

**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.II

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.II
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. II:-**

The learned counsel for plaintiff has filed I.A. No. II U/Order 39 Rule 1 and 2 R/w Section 151 CPC to restrain defendant and his agents, servants and relatives not to interfering the peaceful possession of suit schedule property till disposal of 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 Sqfeet at Palgatte 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 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 defendants 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 suit is barred by limitation. The plaintiff have not filled any documents showing the defendant is trying to alinate 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. No cause of action to file this suit. 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. 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.

Perused the materials available on record.

6. 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?**
- 7. This Court answers above said points as under:-**

Point No.1 : Negative

Point No.2 : Negative

Point No.3 : Negative

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

-: R E A S O N S :-

- 8. Point No.1:-** 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.

9. 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.

10. 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.

11. 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 he plaintiff company have taken undue advantage and created the alleged sale agreement. The another contention of the plaintiff company that its has

performed its part of contract and it is the defendant to perform his part of contract. But 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 fledged trail, hence it cannot be look into at this stage.

12. On going through the averments of the I.A No.II no where the plaintiff has stated the defendant has trying to disturb its possession over the suit schedule property. The entire averments of the plaintiff in the affidavit filed in support of I.A No.II, it has stated that in order to avoid the specific performance of contract the defendant is trying to alienate but not made any specific averments regarding the alleged interference caused from the

defendant. Though the defendant has admitted that possession of the plaintiff over the suit schedule property it the duty of the defendant to evict the plaintiff with only by due process of law, in absence of specific averments this Court would unable to grant relief of injunction as prayed.

13. Under these circumstances, it is necessary to mention that it is well settled principal that the person claiming relief of part performance under Sec.53-A of Transfer of Property Act, the sale agreement shall be registered, here in the present case admittedly the sale agreement which the plaintiff's company is relying upon and claiming the relief of injunction is unregistered one document. The provision of Sec.17(1A) of Registration Act read as under:

“(1-A) The documents containing contracts to transfer for consideration, any immovable property

for the purpose of section 53A of the Transfer of Property Act, 1882, shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001, and if such documents are not registered on or after such commencement then, they shall have no effect for the purposes of the said section 53A.

On going the above said provision it is very much clear that in order to seek protection under Section 53A of Transfer of Property Act the sale agreement shall required registration. Further the Hon'ble Supreme Court in the decision Ameer Minaj V/s Diedre Elizabet Issar reported in (2018) 7 SCC 639 held that **"On a plain reading of the section 17 (1A) it is amply clear that the document containing contract to transfer the**

right, title or interest in the a immovable property for consideration is required to be registration, if party wants to rely on the same for the purpose of section 53 A of T.P act to protect its possession over the stated property. If it is not a registered document, the only consequence provided in this provision is to declare that such document shall have no effect for the purposes of the said section 53 A of 1882 act.”

14. Admittedly in this case the sale agreement dated 25/02/2011 is unregistered and the plaintiffs is claiming injunction over the suit schedule property on the basis of unregistered document which is barred as per provision of section 17 (1A) of Registration Act and Ration laid down by the Hon’ble supreme court discussed above. Therefore At this juncture without further discussion over merits of the case this court is on opinion that the

plaintiff's company has not made out prima facie case against the defendant to grant Temporary Injunction. It is also well settled principal that to claim the relief of temporary injunction one must prove three ingredients prima facie case, balance of convenience, and irreparable loss. If the plaintiff failed to prove very first ingredient of prima facie case the next ingredients that is balance of convenience and irreparable loss could not be consider. Here in this case the plaintiff's company had failed to prove the prima facie case itself, and also failed to prove that the Balance of convince lies in its favor, and no irreparable loss would caused if the interim relief claimed by the plaintiff is not granted. Hence foregoing reasons this court accordingly answer **Point No.1 to 3 are held in the Negative.**

15. 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. II filed by the
plaintiff under Order 39 Rule 1
and 2 CPC is hereby dismissed.**

**The earlier order dated
13/02/2024 passed ex-parte on IA
no II stand's vacated.**

**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.**