

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

**PRESENT**

**Smt.Shreedevi,**  
**B.Com LLB,**  
Addl. Civil Judge & JMFC,  
Jamkhandi.

**Dated this the 18<sup>th</sup> day of July – 2025**

**O.S. No.228/2022**

1. Shri.Amasidda S/o Sidaraya Lonar @ Lonari,  
Age: 38 years, Occ: Agriculture,  
R/o. Gadyal village,  
Tq: Jamkhandi, Dist: Bagalkot  
.....Plaintiff.

**(By Shri.D.T.B., Advocate)**

**- Vs -**

1. Shri.Adivappa S/o Bandu Lonari @ Lonar,  
Age: 63 years, Occ: Agriculture,  
R/o. Gadyal village,  
Tq: Jamkhandi, Dist: Bagalkot  
and Others.  
.....Defendants.

**(D-1 to D-3 - By Shri.G.I.H., Advocate)**

**I.A.No.VI**

1. Shri.Amasidda S/o Sidaraya Lonar @ Lonari,  
.....Applicant/Original Plaintiff.

**- Vs -**

1. Shri.Adivappa S/o Bandu Lonari @ Lonar,  
and Others.  
.....Opponents/Original Defendants.

Sl. No.	Details	Particulars
1	Provision under which the application is filed	Under Order XXXVIII Rule 1, 2 and 5 R/w Section 151 of CPC
2	Relief sought for	Defendants to furnish security for their appearance
3	The date on which the application is filed	21-01-2025
4	Number of the applications	I.A.No.VI
5	Stage of the case	For hearing
6	The date on which the objections are filed by the different opponent/s	-
7	The date on which the orders were passed on the said application/s.	18-07-2025

### **ORDER ON I.A. NO.6**

The counsel for the plaintiff has filed an application under Order 38 Rules 1, 2 and 5 R/w Section 151 of the CPC, seeking directions to the defendants to furnish security for their appearance.

2. In the accompanying affidavit, the plaintiff submits that he has filed a suit against the defendants seeking the relief of specific performance of a contract. It is stated that the defendants have no other property except the suit schedule property. The defendants are attempting to create a charge to the extent of ₹15,00,000/- from the PKPS with the intention of defeating the plaintiff's claim. Hence, the plaintiff prays that directions be issued to the defendants to furnish security for their appearance and in the event of their failure to do so, to order attachment of the landed property bearing R.S. No.127/1C, measuring 01 acre 34 guntas, situated at Gadyal village, Taluka: Jamkhandi, District: Bagalkot.

3. The counsel for defendants has not filed objection to I.A. No.6.

4. Heard counsel appearing for plaintiff and perused materials available on record. The following points have arise for determination;

**P O I N T S**

1. Whether the application under order XXXVIII Rule 1, 2 and 5 R/w Section 151 of CPC filed by the plaintiff is deserves to be allowed?
2. What order?

5. This court answered the above points are as under;

**Point No.1:-** In the Negative.

**Point No.2:-** As per final order for the following;

**:: R E A S O N S ::**

6. **Point No.1:-** I am of the opinion that it is not necessary to repeat the entire case of the parties here, as the same has already been narrated at the outset of this order.

7. The plaintiff apprehends that the defendants are attempting to alienate the suit schedule property with the intent to defeat his claim. In support of this contention, the plaintiff has filed a copy of a mortgage deed. The said mortgage deed pertains to property bearing R.S. No.127/4, measuring 01 acre and 34 guntas. Generally, in a mortgage, only an interest in the property is transferred, and not the

ownership. The plaintiff is the absolute owner of his property and has every right to deal with it in accordance with law. Therefore, the plaintiff is at liberty to transfer his interest in the property. Even if the plaintiff intends to transfer the suit schedule property, any such transferee would be bound by the outcome of the present suit, in accordance with Section 52 of the Transfer of Property Act (*doctrine of lis-pendens*). Furthermore, a temporary injunction has already been granted by this Court restraining the defendants from alienating the suit schedule property. In view of the above, this Court is of the opinion that there is no necessity at this stage to direct the defendants to furnish security for their appearance, as the plaintiff is still required to prove the existence and enforceability of the alleged agreement of sale. Accordingly, this Court answers **Point No.1 in the 'Negative'**.

8. **Point No.2:-** In view of above discussion this court proceeds to pass the following:

**: ORDER :**

The I.A. No.VI filed by the plaintiff  
U/o 38 Rule 1, 2 and 5 is hereby  
rejected.

No order as to cost.

*(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 **18<sup>th</sup> day of July - 2025**)*

**Sd/-  
(Smt.Shreedevi),  
Addl. Civil Judge & JMFC,  
Jamkhandi.**