

**IN THE COURT OF THE 1st ADDL. CIVIL JUDGE & JMFC,
BASAVAKALYAN.**

:PRESENT:

Smt. Shreya Sunil Utture,

B.com, LL.B & LL.M

Original Suit. No. 78/2026

Dated this 18th day of August-2026

PLAINTIFF: Sri. Jairaj S/o Ramanna Sadlapure
(By Sri. LVN., Adv)

- Versus -

DEFENDANT: Sri. Kallappa @Kalyan Rao S/o Ismailappa Vaidya
(By Sri. SKR., Adv)

Parties to IA No.I

APPLICANT: Sri. Jairaj S/o Ramanna Sadlapure
(By Sri. LVN., Adv)

- Versus -

OPPONENT: Sri. Kallappa @Kalyan Rao S/o Ismailappa Vaidya
(By Sri. SKR., Adv)

ORDER ON I.A.NO.1 U/O.39 RULE 1 & 2 OF C.P.C.

The plaintiff has filed this application praying for restraining the defendant from alienating the suit schedule properties bearing land Sy.No.267/*/1 and 267/*/2 each measuring 1 acres 20 guntas., by way of sale, will, gift and mortgage etc, till the disposal of the suit.

The brief facts of the plaintiff case is as under:

The plaintiff has filed the present suit for specific performance of contract in respect of suit schedule properties. The defendant is the owner and possessor of the suit property bearing Sy. Nos.267/*/1 and 267/*/2, agreed to sell one open plot measuring 30 × 40 feet to the plaintiff and received Rs.7,00,000/- as advance consideration. It is contended that the agreement of sale is subsisting and that the balance consideration was agreed to be paid as per the prevailing market value after completion of the layout and release of the plots by the competent authority. The plaintiff further contends that the layout has since been completed and the defendant is now avoiding his contractual obligation and is attempting to deal with the suit property, thereby creating a threat to the plaintiff's contractual interest. Hence, the plaintiff has a strong prima facie case, the balance of convenience lies in his favour, and he would suffer irreparable loss if the defendant is permitted to alienate or encumber the suit property during pendency of the suit. Therefore, the plaintiff has filed this application.

On the contrary the defendant has filed the objections contending that, the I.A. and affidavit are false and frivolous and not marinating the law and facts and denied the contents of the affidavit. The defendant contends that, the plaintiff is not entitled to any interim relief, as the agreement of sale dated 28.06.2021 was already cancelled and the plaintiff had received back Rs.7,00,000/- paid by him along with Rs.3,00,000/- towards interest, much prior to filing of the suit. It is therefore contended that the plaintiff has suppressed material facts and has not approached the Court with clean hands. The defendant further submits that, the plaintiff has no prima facie case, balance of convenience or likelihood of irreparable loss, whereas the defendant has a strong prima facie case and would suffer greater hardship if the interim injunction is granted. Hence, prayed for dismissal of the application.

Heard both sides and perused the materials on records.

The following points are arises for my considerations are:

i) Whether plaintiff has made out prima-facie case?

ii) Whether the balance of convenience lies in favour of plaintiff?

iii) Whether greater hardship would be caused to the plaintiff if the injunction is not granted?

iv) What order?

My answer to the above points are as under:

Point No.1 : in the Affirmative

Point No.2 : in the Affirmative

Point No.3 : in the Affirmative

Point No.4 : As per final order
for the following ;

REASONS

Point Nos.1 to 3: Since these points are interconnected, they are taken up together for consideration.

The plaintiff contends that the defendant agreed to sell an open plot measuring 30 × 40 feet in Sy.Nos.267/*/1 and 267/*/2 and received a sum of Rs.7,00,000/- as advance consideration. It is the specific contention of the plaintiff that the agreement of sale dated 28.06.2021 is subsisting, that the layout has been completed and that the defendant is avoiding performance of the agreement and attempting to deal with the suit property. Per contra, the defendant contends that the said agreement was already cancelled and that the plaintiff had received back the advance amount of Rs.7,00,000/- along with Rs.3,00,000/- towards interest and, therefore, the plaintiff has suppressed material facts and has not approached the Court with clean hands.

At the stage of considering an application under Order XXXIX Rules 1 and 2 of CPC, the Court is required to examine whether the plaintiff has made out a prima facie case, whether the balance of convenience lies in his favour and whether he would suffer irreparable injury if the injunction is not granted. In the present case, the plaintiff has produced the agreement of sale and the copy of the notice issued to the defendant. The defendant, on the other hand, has relied upon the account statements and has raised a contention regarding cancellation of the agreement and repayment of the amount. These rival contentions involve disputed questions of fact which require consideration on the basis of oral and documentary evidence during the trial and cannot be conclusively decided at this interlocutory stage.

However, having regard to the nature of the suit and the documents produced by the parties, this Court is of the prima facie view that the plaintiff has shown a right requiring protection pending adjudication of the suit. If the defendant is permitted to alienate or encumber the suit property during the pendency of the suit, third-party interests may be created, which may complicate the adjudication of the plaintiff's claim for specific performance and may also lead to multiplicity of proceedings. On the other hand, if the defendant is restrained from alienating or encumbering the property during the pendency of the suit, no substantial prejudice or hardship would be caused to him, as the order would only preserve the subject matter of the suit until its final adjudication.

Therefore, this Court is of the considered view that the plaintiff has established a prima facie case and that the balance of convenience lies in his favour. The plaintiff would also suffer irreparable injury if the suit property is alienated or encumbered during the pendency of the suit. Accordingly, Point Nos.1 to 3 are answered in the **Affirmative**.

Point No.4: In view of the findings recorded on Point Nos.1 to 3, I proceed to pass the following:

ORDER

The I.A.No.1 filed by the plaintiff under Order XXXIX Rules 1 and 2 of CPC is hereby **allowed**.

The defendant is hereby restrained by way of temporary injunction from alienating, encumbering or creating any third-party interest over the suit schedule properties bearing Sy.Nos.267/*1 and 267/*2, each measuring 1 acre 20 guntas, by way of sale, gift, mortgage or otherwise, during the pendency of the suit.

_(Pronounced in open Court on this 18th day of August, 2026).

**Ist Addl Civil Judge and JMFC.,
Basavakalyan.**