



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 25TH DAY OF FEBRUARY, 2026
BEFORE
THE HON'BLE MS. JUSTICE TARA VITASTA GANJU
WRIT PETITION NO. 2496 OF 2026 (GM-CPC)

BETWEEN:

1. GALAMMA
D/O LATE GALI HANUMAIAH,
AGED ABOUT 59 YEARS,
R/AT PATTANAGERE VILLAGE,
KENGARI HOBLI,
BENGALURU - 560 098.
2. ANJINAPPA
S/O LATE GALI HANUMAIAH,
AGED ABOUT 53 YEARS,
R/AT NO.167,
PATTANGERE VILLAGE,
BANGALORE SOUTH TALUK,
BANGALORE - 560 098.
3. SMT. MAHESHWARI
D/O LATE GALI HANUMAIAH,
AGED ABOUT 51 YEARS,
R/AT NO.167,
PATTANGERE VILLAGE,
BANGALORE SOUTH TALUK,
BANGALORE - 560 098.
4. NARAYANA G
S/O LATE GALI HANUMAIAH,
AGED ABOUT 50 YEARS,
R/AT NO.167,



PATTANGERE VILLAGE,
BANGALORE SOUTH TALUK,
BANGALORE - 560 098.

...PETITIONERS

(BY SRI. SHARATH S. GOWDA, ADVOCATE)

AND:

1. GALI HANUMANTHAPPA
S/O LATE HANUMANTHAPPA,
AGED ABOUT 59 YEARS,
R/AT NO.110/A, 4TH CROSS,
NEAR MARAMMA TEMPLE, PATTANAGERE,
RAJARAJESHWARI NAGAR,
BANGALORE SOUTH,
BENGALURU - 560 098.
2. SMT. GALAMMA
D/O LATE HANUMANTHAPPA,
AGED ABOUT 56 YEARS,
R/AT PATTANGERE VILLAGE,
KENGARI HOBLI,
BENGALURU - 560 098.
3. ANJAN MURTHY
S/O LATE HANUMANTHAPPA,
AGED ABOUT 45 YEARS,
R/AT NO.167, NEAR MARAMMA TEMPLE,
PATTANGERE, RAJARAJESHWARI NAGAR,
BANGALORE SOUTH TALUK,
BANGALORE - 560 098.
4. BASAPPA
S/O LATE SIDDAPPA,
AGED ABOUT 98 YEARS,
R/AT PATTANAGERE VILLAGE,



KENGERI HOBLI,
BENGALURU - 560 098.

5. SUSHEELAMMA
W/O RAMAPPA,
AGED ABOUT 85 YEARS,
R/AT THEERTHAHALLI VILLAGE,
SHIVAMOGGA - 577 432.
6. K.T INDIRA
W/O LATE K.M THIMMAIAH,
AGED ABOUT 83 YEARS,
R/AT NO.M7, SCHOOL ROAD,
SOMAVARPET, COORG - 571 236.
7. K.T SANATH
S/O LATE K.M THIMMAIAH,
AGED ABOUT 56 YEARS,
R/AT NO.M7, SCHOOL ROAD,
SOMAVARPET, COORG - 571 236.
8. M/S M SQUARE PROPERTIES
REP. BY ITS SOLE PROPRIETOR,
MR.NARESH KUMAR,
S/O LATE HEERACHAND,
AGED ABOUT 53 YEARS,
R/AT NO.62, 63, 88 AND 89,
HOSAKEREHALLI, BSK III STAGE,
BANGALORE - 560 085.
9. M/S ELEGANT ALTIMA
A PARTNERSHIP FIRM,
HAVING ITS REGISTERED OFFICE
AT NO.11/13, GUBALAHALA VILLAGE,
UTTARAHALLI,
BANGALORE - 560 061



REP. BY ITS PARTNERS
REGD. UNDER PARTNERSHIP ACT

10. SRI. S.N MANJUNATH
S/O SRI. M. SUBRAMANI,
AGED ABOUT 37 YEARS,
R/AT NO.1/116,
NEW KEMPEGOWDA LAYOUT,
BSK 3RD STAGE, BANGALORE - 560 085.
11. SRI. S. RAJESH
S/O SRI. M. SUBRAMANI,
AGED ABOUT 35 YEARS,
R/AT NO.1/116,
NEW KEMPEGOWDA LAYOUT,
BSK 3RD STAGE, BANGALORE - 560 085.
12. SRI. S. JAYANTH
S/O SRI. M. SUBRAMANI,
AGED ABOUT 32 YEARS,
R/AT NO.1/116,
NEW KEMPEGOWDA LAYOUT,
BSK 3RD STAGE, BANGALORE - 560 085.
13. SRI. S. CHANDRAPRAKASH
S/O LATE MUNASWAMY NAIDU,
AGED ABOUT 60 YEARS,
R/AT NO.767, SREENIKETHAN,
7TH MAIN, 3RD CROSS, KSRTC LAYOUT,
J.P NAGAR, 2ND PHASE,
BENGALURU - 560 075.

...RESPONDENTS

(BY SRI. G.V. SUDHAKAR, ADVOCATE FOR R9 TO R13;
R1 TO R3 ARE SERVED AND UNREPRESENTED)



THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE XXXV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH 36) TO PASS ORDERS FORTHWITH ON IA NO. 1 AND 2 FILED UNDER ORDER XXXIX RULE 1 AND 2 SEEKING FOR TEMPORARY INJUNCTION O.S. NO. 4497/2024, VIDE ANNEXURE-J AND J1.,

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORAL ORDER

1. The present petition seeks to challenge an order passed on I.A.Nos.1 and 2 filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 in O.S.No.4497/2024 by the learned XXXV Additional City Civil and Sessions Judge, Bengaluru (CCH-36) [hereinafter referred to as "Impugned Order"].

2. The prayers in the present petition read as follows:

a) Issue writ in the nature of Mandamus or any other appropriate writ, order or direction to direct the XXXV Additional City Civil and Sessions Judge, Bengaluru (CCH-36) to pass orders forthwith on I.A.No.1 and 2 filed under Order XXXIX Rule 1 and 2 seeking for



temporary injunction in O.S.No.4497/2024, vide Annexure – J & J1.

b) Grant such other relief that this Hon'ble Court may deem fit in the facts and circumstances of the matter.

3. This Court by its order dated 28.01.2026 while issuing emergent notice had passed the following directions:

"Heard.

Issue emergent notice to the respondents returnable by 25.02.2026.

In the meanwhile, parties are directed not to alienate, encumber or create any third party rights over the suit schedule property till the next date of hearing.

Re-list on 25.02.2026.

Liberty is reserved in favour of respondents to seek vacation / modification of this order.

Office objections to be complied with by the next date of hearing."

4. The Court had thus also directed that the liberty is reserved in favour of the respondents to seek vacation / modification of this order. In pursuance of this liberty, the respondents have filed an application being I.A.No.3/2026, which is listed before the Court today.



5. Learned counsel for the parties submit that respondent Nos. 9 to 13 are the only contesting respondents and that service to respondents No.1 to 8 be dispensed with. Accordingly, the service to respondent Nos.1 to 8 is dispensed with.

6. Learned counsel for the respondents has contended that an order was passed by the learned Trial Court on 26.06.2024 issuing notice and not granting any *ex-parte* interim injunction on an application filed by the petitioners/plaintiffs under Order XXXIX Rule 1 and Rule 2 of the Code of Civil Procedure, 1908 (hereinafter referred as CPC). This order was challenged before this Court by the petitioners in a Writ Petition being W.P.No.38505 / 2025.

6.1 By an order dated 19.12.2025, a Coordinate Bench of this Court, while disposing of the matter, had passed a direction that the Trial Court shall pass reasoned order on deciding the application under Order XXXIX Rule 1 and



Rule 2 of CPC. Paragraph 12 of the Order of 19.12.2025 is set out below:

"12. Accordingly, I pass the following:

ORDER

- i. This petition is **disposed off**;*
- ii. The matter is remitted back to XXXV Additional City Civil and Sessions Judge, Bengaluru to pass suitable orders on the applications filed under Order XXXIX Rules 1 and 2 of CPC. In case the defendants are served and objections are filed, the same can be taken and if others are not served, the trial Court is at liberty to proceed and pass orders in accordance with law;*
- iii. The trial Court shall pass suitable reasoned orders on the application under Order XXXIX Rules 1 and 2 by following due process of law and adhering to the provisions under Order XXXIX Rules 1 and 2 read with Section 151 of CPC, Proviso to Order XXXIX Rule 3 of CPC, the judgments of the Hon'ble Apex Court and the judgment of this Court, strictly;*
- iv. The Petitioners are at liberty to move the trial Court during vacation for urgent interim relief;*
- v. It is made clear that this Court has not expressed any opinion on merits of the matter.*

Ordered accordingly."

7. Learned counsel for the respondents further submits that pleadings in the application are complete. However, instead of arguing the matter before the Trial Court, the petitioners have rushed to the High Court once again. He



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further contends that a challenge to an order under Order 39 of the CPC is an appealable order. Reliance is place on the judgement passed by this Court in the case of ***Bharath Kumar v. Munivenkatappa***¹.

8. The learned counsel for the petitioners on the other hand has refuted the contentions of learned counsel for the respondents. He further contends that the application has not been taken up for hearing by the learned Trial Court as yet.

8.1. The issue whether order under Order 39 of the CPC is appealable or amenable to Article 227 of the Constitution of India is no longer *res integra*. The Supreme Court in the case of ***A. Venkatasubbaih Naidu Vs. S. Chellappan and others***² has held that the power to grant an *ex-parte* injunction is derived from Order XXXIX Rule 1 of the CPC, since Order XLIII Rule 1(r) of the CPC makes an order under this rule appealable, the choice of remedy which lies

¹ W.P.No.21137/2021 – (NC: 2026: KHC:802)

² (2000) 7 SCC 695



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with the parties is that they can either move the Trial Court to vacate the order under Order XXXIX Rule 4 or file an appeal under Order XLIII Rule 1(r) of the CPC. The Court further held that the statute does not distinguish between *ex-parte* and final orders in exercise of the provisions under Order XXXIX Rules 1 and 2 of the CPC and thus the disposing of an application under Order XXXIX of the CPC would be amenable to such challenge.

The relevant extract of this judgment is set out below:

*"6. The first respondent, on behalf of himself and Respondents 2 to 5, **filed a revision petition invoking Article 227 of the Constitution before the High Court of Madras alleging that they purchased the property from the owners thereof as per different sale documents executed on 15-3-1996, and they were in possession and enjoyment of the property.** They further alleged that one Ranganathan, MLA and one Hithayatullah together expressed a wish to purchase the property from the respondents, but it was not agreed to and then those two persons exerted threat and pressure on them to capitulate to their demand. As they did not yield to such threats a suit was filed in 1998 by some parties who are now supporting the present plaintiff. The respondents further alleged that the said suit was filed at the instance and instigation of those two named persons. When they failed to get any relief there from another suit was caused to be filed through one M. Devasinghamani on the strength of some concocted documents. As no relief was obtained in that suit also the present suit, which is the third one in the series, has been filed at the behest of the above-named persons, according to the respondents.*



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7. Learned Single Judge of the High Court of Madras who disposed of the revision made the observation that the trial court ought not have granted an order of injunction at the first stage itself which could operate beyond thirty days as the court had then no occasion to know of what the affected party has to say about it. Such a course is impermissible under Order 39 Rule 3-A of the Code, according to the learned Single Judge. He, therefore, set aside the injunction order "for the clear transgression of the provisions of law" and noted that this is the third suit filed in reference to the suit property and hence deprecated the grant of ex parte injunction without notice. Though learned Single Judge further declined to go into the other allegations, he has chosen to make the following observations also:

"However, prima facie, I am satisfied that these materials are relevant for consideration before granting ad interim injunction. As per the plaint and affidavit averments I admit that the first respondent is occupying a vacant portion of 1670 sq ft and running paper business and charcoal. But there is no document to show that the first respondent is actually in possession and running such a business except the lease deed. Hence the ex parte order is unsustainable. For all these reasons, I am of the view that the order passed by the learned Judge is liable to be set aside and it is accordingly set aside."

8. After holding thus, learned Single Judge directed the trial court to take up the interlocutory application for injunction and pass orders on merits and in accordance with law expeditiously.

[Emphasis Supplied]

9. A contention as is being raised by the petitioner in this case, was raised by one party in the **Venkatasubbaiah's** case. It was contended that the party aggrieved could have either filed an application for modification before the



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Trial Court or file an appeal before the Appellate Court. It was contended that a petition under Article 227 of the Constitution of India could not be entertained. The Supreme Court examined the provisions of Section 104 and Order 43 as well as Order 39 of the CPC and has held it cannot be contended that ex-parte orders are not amenable under Order 39 of the CPC. It was held that ex-parte orders like the remaining orders under Order 39 of the CPC, are also amenable to appeals under Order XLIII Rule 1(r) of the CPC. It was further held that the party aggrieved must file an application before the Appellate Court or the same Court as follows:

9. *Shri Sivasubramaniam, learned Senior Counsel contended that the High Court should not have entertained a petition under Article 227 of the Constitution when the respondent had two remedies statutorily available to him. First is that the respondent could have approached the trial court for vacating, if not for any modification, of the interim ex parte order passed. Second is that an appeal could have been preferred by him against the said order. It is open to the respondent to opt either of the two remedies, contended the Senior Counsel.*

10. Section 104 of the Code says that:

"104. (1) An appeal shall lie from the following orders, and save as otherwise expressly provided in



the body of this Code or by any law for the time being in force, from no other orders:

(i) any order made under rules from which an appeal is expressly allowed by rules:"

11. Order 43 Rule 1 says that:

"1. An appeal shall lie from the following orders under the provisions of Section 104, namely—

(r) an order under Rule 1, Rule 2, Rule 2-A, Rule 4 or Rule 10 of Order XXXIX;"

12. Order 39 Rule 1 says thus:

"1. Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or disposition of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit, until the disposal of the suit or until further orders."

13. It cannot be contended that the power to pass interim ex parte orders of injunction does not emanate from the said Rule. In fact, the said Rule is the repository of the power to grant orders of temporary injunction with or without



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notice, interim or temporary, or till further orders or till the disposal of the suit. Hence, any order passed in exercise of the aforesaid powers in Rule 1 would be appealable as indicated in Order 43 Rule 1 of the Code. The choice is for the party affected by the order either to move the appellate court or to approach the same court which passed the ex parte order for any relief."

[Emphasis Supplied]

9.1 A similar view has been taken by the Supreme Court in the case of ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabi and others Vs. Tuticorin Educational Society and others***³ and ***Mohamed Ali Vs. V.Jaya and Ors.***⁴ wherein it has been held that, where a petition under Article 227 of the Constitution of India was filed challenging such an order held that the petition is not maintainable. The relevant extract of ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabi's*** case is below:

"11. Secondly, the High Court ought to have seen that when a remedy of appeal under Section 104(1)(i) read with Order 43, Rule 1(r) of the Code of Civil Procedure, 1908, was directly available, Respondents 1 and 2 ought to have taken recourse to the same. **It is true that the**

³ (2019) 9 SCC 538

⁴ (2022) 10 SCC 477



availability of a remedy of appeal may not always be a bar for the exercise of supervisory jurisdiction of the High Court. In A. Venkatasubbiah Naidu v. S. Chellappan [A. Venkatasubbiah Naidu v. S. Chellappan,⁵], this Court held that "though no hurdle can be put against the exercise of the constitutional powers of the High Court, it is a well-recognised principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies before he resorts to a constitutional remedy".

12. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before civil courts in terms of the provisions of Code of Civil Procedure, and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which Respondents 1 and 2 invoked the jurisdiction of the High Court. This is why, a 3-member Bench of this Court, while overruling the decision in Surya Dev Rai v. Ram Chander Rai [Surya Dev Rai v. Ram Chander Rai⁶, pointed out in Radhey Shyam v. Chhabi Nath [Radhey Shyam v. Chhabi Nath⁷, that "orders of civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts".

13. Therefore wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court,

⁵(2000) 7 SCC 695

⁶ (2003) 6 SCC 675

⁷(2015) 5 SCC 423 : (2015) 3 SCC (Civ) 67



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*the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. **Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself.***

[Emphasis Supplied]

10. As stated above, the prayer before this Court as is reproduced above is limited, seeking a direction to the learned Trial Court to take up this application under Order XXXIX Rule 1 and Rule 2 of the CPC forthwith. A similar direction has already been passed by a Coordinate Bench of this Court on 19.12.2025 in Writ Petition No. 38505/2025. Thus no orders are necessary other than requesting the learned Trial Court to take up the Application filed Order XXXIX Rule 1 and Rule 2 of the CPC on the next date of hearing.

11. The learned counsel for the petitioners has requested that the interim protection granted to by this Court continue till the next date of hearing before the Trial Court i.e., 12.03.2026.



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12. In the present case, this Court had granted ex-parte interim protection restraining alienation of the suit schedule property pending consideration of the matter. The Supreme Court has in a recent decision in ***Mangal Rajendra Kamthe v. Tahsildar, Purandhar***⁸, clarified the scope of granting interim protection when the High Court declines to entertain a writ petition on the ground of the availability of an alternative efficacious remedy. The Supreme Court held that once the High Court declines to entertain a writ petition on the ground of an efficacious alternative remedy, the proceedings must terminate at that stage and the Court cannot grant interim relief merely to enable the petitioner to approach the alternative forum, as interim relief can only be granted in aid of the final relief sought in the petition. It is apposite to extract the relevant extract of the ***Mangal Rajendra Kamthe case*** below:

"5. Orders of similar nature have engaged our attention where the high courts, while declining to

⁸ 2026 SCC OnLine SC 297



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entertain writ petitions under Article 226 of the Constitution on the ground of availability of an efficacious alternative remedy to the writ petitioner(s) concerned have, nonetheless, granted relief [either by staying operation of the order(s) under challenge or directing maintenance of status quo] to be operative for a limited period to enable such petitioner(s) to seek appropriate relief from the alternative forum.

6. It is settled law that once the high court, upon application of mind, declines to entertain a writ petition in the exercise of its discretionary jurisdiction on the ground that an efficacious alternative remedy for grant of relief is available but such remedy has not been pursued by the petitioner, the proceedings do not survive and must draw to an end then and there; however, in such a circumstance when no final relief can effectively be granted on the petition, **it is impermissible to pass an order in the nature of an interim relief [either by granting stay of operation of the order under challenge or by directing status quo to be maintained] till such time the aggrieved petitioner approaches the alternative forum. Such an order, as and when passed, would be in the teeth of a Constitution Bench decision of this Court in State of Orissa v. Madan Gopal Rungta.**⁹

[Emphasis Supplied]

14. In view thereof the petition is **disposed of** granting liberty to the petitioner to take appropriate steps in accordance with law, if he so chooses, and directing the learned Trial Court to take up for hearing the application

⁹ 1951 SCC 1024



under Order XXXIX Rules 1 and 2 of the CPC on the next date of hearing.

15. The respondents are also at liberty to file an application for advancing the date of hearing before the learned Trial Court, if they so desire.

16. It is clarified that this Court has not examined the matter on merits. The rights and contentions of both parties are kept open to be agitated before the Trial Court. All pending applications shall stand closed.

**Sd/-
(TARA VITASTA GANJU)
JUDGE**

BVK / KS
List No.: 3 Sl No.: 19