



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 24<sup>TH</sup> DAY OF MARCH, 2026**

**BEFORE**

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

**MISCELLANEOUS FIRST APPEAL NO. 7726 OF 2019 (CPC)**

**BETWEEN:**

SRI RAJU  
S/O SRI PONNA PUJARI,  
AGED ABOUT 45 YEARS,  
R/A NO.9-4/2,  
6<sup>TH</sup> CROSS,  
MASJID ROAD,  
OLD OKALIPURAM,  
BENGALURU - 560 021.

...APPELLANT

(BY SRI. T PRAKASH.,ADVOCATE)

**AND:**

M/S NAVAKAR  
REGISTERED PARTNERSHIP FIRM,  
HAVING ITS REGISTERED OFFICE AT:  
NO.22/1, MADARSAB LANE,  
COTTONPET,  
BENGALURU - 560 053.  
REPRESENTED BY ITS PARTNERS,  
SRI SUSHIL KUMAR AND MR NOORULLA.

...RESPONDENT

(BY SRI. R B SADASIVAPPA.,ADVOCATE)

THIS MFA FILED U/O. 43 RULE 1(r) OF CPC, AGAINST THE ORDER DATED. 19.02.2019, PASSED ON IA.NO.I, IN O.S. NO.7501/2018, ON THE FILE OF THE LVIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (CCH-59), BENGALURU, ALLOWING THE IA.NO.I, FILED U/O.39 RULES 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 present Miscellaneous First Appeal is filed by the defendant calling in question the order dated 19.02.2019 passed on I.A.No.1 in O.S.No.7501/2018 on the file of LV111 Additional City Civil and Sessions Judge, Bengaluru City (CCH.No.59) (for short 'the trial Court'), whereby the trial Court has allowed the application filed under Order XXXIX Rules 1 and 2 of CPC by the plaintiff and granted an order of temporary injunction restraining the defendant from interfering with the construction of the compound wall around the suit schedule property pending disposal of the suit.

**Brief facts:**

2. The plaintiff has instituted the suit seeking decree of permanent injunction in respect of the suit schedule property, claiming to be the absolute owner in possession having acquired title under a registered sale deed dated



09.05.2014 and having obtained sanction plan for construction. It is the case of the plaintiff that while he was putting up construction, the defendant interfered and obstructed the same without any manner of right. The plaintiff therefore, filed I.A.No.1 seeking temporary injunction restraining the defendant.

3. The defendant entered appearance and contested the application contending that there exists a public road on the northern side of the suit property, which is the only access to his property, and that the plaintiff is attempting to encroach upon the said road. The trial Court, upon consideration of the materials placed on record, allowed the application and granted temporary injunction.

4. Learned counsel appearing for the appellant submits that the trial Court failed to consider that a public road of 5.80 meters exists on the northern side of the suit property and the plaintiff has suppressed material facts and has not correctly described the boundaries of the suit



property. It is submitted that the plaintiff is attempting to encroach upon the public road by putting up a compound wall. Further, it is contended that the trial Court has ignored the City Survey records, documentary evidence showing existence of the road, and that the plaintiff has made unauthorised construction.

5. *Per contra*, learned counsel appearing for the respondent/plaintiff contends that the plaintiff is the absolute owner in possession supported by the registered sale deed and revenue records. It is contended that there is no road on the northern side of the property and the defendant is making false claims to interfere with lawful construction. It is also contended that the defendant had earlier failed in obtaining injunction and is now causing obstruction and that the plaintiff has established a *prima-facie* case and balance of convenience *lies* in his favour.



6. This Court has carefully considered the rival contentions urged and perused the materials placed on record.

7. The point that arises for consideration is that *whether the impugned order passed by the trial Court warrants any interference.*

8. The trial Court on consideration of the pleadings and documents has held that the plaintiff has established a *prima-facie* case, the balance of convenience *lies* in favour of the plaintiff and the plaintiff would suffer irreparable injury if injunction is not granted and accordingly, allowed I.A.No.1 and restrained the defendant from interfering with the construction.

9. The appeal is against the order of temporary injunction. It is well settled that the Appellate Court would not interfere with the discretionary order of the trial Court unless the same is shown to be arbitrary, perverse or contrary to the settled principle. The materials placed on



record discloses that the ownership and possession of the plaintiff over the suit schedule property is not seriously disputed. The dispute is confined to the alleged existence of a road on the northern side. The trial Court has considered the chain of documents produced by the plaintiff, which do not disclose existence of any road on the northern side. On the other hand, the material produced by the defendant does not conclusively establish the existence of the public road. The trial Court has examined the City Survey Plan and also the other documents and has recorded a finding that what is shown is only a vacant space and not a notified public road. The said finding is based on appreciation of material on record and cannot be termed as perverse.

10. The plaintiff has also filed an undertaking to abide by the decision of the competent authority in the event of encroachment. This aspect has been rightly taken into consideration by the trial Court while balancing equities. At this stage, the plaintiff is putting up



construction based on a sanction plan. If the interference is not restrained, greater hardship would be caused to the plaintiff. On the contrary, the defendant has not established clear legal right at this stage warranting refusal of injunction.

11. The findings recorded by the trial Court are based on *prima-facie* case and appreciation of material. The settled principles governing grant of injunction has rightly been applied by the trial Court. The appellant has not made out any case to demonstrate that the discretion exercised by the trial Court is either arbitrary or capricious. Accordingly, the point frame for consideration is answered and this Court pass the following:

### **ORDER**

- i) The Miscellaneous First Appeal is hereby ***dismissed.***
- ii) The order dated 19.02.2019 passed on I.A.No.1 in O.S.No.7501/2018 on the file of



LVIII Additional City Civil and Sessions  
Judge, Bengaluru City (CCH.No.59) is  
hereby ***confirmed***.

- iii) It is needless to say that any observation made by this Court or the trial Court during the course of considering I.A.No.1 will not influence the trial Court to consider the matter on merits.
- iv) The trial Court shall dispose of the suit as expeditiously as possible.

**Sd/-**

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**JUSTICE K.S. HEMALEKHA**

PHM  
List No.: 1 Sl No.: 26