



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF APRIL, 2026

BEFORE

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

MISCELLANEOUS FIRST APPEAL NO.4878 OF 2023 (CPC)

C/W

MISCELLANEOUS FIRST APPEAL NO.4880 OF 2023 (CPC)

IN MFA NO.4878/2023

BETWEEN:

SRI BASAVARAJU
S/O CHIKKA HONNAPPA,
AGED ABOUT 62 YEARS,
RESIDING AT NO.16,
PUNYABHOOMI LAYOUT,
1ST CROSS, 5TH 'C' MAIN,
KALKERE, BANGALORE-560043.

...APPELLANT

(BY SRI D.S. MALI PATIL, ADVOCATE)

AND:

1. MR. M. VADIVELU
S/O MUNASWAMY
AGED ABOUT 45 YEARS,
2. MRS. SANGEETHA
W/O M. VADIVELU,
AGED ABOUT 41 YEARS,

BOTH ARE R/AT NO.185,
KALKERE, HORAMAVU POST,
BANGALORE-560043.

...RESPONDENTS

(BY SRI M.D. RAGHUNATH, ADVOCATE FOR R-1 & R-2)





NC: 2026:KHC:22232
MFA No. 4878 of 2023
C/W MFA No. 4880 of 2023

THIS MFA IS FILED UNDER ORDER 43 RULE 1(r) R/W SECTION 151 OF CPC., AGAINST THE ORDER DATED 17.06.2023 PASSED ON I.A.NO.1 IN O.S.NO.125/2022 ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE, BENGALURU RURAL DISTRICT, BENGALURU, REJECTING THE I.A.NO.1 FILED UNDER ORDER 39 RULE 1 AND 2 OF CPC.

IN MFA NO.4880/2023

BETWEEN:

SRI BASAVARAJU
S/O CHIKKA HONNAPPA,
AGED ABOUT 62 YEARS,
RESIDING AT NO.16,
PUNYABHOOMI LAYOUT,
1ST CROSS, 5TH 'C' MAIN,
KALKERE, BANGALORE-560043.

...APPELLANT

(BY SRI D.S. MALI PATIL, ADVOCATE)

AND:

1. MR. M. VADIVELU
S/O MUNASWAMY,
AGED ABOUT 45 YEARS,
2. MRS. SANGEETHA
W/O M. VADIVELU,
AGED ABOUT 41 YEARS,

BOTH ARE R/AT NO.185,
KALKERE, HORAMAVU POST,
BANGALORE-560 043.

...RESPONDENTS

(BY SRI M.D. RAGHUNATH, ADVOCATE FOR R-1 & R-2)

THIS MFA IS FILED UNDER ORDER 43 RULE 1(r) R/W SECTION 151 OF CPC, AGAINST THE ORDER DATED 17.06.2023 PASSED ON I.A.NO.3 IN O.S.NO.125/2022 ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE, BENGALURU RURAL DISTRICT, BENGALURU,



NC: 2026:KHC:22232
MFA No. 4878 of 2023
C/W MFA No. 4880 of 2023

ALLOWING I.A.NO.III FILED UNDER ORDER 39 RULE 1 AND 2 R/W SECTION 151 OF CPC.

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

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

ORAL JUDGMENT

These two appeals are taken up together, as they arise out of the same suit in O.S.No.125/2022.

2. The appellant in both the appeals is the plaintiff.

3. The Miscellaneous First Appeals are directed against the order dated 17.06.2026 passed on I.A.Nos.1 and 3 in O.S.No.125/2022 on the file of the Principal Senior Civil Judge, Bengaluru Rural District, Bengaluru (hereinafter referred to as the "Trial Court"), whereby the application filed by the plaintiff under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC), came to be rejected and the application filed by the defendants under Order XXXIX Rules 1 and 2 of the CPC came to be allowed.



4. Heard the learned counsel for the appellant and the learned counsel for the respondents.

Brief Facts:

5. The suit is one for specific performance of an agreement of sale dated 08.02.2021. The case of the appellant/plaintiff is that the defendants received a sum of ₹15,00,000/- towards part consideration and failed to execute the sale deed, thereby necessitating the filing of the suit.

6. Along with the suit, I.A.No.1 was filed by the plaintiff under Order XXXIX Rules 1 and 2 of CPC seeking a temporary injunction restraining alienation of the suit schedule property. I.A.No.3 was filed by the defendants seeking injunction restraining the interference with their possession. The Trial Court rejected I.A.No.1 and allowed I.A.No.3.

7. Learned counsel for the appellant submits that there exists a registered agreement of sale in favour of the



plaintiff and that, as per the terms of the agreement, the possession has not been delivered to the plaintiff. It is contended that, taking advantage of the rejection of injunction application, the defendants are trying to create third-party rights in respect of the suit property. It is further contended that this Court, by order dated 11.09.2023, directed the parties not to create any third-party interest in respect of suit schedule property, and the said interim order is in continuation.

8. *Per contra*, learned counsel for the respondents sought to justify the impugned order and submits that the defendants are in possession of the suit schedule property and they do not intend to alienate or create any third-party rights.

9. This Court has carefully considered the rival submissions and perused the material on record. The point that arises for consideration is:



"Whether the impugned orders passed by the Trial Court warrant interference by this Court?"

10. Undisputedly, the agreement of sale does not contemplate delivery of possession at the time of the agreement. Clause-6 of the agreement of sale, as extracted by the Trial Court, reads as under:

"The vendors will deliver vacant possession of the schedule property to the purchaser at the time of execution of the sale deed, and possession of the schedule property shall remain with the vendors until such execution."

11. Clause 6 clearly provides that the possession shall be delivered only at the time of execution of the sale deed. In view of the said clause, the defendants continued to be in possession. Hence, the Trial Court was justified in allowing I.A.No.3 restraining the plaintiff from interfering with defendants' possession. The said order does not call for interference. However, with regard to alienation, it is an admitted position that there exists a registered



agreement of sale dated 08.02.2021 in favour of the plaintiff. Though the same is disputed, the issue is triable. In order to preserve the subject matter of the suit and to avoid multiplicity of proceedings, it is necessary to protect the property during the pendency of the suit by restraining the alienation. Accordingly, this Court pass the following:

ORDER

- i. The MFA.No.4878/2023 is hereby ***allowed***.
- ii. The impugned order dated 17.06.2026 passed on I.A.No.1 in O.S.No.125/2022 on the file of the Principal Senior Civil Judge, Bengaluru Rural District, Bengaluru ('Trial Court' for short) is hereby ***set aside*** and modified, directing both the parties not to alienate, encumber or create third party rights in respect of the suit schedule property pending consideration of the suit.
- iii. MFA.No.4880/2023 is hereby ***dismissed***.



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- iv. The impugned order dated 17.06.2026 passed on I.A.No.3 in O.S.No.125/2022 is hereby ***confirmed.***

Sd/-

JUSTICE K.S. HEMALEKHA

AT
List No.: 1 Sl No.: 30