



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.7993 OF 2025 (CPC)

BETWEEN:

1. SRI SHRIDHAR BABU
S/O. LATE BALARAM,
AGED ABOUT 60 YEARS,
RESIDING AT #1293,
PRAKASHA NILAYA,
10TH MAIN ROAD, VIJAYANAGAR,
BENGALURU-560 040.
2. SRI B. RAMESH BABU
S/O. LATE BALARAM,
AGED ABOUT 59 YEARS,
RESIDING AT #31/12,
13TH MAIN ROAD, VIJAYANAGAR,
BENGALURU-560 040.

...APPELLANTS

(BY SRI G.B. SHARATH GOWDA, ADVOCATE)

AND:

SMT. B. UMADEVI
D/O. LATE BALARAM,
W/O. KRISHNA
AGED ABOUT 62 YEARS,
RESIDING AT #1016, 7TH CROSS,
VIJAYANANDA NAGARA,
NANDHINI LAYOUT,
BENGALURU-540 096.

...RESPONDENT

(BY SRI VAKKUND SONATAI GANAPATHRAO, ADVOCATE)

THIS MFA IS FILED UNDER ORDER 43 RULE 1(r) OF THE CPC.,
AGAINST THE ORDER DATED 22.09.2025 PASSED ON I.A.NO.1 IN
O.S.NO.3435/2025 ON THE FILE OF THE IX ADDITIONAL CITY CIVIL



AND SESSIONS JUDGE, BENGALURU (CCH.5), ALLOWING I.A.NO.1
FILED U/O.39 RULE 1 AND 2 READ WITH SECTION 151 OF CPC.

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

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

ORAL JUDGMENT

This Miscellaneous First Appeal is filed by the defendants in O.S.No.3435/2025, challenging the order dated 22.09.2025 passed by the IX Additional City Civil and Sessions Judge, Bengaluru ('Trial Court' for short) on the applications under Order XXXIX Rules 1 and 2 CPC, whereby the Trial Court has allowed the plaintiff's application for temporary injunction and rejected the application filed by the present appellants under Order XXXIX Rule 4 CPC for vacating the interim order. By the impugned order, the Trial Court has directed the parties to maintain *status quo* in respect of the suit schedule property.



Brief facts:

2. The plaintiff instituted suit seeking partition and separate possession of her share in the suit schedule property and also for a declaration that the registered release deed dated 01.09.2020 is not binding on her. It is a case of the plaintiff that though a release deed is said to have been executed by her and her mother, the same was obtained by fraud, misrepresentation and undue influence and therefore she continues to retain her right in the property. On that premise, the plaintiff contends that any act of the defendants in altering the nature of the property or creating third party rights would seriously prejudice her share.

3. The defendants, who are the appellants before this Court contend that the plaintiff and her mother had voluntarily executed a registered release deed dated 01.09.2020 relinquishing all their rights over the suit schedule property. It is further contended that after



demise of the mother on 15.01.2023, a partition was effected between them and acting upon the same, the existing structures were demolished and construction was commenced in May-2025 after obtaining sanction from BBMP.

4. In the said suit the plaintiff filed application under Order XXXIX Rules 1 and 2 seeking temporary injunction to restrain the defendants from putting up construction and alienating the suit property. The defendants in turn filed objections and also filed an application under Order XXXIX Rule 4 CPC seeking vacating of the interim order. The Trial Court Upon consideration of the rival contentions, has held that the dispute revolves upon the validity of the release deed which requires adjudication at trial and the plaintiff has made out a *prima facie* case. It is further held that the balance of convenience lies in favour of the plaintiff and that irreparable injury would be caused if injunction is not granted. Accordingly, the Trial Court allowed the plaintiff's



application and rejected the application filed by the defendants under Order XXXIX Rule 4 CPC and directed the parties to maintain *status quo*.

5. Learned counsel for the appellants submits that:

- i. The plaintiff has voluntarily executed the registered release deed dated 01.09.2020, thereby relinquishing all rights and hence no *prima facie* case exists.
- ii. The appellants have specifically stated in paragraph No.11 of the application filed under Order XXXIX Rule 4 that in the event the plaintiff succeeds in the suit, they shall not claim any equity in respect of the construction or development made on the property.
- iii. It is contended that once such a categorical undertaking is placed on



record, the Trial Court ought not to have restrained construction.

- iv. The defendants after lawful partition and after obtaining necessary sanction from the BBMP, have already commenced construction in May-2025 and therefore the order of injunction as the effect of stalling an ongoing lawful activity.
- v. The Trial Court has failed to appreciate that even if the plaintiff ultimately succeeds, the rights can be worked out and no irreparable injury would be caused, particularly when the appellants had undertaken not to claim equity.
- vi. It is further contended that the suit is improperly valued and that the provisions of Section 38 of the Karnataka Court Fees and Suits Violation Act, 1958 ('Act' for



short) have not been properly complied with.

- vii. The impugned order therefore suffers from perversity and illegality and is liable to be set aside.

6. *Per contra*, learned counsel for the respondent-plaintiff submits that:

- i. The release date dated 01.09.2020 is vitiated by fraud, misrepresentation and requires adjudication at trial.
- ii. The plaintiff continues to have substantive share in the property and any construction or alienation would prejudice her right.
- iii. The Trial Court has rightly exercised discretion in preserving the property by granting an order of *status quo*.



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

"Whether the impugned order warrants any interference by this Court?"

8. The Trial Court has held that the dispute relates to validity of the release deed, which cannot be adjudicated at the interlocutory stage and the plaintiff has not made out a *prima facie* case, balance of convenience lies in favour of the plaintiff and irreparable injury would be caused if injunction is not granted and the order of *status quo* was directed to be maintained. It is not in dispute that the plaintiff had executed a registered release deed dated 01.09.2020. Though its validity is questioned, such validity would require a full-fledged trial. At the interlocutory stage, the existence of a registered document, *prima facie* dilutes the claim of the plaintiff in seeking an equitable relief of injunction. A significant aspect which has not been properly appreciated by the



Trial Court is the categorical statement made by the appellants in paragraph No.11 of the application which reads as under:

"I state that adjudication of the present suit will take time, and until then, I and my family would be left without shelter. Hence, I pray that may be permitted to continue construction over the suit schedule property at my own risk. I undertake before this Hon'ble Court that in the event any adverse order is passed against me in the suit, I shall not claim any equity and shall abide by the decision of the Court."

9. Wherein it is stated that, in the event the plaintiff succeeds, the appellants shall not claim any equity in respect of the construction. When such an undertaking is placed on record, the apprehension of the plaintiff regarding prejudice stands substantially mitigated. The element of irreparable injury is neutralized and the necessity to stall construction no longer survives. The material on record also indicates that after obtaining



sanction from BBMP, the defendants have already commenced construction in May-2025. In such circumstances, restraining further construction would cause serious prejudice to the defendants, upset the ongoing development and result in greater hardship. The Trial Court has failed to properly weigh the balance of convenience. In the present case, the plaintiff has executed a release deed which is subject to the further adjudication in the trial, the defendants are in possession and have commenced construction and an undertaking has been given not to claim equity. Thus, the balance of convenience clearly tilts in favour of the defendants.

10. Though the appellants have raised a contention regarding improper valuation and earlier rejection of the plaint on the ground of Court fee with reference to Section 38 of the Act, the issue requires adjudication by the Trial Court. In view of the *prima facie* registered release deed, subsequent partition and commencement of construction and undertaking not to claim equity, this Court is of the



considered opinion that the plaintiff has not established a strong *prima facie* case warranting grant of injunction. The Apex Court in the case of ***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*), has held, if the orders of the Trial Court suffers from perversity, the same can be interfered by the Appellate Court and on perusal of the impugned order, this Court is of the considered opinion that the same warrants interference.

11. Accordingly, the point framed for consideration is answered and this Court pass the following:

ORDER

- i. The Miscellaneous First Appeal is ***allowed***.
- ii. The order dated 22.09.2025 passed in O.S.No.3435/2025 by the IX Additional City Civil and Sessions Judge, Bengaluru is hereby ***set aside***.

¹ 1990 (Supp) SCC 727

² (1992) 1 SCC 719



- iii. The application filed by the plaintiff under Order XXXIX Rules 1 and Rule 2 is ***rejected*** and the application filed by the defendants under Order XXXIX Rule 4 is ***allowed***, the order of *status quo* stands ***vacated***.
- iv. It is however made clear that any constructions carried out by the appellants shall be subject to the result of the suit and the undertaking given by the appellants that they shall not claim equity shall bind them.
- v. It is needless to state that the Trial Court to dispose of the suit as expeditiously as possible.
- vi. Any observation made by this Court in the present appeal, shall not come in the way of the Trial Court in disposing the suit on its own merits independently and in accordance with law.

Sd/-

JUSTICE K.S. HEMALEKHA