

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE &  
J.M.F.C., HUBBALLI

Present:  
Sri. RAGHAVENDRA.R.  
B.A.L, L.L.B.  
I Additional Senior Civil Judge and JMFC.,  
Hubballi.

**O.S. No.366/2024**

Dated this the 25<sup>th</sup> day of January, 2025

Plaintiff : Shri. Anil S/o Mohan Meharwade.  
.Vs.  
Defendant : Ratnakar Hiremath.

**PARTIES TO I.A. NO.I**

Applicant/s : Shri. Anil S/o Mohan Meharwade.  
.Vs.  
Opponent/s : Ratnakar Hiremath.

- i. Provision under which application is filed : Under Order 39 Rule 1 and 2 R/w Sec.151 of CPC.
- ii. Relief sought for : To restrain the defendant and their men, agents, legal heirs and servants from handover the possession of the suit property to any body in any other manner till disposal of suit.
- iii. The date on which application is filed : 14.08.2024

- iv. Number of the : 1  
application
- v. The date on which : 13.11.2024  
objections are filed  
by different  
opponents
- vi. The date on which : 25.01.2025  
orders were passed  
on the said  
application

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### **ORDERS ON IA No.I**

This order arises out of interlocutory application No.I filed by the applicants/plaintiff under Order XXXIX Rule 1 and 2 of Civil Procedure Code to restrain the defendant and their men, agents, legal heirs and servants from handover the possession of the suit property to any body in any other manner till disposal of suit.

2. The brief facts of the affidavit annexed to application is that, the plaintiff has filed suit for eviction or recovery of possession. That the plaintiff strongly apprehend that, the defendant may transfer/handover the suit property to any body. If the defendant has not restrained by an order, the defendant may misuse the due process of law and may give trouble to plaintiff. Hence, the plaintiff prayed to allow the application.

3. The defendants have resisted the application by filing memo to consider written statement as objections to interim application. The defendant has denied the

allegation of the plaintiffs in the written statement and contended that the plaintiff using his first force tried to threaten the defendant and when the defendant has clearly protested his illegal act, the plaintiff has filed this false suit. There is no cause of action arose to plaintiff to file the suit against the defendant. The defendant has clearly told before the police authorities regarding the sale agreement and his occupation. Hence, the defendant prayed to dismiss the suit and interim application with costs.

4. I have heard the arguments canvassed by learned counsel for parties.

5. The following points are for my consideration.

- Point No.1: Whether the plaintiffs have made out a prima facie case in their favour?
- Point No.2: Whether balance of convenience lies in favour of the plaintiff?
- Point No.3: Whether the plaintiff would suffer irreparable loss and injury if the temporary injunction is not granted as prayed by him in interim application?
- Point No.4. What order?

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

- Point No.1: In the affirmatively.
- Point No.2: In the affirmatively.
- Point No.3: In the affirmatively.
- Point No.4: As per final order, for the following;

## **REASONS**

7. **Point No.1 to 3**: These points are interlinked each other, as such I considered these points together to avoid repetition of facts of the case and for common discussion. It is undisputed fact that, the present suit is eviction or recovery possession. The plaintiff has specifically averred in the application that, the defendant may transfer/handover the suit property to any body. If the defendant has not restrained by an order, the defendant may misuse the due process of law and may give trouble to plaintiff. Per contra, the defendant has totally denied the allegation made by the plaintiff in the plaint and contended that he is in possession on the basis of the sale agreement.

8. The plaintiff has produced the photocopy of the sale deed in support of their claim and title. On careful perusal of the said document, be gathered that the plaintiff has purchased the property bearing flat No.510 measuring 1500 Sq.Feet super built up are on the 4<sup>th</sup> floor in B-block along with 1/50th i.e.,431.87 Sq.feet undivided share and interest in the Schedule A plot bearing NA plot No.1B/2 measuring 17 Guntas 0.75 Annas formed in Unkal Village RS No.533/1E/2+4 in the residential apartment known as ROYAL COMFORT, Situated near Siddeshwar park, Banashankari Badavane, Vidyanagar. The property extract is standing in the name of the plaintiff. The plaintiff has specifically pleaded about illegal possession of the defendant over the suit property in the plaint. The

defendant has denied the allegation. Both the parties have made several allegation against each other in the pleading. To give specific findings on rival contentions, it needs full fledged trial of the parties. The entire written statement does not depicts that, the defendant have an intention to hand over the suit property.

9. It is well settled principle of Law that, the discretion of the Court is exercised to grant a temporary injunction only when the plaintiffs have made out existence of prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction; when the need for protection of the defendant's right is compared with or weighed against the need for protection of the defendants rights, the balance of convenience tilting in favour of the plaintiffs and clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction order is not granted. The facility to Principles Governing Grant of Injunction is at the discretion from the Court. This foresight, however, should be exercised reasonably, judiciously as well as on sound lawful principles. Injunction must not be lightly granted mainly because it adversely affects the other side. The grant of injjunction was in the nature connected with equitable relief, and the Court room has undoubtedly capacity to impose such terms and conditions as it perceives fit. It is a well settled principle of law that interim relief can always be granted in the aid of and as ancillary to the main relief available to the party on final determination of his right in a suit or any other proceeding.

10. Therefore, the Court undoubtedly possesses the power to grant interim relief during the pendency of the suit. Temporary injunction restrains a party temporarily from doing the specified act and can be granted only until the disposal of the suit or until the further orders of the Court. At this point of time, I would like to place reliance on the decisions reported in (2010) 1 SCC 689 - Kashi Mata Samsthan and another V/s Shrimad Sudhindra Thirtha Swamy and another. In the Hon'ble Supreme Court held in para 16 that:

“It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience of irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.....”.

The ratio laid down in the above decision clarifies that the plaintiffs ought to make out prima facie case in order to obtain temporary injunction. The grant of injunction was in the nature connected with equitable relief, and the Court room has undoubtedly capacity to impose such terms and conditions as it perceives fit. As I mentioned above, in order to decide the claim of the plaintiffs it needs full fledged trial. By considering all the materials on record it appears to Court that, it is necessary to issue prohibitory order against the defendant as prayed by the plaintiff in this application. If the injunction has not been granted in favour of the plaintiff, the plaintiff would be put to great hardship and it cannot be compensated in terms of money. Hence, it appears to Court that, the plaintiff has established the prima facie case and balance of convenience to get relief as prayed in the application. Hence, I answer **point No.1 to 3 in the affirmatively.**

11. **Point No.4:** As per following;

### **ORDER**

**Interlocutory Application No.1 filed by the plaintiff under Order XXXIX rules 1 and 2 of Code of Civil Procedure is hereby allowed with costs.**

**The defendant No.1 is hereby restrained from handing over the possession of the suit schedule property**

**to any person in any manner till disposal  
of the suit.**

(Directly typed and computerized by me in laptop and corrected, signed and then pronounced by me in Open Court on this the **25<sup>th</sup> day of January, 2025**)

(Raghavendra. R)  
I Addl. Senior Civil Judge and JMFC.,  
Hubballi.