

KABG300013692024



**IN THE COURT OF SENIOR CIVIL JUDGE,
BAILHONGAL, AT; BAILHONGAL
PRESENT:**

**Shri. Ravi Babu Chawan,
B.A. LLB.,
Senior Civil Judge, Bailhongal.**

O.S. No.300/2024

Dated this the 9th Day of October, 2025

Sri. Somashekhar Ningappa Totagi,
Age: 44 years, Occ: Agriculture,
R/o: M.K. Hubli, Tq: Kittur.

.....Plaintiff

(By Shri. C.S.C., Advocate)

- Vs. -

1) Smt. Neelavva W/o Godachayya Godachayyanavar,
Age: 79 years, Occ: Household,
R/o: Dombarkoppa, Tq: Kittur.

2) Smt. Jayashri W/o Danayya Kagati,
Age: 56 years, Occ: Household,
R/o: Marakatti, Tq: Bailhongal.

3) Irayya Godachayya Godachayyanavar,

Age: 46 years, Occ: Agriculture,
R/o: Dombarkoppa, Tq: Kittur.

4) Sri. Basayya Godachayya Godachayyanavar,
Age: 43 years, Occ: Agriculture,
R/o: Dombarkoppa, Tq: Kittur.

.....Defendants

(By Sri. M.U.H., Advocate)

PARTIES TO IA No.I

Sri. Somashekhar Ningappa Totagi,
Age: 44 years, Occ: Agriculture,
R/o: M.K. Hubli, Tq: Kittur.

**.....Applicant/
Plaintiff**

(By Shri.. C.S.C., Advocate)

- Vs. -

1) Smt. Neelavva W/o Godachayya Godachayyanavar,
Age: 79 years, Occ: Household,
R/o: Dombarkoppa, Tq: Kittur.

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3) Irayya Godachayya Godachayyanavar,
Age: 46 years, Occ: Agriculture,
R/o: Dombarkoppa, Tq: Kittur.

4) Sri. Basayya Godachayya Godachayyanavar,

Age: 43 years, Occ: Agriculture,
R/o: Dombarkoppa, Tq: Kittur.

**.....Respondents/
Defendants**

(By Sri. M.U.H., Advocate)

i	Provision under which the application is filed	U/o 39 Rule-1 and 2 of CPC R/w.sec. 151 of CPC
ii	Relief sought for	Restraining the defendants from alienating the suit property bearing GP RS No.230/1 of kittur
iii	The date on which the application is filed	06-02-2025
iv	Number of the application	IA No.I
v	The date on which the objections are filed by the opponent	07-04-2025
vi	The date on which the orders were passed on the said application	08-10-2025

ORDER ON I.A.No.I

The plaintiff has filed the present application under Order XXXIX Rule 1 and 2 read with Section 151 of CPC seeking an order of temporary injunction restraining the

defendants from alienating or creating any charge or encumbrance over the suit property bearing R.S. No.230/1 of Kittur during the pending of the suit.

2. Facts in brief are as follows:

In the affidavit accompanying filed by the plaintiff in support of the application it is stated that, the plaintiff has filed the present suit against the defendants for the relief of specific performance. It is the case of the plaintiff that on 26-08-2024, the defendants being the absolute owners of the suit property entered into registered agreement of sale in favour of the plaintiff agreeing to sell the suit property for a total consideration of Rs.11,00,000/-. It is further stated that the defendants received a sum of Rs.10,70,000/- as earnest money and executed the registered agreement of sale in token of having agreed to convey the property. It is alleged that, in spite of several requests made by the plaintiff, the defendants have failed to execute the sale deed in terms of the agreement and are now attempting to alienate or encumber the suit property in favour of third parties. Hence, the plaintiff sought for interim temporary injunction.

3. On the other hand, the defendants have filed their written statement, and the same is adopted as objections to I.A. No.1. The defendants in their written statement contended that, the plaintiff is engaged in money lending business and that there was never any intention to sell the suit property. According to them, they had borrowed a hand loan of Rs.10,00,000/- in cash from the plaintiff for the purpose of investing trading activities. Due to loss in their agricultural income, they could not repay the said amount. They further contended that that there was no sale transaction between the parties, and that the plaintiff, with an intention to usurp their valuable property, forcibly took them to office of the Sub-Registrar, Kittur, and got created the alleged registered agreement of sale styled as agreement of sale. It is further contended that they are ready and willing to refund the said hand loan amount of Rs.10,00,000/-, and therefore, the present suit for specific performance is not maintainable. With these grounds, the defendants have prayed for dismissal of suit as well as the present I.A. No.1.

4. Heard the learned counsel for the plaintiff. Despite affording sufficient opportunity, the defendants

have not appeared nor addressed their arguments on the application.

5. The following points would arise for my consideration:

POINTS

- 1) Whether the plaintiff / applicant has made out a prima facie case?
- 2) Whether the balance of convenience lies in favour of the applicant/plaintiff?
- 3) Whether the applicant/plaintiff would be put to irreparable loss or injury in the event the application is not allowed?
- 4) What order?

6. My findings on the aforesaid points is 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

7. **Point Nos.1 to 3:-** In order to avoid repetition of facts all these points are taken up together for common discussion.

8. The records reveal that the plaintiff has produced the registered agreement of sale dated 26-08-2024, which is marked as Ex.P2, wherein the defendants have agreed to sell the suit property for a total consideration of Rs.11,00,000/-. The plaintiff has also produced RTC extracts which prima facie show that the suit property stands in the name of the defendants.

9. The contentions of the defendants that the said agreement was created as a security for the loan transaction and not as a genuine sale agreement is matter that requires detailed evidence, which can only be adjudicated at the stage of trial. At this interlocutory stage, the court is not required to determine the genuineness of the registered agreement only to ascertain whether the plaintiff has made out a prima facie case, and whether the balance of convenience and irreparable injury favour the grant of temporary injunction.

10. Having regard to the materials on record, the existence of a registered agreement of sale executed alleged to have been executed by the defendants in favour of the plaintiff is not dispute. If during the pendency of the suit the defendants are permitted to alienate or encumber the suit property, it would lead to multiplicity of proceedings and may frustrate the very object of the suit. Therefore, the apprehension of expressed by the plaintiff that the defendants may alienate the suit property appears to be reasonable and cannot be ignored.

11. Granting an order restraining the defendants from alienation the property would not cause any irreparable loss to them, whereas refusal of such relief would cause serious prejudice and irreparable injury to the plaintiff. The balance of convenience is therefore in favour of the plaintiff.

12. In view of the above discussion, this Court is of the opinion that the plaintiff has made out a prima facie case, the balance of convenience lies in his favour, and he will suffer irreparable loss if the relief sought is not granted. Accordingly, I answer point Nos.1 to 3 in the ***affirmative.***

13. **Point No.4:-** In view of above findings, and discussion made, this Court deems it fit to pass the following:

ORDER

I.A.No. I filed under Order 39 Rule 1 and 2 R/w. Section 151 of C.P.C. by the plaintiff is hereby allowed.

The defendants are hereby restrained from alienating, transferring or encumbering the suit property in any manner whatsoever until the disposal of the suit.

The costs shall follow the result of this suit.

For compliance of 89 of CPC.

(Directly dictated to the stenographer on computer system, typed by him and corrected by me, then pronounced by me in the open Court on this the 9th Day of October, 2025)

(Ravi Babu Chawan)
Senior Civil Judge, Bailhongal.

