



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

MISCELLANEOUS FIRST APPEAL NO.1197 OF 2025 (CPC)

C/W

MISCELLANEOUS FIRST APPEAL NO.5552 OF 2021 (CPC)

IN MFA NO.1197/2025

BETWEEN:

SRI RAJESH M KURPAD
S/O LATE K.S. MOHARAM,
AGED ABOUT 53 YEARS,
RESIDING AT NO.395/32,
GROUND FLOOR, 17TH MAIN,
4TH 'T' BLOCK, JAYANAGAR,
BENGALURU - 560 041.

...APPELLANT

(BY SRI KOUSHIK M.S., ADVOCATE)

AND:

1. SRI S. SHIVANANJAPPA
S/O LATE SIDDAIAH,
AGED ABOUT 66 YEARS,
2. SMT. NAGAMMA
W/O SHIVAANJAPPA,
AGED ABOUT 59 YEARS,

RESPONDENT NOS.1 & 2 ARE R/AT
NO.32/2, 1ST FLOOR, 17TH MAIN ROAD,
35TH 'A' CROSS, 4TH 'T' BLOCK,
JAYANAGAR, BENGALURU-560 041.



NC: 2026:KHC:17481
MFA No. 1197 of 2025
C/W MFA No. 5552 of 2021

3. SMT. GAYATHRI .S
W/O SOMESH ANAND,
D/O S. SHIVANANJAPPA,
AGED ABOUT 38 YEARS,
RESIDING AT NO.201,
AVANTHIKA APARTMENT,
1ST MAIN, 3RD CROSS,
NEAR GANESHA TEMPLE,
KOTHANUR DINNE, J.P. NAGAR,
8TH PHASE, BENGALURU-560076.

...RESPONDENTS

(BY SRI MARILINGE GOWDA, ADVOCATE FOR RESPONDENTS)

THIS MFA IS FILED UNDER ORDER 43 RULE 1(r) OF CPC.,
AGAINST THE ORDER DATED 08.11.2024 PASSED ON I.A.NO.3 IN
O.S.NO.4865/2020 ON THE FILE OF THE XXXVII ADDITIONAL
CITY CIVIL AND SESSIONS JUDGE, BENGALURU CITY (CCH-38),
REJECTING I.A.NO.3 FILED UNDER ORDER XXXIX RULE 1 AND 2
READ WITH SECTION 151 OF CPC.

IN MFA NO.5552/2021

BETWEEN:

SMT. REKHA .B.
D/O. LATE K.S. MOHAN RAM,
AGED ABOUT 56 YEARS,
R/AT MAYASANDRA VILLAGE,
TUMKUR DISTRICT,
(DEAD BY LR, i.e. APPELLANT NO.1)

1. SRI RAJESH M KURPAD
S/O LATE K.S. MOHANRAM
AGED ABOUT 49 YEARS,
RESIDING AT NO.395/32,
GROUND FLOOR, 17TH MAIN,
4TH 'T' BLOCK, JAYANAGAR,
BENGALURU-560041.

...APPELLANT

(BY SRI KOUSHIK M.S., ADVOCATE)



AND:

1. SHIVANANJAPPA .S
S/O. LATE SIDDAIAH,
AGED ABOUT 61 YEARS,
2. SMT. NAGAMMA
W/O S. SHIVANANJAPPA,
AGED ABOUT 55 YEARS,
3. SMT. GAYATHRI .S.
W/O SRI SOMESH ANAND .K
D/O S. SHIVANANJAPPA,
AGED ABOUT 34 YEARS,

RESPONDENT NOS.1 TO 3 ARE
R/AT NO.395/2, 32/2,
I FLOOR, 17TH MAIN ROAD,
35TH 'A' CROSS, 4TH 'T' BLOCK,
JAYANAGAR,
BENGALURU-41.

...RESPONDENTS

(BY SRI MARILINGE GOWDA, ADVOCATE FOR R-1 TO R-3)

THIS MFA IS FILED UNDER O 43 RULE 1(r) OF CPC
AGAINST THE ORDER DATED 10.03.2020 PASSED ON I.A.NO.1 IN
O.S.NO.9311/2019 ON THE FILE OF THE XXIX ADDITIONAL CITY
CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-30), ALLOWING
THE I.A.NO.1 FILED UNDER ORDER 39 RULE 1 AND 2 OF CPC.

THESE APPEALS COMING ON FOR ORDERS, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MRS. JUSTICE K.S. HEMALEKHA



ORAL JUDGMENT

MFA No.5552/2021 is preferred by the defendants in O.S. No.9311/2019 calling in question, the order dated 10.03.2020 passed on I.A. No.1 by the XXIX Additional City Civil and Sessions Judge at Bengaluru (CCH-30) ('Trial Court' for short), whereby the application filed under Order XXXIX Rules 1 and 2 CPC by the respondents-plaintiffs seeking a temporary injunction restraining the defendants-appellants from interfering with the enjoyment of passage, staircase and lift provided to schedule 'B' property came to be allowed.

2. MFA No.1197/2025 is preferred by the plaintiff in O.S. No.4865/2020, assailing the order dated 08.11.2024 passed on I.A. No.3/2024 on the file of the XXXVII Additional City Civil and Sessions Judge, Bengaluru (CCH-38) ('Trial Court' for short), whereby the application filed by the appellant under Order XXXIX Rules 1 and Rule 2 CPC seeking an order of temporary injunction restraining the defendants or anyone claiming through them from



parking vehicles or using the schedule 'A' property for any purpose, pending disposal of the suit came to be rejected.

3. Since both the appeals arise out of the dispute between the same parties in respect of the common properties and reciprocal rights over the passage and parking area, though from different suits, they are heard together and disposed of by this common order.

4. The plaintiff in O.S. No.4865/2020 seeks to restrain the defendants from using the passage and parking area, whereas the defendants in O.S. No.9311/2019 have asserted their right of access and enjoyment of common areas, including the passage, staircase and lift, arising out of their purchase and undivided share.

5. Learned counsel for the appellant, who is the plaintiff in O.S. No.4865/2020 and the defendant in O.S. No.9311/2019, contends that the Trial Court has erred in rejecting the application filed by the plaintiff in O.S.



No.4865/2020, despite the clear obstruction allegedly caused by the defendants by parking vehicles in the schedule 'A' property and despite the plaintiff being in possession and entitled to regulate the use of passage. It is contended that the parking in the common passage amounts to interference with ingress and egress and that the Trial Court failed to appreciate the existence of a *prima facie* case and balance of convenience and the order granting injunction in O.S. No.9311/2019 in favour of the respondents virtually denies access to the 'B' schedule property. It is contended that the access through passage and common areas is incidental to ownership, and the injunction granted is excessive and unsustainable.

6. *Per contra*, learned counsel for the respondents in O.S. No.4865/2020 submits that the respondents have an undivided share and a right to use the common areas, including passage and that the parking rights flow from the sale deed and nature of the property. No exclusive right is vested with the plaintiff to restrict the usage and it



is contended that the appellant is interfering beyond the permissible use and the Trial Court has rightly protected the respondents' possession and regulated access and the order is necessary to prevent misuse and obstruction and the application filed by the appellant in O.S. No.4865/2020 is rightly been rejected.

7. This Court has carefully considered the contentions and perused the material on record.

8. It is noticed that MFA No.1197/2025 arises out of O.S. No.4865/2020 filed by the plaintiff-appellant, seeking a decree of permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the schedule 'A' and 'B' properties. Schedule 'A' property is described as North-Western portion measuring 190 square feet with a small store room measuring 50 square feet in the property bearing No.395/32 situated at Jayanagar, Bengaluru and schedule 'B', is described as a third floor with lift room and private



terrace, measuring about 200 square feet with a room, and lift room along with private terrace approximately 1,450 square feet.

9. The appellant had filed I.A. No.3/2024 seeking temporary injunction to restrain the defendants from blocking the said North-Western area, namely the Schedule 'A' property, by parking vehicles and from interfering with the peaceful possession of both schedule 'A' and 'B' properties. The said application came to be rejected by the Trial Court. At the same time, it is not in dispute that the appellant herein is arrayed as defendant in O.S. No.9311/2019 instituted by S. Shivananjappa, Nagamma and Gayathri, wherein the plaintiffs therein have sought for permanent injunction in respect of schedule 'B' property and also a mandatory injunction directing the defendants to demolish the compound wall on the western side, provide access for car parking, remove temporary shed in the ground floor of the schedule 'A' property and to provide free parking space as



contemplated under the sale deed dated 18.05.2012 and further, to remove the lock placed on the terrace gate or alternatively provide a duplicate key. In the said suit, schedule 'A' property is described as the land bearing No.395 situated at Jayanagar, Bengaluru and schedule 'B' is described as the first floor flat measuring 1300 square feet of built up area, along with 516 square feet of undivided share in the land, with specific recitals in the sale deed conferring common rights over staircase, lift, passage and other amenities.

10. In the said suit, an application under Order XXXIX Rules 1 and Rule 2 CPC was filed seeking to restrain the defendant (appellant in MFA No.1197/2025) from obstructing the use and enjoyment of passage, staircase and lift provided to schedule 'B' property, which application came to be allowed by the Trial Court.

11. A conjoint reading of the pleadings and documents would indicate that both these suits arise out



of the same transaction and the sale deed dated 18.05.2012, wherein the purchaser of the 'B' schedule property is conferred not only the constructed portion but also an undivided right and common interest in the land, along with the right to use common areas such as the staircase, lift, passages and other amenities. The dispute between the parties essentially revolves around the extent and the manner of use of the common passage area, namely, the schedule 'A' property and the corresponding right of access to the schedule 'B' property.

12. The Trial Court, in O.S. No.4865/2020 while considering I.A. No.3/2024, has *prima facie* held that schedule 'A' property is not exclusive property of the plaintiff and that the defendants having derived rights under the sale deed cannot be completely restrained from using the common passage area. The Trial Court has further observed that the question as to whether parking of vehicles amount to obstruction or exceeds the permissible use, is a matter to be adjudicated in a full-



fledged trial and at interlocutory stage, no blanket injunction can be granted so as to defeat the rights flowing from the sale deed. On such reasoning, it was held that the plaintiff has failed to establish a *prima facie* case and consequently, declined the relief of temporary injunction.

13. The Trial Court in O.S. No.9311/2019, while allowing I.A. No.1, has taken note of the very same sale deed recitals and has *prima facie* held that the plaintiffs therein (defendants in O.S. No.4865/2020) being purchaser of schedule 'B' property, have a right of access through the common passage, staircase and lift and that any obstruction thereto would render the enjoyment of the property illusory. Accordingly, it has granted an order of injunction restraining the defendants from interfering with such access, without adjudicating upon the larger issue of title and exclusive right over the common area. Thus, both the Trial Court, on appreciation of the same set of documents, have adopted a consistent approach in recognizing that the rights claimed by the parties are not



exclusive in nature, but are interdependent and arise out of the common sale transaction. The order rejecting the injunction in O.S. No.4865/2020 prevents the exclusion of co-existing rights, whereas the order granting injunction in O.S. No.9311/2019 merely protects the right of access necessary for the enjoyment of schedule 'B' property.

14. For the foregoing reasons, the findings recorded by the Trial Court cannot be said to be either perverse or arbitrary, warranting any interference by this Court

15. In addition, having regard to the fact that both the suits arise out of the same property and that the rights claimed by the parties flow from the very same sale deed dated 18.05.2012, this Court is of the considered view that the issues involved are substantially overlapping and interdependent. In order to avoid multiplicity of proceedings and possibility of conflicting findings, it is appropriate to reserve liberty to the parties to seek appropriate orders before the competent Court, including



for clubbing the suits, which are presently pending, so that the matters may be tried and disposed of together in accordance with law.

16. Accordingly, this Court pass the following:

ORDER

- i. The miscellaneous first appeals are hereby ***dismissed***.
- ii. The impugned order dated 10.03.2020 passed on I.A. No.I in O.S. No.9311/2019 by the XXIX Additional City Civil and Sessions Judge at Bengaluru (CCH-30) is hereby ***confirmed*** and order dated 08.11.2024 passed on I.A. No.3/2024 in O.S. No.4865/2020 on the file of the XXXVII Additional City Civil and Sessions Judge, Bengaluru (CCH-38) stands ***confirmed***.

Sd/-

JUSTICE K.S. HEMALEKHA

MBM

List No.: 1 Sl No.: 57