

**THE COURT OF PRINCIPAL SENIOR CIVIL
JUDGE & JMFC, BELTHANGADY, D.K. DISTRICT**

:PRESENT:

SRI. MANU B.K., *B.A.L., LL.M.*,
Prl. Senior Civil Judge & JMFC,
Belthangady, D.K. District

Dated, this the 19th day of March 2025

O.S./31/2024

PLAINTIFFS:

Sri. Jayakumar,
S/o. Kaliyappa,
Aged about 52 years,
One of the Partner in
“Team Four Developers”
Vignesh City Complex,
Main Road Belthangady.
Belthangady Taluk,
D.K.574 214.

(By Sri. P.K.S., Advocate)

-V/s-

DEFENDANT:

Godfrey D Cunha,
S/o. John J. D Cunha,
Aged about 72 years,
R/at Opp: Padma

Electronics,
Guruvayanakere,
Kuvettu Village,
Belthangady Taluk.
D.K.574 217.

(By Sri. Y.R.K., Advocate)

PARTIES TO I.A.No.II

<u>Applicant/Plaintiff:</u>	Sri. Jayakumar
	-V/s-
<u>Opponent/defendant:</u>	Godfrey D Cunha

**Order on I.A.No.II filed by the plaintiff
u/o XXXIX Rule 1 & 2 and section 151 of C.P.C.**

The plaintiff has filed the I.A.No.II u/o XXXIX Rule 1 & 2 and Section 151 of CPC seeking to restrain the defendant, his men, servant or any person or persons claiming through him from withdrawing any compensation amount from the Land Acquisition Officer and Authorized Officer of National Highway-73 for acquisition of suit

schedule property till disposal of the suit.

2. In the affidavit annexed to the application, the plaintiff has stated that, he is a partner of partnership firm namely “Team Four Developers”. The said firm was created as per Deed of Partnership dated:06.02.2017 and certificate of registration has been issued accordingly. Acting as a partner of the firm, the partners have entered into an agreement for purchase of schedule properties and accordingly, after mutual discussion, the partners entered into an agreement of sale with the defendant on 28.09.2017. But there was a non-alienation clause with respect to aforesaid property. Hence, the defendant has agreed to execute sale deed after completion of non-alienation period.

The total sale consideration was Rs.95,00,000/-,out of the aforesaid amount, the plaintiff has paid Rs.10,00,000/- to the defendant and agreed to pay remaining amount at the time of sale deed. However, the defendant has never tried to execute the sale deed and the suit schedule property is lying by the side of Mangaluru-Kaduru National Highway and there is likelihood of acquiring portion of the suit land for formation of roadway. As such, if the suit land is acquired for formation of Highway and if the defendant has received the compensation amount, then the amount paid by the plaintiff to the defendant may not be returned back. The plaintiff is always ready and willing to perform his part of contract. Hence, the plaintiff prays to allow

the application.

3. As against the application filed by the plaintiff, the defendant has tendered his appearance through his Advocate and filed memo adopting the written statement. In the written statement, it is stated that the defendant has not executed any agreement of sale and the defendant also denied the receipt of earnest money. The defendant has contended that, the time was fixed for performance of contract. Hence, the suit claim is barred by limitation. Therefore, the defendant sought to dismiss the application.

4. Heard the argument of learned counsel for

both side.

5. The points that arise for my consideration are;

1. Whether the plaintiff has made out a prima-facie case ?
2. Whether the balance of convenience lies in favour of plaintiff?
3. Whether the irreparable injury would be caused to the plaintiff, if an order of temporary injunction is not granted?
4. Whether the plaintiff is entitled for the reliefs claimed in the application?
5. What order?

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

Point no.1 to 4 : In the **NEGATIVE**
Point no.5 : **As per final order**

for the following:-

REASONS

7. **POINT No.1 to 4**: Since these points are interconnected and based on common set of facts, these points are taken up together for common consideration and in order to avoid repetition of facts.

8. Before embarking upon the factual matrix of this case, it is appropriate to ascertain the essential ingredients which are essential to grant a temporary injunction. As per Order XXXIX Rule 1 & 2 of CPC, to grant temporary injunction, the party who seeks the relief has to establish three essential ingredients. Those essential ingredients are Prima

facie case, balance of convenience and irreparable injury. A 'prima facie case', which necessities that as per the material placed on record, the plaintiff is likely to succeed in the final determination of the case; Generally speaking, the phrase 'prima facie case' is not a term of art and it simply signifies that at first sight the plaintiff has a strong case. According to Webster's International Dictionary, 'prima facie case' means a case established by 'prima facie evidence', which in turn means the evidence that is sufficient in law to raise a presumption of fact unless rebutted. Balance of convenience means, such that the prejudice likely to be caused to the plaintiff due to rejection of the interim relief will be higher than the inconvenience

that the defendant may face if the relief is so granted; and Irreparable injury means, if the relief is not granted, the plaintiff will face an irreversible injury that cannot be compensated in monetary terms. By keeping the above aspects as basic touchstone, now let me evaluate the material placed by the parties.

9. As per the contention of the plaintiff, it is a partnership firm and certificate of registration has been issued accordingly. To prove the aforesaid fact, the plaintiff has produced copy of Partnership Deed and Certificate of Registration. The plaintiff has contended that, he has entered into an agreement of sale with the defendant and paid advance amount. However, the defendant has

categorically denied the aforesaid contention. The main contention of the plaintiff is that there is a likelihood of acquiring the portion of suit schedule property for National Highway and the defendant is willing to claim compensation amount. However, to prove the prima facie case, the plaintiff has not produced any notification issued by the Government or National Highway Authority to show that the portion of suit schedule property is likely to be acquired for formation of National Highway. Hence, this court is of the view that the prima facie case is not made out by the plaintiff.

10. The plaintiff has contended that, they have paid advance amount, therefore, if the compensation amount is released to the defendant,

then it may not be possible for them to recover the said amount from the defendant. However, the said contention taken by the plaintiff is contrary to the plaint averments and main relief sought by the plaintiff. Apart from that, even if the National Highway Authority acquires the portion of suit land, then there would be some other portion of suit land. Therefore, if the plaintiff establish about payment of advance amount, then it can claim the said amount through the aforesaid land . As such, balance of convenience does not lies in favour of the plaintiff.

11. The plaintiff contended that, as on the date of execution of agreement of sale, the non-alienation clause was in existence, hence, the sale

deed was not executed immediately. The said aspect would clearly goes to show that the validity of agreement of sale executed during the subsistence of non-alienation period is to be ascertained in the trial. Apart from that, the defendant has clearly disputed the agreement of sale, hence the rival contentions of the parties to be ascertained in the trial.

12. The plaintiff has contended that, the National Highway authority is likely to acquire the portion of suit schedule property for formation of highway. But no material is placed to establish the aforesaid aspect. Apart from that, the National Highway authority is not a party to this case. As per amended provision of Specific Relief Act, no

injunction shall be granted with respect to Government projects. If this application is allowed and if the same is going to cause harm to the National Highway Authority to form road, then it would be contrary to the provision of Specific Relief Act. Apart from that, the National Highway Authority is not a party to the case. Moreover, no documents are placed to show that the National Highway Authority is going to acquire the portion of suit land for formation of road. Hence, no injury will be caused to the plaintiff as entire property is not going to be acquired by National Highway Authority. On the other hand, the mere execution of agreement of sale does not amounts to transfer of title. Hence, if the application is allowed, the

irreparable injury will be caused to the defendant. On the other hand, no injury will be caused to the plaintiff as there would be some more property left with respect to suit schedule property. More importantly, the plaintiff has contended that, it is a partnership firm, but no documents are placed to show that he has been authorized by other partners to prosecute the case or he is a managing partner of the said firm and he is authority to institute this case. Hence, the material reveals that the plaintiff has failed to prove prima facie case and the balance of convenience does not lies in favour and no irreparable injury will be caused to the plaintiff, if the temporarily injunction is not granted. Accordingly, I am answering point No.1 to 4 in the

NEGATIVE.

13. **POINT No.5:** In view of my findings on the point no.1 to 4, I proceed to pass the following:

ORDER

The I.A.No.II filed by the plaintiff under Order XXXIX Rule 1 & 2 and Section 151 of C.P.C is dismissed.

No order as to costs.

(Dictated to the stenographer, transcribed by her, transcript then corrected by me and pronounced in the open court on this 19th day of **March 2025**)

(MANU B.K.)

**Prl. Senior Civil Judge & JMFC
Belthangady, D.K.**