

**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE, HUBBARD**

Present:

Sri. Yamanappa Karehanumanthappa,
Prl. Senior Civil Judge, Hubballi.

O.S. No.424/2025

Dated this the 2nd day of May - 2026

Plaintiff : Shivanand S/o. Hanamantappa Jogin.

.Vs.

Defendants : Smt. Shakuntala W/o. Ashok Sureban and
others.

PARTIES TO IA No.I

Applicant : Shivanand S/o. Hanamantappa Jogin.

.Vs.

Opponents : Smt. Shakuntala W/o. Ashok Sureban and
others.

ORDER ON IA No.I

This suit is filed by the plaintiff for the relief of specific performance of contract against defendants. I.A. No.I is filed by plaintiffs U/o.XXXIX Rule 1 and 2 of CPC seeking temporary injunction as against defendants from alienating and creating charge over the suit schedule property pending disposal of the suit.

2. In support of the application, plaintiff sworn affidavit stating that he has paid a sum of ₹1,00,000/- as earnest sale consideration and ready and willing to enforce

his part of contract and remaining sale consideration of ₹8 lakhs is kept ready to get sale deed executed in his favour. He has further contended that the deceased Ashok S/o. Bheemappa Sureban the husband of defendant No.1 and father of defendants No.2 to 4 having executed agreement of sale by receiving ₹1 lakh as earnest sale consideration. Now the defendants are under obligation to execute the sale deed are making hurried attempts to dispose of the suit property to thir parties. If the defendants succeeded to alienate the suit property it will cause loss and hardship and cannot be compensated in terms of money. He has got strong prima facie case and balance of convenience is also in his favour. If the temporary injunction is not granted, it will cause great and irreparable loss and injury to him. Hence, prayed to allow the application.

4. On issuance of suit summons, defendants have appeared and filed written statement. They have filed memo to treat the written statement as objection to I.A. No.1. They have contended that the suit filed by the plaintiff is barred by law of limitation. Further contended that late Ashok Sureban being a civil contractor was in need of finance and plaintiff is also a businessman and deals with development of lands. As and when the Ashok Sureban required financial requirement he used to take loans from the plaintiff and used to give either promissory note or blank signed cheques. Asok Sureban approached the plaintiff for hand loan of ₹1 lakh. The plaintiff insisted for execution of registered

agreement of sale. Accordingly, Ashok Sureban agreed and executed agreement of sale with respect to the suit property on 16.06.2017. There was no intention on the part of Ashok to sell the suit property. The said document was a hollow document. It is only a security purpose. The Ashok has repaid the loan of ₹1 lakh to the plaintiff, immediately he demanded for cancellation of agreement of sale, but the plaintiff on one or other reasons postponed the same. Since there was mutual trust and confidence, late Ashok neglected the same. The plaintiff taking undue advantage of the trust and confidence has misused the said document and filed this suit. The transaction is of the year 2017 and this suit is filed on 13.08.2025 after span of more than 8 years which is prima facie barred by law of limitation. Hence, prayed to dismiss the suit.

5. I have heard both sides and perused the pleadings of the parties, I.A. as well as documents relied by both the parties to the suit. The following points arise for my consideration:

1. Whether the plaintiff has made out prima facie case?
2. Whether the balance of convenience is in favour of the plaintiff?
3. Whether the plaintiff would suffer irreparable injury, if his prayer for temporary injunction is dis-allowed?
4. What order?

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

Points No.1 to 3 : In the Affirmative.

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

REASONS

7. **Points No.1 to 3:** It is not in dispute that as per records the husband of defendant No.1 and father of defendants No.2 to 4 i.e. Ashok Sureban was the owner of the suit property. According to plaintiff Ashok Sureban has agreed to sell the suit property for ₹9,00,000/- under agreement of sale, dated 16.06.2017. According to defendants Ashok Sureban has taken hand loan of ₹1 lakh from the plaintiff and for security purpose has executed registered agreement of sale in favour of plaintiff. Ashok Sureban has paid loan of ₹1 lakh to the plaintiff, but he has neglected to cancel the agreement of sale. The plaintiff took the advantage of said agreement of sale and filed this suit.

8. The record of rights produced by the plaintiff discloses that suit property is standing in the name of Ashok Sureban as on date of agreement. The defendants have contended that the suit of the plaintiff is barred by law of limitation. Whether the alleged agreement of sale executed by Ashok Sureban is valid or not is required full pledged trial. Whether the agreement of sale is executed for security purpose and Ashok has paid the hand loan of ₹1 lakh to the plaintiff is also required full pledged trial. So, considering the

nature of the suit, documents produced by the plaintiff, I hold that plaintiff has made out prima facie case. It is well settled position of law that while considering the prima facie case, this court cannot conduct mini trial. So, without giving any finding on merits of the case, I hold that plaintiff has made out prima facie case, balance of convenience leans in his favour. If suit property is alienated during pendency of the suit, then it will leads to multiplicity of proceedings. So, I hold that plaintiff will be put to more hardship if temporary injunction is refused. Hence, I answer **points No.1 to 3 in Affirmative.**

9. **Point No.4:** In view of my answer to points No.1 to 3 as stated above, I proceed to pass the following;

ORDER

The I.A. No.I filed by the plaintiff U/o.XXXIX Rule 1 and 2 of CPC is allowed.

The defendants or anybody on their behalf are restrained from alienating the suit property in any form by granting temporary injunction, till disposal of the suit.

The costs shall follow the event.

(Dictated to the Stenographer directly on computer, computerized by her, script corrected directly on computer and then pronounced by me in the Open Court on this the **2nd day of May - 2026**)

(Yamanappa Karehanumanthappa)
Prl. Senior Civil Judge, Hubballi.