

KABR310012192016



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 03rd March, 2026

O.S.No.6/2017

BETWEEN:

Sri. Y. Ravi @ Ravikumar : **Plaintiff**
S/o Yellappa

(Plt. - By Sri.T.K.S., Advocate)

AND:

Smt. K. Roopa : **Defendant**
W/o M. Amarendra

(Deft.- By Sri. D.N.N., Advocate)

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	Provision under which the application is filed	under Order XXXVIII Rule 5 of C.P.C
ii	Relief sought for	For attachment before



		Judgment
iii	The date on which the application is filed	05-01-2017
iv	Number of the application	I.A.No.II
v	Date of filing objection	Nil
vi	Date of Pronouncement of Order	03-03-2026

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

ORDER ON I.A. No.II

The instant application has been filed by the counsel for plaintiff under Order XXXVIII Rule 5 of C.P.C, for attachment before Judgment.

2. In the affidavit accompanying the application, the plaintiff has stated that he has filed the suit for recovery of money. The defendant is the family friend of the plaintiff. The defendant requested the plaintiff for financial help and availed loan of Rs.20,00,000/-. The defendant offered the immovable property bearing khaneshumari No. 2770 of Vijayapura Town as security. The defendant agreed to execute the deed of deposit of title deeds. The defendant has failed to repay the amount. Therefore, the plaintiff has filed the present suit for recovery of the loan amount. The plaintiff issued legal notice



dated 14-08-2016. The defendant is trying to dispose off the suit property and create charge over the same. If the property has been alienated, the plaintiff will not be able to recover the amount. Hence, prayed to allow the application.

3. In application is not opposed by the defendant by filing objection.

4. Heard counsel for plaintiff. The counsel for defendant failed to address his arguments.

5. **The following points would arise for my consideration:**

1. Whether the plaintiff has made out grounds to allow the application
2. What order ?

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

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

Point No.2 : **As per final Order
for the following**

REASONS



7. **Point No.1:** This is an application filed for attachment of property before Judgment. As per Order 38 Rule 5 of C.P.C on an affidavit or otherwise the defendant satisfies the court that the property to be attached is about to be disposed off or removed from the local limits of the jurisdiction of the court, the court may attach the property before Judgment. The plaintiff shall specify the property required to be attached. The property required to be attached without satisfying Order 38 Rule 5 (1) of C.P.C shall be void. **In AIR 1951 Kolkata 156** 14 guiding principles are laid down for attachment of property before Judgment. In this case, the plaintiff has stated in the affidavit that the defendant is trying to alienate the suit property. In this regard, this court has already passed order on I.A.No.1 by restraining the defendant from alienating the suit schedule property. Therefore, any alienation during the pendency of the suit is covered under Section 52 of Transfer of Property Act, as well as the order passed by this court on I.A.No.1. Though, the plaintiff has stated that the defendant is trying to dispose off the suit property, it appears that from the year 2016 there is no such alienation has been made by the defendant. Moreover, the application does not satisfy Order 38 Rule 5 (1) of the C.P.C as well 14 guiding principles laid down in the decision referred above. It is to be noted here that the application came to be filed in the year 2017 and the plaintiff is pressing on the application in



the year 2025, when the matter is posted for arguments. Therefore, I am of the considered opinion that no grounds are made out for granting relief as sought in I.A.No. 2. **Hence, I answer Point No.1 in the Negative.**

8. Point No.2 : In view of the above findings, this court proceed to pass the following:

ORDER

I.A. No.II filed by the plaintiff
under Order XXXVIII Rule 5 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 03rd Day of March, 2026).

Sd/-

(PRAVEEN NAYAK)

Prl. Senior Civil Judge & J.M.F.C.,
Devanahalli.