

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

PRESENT

**SRI. G.R. SHETTAR., B.com. LL.B (Spl)
PRL. SENIOR CIVIL JUDGE AND CJM, GADAG**

DATED THIS 01ST DAY OF OCTOBER, 2024

O.S.No.105/2024

PLAINTIFF:

Basavaraj S/o Nagappa Arahunasi,
Age:47 years, Occ:Agriculture,
R/o Lakkundi.

(R/by Sri. I.L.D., Advocate)

Vs

DEFENDANT:

Shakuntala W/o Channabasappa Hombal,
Age:65 years, Occ:Rtd.Employee,R/o Lakkundi,
Now resides at Near Abdul Kalam Shadi Mahal,
Near Auto Stand, Hatalageri Road,
Gadag – 582 102.

(R/by Sri. S.M.H., Advocate)

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PARTIES To I.A. No.I

APPLICANT:

Basavaraj S/o Nagappa Arahunasi,

Vs

OPPONENT:

Shakuntala W/o Channabasappa Hombal,

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ORDER ON I.A.I U/O 39 RULE 1 & 2 OF CPC

Plaintiff has filed the present application praying for restrain the defendants from alienating, creating encumbrance, pledging and mortgaging the suit property in any manner till disposal of the suit.

2. Application is supported by the affidavit sworn to by the plaintiff wherein it is contended that plaintiff has file this suit for specific performance of contract based on agreement for sale executed by the defendant dated:19.04.2021. The defendant has executed agreement for sale agreeing to sell the suit property to the plaintiff for Rs.7,35,000/- and received earnest money of Rs.2,00,000/-, he again paid Rs.4,00,000/- to the defendant through NEFT. When the plaintiff asked to execute the sale deed the defendant has not performed her part of contract and refused to execute the sale deed. The plaintiff is an apprehension that the defendant may alienate the suit property to take unlawful gain. Hence, the plaintiff constrained to file the suit and application.

3. After service of summons, the defendant has appeared through her learned counsel and denied the plaint averments as false. It is contended that after her retirement and retirement of her husband from service, the defendant was interested of doing agriculture, she was in search of land around Lakkundi village, since the plaintiff is her relative the defendant sought his help to search the agriculture land for her. In 2022 they searched a land at Talabal village and decided to purchase the same. At that time defendant fell short of some funds and she requested the plaintiff to lend Rs.5,50,000/- for 6 months, the plaintiff lent Rs.5,50,000/- through two installments of Rs.4,00,000/- and Rs.1,50,000/-. Then the defendant went to repay the amount but the plaintiff started pressurizing the defendant to sell the suit property for meager amount of Rs.5,50,000/- by taking undue advantage of the old age of defendant by creating document styled as 'Mane Khareedi Vachana Patra Besmi'. The plaintiff has filed false suit. Hence, prayed

for dismissal of the suit and application.

4. Heard the arguments.

5. The points arise for my consideration are:

P O I N T S

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 plaintiff would be put to irreparable loss, if the T.I., as prayed is not granted?
4. What order ?

6. My findings on the above points are:

POINT No.1 to 3 : In the Affirmative
POINT No.4 : As per the final order
for the following:

R E A S O N S

7. **POINTS No.1 & 2** : The plaintiff has filed the suit for specific performance of contract based on agreement for sale executed by the defendant but then refused to execute the sale deed and the plaintiff is also apprehension that the defendant may alienate the suit property. Per contra the defendant has denied the plaint

averments and contended that she to financial assistance of Rs.5,50,000/- from the plaintiff for another transaction but when the defendant went to repay the amount the plaintiff by creating false document has pressurized the defendant to execute sale deed in respect of the suit property by taking undue advantage of the old age of the defendant.

8. I have gone through the entire material carefully. Plaintiff has filed the suit based on agreement for sale said to have been executed by the defendant but the defendant has admitted the receipt of Rs.5,50,000/- but denied the execution of agreement for sale. To decide the real dispute between the parties, full-fledged trial is required. Present application has to be decided on the basis of the material produced at this pre trail stage. For granting the temporary injunction, prima facie is to be looked into, prima facie case includes maintainability of suit. On going through the material produced at this pre trail stage suit of the plaintiffs is absolutely maintainable and fit of trial. Therefore, I am of the opinion that the

plaintiffs have made out prima facie case and balance of convenience is also in favour of plaintiffs. Hence, I answer the Points No.1 and 2 in the Affirmative.

9. **POINT No.3:** As discussed above, suit of the plaintiff is maintainable and fit for trial. Purpose of granting temporary injunction is to maintain the stay of thing as exists to the till disposal of the matter in controversy. Admittedly, suit property is standing in the name of defendant, if the defendant succeed in alienating the suit property, the situation will become irreversible as on the date of disposal of matter and it will lead to multiplicity of proceedings. Further, after filing of the suit, Ex-parte temporary injunction order was granted and extended from time to time till further orders. Under such circumstances if the temporary injunction as prayed in I.A.No.I is not granted the plaintiff would be put to irreparable loss then the defendant. Hence, I answer the point No.3 in the Affirmative.

10. **POINT No.4**: As discussed above, I proceed to pass the following:

ORDER

I.A.No.I filed by the plaintiff U/o 39 Rule 1 and 2 R/w Sec.151 of CPC is hereby allowed.

The defendant is hereby restrained from alienating the suit property in any manner till disposal of the suit.

No order as to cost.

(Dictated to Stenographer, transcribed and typed by him, printed, then corrected and pronounced by me in the open court on this **01st day of October, 2024**)

Sd/- 01/10/2024

(G.R. SHETTAR)

**Prl. Senior Civil Judge & CJM.,
GADAG**