

KABK710001772024



O.S./24/2024
{CASE_CAUSE_TITLE}

IN THE COURT OF ADDITIONAL CIVIL JUDGE &
JMFC, JAMKHANDI, AT: JAMKHANDI.

PRESENT :
SHRI. ARASHAD ANSARI,
B.Com, L.L.M.,
Addl. Civil Judge & JMFC,
Jamkhandi.

Dated this 12th day of July – 2024

O.S. No.24/2024

1. Shri.Umesh Yallappa Kori,
Age: 52 years, Occ: Agriculture,
R/o. Hulyal village,
Tq: Jamkhandi, Dist: Bagalkot.

..... Plaintiff.

(By Shri.S.R.K., Advocate)

Vs.

1. Shri.Lachchappa S/o Siddappa Hebbalatti,
Age: 47 years, Occ: Construction work,
R/o. Inam Hanchanal R.C., Hulyal,
Tq: Jamkhandi, Dist: Bagalkot.

..... Defendant.

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

I. A. No.I

1. Shri.Umesh Yallappa Kori,

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

1. Shri.Lachchappa S/o Siddappa Hebbalatti,

.....Opponent/Defendant.

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Sl. No.	Details	Particulars
1	Provision under which the applications are filed	Under Order 39 Rule 1 and 2 R/w Section 151 of CPC
2	Relief sought for	Ad-interim Temporary Injunction Order
3	The date on which the application is filed	06-01-2024
4	Number of the applications	I.A.No.I
5	The date on which the objections are filed by the different opponent/s	
6	The date on which the orders were passed on the said application/s.	12-07-2024

**ORDER ON I.A.NO.I FILED BY THE
APPLICANT/PLAINTIFF UNDER ORDER 39
RULE 1 AND 2 R/W SECTION 151 OF CPC**

This application is filed by the applicant/plaintiff seeking order of temporary injunction against the

defendant from alienating suit schedule property or creating any charge over the same till disposal of the suit. For the reasons stated in the accompanying affidavit.

2. On the other hand defendant objected the present application and denied all the averments made in the application and prayed to reject the application.

3. Heard the arguments of both the learned counsels and also perused the records placed before this court.

4. The points that arise for my consideration is as under :

- 1) Whether plaintiff has made out prima-facie case to grant the temporary injunction in his favour?
- 2) Whether the balance of convenience lies in favour of plaintiff?
- 3) Whether the plaintiff proves that, irreparable loss would be caused to him if temporary injunction is not granted ?
- 4) What Order?

5. My findings to the above 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;

: R E A S O N S :

6. **Point No.1 AND 2:-** For the sake of convenience and to avoid repetition of facts, these two points are taken up together for common discussion.

7. It is the specific case of plaintiff that, he filed the present suit for specific performance of contract. The defendant has executed a agreement of sale in respect of suit schedule property. Now it is learnt that in order defraud and to make fail in this suit. The defendant is hurry to alienate the suit land illegally. If the defendant is not restrained and if he succeeds in his illegal acts plaintiff will suffer heavy loss and injury which cannot be compensated in any terms. Hence it is necessary to restrain the defendant as prayed.

8. On the other hand it is the contention of the defendant is that, he admits sale agreement but denied that it is executed in respect of agreement of sale. It is contended that the agreement of sale is executed for the security purpose of loan transaction. Therefore executing the sale deed or handed over the possession of the suit property will not arise. On these grounds prayed to reject the application. In order to prove to grant temporary injunction the court has to consider 1) prima-facie case. Looking to the plaint averments as well as material available wherein it is contended that both plaintiff and defendant are entered into a contract. Thus it is sufficient to show that plaintiff has got prima-facie case. Another basis principle is that balance of convenience and inconvenience has to be looked into along with to whom irreparable loss and injury would be caused. The defendant has admittedly executed sale agreement but it is denied that the agreement is executed in respect of sale. On the contrary it is contended that the suit agreement was executed for security purpose of loan

transaction. Therefore if temporary injunction is not granted plaintiff will suffer irreparable loss and injury. The balance of convenience also lies in his favour. The contentions raised by the plaintiff and defendant needs full fledged trial. If the temporary injunction as prayed is not granted it will leads to multiplicity of proceedings. Hence for the above said reasons, I answer Point No.1 and 2 in the '**Affirmative**'.

9. **Point No.3:-** As discussed in Point No.1 and 2 irreparable loss and injury would be caused to the plaintiff in case of refusing of grant of temporary injunction. Thus I answer Point No.3 in the '**Affirmative**'.

10. **Point No.4:-** For the reasons and findings given to Point No.1 to 3, I proceed to pass the following :

: O R D E R :

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

Defendant is hereby restrained by an order of temporary injunction

from alienating or creating charge over suit schedule property to anybody else in any manner till disposal of the suit.

No order as to costs.

*(Dictated to the Stenographer directly on computer and typed by him, and corrected, printout taken, signed by me and then pronounced in the open court on this the **12th day of July - 2024**)*

Sd/-

(Arashad Ansari)
Addl. Civil Judge & JMFC,
Jamkhandi.