

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

PRESENT

Sri. Venkanna B. Hosamani, B.Com., LL.B. (Spl.)
Prl. Senior Civil Judge & CJM,
Dharwad

O.S. No.310/2024

Dated this 18th day of June, 2026

PLAINTIFF/S : Shri. Mahantesh S/o Desai Jamadar,
Age: 45 years, Occ: Agriculture & Service,
R/o Koti plot, Patreshwara Nagar,
Near new APMC, Kamalapur, Dharwad.

-Vs-

DEFENDANT/S: 1. Shri. Mallikarjun S/o Annarao Utagur,
Age: 59 years, Occ: Agriculture & service,
R/o Mahalaxmi Nilay, Shanti Colony,
3rd cross, Kamalapur, Dharwad.
and another.

Parties to I.A. No.VIII

Applicant : Shri. Irappa S/o Mallappa Marabasannavar
(Ori.Def.2.)
(By Sri M.G.P., Adv.,)

-Vs-

Opponent : Shri. Mahantesh S/o Desai Jamadar,
(Ori.Pltf)
(By Sri. G.G. Gadag, Adv.,)

ORDER ON I.A No.VIII

The defendant No.2 has filed I.A No.VIII U/o 39
Rules 4 R/w Section 151 of CPC seeking to vacate the

order of temporary injunction dated 15/07/2024 in the interest of justice and equity.

2. In the annexed affidavit, the defendant No.2 has contended that, he is the absolute owner and in possession of the suit property by virtue of the sale deed dated 26/12/2023 which is purchased from the defendant No.1 and the same was registered before the Sub Registrar, Dharwad and he is having right, title and interest over the suit property. In spite of that the plaintiff has filed the false suit against the defendant and obtained a temporary injunction against defendant No.1 by suppressing the true facts. Hence, temporary injunction order is liable to be vacated and prayed to allow the application.

3. The plaintiff has filed his written objections to I.A No.VIII and has opposed the said application contending that the temporary injunction order has been passed by this Court against the defendant No.1, but not against the defendant No.2. Hence, the defendant No.2 has no

locus standi to file the instant application and prayed for rejection of the interim application.

4. Heard the arguments on both sides and perused the materials placed on record.

5. The following points have arisen for consideration,

1. Whether the plaintiff has made out a prima-facie case?

2. Whether the balance of convenience lies in favour of the plaintiff?

3. Whether the plaintiff will be put to irreparable loss or injury, if an order of temporary injunction is vacated ?

4. What order?

6. The points have been answered 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 the final order

for the following

: REASONS :

7. **Point Nos. 1 and 2:** For the sake of convenience and to avoid repetition of facts, these points are taken together for consideration.

8. The plaintiff has filed I.A No.II U/o 39 Rules 1 and 2 R/w Section 151 of CPC seeking to grant an exparte temporary injunction against the defendant or his agent or any person on behalf of the defendant not to alienate the suit property or not to create any charge over the suit property or not to change the nature of the suit property till disposal of the suit in the interest of justice and equity.

9. In the annexed affidavit, the plaintiff has stated that due to family necessity of defendant he was agreed to sell the suit property to the plaintiff. After discussion, the defendant has agreed to sell his property for sale consideration of Rs.30,00,000/- to the plaintiff. The plaintiff has paid Rs.11,00,000/- by way of cash on 24/01/2023 and he has also paid Rs.15,00,000/- through cheque bearing No. 611963 of State Bank of India, Dharwad branch. In total the plaintiff has paid earnest money of Rs.26,00,000/- to the

defendant and has agreed to pay the remaining balance sale consideration of Rs.4,00,000/- at the time of execution of registered sale deed. It is further contended that, now the plaintiff heard that the defendant is trying to alienate the suit property. Therefore, he has issued a legal notice to the defendant on 05/06/2024. In spite of that the defendant has not come forward to execute registered sale deed. If the defendant is alienate the suit property to other person the plaintiff will be put into much hardship. Hence, he is having prima facie case and balance of convenience also lies in his favour. If the application is rejected every untold hardship and loss will be caused to him which cannot be compensated in terms of money. But on the other hand, in this case if the application is allowed no harm or injury will be caused to the other side and prayed to allow his application.

10. On 15/07/2024 after hearing the counsel for the plaintiff ex parte injunction order is granted till filing of the written statement and emergent notice of I.A No.2 and suit summons issued against the defendant.

11. On perusal of the entire material placed on record, it discloses that earlier the plaintiff has filed his suit against one Sri. Mallikarjun S/o Annarao Utagur who is now defendant No.1 and subsequently amended the plaint and impleaded the defendant No.2 i.e., Sri. Irappa S/o Mallappa Marabasannavar who has filed this application for vacating the temporary injunction order passed by this Court.

12. On careful perusal of the documents, itself discloses that, as on the date of filing of this suit, the defendant No.1 is not the lawful owner in possession of the suit property. As on the date of filing of the suit, the defendant No.2 was / is lawful owner and in possession of the suit property by virtue of sale deed executed by the defendant No.1 in favour of defendant No.2 on 26/12/2023. Such being the case, further alienation of the suit property by the defendant No.1 does not arise and it is also crystal clear that question of raising loan and changing the nature of the suit by the defendant No.1 does not arise at all. Admittedly, the plaintiff has obtained the ad-interim temporary injunction order against Mallikarjun Utagur i.e.,

defendant No.1 on 15/07/2024. After impleading the defendant No.2, the plaintiff has not taken any steps against the defendant No.2 restraining him from alienating, creating any charge over the suit property. If really, plaintiff is apprehension of creating the charge or alienation or change of nature of the property, he ought to have file necessary application get injunction order against the defendant No.2 also. But, the plaintiff has not taken any steps to obtain the temporary injunction against the defendant No.2 pending disposal of the suit.

13. The counsel for the defendant No.2 during the course of his argument, argued that in spite of purchase of the suit property by the defendant No.2 by paying huge amount, the revenue authorities are not mutating the name of the defendant No.2 in the records of the suit property saying that there is a stay order by the Court. At this stage, I am of the opinion that the revenue authorities ought to have mutate the name of the defendant No.2 when there is no stay order operating against the defendant No.2. The exparte temporary injunction order is not binding on the defendant

No.2 as on the date of order of temporary injunction defendant No.2 is not the party to the suit.

14. Considering all the facts and circumstances of the case, I am of the opinion that when the temporary injunction obtained by the plaintiff against the defendant No.1 not to alienate or modify or changing the nature of the suit property or create any charge or loan on the suit property by defendant No.1. But question of continuing the same does not arise at all because as on the date of filing of the suit, the defendant No.1 is not the lawful owner in possession of the suit property. Question of alienation or creating charge or change of nature of the property by the defendant No.1 does not arise. Hence, there is no prima facie in favour of the plaintiff and also balance of convenience not lies in favour of the plaintiff. Hence, the point Nos.1 and 2 are answered in **Negative.**

15. **Point No. 3:** If the application is not allowed, the defendant No.2 will be suffer much hardship rather than the plaintiff because as earlier discussed supra, as on the date of filing of the suit, the defendant No.1 is not owner and in

possession of the suit property and who has executed the agreement of sale in favour of the plaintiff as per the say of the plaintiff. Admittedly, as on the date of filing of the suit, the defendant No.2 is not a party to the proceedings before this Court. Subsequently, as per the order passed on I.A No.4, the defendant No.2 has been inserted by the plaintiff by amending the plaint. Such being the case, at this stage I am of the opinion that if temporary injunction is not vacated much hardship will be caused to the defendant No.2. Accordingly I answered point No.3 in the **Negative**.

16. **Point No. 4:** In view of my answers to the above points No.1 to 3, I proceed to pass the following;

: ORDER :

*The I.A. No.VIII filed U/o. 39 Rule 4 R/w
Section 151 of CPC by the defendant No.2 is
hereby allowed.*

(Dictated to the stenographer, transcription typed by him; corrected by me and order is pronounced in the open court on the 18th day of June, 2026).

(Venkanna B. Hosamani)
Prl. Senior Civil Judge & CJM.,
Dharwad.