

IN THE COURT OF I ADDL. SENIOR CIVIL JUDGE AND
J.M.F.C., HUBBALLI

PRESENT:- SMT. SARVAMANGALA K.M.,
B.A. LL.B

I ADDL. SENIOR CIVIL JUDGE AND JMFC.,
HUBBALLI.

Dated this 12th day of September 2025

O.S. No.39/2025

PLAINTIFFS : Gadigeppa S/o Ramappa
Amargol.

//Versus//

DEFENDANTS : Dr. Subbanagouda S/o Gurunath
Kulkarni @ Patil and others.

PARTIES TO I.A.I

Applicant : Gadigeppa S/o Ramappa Amargol.

//Versus//

Opponent : Dr. Subbanagouda S/o Gurunath
Kulkarni @ Patil and others.

- i. Provision under : Under Order 39 Rule 1 and
which application is 2 R/w Sec.151 of CPC.
filed

- ii. *Relief sought for* : *Seeking an order of temporary injunction, restraining the defendants, their agents, their attorneys, servants or anybody claiming through them from alienating or creating any encumbrance over the suit property in the interest of justice and equity.*
- iii. *The date on which application is filed* : *24.01.2025*
- iv. *Number of the application* : *I*
- v. *The date on which objections are filed by different opponents* : *15.07.2025*
- vi. *The date on which orders were passed on the said application* : *12.09.2025*

ORDER ON I.A. NO.I

The counsel for the plaintiff filed an I.A. No.I under Order 39 rule 1 and 2 R/w Sec.151 of C.P.C., seeking an order of temporary injunction, restraining the defendants, their agents, their attorneys, servants or anybody claiming through them from alienating or

creating any encumbrance over the suit property in the interest of justice and equity.

Description of suit property:

The suit property bearing survey/block No.12 measuring 05 acres 19 guntas situated at Haliyal Village, Hubballi Taluk, Dharwad District, and bounded as follows:

*East : Land of Naganagouda.
West : Land of Basanagoudar.
North : Land of Hsaraddi.
South : Land of Hanumantagoudar.*

2. The defendants have filed their objections to the said application.

3. Heard arguments by both side.

4. On the basis of entire materials available on record the following points arise for my consideration:

POINTS

- 1. Whether the plaintiff has made out prima-facie case?*
- 2. Whether the balance of convenience lies in favour of the plaintiff?*

3. *Whether the hardship would be caused to the plaintiff if injunction is not granted?*

4. *What order ?*

5. *My answer to the above points are as follows:*

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

6. **Point No.1:** *This is the suit filed by the plaintiff against the defendants for the relief of specific performance of contract in respect of agreement of sale dated:09.12.2022.*

7. *Along with this suit the plaintiff have filed the present application seeking the relief of temporary injunction against the defendants regarding restraining them from alienating or creating any charge over the suit property.*

8. *In the annexed affidavit the plaintiff averred that, defendants are the joint owners of the suit property and were in dire need of money and also to meet out their legal necessities, have jointly executed a Registered Sale Agreement in favour plaintiff on*

09.12.2022 for sale of above said 05 Acres 19 Guntas of land for total sale consideration of Rs.23,00,000/- before the Sub-Registrar Hubballi and defendants have received the part sale consideration amount of Rs.22,00,000/- from plaintiff and accordingly defendants have agreed to execute the registered sale deed in his favour by receiving the balance sale consideration amount of Rs.1,00,000/- at the time of registration of the Final Sale Deed.

It is further averred that, plaintiff all the while ready and willing to perform his part of the contract right from inception, but the defendants, on one or the other false pretext, postponed the same, inspite of many requests and reminders by plaintiff. The Plaintiff have kept the balance sale consideration of Rs.1,00,000/- ready to get a Registered Sale Deed executed in his favour, but the defendants have failed to perform their part of the contract and through reliable sources, the plaintiff came to know that, the defendants are attempting to sell the suit property to a third person behind his back. Plaintiff all the while ready and willing to perform his part of the contract now also and when the defendants refused to perform their part of the contract, plaintiff have no other alternative rather than filing this suit for the relief of specific performance of the

contract. Plaintiff have made out a prima facie case for grant of injunction. The balance of convenience is in his favour. In case ad-interim injunction is not granted, the defendants will sell the suit property illegally and in that event, material injury and hardship will be caused to plaintiff.

9. The objections of the defendants is that the application is false, frivolous, vexatious and same is neither tenable in law nor on facts of the case. It is submitted that the defendants had offered the suit property for sale. On coming to know about the same, the plaintiff had approached the defendants and had negotiated the terms of sale and has agreed to purchase the suit property for a total sale consideration of Rs.68,75,000/- and out of which sum of Rs.22,00,000/- on 10.02.2022 has been paid through RTGS, and sum of Rs.5,00,000/- on 04.11.2022 and remaining sale consideration of Rs.41,75,000/- was agreed to be paid within 60 days from the date of agreement of sale. That the plaintiff having agreed to purchase the property in question had agreed to place all the terms and conditions in a written document. Consequently an agreement of sale came to be executed on 07.11.2022 before the notary public. It is also agreed by and between the plaintiff and

these defendants that if the plaintiff failed to pay remaining balance sale consideration of Rs.41,75,000/- within the stipulated period the earnest money will be forfeited but as per the terms of agreement of sale the plaintiff failed to pay balance sale consideration of Rs.41,75,000/- within stipulated period despite repeated requests and reminders by these defendants even the plaintiff tried to avoid to meet these defendants. Therefore, it is clear that the plaintiff never ready and willing to get the sale deed executed by paying remaining sale consideration of Rs.41,75,000/- within 60 day as sated above. Therefore, it is clear that the plaintiff himself has violated the terms of agreement of sale by not paying remaining sale consideration. Hence, the defendants have forfeited the advance sale consideration as per the terms of agreement of sale as such the agreement of sale is not at all in force and the plaintiff cannot enforce the agreement of sale in question. The plaintiff never ready and willing to get the sale deed executed by paying remaining sale consideration of Rs.41,75,000/- within 60 days as stated above. Therefore, it is clear that the plaintiff himself has violated the terms of agreement of sale as such the agreement of sale is not at all in force and the plaintiff cannot enforce any of the agreements. That the agreement of sale is

not for the consideration referred to in the registered agreement of sale. On the contrary it is the consideration referred to in the agreement of sale dated 07.11.2022 but the plaintiff has suppressed all these material facts. Hence, the plaintiff is not entitled for equitable relief which is always discretionary in nature.

It is further submitted that, it is also suppressed by the plaintiff that after execution of the agreement of sale deed 07.11.2022, the plaintiff had approached these defendants and requested these defendants that if the entire actual sale consideration is disclosed that would burden for him to pay unnecessary heavy stamp duty. Therefore, to avoid the same, the plaintiff requested these defendants to execute another agreement of sale by showing valuation of the suit property. As maintained by the Sub-Registrar for the purpose of collection of stamp duty. Hence, these defendants were forced to execute another nominal registered agreement of sale. As stated above the plaintiff had no money which is payable to these defendants as per the terms of agreement of sale dated:07.11.2022. Therefore, he has not come forward to pay the balance consideration. Hence, the plaintiff is not entitle to get the sale deed registered since

the time was essence of the contract. Not only this the plaintiff suppressed the material facts and thereby is trying to grab the valuable property by using the alleged agreement of sale dated:07.11.2022 by suppressing the existence of the actual agreement of sale dated:09.12.2022. Therefore, the suppression of all these material facts disentitles the plaintiff to seek equitable relief. That the plaintiff has not made out any of the three essential ingredients for grant of ad-interim temporary injunction. Therefore, the plaintiff is not entitled for the same. Hence, prayed to dismiss the application with costs.

10. The present application has been filed along with the suit seeking the above said reliefs, So far as this I.A. is concerned they seeking the relief of not to alienate the suit property against the defendants.

11. In order to ascertain the prima-facie case of the plaintiff and in the light of the arguments canvassed by the learned counsel for the plaintiff and defendants this Court carefully perused the materials on record, the list of documents of the plaintiff consists of registered sale agreement dated:09.12.2022, discloses the fact that

there is a prima facie that the defendants have executed sale agreement in respect of suit schedule property by receiving advance sale consideration of Rs.22,00,000/- out of sale consideration amount of Rs.23,00,000/- and agreed to pay the balance sale consideration amount of Rs.1,00,000/- at the time of registration. Further, the plaintiff relied upon record of rights bearing survey No.12/2 measuring 5 acres 19 guntas situated at Halliyal Village, Hubballi Taluk standing in the name of defendants. Further, relied upon copy of legal notice dated:26.12.2024 discloses the fact that the plaintiff calling upon the defendants to execute sale deed and he was ready and willing to perform his part of contract and also intimate him to in default he has to face legal consequences. Further relied upon Reply notice dated:04.01.2025, discloses the fact that the defendants have replied that, they had offered the property referred in the notice for sale, and the plaintiff had approached the defendants and had negotiated the terms of sale with the defendants and agreed to purchase the property referred above for a total sale consideration of Rs. 68,75,000/- out of which a sum of Rs. 22,00,000/- has been paid through RTGS and sum of Rs. 5,00,000/- through cash and remaining sale consideration of Rs. 41,75,000/-

was agreed to be paid within 60 days from the date of agreement of sale. The defendant having received part of consideration and plaintiff having agreed to place all the terms and conditions in a written document. Consequently an agreement of sale came to be executed on 07.11.2022 before the notary public. It is also agreed by and between the plaintiff and defendant that, if the plaintiff failed to pay remaining balance sale consideration of Rs. 41,75,000/- within stipulated period the earnest money be forfeited but as per the terms of the agreement of sale the plaintiff failed to pay the balance sale of consideration of Rs. 41,75,000/- within stipulated period despite repeated requests and reminds by the defendant even the plaintiff tried to avoid to meet the defendant. The plaintiff never ready and willing to get the sale deed executed by paying remaining sale consideration of Rs. 41,75,000/- within 60 days. The plaintiff himself violated the terms of agreement of sale by not paying remaining sale consideration. Therefore, the defendants have forfeited the advance sale consideration as per the terms of agreement of sale as such the agreement of sale is not at all in force. The sale transaction is not for consideration referred to in the notice of plaintiff. On the contrary it is the consideration referred/agreed in

the agreement of sale dated 07.11.2022 but the plaintiff for his unlawful enrichment and so also by suppressing the earlier agreement of sale got issued a false and vexatious notice the defendant. The plaintiff also suppressed that after execution of the agreement of sale he had approached the defendant and requested that if the entire actual sale consideration is disclosed that would burden him to pay unnecessary heavy stamp duty. Therefore, to avoid the same the plaintiff requested the defendant to execute another agreement of sale by showing valuation of the property referred to in the notice of plaintiff as maintained by the Sub-Registrar for the purpose of collection of stamp duty. The plaintiff had no money which is payable to the defendant as per the terms of agreement of sale dated 07.11.2022 and therefore, he has not come forward to pay the balance consideration. Hence, the plaintiff is not entitled to get the sale deed registered since the time was essence of the contract and plaintiff has also suppressed the material facts and thereby is trying to grab the property using the agreement of sale dated 08.12.2022 registered on 09.12.2022 by suppressing the existence of the agreement of sale dated 07.11.2022. Therefore, the plaintiff has lost his right to get the sale deed registered including the

refund of earnest money of Rs. 27,00,000/- as per the terms of agreement of sale.

12. On the other hand, the defendant relied upon the original agreement of sale dated 07.11.2022 executed before notary public. On careful perusal of said document it is noticed to the Court that, Sy.No. 12 which is the description of the suit property appeared in the said document, but as per the plaintiff to the extent of 5 acres 19 guntas out of total extent 15 acres 19 guntas is the present suit schedule property. No doubt Sy.No. 12 is total extent 15 acres 19 guntas in Halyal village, Shiraguppi Hobli, Hubballi Taluk, out of 15 acres 19 guntas 10 acres are possessed, owned and belongs to Hasareddy and his family, out of which to the extent of 5 acres 19 guntas is possessed, owned and cultivated by one Patil Kulkarni and his family by way of ownership as per order passed by Hon'ble High Court of Karnataka, Dharwad Bench.

As per the contention of the plaintiff, the defendants who are the legal heirs of Gurunath Kulkarni R/o Rayaji Kulkarni are executed sale agreement in respect of suit property in his favour dated 09.12.2022 for total sale consideration of Rs. 23,00,000/-, out of which they have already received Rs. 22,00,000/- from the plaintiff

as cited in Para No. 4 of the plaint, but as per agreement they have not executed sale deed in favour of the plaintiff by receiving sale consideration amount of Rs.1,00,000/-. On perusal of sale agreement it is noticed to the court that, the payment of earnest money has been disclosed in page No.3 of the sale agreement. The above said agreement is in the date of 08.12.2023 later the plaintiff issued notice to the defendants calling upon them to execute the sale deed as per agreement dated 26.12.2024 is within limitation. No doubt the defendants have issued reply on 04.01.2025, but the present plaintiff denied the said reply in total.

13. *The counsel for defendant vehemently argued that, the said document is not one of the sale agreement. The plaintiff has to pay the remaining balance consideration amount within 60 days from the date of said sale agreement. Further they have vehemently argued that, the plaintiff has suppressed the material facts regarding documents of the defendants is concerned and no pleading regarding the said documents. Further they have taken specific contention that, agreement of sale executed on 07.11.2022, but notice has been issued 26.12.2024. When there is a clause in the said agreement*

i.e., 60 days from the date of agreement, the time is essential of contract.

As per the contention of the plaintiff, suit is in time and after lapse of 60 days within 3 years notice has been issued to the defendants. Therefore, question of considering the arguments of defendants does not survive. Further the counsel for defendant relied upon the order passed by this court on IA No.1 in OS No.45/2025 and vehemently argued that, said IA was rejected on the sole ground that, the plaintiff has suppressed the material documents in their suit. But the above said order is not binding upon this Court. Therefore, it cannot be taken into consideration..

14. Further, the counsel for plaintiffs relied upon a decision reported in 2025 (3) KCCR 2487 and (2006) 5 Supreme Court Cases 367.

wherein this decision the Hon'ble High court of karnataka held that, Relief restraining alienation of suit property or creation of third party interest in respect thereof-Agreement provided for survey of suit property ad measurement thereof, failure of plaintiff and defendant to comply with said condition contained in agreement - this issue is

to be adjudicated by a full fledged trial. Grant of injunction upheld by the Hon'ble High court of karnataka.

Further in a second decision the Hon'ble Supreme court of India held regarding what are the relevant factors to be considered for grant of injunction, further held that court has to consider question regarding existence of a prima facie case, which involves finding of fact as to whether a case for trial is made out as also whether other factors requisite for grant of injunction exist, court has also to consider balance of convenience of the parties and irreparable injuries, if any, might be suffered by plaintiff in case of refusal to grant injunction.

During the course of argument the counsel for defendant relied upon the decision reported in ILR 1989 Kar 1701 in between Gourishankara Swamigalu Vs. Sri. Siddaganga Math, wherein this decision the Hon'ble Supreme Court held that existence of prima-facie case is harbinger to investigate other aspects, if no prima-facie case, balance of convenience and irreparable loss need no consideration.

Further relied upon the decision reported in 2010(5) KCCR 3221 in between Kashimath Samsthan and another Vs. Srimad Sudhindra Thirthaswami and another wherein this decision the Hon'ble

Supreme Court of India held that when the party approaching to the Court is unable to prove the prima-facie case, temporary injunction has to be refused even if such party makes out a case for balance of convenience and irreparable injury.

Further relied upon the decision reported in 2017 (5) KCCR Sn.336 wherein this decision the Hon'ble High Court held that when the suit is not maintainable temporary injunction cannot be granted.

Further relied upon the decision reported in 2020(1) KCCR 494 wherein this decision the Hon'ble High Court of Karnataka held that when the party has not established existence of prima-facie case, irreparable injury and balance of convenience not justifiable.

Further relied upon the decision reported in 2017 (5) KCCR 578 wherein this decision the Hon'ble High Court of Karnataka held that while considering the application for grant of injunction Court will not only consider existence of prima-facie balance of convenience, irreparable injury but also conduct of parties as relevant consideration to grant on refusal as it is an equitable relief.

The last two decisions is no way concerned to the suit of the plaintiff as the plaintiff filed present suit on hand for the relief of specific performance of contract.

15. So far as remaining decisions are concerned, when the plaintiff has fails to establish prima-facie case then only other two ingredients that balance of convenience and irreparable loss are not justifiable, but in the present suit on hand the plaintiffs have establish prima-facie case, therefore the above said decisions are not applicable to the case on hand.

In such circumstances, in this stage, this court cannot come to the conclusion on the basis of documents produced by the both the parties regarding whether the plaintiff case is genuine or defendants contention is genuine, is to be consider after full pledged trial only. Anyhow, whether the grievance urged by either of the parties is correct or not, is to be considered at the time of full fledged trial only.

16. At this stage without going in to the merits of the case and without holding the mini trial, this court has considered the aspect of prima-facia case. At this stage, the courts makes it very clear that, this court is looking towards the prima-facia case and not prima-facia title. It is settled principles of law that at the time of disposing of temporary injunction application, the court cannot go in to the prima-

facie title and only to consider whether the plaintiff has made out prima-facia case for grant of interim relief.

17. On perusal of the materials available on record it is noticed to the court that, if the defendants are allowed to sell the property in favour of third persons except plaintiff it would really cause multiplicity of the proceedings, on the other hand if the relief is granted no hardship would be caused to any of the parties, on contrary, the parties to the suit can get their relief subject to decree.

18. This court is of opinion that, the contention taken by the defendant can be considered at the time of full fledged trial only, in this stage there is a prima facie case in favour of plaintiff, Hence, I am of the considered opinion that, the plaintiff has established the prima-facia case in their favour, after considering all these facts, this court has answered **point No.1 in the Affirmative.**

19. **Point No.2 and 3:** As these points are inter connected with each other, I have taken these points together for consideration in order to avoid repetition of facts.

The second condition for granting temporary injunction is that, the balance of convenience must be in favor of applicant. In other words the court must be satisfied that, the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing injunction will be greater than that, which is likely to be caused to the opposite party by granting it.

20. The object of the interlocutory injunction is to protect the plaintiff against the injury by violation of his right for which, he could not be adequately compensated if issues were resolved in her favor at the trial.

21. These are all the facts can be considered after full fledged trial. Anyhow, the plaintiff filed the above said application seeking an order of restraining the defendants from alienate the suit schedule property to the third persons in future if any pending disposal of the suit. In such circumstances, if we presume that the plaintiff has get the relief in respect of the suit schedule property it will not cause any hardship to the defendants. Therefore there are sufficient grounds on record to hold that, the balance

*convenience and irreparable loss lies in favor of plaintiff if injunction is not granted. In view of the above discussion, I answered **point No.2 and 3 in the Affirmative.***

22. **Point No.4:** *On the basis of my reasons on point Nos.1 to 3, I proceed to pass the following;*

ORDER

The I.A No.I filed by the learned counsel for the plaintiff under Order 39 Rule 1 and 2 R/w Section 151 of CPC is hereby allowed.

Accordingly, the defendants are hereby restrained from alienating or creating any document or any charge in respect of the suit schedule property till disposal of the suit.

No order as to costs.

*(Dictated to the Stenographer, directly on Computer and typed by her. The same is corrected and then pronounced by me in the open court on this the **12th day of September 2025**)*

*sd/-
(SMT. SARVAMANGALA K.M.,)
I Addl. Senior Civil Judge & JMFC.,
Hubballi.*