considerations do not apply.

(4) In any case in which it is found that the matter directly and substantially in issue has been directly and substantially in issue in the former suit and has been heard and finally decided by such Court, the principle of res judicata is not to be ignored merely on the ground that the reasoning, whether in law or otherwise, of the previous decision can be attacked on a particular point. On the other hand it is plain from the terms of sec. 11 of the Code that what is made conclusive between the parties is the decision of the Court and that the reasoning of the Court is not necessarily the same thing as its decision. The object of the doctrine of res judicata is not to fasten upon parties special principles of law as applicable to them inter se, but to ascertain their rights and the facts upon which these rights directly and substantially depend; and to prevent this ascertainment from becoming nugatory by precluding the parties from re-opening or recontesting that which has been finally decided."

(Emphasis supplied)

13. The advocate for defendants has relied the decision of Hon'ble Supreme Court of India reported in ***AIR 1964 SC 993 Arjun Singh V/s Mohendra Singh and Others*** in Para No.11 to 14 of the said decision the Hon'ble Supreme court of India held as under:

"11. That the question of fact which arose in the two proceedings was indentical would not be in doubt. Of course, they were not in successive suits so as to make the provisions Section 11 of the Civil Procedure Code, applicable in terms That the scope of the principle of res judicata is not confined to what, is contained in Section 11 but is of more general application is also not in dispute. Again, res judicata could be as much applicable to different stages of the same suit as to findings on issues in different suits. In this connection we were 'referred to what this Court said in Satyadhan Ghosal v. Smt Deorajin Debi (1960) 3 SCR 590 where Das Gupta, J. speaking for the Court expressed himself thus:

> "The principle of res judicata-is based on the need of giving a finality, to judicial decisions. What it says is that once resjudicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter — whether on a question, of fact or on a question of law — has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again.... The principle of res judicata applies also as between the two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings."

Mr Pathak — laid great stress on this passage as supporting him in the two submissions that he made: (1) that an issue of fact or law decided even in an interlocutory proceeding could operate as res judicata in a later proceeding, and next

(2)that in order to attract the principle of res judicata the order or decision first rendered and which is pleaded as res judicata need not be capable of being appealed against.

12. We agree that generally speaking these propositions are not open to objection. If the court which rendered the first decision was competent to entertain the suit or other proceeding, and had therefore competency to decide the issue or matter, the circumstance that it is a tribunal of exclusive jurisdiction or one from whose decision no appeal lay would not by them selves negative the finding on the issue by it being res judicata in later proceedings. Similarly, as stated already, though Section 11 of the Civil Procedure Code clearly contemplates the existence of two suits and the findings in the first being res judicata in the later suit it is well established that the principle underlying it is equally applicable to the case of decisions rendered at successive stages of the same suit or proceeding. But where the principle of res judicata is invoked in the case of the different stages of proceedings in the same suit, the nature of the proceedings, scope of the enquiry which the adjectival law provides for the decision being reached, as well as the specific provisions made on matters touching such decision are some of the material and relevant factors to be considered before the principle is held applicable. One aspect of this question is that which is dealt with in a provision like Section 105 of the Civil Procedure Code which enacts:

"105. (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand made after the commencement of this Code from which an appeal lies

does not appeal therefrom, he shall thereafter be precluded from disputing its correctness."

It was this which was explained by Das Gupta, J. in Satyadhayan Ghosal case (1960) 3 SCR 590, already referred to:

"Does this, however, mean that because an earlier stage of the litigation a court had decided an interlocutory matter in one way and no appeal has been taken therefrom or no appeal did lie, a higher court cannot at a later stage of the same litigation consider the matter again?... It is clear therefore that an interlocutory order which had not been appealed from either because no appeal lay or even though an appeal lay an appeal was not taken could be challanged in an appeal from the final decree or order."

13. If the correctness of the order of the Civil Judge in disposing of the application file 1 by the appellant on May 31, 1958 were questioned in an appeal against the decree in the suit, these principles and the observations would have immediate relevance. But it is not as if the distinction here drawn between the type of interlocutory orders which attain finality and those that do not, is of no materiality in considering whether a particular interlocutory order is of a kind which would preclude the agitation of the same question before the same court in further stages of the same proceeding. Dealing with the decisions of the Pi ivy Council in **Rum Kirpal Shukul v. Rup Kuari,** Bani Ram v. Nanhu Mal, and Hook v. Administrator General of Bengal which are the leading cases in which the principle of res judicata wan held applicable to different stages of the same proceedings, Das Gupta» J. observed:

"It will be noticed that in all these three cases, viz.. Ram Kirpal Shukul case, Bani Ram case and Hook case, the previous decision which was found to be res judicata was part of a decree. Therefore though in form the later proceeding in which the question was sought to be raised again was a continuation of the previous proceeding, it was

in subatance, an independent subsequent proceeding. The decision of a dispute as regards execution it is hardly necessary to mention was a decree under the Code of Civil Procedure and so in Ram Kirpal's case and Bani Ram's case, such a decision being a decree really terminated the previous proceedings. The fact therefore that the Privy Council in Ram Kirpal Shukul's case described Mr Probyn's order as an interlocutory judgment, does not justify the learned counsel's contention that all kinds of interlocutory judgments not appealed from become res judicata. Interlocutory judgments which have the force of a decree must be distinguished from other interlocutory judgments which are a step towards the decision of the dispute between parties by way of a decree or a final order."

14. It is needless to point out that interlocutory orders are of various kinds; some like orders of stay, injunction or receiver are designed to preserve the status quo pending the litigation and to ensure that the parties might not be prejudiced by the normal delay which the proceedings before the court, usually take. They do not, in that sense, decide in any manner the merits of the controversy in issue in the suit and do not, of course, put an end to it even in part. Such orders are certainly capable of being altered or varied by subsequent applications for the same relief, though normally only on proof of new facts or new situation which subsequently emerge. As they do not impinge upon the legal rights of parties to the litigation the principle of res judicata does not apply to the findings on which these orders are based, though if applications were made for relief on the same basis after the same has once been disposed of the court would be Justified in rejecting the same as an abuse of the process of court. There are other orders which are also interlocutory but would fall into a different category. The difference from the ones just now referred to lies in the fact that they are not directed to maintaining the statusquo, or to preserve the property pending the final adjudication but are

designed to ensure the just, smooth, orderly and expeditious disposal of the suit. They are interlocutory in the sense that they do not decide any matter in issue arising in the suit, nor put an end to the litigation. The case of an application under 0. IX, Rule 7 would be an illustration of this type. If an application made under the provisions of that rule is dismissed and an appeal were filed against the decree in the suit in which such application were made, there can be no doubt that the propriety of the order rejecting the reopening of the proceeding and the refusal to relegate the party to an earlier stage might be convassed in the appeal and dealt with by the appellate court. In that sense, the refusal of the court to permit the defendant to "set the clock back" does not attain finality. But what we are concerned with is slightly different and that is whether the same Court is finally bound by that order at later stages so as to preclude its being reconsidered. Even if the rule of res judicata does not apply it would not follow that on every subsequent day which the suit stands adjourned for further hearing, the petition could be repeated and fresh orders sought on the basis of identical facts. The principle that repeated applications based on the same facts and seeking the same reliefs might be disallowed by the court does not however necessarily rest on the principle of res judicata. Thus if an application for the adjournment of a suit is rejected, a subsequent application for the same purpose even if based on the same facts, is not barred on the application of any rule of res judicata, but would be rejected for the same grounds on which the original application was refused. The principle underlying the distinction between the rule of res judicata and a rejection on the ground that no new facts have been adduced to justify a different order is vital. If the principle of res judicata is applicable to the decision on a particular issue of fact, even if fresh facts were placed before the Court, the bar would continue to operate and preclude a fresh investigation of the issue, whereas in the Other case, on proof of fresh

> facts, the court would be competent, may would be bound to take those into account and make an order conformably to the facts freshly brought before the court."

Therefore the said decision is not helpful to the case of the plaintiff.

14. The plaintiff without challenging the order on I.A.No.2 filed the present I.A.No.3, at this stage also the plaintiff has not produced any documents before the Court to show that the plaintiff is in possession and enjoyment of the suit schedule property, within the given extent and boundaries of the plaint schedule. During the course of arguments the counsel for the plaintiff has relied the document, copy of house site grant register and its sketch and contended that the said document is clearly shows the extent of suit schedule property. In orders on I.A.No.2 this Court has clearly observed that in the said document neither the name of plaintiff nor the grand father of plaintiff is entered for rick yard site No.116 and also observed that in the said document name of Karibasappa is entered in house site list in Sl.No.2 and the plaintiff has filed the present suit for alleged rick yard site No.116. Therefore the contention of the counsel for the plaintiff holds no water.

15. During the course of arguments the counsel for the plaintiff argued that the defendants have constructing the building without obtaining the license and prays to allow the application. It is the plaintiff who approach the Court for the relief of temporary injunction therefore it is the duty of the plaintiff to made out prima-facie case for granting temporary injunction by producing the cogent material documents.

16. Therefore, I am of the opinion that the plaintiff has failed to prove the prima-facie case. If the plaintiff has produced the material documents before the Court to show that as on the date of filing of the suit he is in possession and enjoyment of the suit schedule property within the given extent and boundaries of the plaint schedule then only he is entitled for the relief as prayed in the I.A. But in the present case, the plaintiff has not produced any documents to show the extent of the suit schedule property. Therefore, plaintiff has not made out prima-facie case for granting temporary injunction and balance of convenience not lies in his favour. If the temporary injunction order is granted it cause

injustice to the defendants. Hence I answer **Point No.1 to 3** in the **NEGATIVE.**

17. **Point No.4**:- For the aforesaid reasons and discussions made above, I proceed to pass the following:-

O R D E R

I.A.No.III filed by the plaintiff under Order 39 Rule 1 and 2 of CPC., is hereby dismissed.

(Dictated to the Stenographer, transcribed and computerized by her, corrected by me, and then pronounced in the open court on this the ***19th day of JANUARY 2026.)***

(SAYED MOHIUDDIN URF KHAWAJA PEERAN)
CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI.