

**IN THE COURT OF PRL.CIVIL JUDGE AND PRL.JMFC,
DHARWAD**

-: PRESENT :-

**Sri.AVINASH GHALI.,
B.A. LL.B.,
Prl. Civil Judge & .J.M.F.C., Dharwad**

Dated this the 19th day of December - 2025

Original Suit No.741/2025

BETWEEN

Plaintiff : Sri. Shivappa S/o Annappa Chikkanavar

(By Sri. M.S.P., Adv.)

V/s.

Defendant: Sri. Basavraj S/o Arjuna Jagadale

(By Sri.S.K.D., Adv.)

PARTIES TO I.A.NO.I

Applicant : Sri. Shivappa S/o Annappa Chikkanavar
(Ori Pltff)

V/s.

Opponents : Sri. Basavraj S/o Arjuna Jagadale
(Ori Dfts)

1.	Provision under which the application is filed	I.A No.I U/O XXXIX Rule 1 & 2 R/w Sec. 151 of CPC
2.	Relief sought for	Prayer to restrain the defendant, his henchman

		or any other person acting on behalf of defendant from alienating the suit property till disposal of the present suit.
3.	The date on which the applications are filed	18-09-2025
4.	Number of the applications	I.A No.I
5.	The date on which the objections filed by different opponents	03-11-2025
6.	The date on which the orders were passed on the said application	19-12-2025

ORDER ON I.A. NO.I

The plaintiff has filed the present application under Order XXXIX Rule 1 and 2 R/w 151 of CPC with prayer to restrain the defendant, his henchman or any other person acting on behalf of defendant from alienating the suit property till disposal of the present suit.

2. In the affidavit annexed with present application it is stated by plaintiff that the suit is filed for relief of specific performance of contract. The plaintiff has further stated that he is having apprehension that the defendant

may at any time alienate the suit property during pendency of present suit and if defendant succeeds in alienating the suit property, the purpose of filing of suit would be defeated. Hence it is also stated that plaintiff is having prima-facie case and balance of grievance lies in his favour and if application is not granted he will put to irreparable loss and hardship. Hence it is prayed to allow the present application.

3. The defendant has appeared through his counsel and filed the written statement, which has been adopted as objection to the present application.

4. The defendant has denied the contention of the plaintiff and contended that the suit is barred by law of limitation and also suit is bad for non-joinder of necessary parties. It is denied that defendant has executed the agreement of sale dated 21.02.2017 by agreeing to sell the suit property for Rs.2,80,000/-.

5. It is contented that the plaintiff is native of the Mummigatti Village, Dharwad, and defendant is resident of Navalur Village, and there is a distance between the both villages is 20 kilometers. Hence, it is contented that purchasing of one gunta would not advantageous being agricultural land. The agreement of sale has been created. There is no contract at all. The counsel of defendant has filed OS No.170/2015, since from 2017 to 2025, about 8

years plaintiff has kept quiet. Hence, suit is barred by Section 54 of Limitation Act. The plaintiff does not have a prima-facie case and balance of convenience, and if a application is allowed, the defendant could put a great hardship. Hence it is prayed to reject the present application.

6. Heard the learned counsel for plaintiff and also heard the learned counsel for defendant. Perused the materials on record.

7. The following points that would arise for consideration by this Court.

1. Whether plaintiff has made out a prima-faice case?
2. Whether balance of convenience lies in favour of plaintiff?
3. Whether irreparable injury and hardship would cause to the plaintiff, if temporary injunction is not granted?
4. What order?

8. My findings on above points are as under :

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

9. Point No.1 to 3 : These points are taken together for common discussion in order to avoid the repetition of facts and discussion.

10. It is relevant to note that the present suit is filed for relief of permanent injunction. For enforcing the agreement of sale of alleged to be executed by defendant no.1 on 21.02.2017.

11. It is to be noted that the alleged agreement is alleged to be executed on 21.02.2017. Whereas the present suit is filed in the year 2025.

12. It is to be noted that on going through a affidavit annexed with present application it is evident that the plaintiff has stated in the said application that he is having apprehension that the defendant may alienate suit property at any time and on this ground plaintiff is seeking to grant the temporary injunction.

13. It is significant to note that the plaintiff has to establish that defendant has executed the agreement of sale by agreeing to sell the suit schedule property for Rs.2,80,000/-. The alleged agreement of sale dated 21.02.2017, wherein there is no time is essence of contract. It is important to note that the original agreement of sale is pertaining to the 2017 year, whereas the present suit is filed in the year 2025. However from the recital of agreement of sale it is evident that the defendant has agreed to execute the sale deed as he would get his name to be mutated and then he will execute the sale deed.

14. It is relevant to note that the contents of affidavit annexed with present application, it is evident that the plaintiff has specifically stated in the affidavit that he is having apprehension that defendant may, at any stage of present suit, may alienate the suit property, except this ground, the plaintiff failed to show that defendant is alienating the suit property. Whether the defendant has made out any agreement of sale with other persons with respect to suit property. Hence, there is no absolute records have been placed by the plaintiff to support his apprehension about alienation of suit property by the defendant. Hence, same does not itself support to the contention of the plaintiff.

15. It is relevant to note that the original RS No.268/2 measuring 2 acres 31 gunta and a suit property is measuring 1 gunta with a boundary stated therein. The subject matter of suit property is only 1 gunta. Therefore if a stay is granted to the original R. S. No.268/ 2, then the right of plaintiff over suit property would be affected. Therefore, there are no prima-facie materials to show that the balance of convenience also lies in favour of the plaintiff. It is significant to note that the ***as per Section 52 of T.P Act,*** the decree would binding not only parties but also binding on the person who purchases the suit property during pendency of suit. Thus even if temporary injunction is not granted, certainly right of the plaintiff would be protected under Section 52 of T.P Act. If injunction is granted then more irreparable loss would to defendants being suit property is agricultural land. In view of aforesaid discussion, this Court answered **Point No.1 to 3 are in the Negative.**

16. Point No.4: For the forgoing reasons, discussion and finding on Point No.1 to 3, this Court proceeds to pass following order.

ORDER

IA No.I filed by the plaintiff U/O XXXIX
Rule 1 and 2 R/w 151 of CPC is hereby
rejected.

No order as to cost.

(Dictated to the Adalat AI and Stenographer, same is transcribed by her, then corrected, signed by me and pronounced in the open Court dated this **19th day of December 2025**).

(Avinash M. Ghali)
Prl., Civil Judge & JMFC.,
Dharwad.