



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH, 2026

BEFORE

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

MISCELLANEOUS FIRST APPEAL NO.7565 OF 2024 (CPC)

BETWEEN:

1. SRI SHEKAR .H
S/O. K.L. HUCHE GOWDA,
AGED ABOUT 29 YEARS,
R/AT NO.96/1, 7TH CROSS,
DOMLUR VILLAGE,
BANGALORE-560 071.
2. SRI RAVI.H
S/O. K.L.HUCHE GOWDA,
AGED ABOUT 25 YEARS,
R/AT NO.96/1, 7TH CROSS,
DOMLUR VILLAGE,
BANGALORE-560 071.

...APPELLANTS

(BY SRI B.C. VENKATESH, ADVOCATE)

AND:

1. SMT. K.S. LAKSHMI
D/O. K.L. HUCHE GOWDA,
AGED 19 YEARS,
NO.8, OM SHRI SHIVALAYA,
BEHIND UJALA FACTORY,
MANGAMMANAPALYA ROAD,
BANGALORE-560 068.
2. SRI R. MANJUNATH
S/O. P.RAJU,
AGED 26 YEARS,
RESIDING AT NO.205/5, II BLOCK,
BALAJI ROAD, THYAGARAJANAGAR,
BANGALORE-560028.

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Location: HIGH
COURT OF
KARNATAKA



3. SMT.JAYAMMA
W/O. LATE K.L. HUCHEGOWDA,
AGED ABOUT 59 YEARS,
RESIDING AT KAVALAGUNDI VILLAGE,
BELLUR HOBLI, NAGAMANGALA TALUK,
MANDYA DIST-571418.

ALSO RESIDING AT:

NO.522, ITI LAYOUT,
NEAR HOSAPALYA,
MANGAMMANAPALYA,
BOMMANAHALLI,
BANGALORE-560060.
4. SMT. RADHAMANI
W/O. S. RAMEGOWDA,
AGED ABOUT 31 YEARS,
BOMMANAHALLI VILLAGE,
BELLURU HOBLI, NAGAMANGALA TALUK,
MANDYA DIST-571432.
5. SRI. B.S.GOWDAIAH
S/O. H.L. SHIVARAMEGOWDA,
AGED ABOUT 60 YEARS,
RESIDING AT BRAHMIN STREET,
BELLURU HOBLI, NAGAMANGALA TALUK,
MANDYA DIST-71418.
6. SMT. T. RENUKA
W/O. D.B. PARASHIVA,
AGED ABOUT 36 YEARS,
NO.359, TANK ROAD,
NAGAMANGALA TOWN,
MANDYA DIST-571432.
7. SRI P.RAJU
S/O LATE PAPANNA,
AGED ABOUT 60 YEARS,
RESIDING AT NO.205/5, II BLOCK,
BALAJI ROAD, THYAGARAJANAGAR,
BANGALORE-560028.

...RESPONDENTS

(BY SRI HARISH T., ADVOCATE FOR
SRI SHANKAR H.C., ADVOCATE)



THIS MFA IS FILED UNDER ORDER 43 RULE 1(r) OF THE CPC., AGAINST THE ORDER DATED 13.08.2024 PASSED ON I.A. NO.35 IN O.S.NO.1747/2007 ON THE FILE OF THE PRINCIPAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, DISMISSING I.A.NO.35 FILED UNDER ORDER 39 RULE 1 AND 2 R/W SECTION 151 OF CPC.

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

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

ORAL JUDGMENT

This Miscellaneous First Appeal is preferred by the plaintiffs assailing the Order dated 13.08.2024 on I.A.No.35 in O.S.No.1747/2007 on the file of the Principal City Civil and Sessions Judge at Bengaluru ('Trial Court' for short), whereby the application filed by the plaintiffs under Order XXXIX Rules 1 and 2 CPC seeking temporary injunction restraining defendant Nos.1 and 3 to 6 from alienating the schedule-B properties came to be rejected.

2. Heard learned counsel for the appellants and the learned counsel for the respondents.

3. The plaintiffs instituted a suit for partition and separate possession in respect of the suit schedule-'A' and



'B' properties. During the pendency of the suit, the plaintiffs' filed I.A.No.15 seeking amendment of plaint by adding additional Item Nos.1 to 11 as schedule-'B' properties of the plaint. The defendants did not file any objections. The Trial Court, by an order dated 25.10.2013, allowed I.A.No.15 and permitted the plaintiffs to add Item No.1 to 11 as schedule-'C' properties to the plaint. During the pendency of the suit, the plaintiffs and defendants Nos.1, 1(b), 2, 2(b), 3, 3(a), 3(b), 4 and 6 have entered into a compromise in respect of the original plaint schedule-'B' properties and plaint schedule-'C' properties have been renumbered as schedule-'B' properties. During the pendency of the suit, the plaintiffs filed I.A.No.35 under Order XXXIX Rule 1 and 2 CPC seeking temporary injunction restraining defendant Nos.1 and 3 to 6 from alienating or encumbering the suit schedule-'B' properties. Defendant Nos.1 and 3 filed objections to I.A.No.35.

4. The Trial Court upon consideration of the material on record observed that the suit filed by the



plaintiffs was of the year 2007 and the present application was filed in the year 2022. Any alienation during the pendency would be governed by Section 52 of the Transfer of Property Act, 1988 ('Act' for short) and the purchaser of the schedule properties during the pendency of the litigation would be bound by the decree in the suit and in those circumstances, the Trial Court observed that the plaintiffs have not made a *prima facie* case for grant of a relief of temporary injunction as prayed in the application and rejected I.A.No.35 filed by the plaintiffs. Aggrieved by which, the plaintiffs are before this Court.

5. Learned counsel for the appellants drawing the attention of this Court to paragraph No.4 of the objections filed by defendant Nos.1 and 3 to I.A.No.35 submits that the defendants have categorically admitted execution of the sale deeds in favour of third parties and the trial Court erred in assuming Section 52 of the Act would sufficiently protect the plaintiffs. It is submitted that refusal of injunction would lead to multiplicity of proceedings and



irreparable injury. It is submitted that the Trial Court has failed to protect the subject matter of the suit by not granting at least a *status quo* order.

6. *Per contra*, learned counsel for the respondents submits that the suit is pending since 2007 and the application was filed belatedly in 2022. The plaintiffs have not shown any imminent threat of alienation. The matter is at the stage of cross-examination and the grant of injunction would prejudice the trial. It is submitted that any transfer during pendency is already protected under Section 52 of the Act.

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

8. It is not in dispute that the suit is filed in the year 2007. However, delay cannot alone be a ground to reject an injunction application. The defendants have admitted alienation of certain priorities. Which substantiates the apprehension of the plaintiffs. Defendant



Nos.1 and 3 have stated in their statement of objections as under:

"4. The defendant No.1 & 3 submits that the suit schedule properties are not ancestral properties and joint family properties of the plaintiffs and the defendants No.1 & 3. The plaintiffs have filed the present interim application after the lapse of 16 years from the date of filing the suit. The defendants further submit that all the suit schedule properties are self acquired properties of the defendant No.1 & 3. The plaintiff has filed the present application to harass, intimidate and gain unlawfully. These defendants have executed sale deeds in favour of the third parties in respect of certain properties in favour of the third parties. The plaintiffs have already made the purchasers as defendants to the suit. This fact is well aware by the plaintiffs. These defendants have filed written statement and additional written statement in the above case wherein the defendants have narrated completely regarding the acquisition of properties and alienated properties. Hence the written statement and additional written statement may be read as part and parcel of the objections.

5. The plaintiffs have already led their evidence in the above case and the defendants have cross examined PW-1 long back. The plaintiffs without



going on the merits of the matter are filing one or the other application to delay the court proceedings. These defendants further submit that if any alienation made during pendency of the suit Section 52 (lis pendency) of the Transfer of Property Act is applicable during pendency of transfer. Therefore the application is liable to be dismissed.”

9. The Trial Court erred in solely relying on Section 52 of the Act without examining the settled principles governing the grant of temporary injunction. The essential tests laid down in ***Wander Ltd. and Another Vs. Antox India Pvt. Ltd.***¹ (*Wander Ltd.*) and ***Dalpat Kumar and Another Vs. Prahlad Singh and Others***² (*Dalpat Kumar*), were not properly applied wherein it was held that, if the order of the Trial Court suffers from perversity, the same can be interfered with by the Appellate Court.

10. The impugned order suffers from illegality and perversity warranting interference. In order to preserve the subject matter of the suit and to avoid multiplicity of

¹ 1990 (Supp) SCC 727

² (1992) 1 SCC 719



proceedings, it is necessary to protect the suit property during pendency of the suit.

11. Accordingly, this Court pass the following:

ORDER

- i. The Miscellaneous First Appeal is hereby ***allowed in part.***
- ii. The order dated 13.08.2024 on I.A.No.35 in O.S.No.1747/2007 on the file of the Principal City Civil and Sessions Judge at Bengaluru is hereby ***set aside.***
- iii. I.A.No.35 filed by the plaintiffs is ***allowed in part.*** The parties are directed to maintain *status quo* as on today of the suit properties till disposal of the suit.

Sd/-

JUSTICE K.S. HEMALEKHA

AT
List No.: 1 Sl No.: 28