

KABR310005402008



**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE & J.M.F.C.,
AT DEVANAHALLI.**

PRESENT

SRI. PRAVEEN NAYAK, LLM.,
Prl. Senior Civil Judge & J.M.F.C.,
Devanahalli.

Dated this day of 30th April, 2026

O.S.No.582/2008

BETWEEN:

Smt. B. Jyothi Prasad : **Plaintiff**
S/o B. Krishnaiah Shetty

(Plt. - By Sri.R.A., Advocate)

AND:

Sri. Patalappa : **Defendants**
S/o Late Chikkamunishamappa and others

(Deft. 1 & 2 - By Sri.K.N.C. Advocate)

(Deft.3,4 - Exparte)

(P.Deft. 6- By Sri. L.N.T., Advocate)

(P.Deft.5- Absent)

**_*_

Provision under which the application is filed	under Order XXXIX Rule 1 and 2 R/w. Section 151 of C.P.C
--	--



ii	Relief sought for	Temporary Injunction
iii	The date on which the application is filed	03-01-2026
iv	Number of the application	I.A.No.15
v	Date of filing objection	04-03-2026
vi	Date of Pronouncement of Order	30-04-2026

Sd/-
(PRAVEEN NAYAK)
Prl. Senior Civil Judge & J.M.F.C.,
Devanahalli.

ORDER ON I.A. No.XV

The instant application has been filed by the counsel for plaintiff under Order XXXIX Rule 1 and 2 R/w. Section 151 of C.P.C, seeking grant of ad-interim order of Temporary Injunction to restrain the proposed defendant No.7, his agents or anybody claiming through him from alienating or creating charge in respect of item No.2 property till disposal of the suit.

2. In the affidavit accompanying the application, the plaintiff has stated he has filed the suit for Specific Performance of Contract and other consequential reliefs. During the lifetime of Venkatesh he purchased the item No.2 property from the defendants No.1 and 2



through registered sale deed dated 07-06-2007. The plaintiff came to know about the alienation made by defendants No.1 and 2 in favour of Venkatesh. He died by leaving behind defendants No.3 and 4. The defendants No.1 and 2 filed additional written statement, wherein they have mentioned that during the lifetime of Venkatesh he gifted the property in favour of his daughter Shwetha. She is the proposed defendant No.5 herein. She has received the property as per gift deed dated 24-11-2016. It is also noticed that the said Shwetha along with her children sold the property in favour of defendant No.6 as per registered Sale Deed dated 03-09-2020. The matter was posted for hearing on I.A.No. 13 and immediately the proposed defendant No.6 came up with an application by stating that he has sold the property on 02-09-2025 in favour of the proposed defendant No.7. There is every chance of alienation of the property by proposed defendant No.7. If the Temporary Injunction is not granted, great hardship will be caused to the plaintiff. Hence, prayed to allow the application.

3. The application is opposed by the proposed defendant No.7 by stating that the same is not maintainable under law. It is stated that the plaintiff has suppressed material facts before this court. The defendant No.1 has filed detailed written statement. The suit is filed for the relief of Specific Performance of agreement of sale against



the defendants. The plaintiff has made false statements on oath and came up with unclean hands. Sy.No.206/2 measuring 20 guntas and 206/3 measuring 20 guntas belong to one M.V. Shwetha. She sold the property in favour of of Nalluri Shravya through registered Sale Deed dated 30-09-2020. She was in possession and enjoyment of the property and sold the property in favour of the proposed defendant No.7 as per Sale Deed dated 02-09-2025. The application is not maintainable under law. Hence, prayed to reject the application with cost.

4. Heard both sides.

5. The following points would arise for my consideration:

1. Whether the plaintiff proves that he has got prima-facie case and the balance of convenience tilts in his favour to pass an order of ad-interim injunction on I.A. No.XV?
2. Whether the plaintiff proves that he will suffer irreparable loss and hardship if temporary injunction order has not been passed on I.A. No.XV?



3. What order ?

6. My answer to the above points are as follows:

Points Nos.1 & 2 : **In the Negative**

Point No.3 : **As per final Order
for the following**

REASONS

7. Point No.1: In order to prove his prima facie case, the plaintiff has to prove his prima facie right over the suit schedule property. This is a suit for Specific Performance of Contract. The plaintiff has filed the present suit against the original defendants by claiming that they have executed an agreement of sale dated 28-03-2005 in favour of him in respect of the suit schedule properties by agreeing to sell the same for a consideration amount of Rs.30,72,750/-. It is further alleged that an amount of Rs.3,00,000/- has been paid by the plaintiff in favour of the defendants. It is pertinent to note here that as per the plaintiff himself the balance consideration due is Rs.27,72,750/-. The amount is not deposited before this court. The suit has been pending from the year 2008. It is the clear case of the plaintiff that during the pendency of the suit, there are several transactions took place. One Shwetha being the daughter of Venkatesh has acquired the property as per registered gift deed dated



24-11-2016. It is also claimed that the said Shwetha and her family members have sold the property in favour of proposed defendant No.6 as per registered Sale Deed dated 03-09-2020. The proposed defendant No.7 has purchased the property i.e, item No.2 property as per Sale Deed dated 02-09-2025. It shows that there were earlier two transactions in respect of the suit item No.2 property during the pendency of the suit. The gift deed of the year 2016 is a registered document. The present application came to be filed in the year 2026 against the proposed defendant No.7. It is settled law that no injunction shall be granted against proposed defendant, who is not a party to the suit.

8. The proposed defendant No.7 appeared through his counsel and filed objection to the present application. The proposed defendant No.7 was impleaded as defendant No.5 in this suit. Accordingly, the plaint came to be amended.

9. The learned counsel for the plaintiff has relied upon the following decisions:-

- 1) AIR 2005 SUPREME COURT 104
- 2) 2009 AIR SCW 6454



I have gone through the above decisions with due respect. The first decision is in respect of the case where the court has refused to grant Temporary Injunction. It is held that no extra ordinary grounds are made out to permit the respondent to put up construction and alienate the suit schedule property. In the second decision it is held that the courts have to strike a balance between two extreme positions, whether the losses sustained by the affected parties thereby may not be possible to be redeemed. The decision is in respect of the aspect of balance of convenience. The facts and circumstances of the present case is completely different and the decisions are not applicable to the case on hand.

10. The learned counsel for the defendant No.5 has relied upon the following decisions:

- 1) 2020 0 Supreme (SC) 4
- 2) 2013 0 Supreme (SC) 799
- 3) 2025 0 Supreme (SC) 593
- 4) 2025 3 CurCC 12

I have gone through the above decisions with due respect. In the above decisions, it is clearly held that the existence of prima facie



case, the balance of convenience and irreparable injury shall be considered along with conduct of the party while deciding an application under Order 39 Rule 1 and 2 of C.P.C. The delay in cases where, though the suit is within the period of limitation, to be considered. It is also held that when there is absence of the relief of declaration for termination/ cancellation of the agreement, the suit for Specific Performance of Contract is not maintainable. On going through the above Judgments, it is crystal clear that the conduct of party shall also be considered while granting the Temporary Injunction. It is also clear that the question of limitation shall also be an aspect for rejection of application. In this case, the said Shwetha has acquired the property through registered gift deed of the year 2016. In **Umadevi and others V/s Anandkumar and others**, it is clearly held by relying upon the decision reported in **(2012) 1 SCC 656, Suraj Lamp Industries Private Limited V/s State of Hariyana and others** that the registration of document gives notice to the world that such a document has been executed. The registration provides safety and security to the transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to the documents. In view of the above decision, it is clear that as per Section 3 of Transfer of Property Act, the registration gives constructive notice to the public about execution of the document.



Therefore, there is clear indication that the question of limitation is involved in so far as filing of the present application is concerned. Moreover, no injunction shall be granted against proposed defendant and the present application came to be filed against the proposed defendant No.7, which is premature. One more aspect covered by the above decisions is that in absence of declarative reliefs in respect of the instruments in a suit for Specific Performance of Contract, the prayer of the plaintiff can not be considered. In this case, the plaintiff has not sought any relief of declaration in respect of the gift deeds standing in the name of Shwetha and the subsequent sale deeds standing in favour of the proposed defendant No.6 and 7.

11. On going through the entire materials on record, there is clear indication that several transactions took place during the pendency of the suit. It is settled law that as per Section 52 of Transfer of property Act any transaction took place during the pendency of the suit is hit by principle of lis pendens. If any alienation is made by the proposed defendant No.5 in favour of 3rd party, the same is subject to out come of the present suit. Accordingly, there is no prima facie case in favour of the plaintiff and the balance of convenience does not tilt in his favour. **Hence, I answer Point No.1 in the Negative.**



12. Point No.2: While answering point No.1 it is held that there is no prima facie in favour of plaintiff. The proposed defendant No.7 has purchased the property for valuable sale consideration. The plaintiff slept over his right from the year 2016 as there was a registered gift deed taken place in favour of Shwetha. Thereby, the plaintiff has allowed the subsequent transactions to take place in the year 2020 and 2025. The proposed defendant No.7 has invested huge money and if the Temporary Injunction is granted at this stage, he will definitely suffer irreparable harm and injury. The matter has reached the final stage and when the case was posted for cross examination of DW.1, the plaintiff has recalled the PW.1 for further chief examination. The conduct of the plaintiff in delaying the suit shall also be considered. Therefore, no hardship will be caused to the plaintiff if the Temporary Injunction is not granted. Thus, the plaintiff has not made out grounds to grant the Temporary Injunction. **Hence, I answer point No.2 in the Negative.**

13. Point No.3: In view of the above findings, this court proceed to pass the following:



ORDER

I.A. No.XV filed by the plaintiff
under Order XXXIX Rule 1 and 2 R/w.
Section 151 of C.P.C, is rejected.
No order as to cost.

(Dictated to the Stenographer, transcribed and computerized by her, same is corrected and then pronounced by me in the open court on this the 30th Day of April, 2026).

Sd/-
(PRAVEEN NAYAK)
Prl. Senior Civil Judge & J.M.F.C.,
Devanahalli.