

KABR320050922023



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE AND
JMFC.,AT DEVANAHALLI**

Present: Sri. PRATHAP KUMAR. N.,**B.A. L.L.B.,**
Prl. Civil Judge & JMFC.,
Devanahalli.

Dated this the 3rd day of March, 2025

O.S.No.500/2023

Plaintiff : Sri. Munikrishna

V/s

Defendant : Smt. Hulluramma & Others.

PARTIES IN I.A. No.III

**Applicant/
Plaintiff** : Sri. Munikrishna
S/o Late Munishamappa,
Aged about 65 years,
R/at Marasandra Village,
Jala Hobli, Yelahanka Taluk.

-V/s-

**Opponent/
defendant** : Smt. Hulluramma
W/o Late Munikrishna,
Aged about 65 years,

R/at Marasandra Village,
Mandur Post, Jala Hobli,
Yelahanka Taluk & Others.

ORDER ON I.A. No.III

This order arising out of I.A No.III filed by plaintiff U/o 39 Rule 1 and 2 R/w Sec.151 of CPC seeking restraining the defendants their men, agents, servants or anybody claiming through or them from putting up construction over the suit schedule property till pending disposal of suit, in the interest of justice and equity.

2. In support of application, the above suit for the relief of specific performance of contract and for other consequential reliefs against defendants in respect of suit schedule property. The averments made in plaint are read as part and parcel of this affidavit to avoid repetitions. One Late Munikrishnappa S/o Late Muniyappa being absolute owner in lawful possession and enjoyment of suit schedule property viz., the property bearing Sy.No.15/7 measuring to an extent of 0-09 guntas out of total extent of 1 acre 0-19 guntas situated at Marasandra Village, Jala Hobli, Bengaluru North expressed his interest to sell the same and I expressed my interest to purchase the same. The

description of said property is fully given in schedule hereunder and hereinafter called and referred to as suit schedule property. The said late Munikrishnappa acquired suit schedule property by virtue of oral partition acted upon amongst his joint family members. The concerned revenue records were not members. The concerned revenue records were not effected in his favour and continued in favour of his father late. Muniyappa till date. In pursuance of fruitful discussions sale price of schedule property was arrived at Rs.1,000/- for which said late Munikrishnappa S/o Late Muniyappa agreed. As such the said Munikrishnappa S/o Late Muniyappa entered into an agreement of sale dated 19.11.1983 agreeing to sell suit schedule property to me and on the very same day the said Late. Munikrishnappa S/o late Muniyappa received entire sale consideration of Rs.1,000/- physical possession of suit schedule property. However, the brothers of the said late Munikrishnappa duly signed as witnesses to subject sale agreement dated 19.11.1983. The said late Munikrishnappa S/o late Muniyappa further promised plaintiff that, he would arrange all necessary documents in respect of suit schedule property such as 11-E

sketch, khata, pahani, mutation survey sketch etc., and execute the proper and registered sale deed in my favour. Though time was not essence of contract I several times contacted and requested the said late Munikrishnappa S/o Late Muniyappa to make the necessary documents ready and execute proper and registered sale deed in my favour. But, said late Munikrishnappa S/o Late Muniyappa avoided the same with ulterior motives and finally kept quiet in this regard for the reasons best known to him. Whereas, in course of time the said Late Munikrishnappa S/o late Muniyappa expired intestate leaving behind defendants as his sole legal heirs to succeed his legal estate. Thus thereupon demise of said late Munikrishnappa S/o Muniyappa defendants stepped into the shoes of the said late Munikrishnappa S/o late Muniyappa in respect of subject sale agreement dated 19.11.1983. Thus thereupon demise of the said late Munikrishnappa S/o late Muniyappa, the plaintiff several times contacted and requested the defendants to make the necessary documents ready and execute proper and registered sale deed in his favour. But, the defendants avoided the same with ulterior motives and finally

kept quiet in this regard for the reasons best known to them. Already performed my part of contract by paying entire sale consideration to the said late Munikrishnappa S/o late Muniyappa and it is defendants who utterly failed to perform your part of contract by not coming forward with all the necessary documents to execute the proper sale deed in respect of suit schedule property in my favour. Recently, I reliably learnt that, the defendants by taking undue advantage of concerned documents still standing in favour of the said late Muniyappa, have been making hectic efforts to alienate suit schedule property in favour of 3rd persons for a higher value even though they have no right to execute sale agreement/sale deed in favour of 3rd persons over suit schedule property as I already obtained proper sale agreement from defendants and I am always ready and willing to get registered the proper sale deed in his favour. The illegal acts of defendants of trying to alienate suit schedule property is contrary to law and against to terms and conditions of sale agreement dated 19.11.1983 mentioned supra. In this context I had sent a legal notice to defendants through RPAD on 12.07.2023 calling upon them to

come and execute proper and registered sale deed in my favour and defendants duly received the said legal notices and issued an untenable reply to the same on 01.08.2023. Immediately on 10.10.2023 I finally demanded defendants to execute the proper and registered sale deed in respect of suit schedule property in his favour whereas defendants finally denied to do so. Now, the defendants by taking undue advantage of the title documents standing in their name, have been making hectic efforts to put up construction in suit schedule property without my knowledge and consent. In fact, the defendants duly handed over physical possession of suit schedule property in my favour on the date of execution of sale agreement itself. In this regard I approached the jurisdictional police to lodge complaint against the defendants. The jurisdictional police did not receive my complaint and advised me to approach this Hon'ble court as the subject matter is civil in nature. If the defendants succeed in their illegal attempts of construction in suit schedule property, I will be put to great hardship and injury and it leads to multiplicity of proceedings. Hence, this I.A. I have made out a prima-facie case and the

balance of convenience is lies in my favour. If this application is not allowed, I will be put irreparable loss and injury. On the other hand, if this application is allowed, no harm or injury would be caused to the other side. Thus, the plaintiff has filed this suit application.

3. On the other hand, the defendant has filed objection and stated that, the plaintiff filed the present suit for relief of specific performance of contract directing defendants to execute proper registered sale deed conveying right, title and interest over suit schedule property of the plaintiff relaying on the alleged sale agreement dated 19.11.1983. The entire agreement of plaintiff is hereby denied by defendants, the alleged sale agreement dated 19.11.1983 is the created one. Be pleased to read written statement of defendants as a part and parcel of this objection to avoid repetition of facts. The application filed by plaintiff U/o 39 Rule 1 & 2 of CPC restraining defendants their agents, assignees or anybody claiming through them from putting up construction in suit schedule property till pending disposal in respect of suit schedule property i.e., Sy.No.15/7, measuring to an extent of 9 guntas

situated at Marasandra Village, Jala Hobli, Bangalore North Taluk now Yelahanka Taluk is totally devoid of merits. The plaintiff is filed this suit narrating that, as well as in U/o 39 Rule 1 & 2 application in paragraph No.5 of affidavit that, Munikrishnappa S/o late Muniyappa entered into an agreement of sale dated 19.11.1983 agreeing to sale suit schedule property to plaintiff and the same day Munikrishnappa S/o late Muniyappa received sale consideration of Rs.1,000/- from plaintiff and put the plaintiff is in possession and the brothers of Munikrishnappa signed as a witness to subject sale agreement dated 19.11.1983 is hereby denied as totally false. During the lifetime of Munikrishnappa he has never executed sale agreement in favour of anybody. If this Hon'ble Court peruse plaint averments the alleged sale agreement relaying by plaintiff dated 19.11.1983 the suit for the year 2024, after more than 41 years that, to after death of Munikrishnappa now the plaintiff approaching this Hon'ble court based on the false documents for the relief of specific performance is not maintainable. The defendants and their uncles are in possession and enjoyment of suit schedule property of plaintiff

cultivating the land under such circumstances based on the false document plaintiff such an application to give new scope to the false document is not sustainable. The suit of the plaintiff itself is not maintainable under such circumstances without any sufficient material plaintiff is filing an application restraining defendants putting up the construction in suit schedule property is not sustainable. The plaintiff by filing such an application trying to divert the main issue and trying to project plaintiff is in possession. The application itself clearly says that, the defendants are in possession contrary to this plaintiff has sought for the prayer (c) granting permanent injunction restraining defendants, their agents, assignees, attorney holders or anybody claiming through them from interfering with the peaceful possession and enjoyment of plaintiff over suit schedule property. The prayer and the interim application are totally against to each other on this ground alone the application filed by plaintiff has to be rejected. On this ground also application may be rejected.

4. Heard on arguments plaintiff side and perused the materials on record.

5. Upon perusal of the records and documents, the following points are arisen for my consideration.

:-POINTS:-

- 1. Whether the prima facie case lies in favor of plaintiff ?**
 - 2. Whether balance of convenience lies in favor of plaintiff ?**
 - 3. Whether any irreparable injury or hardship which cannot be compensated in terms of money would be caused to the plaintiff in the event of refusal of temporary injunction sought?**
 - 4. What order ?**
6. My findings on the above points are as follows:

Point No.1 : In the Negative

Point No.2 : In the Negative

Point No.3 : In the Negative

Point No.4 : As per final order for the following:-

REASONS

7. **Point No.1:-** The plaintiff has filed this suit against defendant seeking relief of specific performance of the contract and such other reliefs as court deems fit.

8. At this stage, without going to the merits of the case and holding mini trial, this court has considered the aspect prima-facie case. At this stage, this court makes it clear that, this court is looking towards prima-facie case and not prima-facie title. It is settled principal law that, at the time dispose the temporary injunction application, the court cannot go into prima-facie case title and only to consider whether the plaintiff has made out a prima facie case for granting interim relief.

9. The primarily purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and prejudice, likely to be caused to the plaintiff if the relief is refused and injury and prejudice likely to be caused to the defendants, if the relief is granted. The underlying object of granting temporary injection is to maintain and preserve status-quo at the time of

institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injuries.

10. The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side. The 1st rule is that, the applicant must make out a prima-facie in support of the right claimed by him. The court must be satisfied that, there is a bonafide dispute raised by the applicant that, there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by the him. The existence of a prima-facie right and infraction of such right is a condition precedent for grant of temporary injunction.

11. In support of the application the plaintiff has produced unregistered agreement of sale dated 19.11.1983. On perusal of the agreement of sale it clearly depict that, the

defendants being a owners of suit schedule property has been handed over possession of suit schedule property in favour of plaintiff on 19.11.1983. In view of the said agreement of sale and pleadings of the plaintiff it clearly depict that, the plaintiff is in peaceful possession and enjoyment of suit schedule property. Under such circumstances, the question of construction house by the defendants does not arise at all.

12. On perusal of the record, the plaintiff has squarely relied on his claim only on agreement of sale dated 19.11.1983. Since 1983 to 2023 i.e., more than 40 years the plaintiff kept quiet and not proceed on the basis of agreement of sale dated 19.11.1983. However, the plaintiff has filed this application by contending that, the defendants are going to construct house in the suit schedule property. Wherein, the application is contrary to the pleadings and documents relied by the plaintiff. Therefore, the plaintiff is failed to prove prima-facie case in his favour.

13. Hon'ble Apex court held that, while applying discretion Court should verified three test which is prima facie case, balance of in convenience, irreparable loss if decline to

granting injunction. *In case reported in **1995(5) SCC 545** between **(Gujarat Bottling Co. Ltd. and others V/s. Coca Cola Co. and others)**. Held that;*

B. Civil Procedure Code, 1908 - Or.39 - Interlocutory injunction - Grant - discretion of court - Factors to be considered in exercise of discretion - Balance of convenience to be seen - Being an equitable relief, conduct of party seeking the injunction or the party seeking court's interference with the order of injunction must be fair - Undertaking can be obtained from the party in whose favour injunction is granted to compensate the other party in case of decision in favour of that party - Equity.

C. Specific Relief Act, 1963 - S. 42 - Injunction enforcing negative stipulation in contract - Discretion of court - When can injunction be refused

Held: The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests - (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at

the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience" lies. In order to protect the defendant while granting an interlocutory injunction in his favour the court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial.

Under Order 39 of the Code of Civil Procedure, jurisdiction of the court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the court has to show that he himself was not at fault and that he himself was not responsible for bringing

about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. Those considerations will arise not only in respect of the person who seeks an order of injunction under Order 39 Rule 1 or Rule 2 of the Code of Civil Procedure, but also in respect of the party approaching the court for vacating the ad interim or temporary injunction order already granted in the pending suit or proceedings.

Another decision of Hon'ble Apex court reported in 2006 (5) SCC 282 between (Seema Arshad Zaheer and others V/s. Municipal Corpn. of Greater Mumbai and others) Held that;

Civil Procedure Code, 1908 - Or. 39 R.1 and Or. 43 R.1(r) - Temporary injunction - When to be granted - Interference by appellate court with the discretion of the trial court when justified - Law in general and law in cases of orders for demolition of buildings, restated - In cases of demolition of buildings where the plaintiff fails to make out a prima facie case for grant of an injunction may not be granted merely on the ground of sympathy or hardship - Where the lower court acts arbitrarily, capriciously or perversely in the exercise of its discretion, the appellate court will interfere - Granting temporary injunction on the basis of "no material" or refusal to grant temporary injunction

are instances of such exercise of discretion - The expression "no material" for the said purpose, held, includes cases where there is not relevant material or where the material, taken as a whole, is not reasonable capable of supporting the exercise of discretion - On facts, held, there was no material in the present case to make out a prima facie case for the grant of temporary injunction against the order of the Commissioner of the Municipal Corporation for the removal/pulling down of the structures he had found to be unauthorized and illegal -Hence, High Court rightly interfered and vacated the temporary injunction granted by the trial court - Practice and Procedure - Interim/Interlocutory orders - Temporary injunction - Town Planning - Unauthorized construction - Municipal Corporation's order for removal/pulling down of - Grant of temporary injunction against, by court - When permissible - Municipalities - Bombay Municipal Corporation Act, 1888 (3 of 1888), S. 351 - Words and phrases - "no material"

Held: The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff; (i) existence of a prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of the plaintiff's right is compared with or weighed against the need for protection of the

defendant's rights or likely infringement of the defendant's rights, the balance of convenience tilting in favour of the plaintiff; and (iii) clear possibility of irreparable injury being cause to the plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands.

The principal laid down by Hon'ble Apex court in above referred decision, the plaintiff is fail to established three test. On these grounds plaintiff is not entitled any interim injunction against defendants. It is too pre-matured to disbelieve the contention taken by learned counsel by plaintiff. Therefore, in my opinion the plaintiff has failed to prove prima-facia case in his favour. **Hence, my answer to point No.1 in the Negative.**

14. **Point No.2:-** The existence of prima-facia case in these matters of granting injunction is really harbinger to investigate other points as per principal cited in the decision of ***Gourishankar Swamigalu has reported in ILR 1989 Karnataka 1701*** and it has been further held that if there is

no prima-facia case at all or the case put forward is so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself. The relief of injunction is remedy in equity hence such relief must be bestowed only on whose reputation and hands are both spotlessly clean. In the light of discussion made about I am of the opinion that balance of convenience does not lies in favour of plaintiff. **Hence, my answer to the point No.2 in the Negative.**

15. **Point No.3:-** If any temporary injunction is granted the plaintiffs should be irreparable injury or hardship which cannot be compensated in terms of money. Therefore, the plaintiff is not loss or any hardship compensated by in terms of money. **Hence, my answer to point No.3 in the Negative.**

16. **Point No.4:-** In view of my answer on point Nos.1 to 3, I passed the following:-

ORDER

**IA No.III filed by the plaintiff Under
Order 39 Rule 1 and 2 R/w Section 151
of C.P.C is hereby dismissed with cost.**

(Dictated to Stenographer on computer directly by her, then same is corrected and pronounced by me in the open court on this the **3rd day of March, 2025.**)

(Sri. Prathap Kumar. N)
Pri. Civil Judge and JMFC.,
Devanahalli.

