



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MARCH, 2026

BEFORE

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

MISCELLANEOUS FIRST APPEAL NO.1629 OF 2026 (CPC)

BETWEEN:

1. MR. MANJUNATHA .L
S/O LATE LAKSHMAIAH,
AGED ABOUT 53 YEARS,
R/AT SLN HOUSE,
RAMPURA VILLAGE,
BIDARAHALLI HOBLI,
VIRGONAGAR POST,
BENGALURU EAST TALUK,
BENGALURU-560049.
2. MR. DATTA RAJESH R.V.
S/O CHIKKAVENKATAPPA,
AGED ABOUT 40 YEARS,
R/AT. NO.120, SLN NILAYA,
RAMPURA VILLAGE, VIRGONAGAR POST,
BENGALURU EAST TALUK,
BENGALURU-560049.
3. MR. SYED IMRAN
S/O SYED JAFFAR,
AGED ABOUT 35 YEARS,
R/AT NO.143, 2ND H MAIN ROAD,
KASTURI NAGAR,
EAST OF NGEF LAYOUT,
BENGALURU-560043.
4. MR. SYED MUZAMMIL
S/O SYED MASTAN MAHBOOB,
AGED ABOUT 28 YEARS,
R/AT NO.64, DARGHA MOHALLA,
VIJINAPURA, DOORAVANINAGAR,
BENGALURU-560016.

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Location: HIGH
COURT OF
KARNATAKA



NC: 2026:KHC:17559
MFA No. 1629 of 2026

5. MR. SATISH BOGOLLU
S/O B. PRABHAKAR REDDY,
AGED ABOUT 47 YEARS,
R/AT NO.25-2-832, REVENUE COLONY,
NEAR SRI RAJA RAJESWARI TEMPLE,
A.K. NAGAR, NELLOR,
ANDHRA PRADESH-524004.

...APPELLANTS

(BY SRI K.S. HARISH, ADVOCATE)

AND:

1. MR. NARAYANASWAMY .C
S/O CHANNAPPA,
AGED ABOUT 54 YEARS,
R/AT NO. MARUTHI NILIYA,
KEMPE GOWDA LAYOUT,
BASHETAHALLI VILLAGE, KASABA HOBLI,
DODDABALAPURA DISTRICT,
BENGALURU RURAL-561203.
2. MR. K.S. ANILKUMAR.
S/O LATE K.H. SRINIVAS,
AGED ABOUT 44 YEARS,
R/AT NO.640, III FLOOR,
10TH A CROSS, WOC, 2ND STAGE,
MAHALAKSHMIPURAM,
BENGALURU-560086.

...RESPONDENTS

(BY SRI N. VEGEESH, ADVOCATE &
SRI R. KESHA VA MURTHY, ADVOCATES FOR C/R-1)

THIS MFA IS FILED UNDER ORDER 43 RULE 1(r) OF THE CPC.,
AGAINST THE ORDER DATED 31.01.2026 PASSED ON I.A.NO.1 IN
O.S.NO.1282/2025 ON THE FILE OF THE ADDITIONAL SENIOR CIVIL
JUDGE AND JMFC, DODDABALLAPURA, DISMISSING APPLICATION
FILED UNDER ORDER 39 RULE 1 AND 2 OF CPC.

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

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



ORAL JUDGMENT

The question that falls for consideration is:

"Whether the Trial Court, while considering an application under Order XXXIX Rules 1 and 2 CPC, was justified in recording a conclusive finding on the maintainability of the suit and rejecting the application?"

2. This miscellaneous first appeal is filed by the plaintiffs against the order dated 31.01.2026 passed in O.S. No.1282/2025 on the file of the Additional Senior Civil Judge and JMFC, Doddapalapura ('Trial Court' for short), whereby the application filed by the plaintiffs under Order XXXIX Rules 1 and 2 CPC seeking temporary injunction to restrain the defendants from alienating the suit schedule properties has been rejected.

Brief facts:

3. The plaintiffs instituted suit seeking specific performance of a Memorandum of Understanding (MOU) dated 22.12.2023, alleging that defendant No.1 had agreed to offer the suit schedule properties for joint



development and had received substantial consideration pursuant thereto. It is the case of the plaintiffs that despite readiness and willingness to perform their part of the contract, the defendants failed to honour the terms of the MOU and on the contrary, attempted to create third party rights.

4. Along with the suit, the plaintiffs filed an application under Order XXXIX Rules 1 and 2 CPC seeking an order of temporary injunction restraining the defendants from alienating or creating third party rights in respect of the suit schedule properties.

5. The defendants entered appearance and filed objections, *inter alia*, contending that the alleged MOU is disputed, that no concluded contract exists and more importantly, that the suit itself is not maintainable before the Civil Court, as the dispute falls within the ambit of commercial dispute under the Commercial Courts Act, 2015.



6. The Trial Court, upon consideration of the rival contention, dismissed the application primarily on the ground that the dispute constitutes a commercial dispute and consequently, no *prima facie* case is made out. The Trial Court has also observed that the application suffers from procedural defects inasmuch as it combines multiple reliefs and that the description of the suit property is vague and insufficient. Aggrieved by the rejection of the application for temporary injunction, the present appeal is filed.

7. Learned counsel for the appellants contends that the impugned order rejecting the application for temporary injunction restraining alienation of the suit schedule properties is illegal, erroneous and contrary to the settled principles governing the grant of temporary injunction under Order XXXIX Rules 1 and 2 CPC. It is submitted that the Trial Court has failed to appreciate the paramount and admitted fact that respondent No.1 had entered into a memorandum of understanding (MOU) with



the appellants and had also received substantial consideration pursuant thereto. In such circumstances, the existence of a *prima facie* contractual relationship and the corresponding rights in favour of the appellants was clearly made out, warranting protection by way of interim injunction.

8. It is further contended that finding of the Trial Court that the dispute constitutes a commercial dispute “under Section 2 (1) (c) (vii) of the Commercial Courts Act, 2015”, is premature, legally untenable and based on misinterpretation of the statutory provisions.

9. Learned counsel submits that the suit schedule properties are agricultural lands and that at the time of execution of the MOU, they were not being used exclusively for trade or commerce. The very proposed future development of the property into a residential layout would not bring the dispute within the ambit of



commercial dispute so as to oust the jurisdiction of the Civil Court.

10. It is further urged that the Trial Court has exceeded the scope of enquiry under Order XXXIX Rule 39 CPC:

- i. By virtually deciding the issue of maintainability and jurisdiction at the interlocutory stage without framing a preliminary issue,
- ii. Affording opportunity to lead evidence, and conducting a full-fledged adjudication.

11. Such an approach, it is contended, has resulted in serious prejudice to the opponent, inasmuch as a finding on jurisdiction has been rendered without adherence to the principles of procedural fairness and natural justice.

12. Learned counsel submits that, even assuming that the question of jurisdiction arises, the Trial Court



ought to have framed a preliminary issue after completion of the pleadings and decided the same in accordance with law. It is argued that where adjudication on maintainability may take time, the Court is not precluded from granting interim protection to safeguard the subject matter of the suit and prevent irreversible damage and consequences. Accordingly, it is contended that the refusal to grant interim protection solely on the ground of maintainability is unsustainable and the impugned order is liable to be set aside.

13. *Per contra*, learned counsel for the respondents seeks to justify the impugned order and submits that no error has been committed by the Trial Court. It is contended that while considering an application for interim relief, this Court is well within its jurisdiction to examine the question of maintainability of the suit, and such consideration forms part of the determination of a *prima facie* case. It is further submitted that the Trial Court has not merely dismissed the application on the ground of



jurisdiction, but has also independently examined the requirements of a *prima facie* case, balance of convenience and irreparable injury, and has recorded findings against the appellants. Learned counsel also supports the reasoning of the Trial Court that:

i. The application suffers from procedural defects, inasmuch as it combines multiple distinct reliefs in single application, contrary to the procedural rules and

ii. The description of the suit schedule properties is vague and insufficient, thereby rendering any order of injunction incapable of effective implementation.

It is therefore contended that the impugned order is well reasoned, legally sound and does not warrant interference in the appeal.

14. It is not in dispute that the plaintiffs have instituted suit for specific performance of a Memorandum of Understanding (MOU) and has also sought an interim



protection restraining the defendants from alienating the suit schedule properties. The defendants upon entering appearance have raised a specific objection that the suit is not maintainable before the Civil Court and the dispute falls within the ambit of commercial dispute under the Commercial Courts Act, 2015. The Trial Court, while considering the application under Order XXXIX Rules 1 and 2 CPC, has primarily rejected the application on the ground that the dispute constitutes a commercial dispute and consequently, that no *prima facie* case arises. The Trial Court has also assigned additional reasons, namely, that the application suffers from procedural defects, combines multiple reliefs and that the description of the suit property is vague.

15. At the outset, it is necessary to observe that the law is no longer *res integra* as to whether a Court can examine the question of maintainability at the stage of considering the interim relief.



16. The Apex Court in the case of **Asma Lateef and another Vs. Shabbir Ahmad and others**¹ (Asma Lateef) has observed at paragraph No.50 as under:

"50. Although not directly arising in the present case, we also wish to observe that the question of jurisdiction would assume importance even at the stage a court considers the question of grant of interim relief. Where interim relief is claimed in a suit before a civil court and the party to be affected by grant of such relief, or any other party to the suit, raises a point of maintainability thereof or that it is barred by law and also contends on that basis that interim relief should not be granted, grant of relief in whatever form, if at all, ought to be preceded by formation and recording of at least a prima facie satisfaction that the suit is maintainable or that it is not barred by law. Such a satisfaction resting on appreciation of the averments in the plaint, the application for interim relief and the written objection thereto, as well as the relevant law that is cited in support of the objection, would be a part of the court's reasoning of a prima facie case having been set up for interim relief, that the balance of convenience is in favour of the grant and non-grant would cause irreparable harm and

¹ (2024) 4 SCC 696



prejudice. It would be inappropriate for a court to abstain from recording its prima facie satisfaction on the question of maintainability, yet, proceed to grant protection pro tem on the assumption that the question of maintainability has to be decided as a preliminary issue under Order 14 Rule 2 CPC. That could amount to an improper exercise of power. If the court is of the opinion at the stage of hearing the application for interim relief that the suit is barred by law or is otherwise not maintainable, it cannot dismiss it without framing a preliminary issue after the written statement is filed but can most certainly assign such opinion for refusing interim relief. However, if an extraordinary situation arises where it could take time to decide the point of maintainability of the suit and non-grant of protection pro tem pending such decision could lead to irreversible consequences, the court may proceed to make an appropriate order in the manner indicated above justifying the course of action it adopts. In other words, such an order may be passed, if at all required, to avoid irreparable harm or injury or undue hardship to the party claiming the relief and/or to ensure that the proceedings are not rendered infructuous by reason of non-interference by the court."



17. The Apex Court categorically held that question of jurisdiction or maintainability assumes significance even at the stage of grant of interim relief and the Court is required to record at least a *prima facie* satisfaction regarding maintainability before granting such relief. It is further held that where the Court is of the opinion that the suit is barred by law or not maintainable, it can certainly assign such reason while refusing interim relief, even without deciding the issue finally. Therefore, the approach of the Trial Court in examining maintainability at the interlocutory stage cannot be said to be wholly impermissible. However, the manner in which such determination has undertaken assumes significance in the present case.

18. A perusal of the record would indicate that no preliminary issue with regard to maintainability or jurisdiction has been formally framed. The objection raised by the defendants goes to the root of the adjudication of the Court and such an issue ordinarily requires



adjudication after affording both parties an adequate opportunity to place material on record and address their arguments, if necessary, by framing a preliminary issue under Order XIV Rule 2 CPC.

19. In the present case, the Trial Court, without framing such a preliminary issue and without affording sufficient opportunity to the plaintiffs to substantiate that the dispute does not fall within the scope of commercial dispute, has proceeded to record a conclusive *prima facie* finding on the jurisdiction and has non-suited the plaintiffs at the interlocutory stage itself. Thus, in the considered view of this Court, the same has resulted in prejudice to the plaintiffs, inasmuch as the issue of maintainability has been virtually decided without a proper adjudicatory exercise.

20. It is true that the Trial Court is not denuded of its power to consider the issue of maintainability while deciding an application under Order XXXIX CPC.



Nevertheless, when such a finding is determinative at the very entitlement of interim relief, the parties ought to have been afforded a meaningful opportunity to address the jurisdictional objection. Such an opportunity would be best subserved by framing a preliminary issue and deciding the same in accordance with law. The distinction, therefore, lies not in the power of the Trial Court but, in the procedure adopted. While the Trial Court could have examined the issue of maintainability *prima facie*, it ought not to have done in a manner that closes the plaintiffs' right to establish maintainability, particularly when the objection is seriously contested.

21. Further, as noticed in ***Asma Lateef*** (*supra*), in situations where adjudication on maintainability may take time and the non-grant of interim protection would lead to irreversible consequences, the Court is not precluded from granting interim protection, subject to appropriate safeguards. This aspect has not been adverted to by the Trial Court.



22. In view of the matter, this Court is of the considered opinion that the Trial Court erred in recording a decisive finding without framing a preliminary issue and without affording adequate opportunity to the plaintiffs and the application ought to have been considered in a procedurally framed manner, balancing both question of jurisdiction and need for interim protection. Accordingly, the point framed for consideration is answered and this Court pass the following:

ORDER

- i. The miscellaneous first appeal is ***allowed-in-part.***
- ii. The order dated 31.01.2026 passed in O.S. No.1282/2025 by the Additional Senior Civil Judge and JMFC, Doddaballapura on the application filed under Order XXXIX Rules 1 and 2 CPC is ***set aside.***
- iii. The matter is remitted to the Trial Court for fresh consideration of the application filed under Order XXXIX Rules 1 and 2 CPC.



- iv. The Trial Court shall first frame an appropriate preliminary issue regarding maintainability.
- v. Afford both parties an opportunity to address and place material on the said issue and thereafter, consider the application for interim relief in accordance with law.
- vi. It is made clear that the Trial Court is at liberty to consider the question of *prima facie* maintainability while deciding the interim application. However, such consideration shall be tentative and without foreclosing the rights of the parties. If the interim application is pressed by the appellants before considering of maintainability by the Trial Court, the Trial Court shall consider the same in accordance with law.

Sd/-

JUSTICE K.S. HEMALEKHA