

IN THE HIGH COURT OF KARNATAKA AT
BENGALURU

DATED THIS THE 14TH DAY OF SEPTEMBER 2016

BEFORE

THE HON'BLE MR. JUSTICE ANAND BYRAREDDY

MISCELLANEOUS FIRST APPEAL No.3520 OF 2016

BETWEEN:

1. Sri. R. Shanmugam,
Son of Late Sri. Ramalingam,
Aged about 57 years,
Residing at # Kamakshi Nilayam,
Subbaraju Road,
Marutheshwar Nagar,
Bangalore – 560 033.
2. Sri. T.S.Thygarajan,
Son of Late Sri. T. Sundar Murthy,
Aged about 57 years,
Residing at #120,
Ramachandrappa Building,
Chiniappa Road,
Kamanahalli Main Road,
Bangalore – 560 084.
3. Sri. T.S.Jyothi Velu,
Son of Late Sri. T. Sundar Murthy,
Aged about 57 years,
Residing at # 10/4-15,
Park Road, M.N.Garden,

Cox Town, Jeevanahalli,
Bangalore – 560 005.

4. Sri. Somashekar T.S.,
Son of Late Sri. T. Sundar Murthy,
Aged about 57 years,
Residing at # 37,
Marathahalli,
Bangalore – 560 037.
5. Smt. T.S.Vimala,
Daughter of Late Sri. T. Sundar Murthy,
Aged about 55 years,
Residing at # 10/2 Upstairs,
Saraswathamma Road,
M.S.Nagar,
Bangalore – 560 033.
6. Sri. Kamalapathi,
Son of Late Sri. T. Shambandam,
Aged about 27 years,
Residing at # 10/2 Upstairs,
Saraswathamma Road
M.S.Nagar,
Bangalore – 560 033.
7. Sri. T. Ambalavanan,
Son of Late Thiruvarasu Pillai,
Aged about 87 years,
Residing at #5C-302,
ISRO Housing Colony,
Domlur,
Bangalore – 560 071.

Appellant Nos.1, 5, 6 and 7 are

Represented by G.P.A. Holder,
T.S.Somashekar,
Son of Late T. Sundar Murthy,
Aged about 57 years,
#259, 14th 'B' Cross,
New Town Yelahanka,
Bangalore – 560 064.

...APPELLANTS

(By Shri Phaniraj Kashyap, Advocate)

AND:

1. Mr. Gulam Farook,
Aged about 49 years,
2. Mr. Shaik Ali,
Aged about 44 years,
3. Shaik Ahamed,
Aged about 38 years,
4. Mr. Shaik Nayeemuddin,
Aged about 35 years,

All children of
Late S.G.Samadani,
All at #10, (old No.7/1),
Ground Floor,
Saraswathmmal Street,
Marutheshwar Nagar,
Bangalore – 560 033.

...RESPONDENTS

(By Shri M.D.Raghunath, Advocate)

This Miscellaneous First Appeal filed under Order 43 Rule 1(r) of the CPC read with Section 104 of CPC, 1908, against the order dated 11.4.2016 passed on I.A.No.1 in O.S.No.25123/2016 on the file of the LVII Additional City Civil and Sessions Judge, Mayo Hall Unit, Benglauru, allowing I.A.No.1 filed under Order 39 Rule 1 and 2 of CPC.

This Miscellaneous First Appeal coming on for Admission this day, the Court delivered the following:

JUDGMENT

The present appellants were the defendants before the Trial Court in a suit for permanent injunction disputed by the respondent on the footing that he was in occupation, claiming under a tenant as the legal representative of the original tenant.

2. According to the appellants herein, the respondent was in no way connected with the erstwhile tenant and was a trespasser on the property and since the Trial Court had granted an order restraining the present appellants from interfering with the possession of the respondent, the present appeal was filed.

In the appeal, an interim order of stay was granted in favour of the appellants. It then transpires that by virtue of the interim order of stay granted, the appellants have taken the initiative of demolishing the property and that the property is no longer in existence.

3. While the learned counsel for the respondents would state that taking advantage of an observation of this court during the hearing of the application for stay that the respondents may not be in possession of the suit property, the appellant has taken the initiative of demolishing the property in order to prevent the respondents from continuing in possession of the property.

3. In any event, the appeal is now rendered infructuous if the property as it stood on the date of suit is no longer in existence and if it is the allegation of the respondent that the appellant has prayed hardship in demolishing the property even as he continued in occupation of the property, his remedies would lie in initiating fresh action both civil and criminal, if the

law so permits. Reserving such liberty, the appeal is disposed of as having become infructuous.

Sd/-
JUDGE

KS