

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF DECEMBER 2019

BEFORE

THE HON'BLE MR. JUSTICE NATARAJ RANGASWAMY

MISCELLANEOUS FIRST APPEAL No. 9098 OF 2019 (CPC)

BETWEEN:

- 1) Smt. Thimmakka,
W/o. Late Sri. Hanumanthappa,
Aged about 70 years.
- 2) Sri. Venkatesh H,
S/o. Late Sri. Hanumanthappa,
Aged about 56 years.
- 3) Sri. Narayana H.,
S/o. Late Sri. Hanumanthappa,
Aged about 48 years.
- 4) Sri. Krishna Murthy H.,
S/o. Late Sri. Hanumanthappa,
Aged about 45 years.

All are residing at Old No. 14/3,
New No. 9, Old Maruthinagara,
Now called as Ambedkar Residency,
2nd Cross, Shanthivana,
Sahakaranagar Post, Bengaluru -560 019.

...Appellants

(By Sri. Mohan S., Advocate)

AND

- 1) Sri. V. Rajanna,
S/o. Sri. Venkatappa,
Aged about 45 years,
Residing at No.58,
Ambedkar Residency,
2nd Cross, Shanthivana,
Sahakaranagar Post,
Bengaluru -560 019.
- 2) Smt. V. Manjula,
W/o. Sri. Ramanujam,
Aged about 48 years,
R/at No.345, 1st Floor,
Sanjeevininagar,
Sahakaranagar Post,
Bengaluru -560 092.
- 3) Sri. Shivakumar H.,
S/o. Late Sri. Hanumanthappa,
Aged about 38 years,

Residing at Old No.14/3,
New No.9, Old Maruthinagara,
Now called as Ambedkar Residency,
2nd Cross, Shanthivana,
Sahakaranagar Post,
Bengaluru -560 019.

...Respondents

(By Sri. Thimmegowda N., Advocate)

This Miscellaneous First Appeal is filed under Order 43 Rules 1(r) of CPC, against the order dated 17.12.2019 passed in I.A.No.1 in O.S.No.281/2019 on the file of the Principal City Civil Judge (CCH-25), allowing the I.A.1 filed U/O 39 Rule 1 and 2 of CPC.

This appeal coming on for *Admission* this day, the Court delivered the following:

JUDGMENT

The defendants in O.S.No.281/2019 have filed this Miscellaneous First Appeal challenging the Order dated 17.12.2019 by which trial Court had allowed I.A.No.1 filed by the plaintiff under Order XXXIX Rule 1 & 2 and restrained the defendants from changing the nature of the suit property.

2. The plaintiff in O.S. No.281/2019 had sought for partition and separate possession of his undivided share in the suit schedule property. Along with the plaint, plaintiff had also filed an application under Order XXXIX Rule 1 & 2 of Code of Civil Procedure to restrain the defendants therein from changing the nature of the suit schedule property.

3. It is relevant to note that the very same plaintiff in O.S.No.281/2019 had filed O.S.No.4195/2019 for perpetual

Injunction in respect of very same property but failed to obtain any interim relief and thus withdrew the suit. The plaintiff thereafter filed O.S.No.4376/2019 without disclosing the previous proceedings, again for perpetual injunction in respect of the very same property and in the said suit the plaintiff was successful in getting an order of temporary injunction. This Order of temporary injunction was vacated in terms of the Order of the Trial Court dated 11.10.2019 which was challenged before this Court in M.F.A. No.8471/2019. When M.F.A.No.8471/2019 came up for consideration, liberty was sought to seek appropriate reliefs in O.S.No.281/2019 which was a comprehensive suit for partition and separate possession. This Court recorded the aforesaid submission and disposed off M.F.A.No.8471/2019 reserving liberty to the plaintiff to pursue his remedy in O.S.No.281/2019.

4. Later the plaintiff filed an application on 17.12.2019 to advance the suit in O.S.No.281/2019 for

considering the application for temporary injunction. The Trial Court noticing the imminent need to pass an interim order, refused the request for adjournment by the defendants and passed an order dated 17.12.2019 and allowed the application. It is this order that the defendants are against in this appeal before this Court.

5. Heard the appellants and respondent No.1.

6. After the appeal was heard for sometime, the defendants/appellants contended that they have already put up construction in a portion of property and that the status-quo may be maintained in respect of portion which is vacant and wherever there is no construction. On the other hand, counsel for respondent No.1 contended that the appellants have proceeded with the construction even after the suit was filed and therefore, the order passed by the trial Court needs to be continued.

7. Having regard to the fact that the suit is filed for partition and separate possession of the suit schedule property and having regard to the fact that the rights of the parties are still in a fluid state, it would be just and proper to direct status-quo of the property to be maintained until the suit is disposed off. This order of status-quo shall be only to maintain the status of the property as it exists today. Any buildings which are in existence as on today shall remain untouched by the parties and no further developments shall be undertaken. With this observation this Miscellaneous First Appeal is disposed off.

Trial Court is requested to decide the suit expeditiously.

**Sd/-
JUDGE**

BVK