

**IN THE COURT OF CIVIL JUDGE & JMFC,
AT JAGALURU**

**Present: SRI.CHETHAN. R,
B.A.L., LL.B.
Civil Judge & JMFC, Jagaluru.**

Dated this 15th Day of March 2024

O.S.No. 24/2024

M/s Suzlon Infrastructure Services Limited,
which company is amalgamated with
M/s Suzlon Energy Limited,Plaintiff

V/s

Sri K.R.PrakashDefendant

I.A.No.I

M/s Suzlon Infrastructure Services Limited,
which company is amalgamated with
M/s Suzlon Energy Limited,
.....Plaintiff/
Applicant.

(Sri Prashanth Patil M.K – Advocate)

Sri K.R. Prakash S/o Revanasiddappa,
Occ: Agriculturist, Age: 46 years,
R/o Pallagatti village,
Tal: Jagalur, Dist: Davanagere.Defendant/
Opponent.

(Sri. K. M. Basavarajappa - Advocate)

PARTICULARS

I	Provision under which the application is filed	Order XXXIX Rule 1 and 2 R/w Sec.151 of C.P.C.
ii	Relief sought for	Temporary Injunction order against the defendant
iii	The date on which the application is filed	Along with suit
iv	Number of the application	I.A.No.I
v	The date on which the objections are filed by different opponents	11.03.2024
vi	The date on which the orders were passed on the said application	15.03.2024

:- ORDER ON I.A. No. I:-

The learned counsel for plaintiff has filed I.A. No. I U/Order 39 Rule 1 and 2 R/w Section 151 CPC to restrain the defendant or any other person or persons claiming under the defendant from alienating the suit schedule properties by way of sale, partition,

relinquishment deed, family settlements, gift, lease, mortgage, or any other form alienation and thereby creating any encumbrance on the suit schedule property till disposal of the suit.

2. The said application is accompanied by the affidavit of the plaintiff stating that the plaintiff is company registered under companies act 1956, doing operation and maintenance of wind turbines and has carrying on its lawful activities at various places in India. It is further stated that suit schedule property is in the name of defendant, he was willing to sell suit schedule property, and the plaintiff was in search of land to establish Electric Switching Station 25 feet x 40 feet totally 1000 Square feet at Pallagatte Village, then the plaintiff approached the defendant to purchase the suit schedule property. In furtherance of sale, the plaintiff has paid total sale consideration of Rs 4,65,000/- (Rupees Four Lakhs Sixty

Five Thousand Only) through two cheques on different dates i.e 21/11/2009 and 12/02/2010 and executed the agreement to sale on 25/02/2011.

3. It is further stated that there were various terms and conditions incorporated in the said agreement and the defendant was binding to the said terms and conditions. On 09/08/2023, the plaintiff has sent legal notice to defendant calling upon him to perform his part of contract, but the defendant denied the same by sending the reply notice on 20/08/2023, the defendant know trying to alienate the suit schedule property only to avoid the specific performance of contract. Hence, plaintiff had filed this suit. It is further stated that plaintiff has made prima facie case, balance of convenience lies in their favour. If IA is not allowed the plaintiff will be put to irreparable loss. Accordingly, the plaintiff prayed to allow I.A.No.I.

4. The learned counsel for defendant has filed objections to I.A.No.I filed U/O 39 Rule 1 and 2 of CPC. According to the defendant the suit of the plaintiff is false, vexatious and not tenable either in eyes of law or on facts. The plaintiff have not made out any grounds for grant of interim order, the suit for specific performance of contract is filed after lapse of 13 years, hence the suit is barred by limitation. The plaintiff has not filled any documents showing the defendant is trying to alienate the suit schedule property. The defendant denied the entire averments given in the pleadings in toto. The plaintiff has admitted the ownership of the defendant in the suit schedule property hence no injunctive orders cannot be passed against the true owner. It is contended that the plaintiff has slept over his rights for more than 12 years hence the relief of part performance cannot entertained. No cause of action to file this suit. No point

of time the defendant intended to sale the property in fact the defendant has agreed to Lease out the schedule property only, but the plaintiff has created the said alleged agreement. If the temporary injunction is granted this defendant will be put to irreparable loss and injury and same is not granted no prejudice will be cause to the plaintiff. Hence prays to dismiss the interim application with exemplary costs.

5. Heard arguments of learned respective counsels on I.A. The counsel for plaintiff relied upon plaintiff one decision of Hon'ble Supreme Court in Civil Appeal No. 2966/2022 D.D dated 18/04/2022. The counsel for defendant also relied the two decisions of Hon'ble High court of Karnataka in 1) K.B Jayaram another V/S Navineethamma and others reported in ILR 2003 KAR 879 and 2) Kugashankar V/s Subhash Chand Goel and Others reported in ILR 2006 Kar 3689.

6. Perused the materials available on record.
7. Points that arise for consideration and determination are as under :-

-: P O I N T S :-

1. **Whether plaintiff has made out a prima-facie case?**
 2. **Whether balance of convenience lies in favour of plaintiff?**
 3. **Whether irreparable loss will be caused to plaintiff if Temporary Injunction is not granted?**
 4. **What Order?**
8. This Court answers above said points 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...

:- REASONS :-

9. Point No.1 to 3:- As all these points for consideration are inter connected to each other, in order to avoid repetition of facts and circumstances of the case all points will take up together for discussion.

10. It is the specific contention of the plaintiff company that has filed suit for the relief of specific performance of contract dated 25/02/2011 directing defendant to execute and register Sale deed in its favor and from interfering with the plaintiff peaceful possession and enjoyment of the suit schedule property.

11. Per contra it is the contention of the defendant that, the plaintiff have not made out any grounds for grant of interim order, the suit for specific performance of contract is filed after lapse of 13 years hence suit is barred by limitation. The plaintiff have not filled any

documents showing the defendant is trying to alienate the suit schedule property. The defendants denied the entire averments given in the pleadings in toto. The plaintiff have admitted the ownership of the defendant in the suit schedule property hence no injunctive orders cannot be passed against the true owner. It is contended that the plaintiff have slept over his rights for more than 12 years hence the relief of part performance cannot entertained. The alleged sale agreement is an Unregistered and not duly stamped hence it cannot be rely by the court to pass interim order. No point of time the defendant intended to sale the property in fact the defendant have agreed to Lease out the schedule property only, but the plaintiff have created the said alleged agreement. No cause of action to file this suit. The plaintiff has filed false suit based on false documents. Accordingly prays to dismiss the I.A.

12. Considering the pleading and documents on record. The plaintiff in support of his case he has produced, sale agreement dated 25/02/2011, copy of sale agreement dated 30/11/2009, Payment receipts, Copies of Cheques, Legal Notice, Reply Notice, Copy of official memorandum, Copies of Police complaint, Copies of Authority Letter, Copies of complaint and statement of defendant, Endorsement by police, RTC extracts, Grama Panchyat order.

13. On perusal of documents produced by plaintiff it discloses that the sale agreement dated 25/02/2011 was entered between the plaintiff's company and defendant for sale of suit schedule property, though the defendant deny the execution of the document, but he had admitted in the his written statement pleading to the effect that the plaintiff is in possession over the suit schedule property as on the date of the agreement, but specific

contention of the defendant that it was initially agreed to the lease the suit schedule property for three years on payment of Rs.1,55,000/- per annum, the plaintiff company asked the plaintiff to enter into lease agreement, believing the words of the plaintiff the defendant put his signature on some papers, but the company has taken undue advantage and created the alleged sale agreement. The another contention of the plaintiff company that it has performed its part of contract and it is the defendant to perform his part of contract. But the defendant contented that the sale agreement unregistered one and it is of year 2011 the plaintiff's have approached this court after lapse of 12 years, suit is barred by limitation. On perusal of the material on records contention of defendant regarding suit barred by law is a mixed question of law and fact it

has to be consider after full fledge trail, hence it cannot be look into at this stage.

14. The object of interim injunction is to keep things in status-quo, so that if at the final hearing, when the plaintiffs obtained judgment in their favour the plaintiffs will in the meanwhile have to be prevented from dealing with the properties in such way as to make that judgment in effectual. What is most important is not the probability of the success of the plaintiffs but the existence of a serious question to be decided. The Court should guard itself against mini trial.

15. Admittedly in this case the plaintiff company is in possession either by the sale agreement dated 25/02/2011 nor as per lease claimed by the defendant. At this stage, if I.A.No.1 is not allowed, the plaintiff will be put to loss and it will lead to multiplicity of

proceedings and will lead to further complications. Hence looking to facts and circumstances of case this Court is of considered opinion that plaintiff has made out a prima facie case. Balance of convenience lies in favour of plaintiffs. If I.A.No.1 is not allowed, plaintiff will be put to heavy and irreparable loss. On the other hand if I.A.No.1 is allowed, the defendant will not be put to irreparable loss. If I.A.No.1 is not allowed, plaintiff will be put to much hardship. As discussed earlier at this stage, plaintiff has made out a prima facie case. Accordingly this Court inclines to answer point no.1 to 3 in **affirmative.**

16. Point No.4: For the forgoing reasons and discussions made above and finding on the above points, I proceed to pass the following:

O R D E R

I.A No. I filed by the plaintiff under Order 39 Rule 1 and 2 CPC is hereby allowed.

The defendant or any other person or persons claiming under the defendant from alienating the suit schedule property by way of sale, partition, relinquishment deed, family settlements, gift, lease, mortgage, or any other form alienation and thereby creating any encumbrance on the suit schedule property till disposal of the suit.

Under these circumstances, no order as to costs.

(Directly dictated to the stenographer, typed by him, corrected and signed by me and then pronounced in open Court on this 15th Day of March 2024)

Sd/-

**(CHETHAN.R)
Civil Judge and JMFC,
Jagaluru.**