



**IN THE COURT OF THE SENIOR CIVIL JUDGE
AND J.M.F.C., SHIGGAON**

Present: Sri. Sunil S. Talawar
B.A.LLB..., (Spl.)
Senior Civil Judge & J.M.F.C.,
Shiggaon

DATED THIS THE 9th DAY OF JULY-2026

O.S.46/2025

Plaintiff : Sri. K E Kanthesh
S/o K E Eshwarappa,
Age: 45 years, Occ: Business/
Agriculture, R/o Jayalakshmi
Nilaya, 1st Main Road, Gundappa
Shed, Malleshwara Layout,
Shivamogga-577201.

Vs.

Defendants: Sri. Swami Linga @ Somanna
S/o Mallappa Bevinamarad,
Age: 63 years, Occ: Business/
Agriculture, R/o Above ICIC
Bank Building, Jayanagar,
Shiggaon, Tq: Shiggoan,
Dist: Haveri.

Parties to the IA I

Applicant: Sri. K E Kanthesh
S/o K E Eshwarappa,
Age: 45 years, Occ: Business/
Agriculture, R/o Jayalakshmi
Nilaya, 1st Main Road, Gundappa
Shed, Malleshwara Layout,
Shivamogga-577201.
(By Sri. V.V.S, Advocate)



Vs.

Opponent: Sri. Swami Linga @ Somanna
S/o Mallappa Bevinamarad,
Age: 63 years, Occ: Business/
Agriculture, R/o Above ICIC
Bank Building, Jayanagar,
Shiggaon, Tq: Shiggoan,
Dist: Haveri.

(By Sri. S.G.T, Advocate)

Parties to the IA II

Applicant: Sri. Swami Linga @ Somanna
(Dft) S/o Mallappa Bevinamarad,
Age: 63 years, Occ: Business/
Agriculture, R/o Above ICIC
Bank Building, Jayanagar,
Shiggaon, Tq: Shiggoan,
Dist: Haveri.

(By Sri. S.G.T, Advocate)

Vs.

Opponent: Sri. K E Kanthesh
(Pltf) S/o K E Eshwarappa,
Age: 45 years, Occ: Business/
Agriculture, R/o Jayalakshmi
Nilaya, 1st Main Road, Gundappa
Shed, Malleshwara Layout,
Shivamogga-577201.

(By Sri. V.V.S, Advocate)

COMMON ORDER ON I.A.No.I AND II

The plaintiff/applicant has filed I.A.No.I **U/O XXXIX Rule 1 and 2 R/w Sec.151 of CPC** seeking temporary injunction against defendant, his agents,



attorneys, executors, henchmen, etc., from alienating or creating any third party interest or rights by way of lease, mortgage, charge, lien, etc., in any manner, till disposal of the suit.

The defendant/applicant has filed I.A.No.II **under Order XXXIX Rule 4 R/w Sec.151 of CPC** seeking order of this court to vacate the exparte temporary injunction granted by this court on preliminary hearing on IA I in the interest of justice and equity.

2. The plaintiff has sworn to the affidavit and stated that, he has filed present suit for the relief of specific performance of contract on the basis of agreement for sale executed by the defendant. He has also stated that, as per terms of agreement for sale the plaintiff has already paid Rs.27,00,000/- to the defendant. It is agreed in the agreement of sale that, the remaining balance amount shall be paid to the defendant at the time of execution of final sale deed. The agreement for sale reduced into writing on 20.12.2021 and same is registered before Sub-Registrar, Shiggaon. The defendant upon repeated request made out by the plaintiff is not ready to execute final sale deed. In order to deprive the valuable rights of the plaintiff, the defendant is intending to sale the suit properties to others. Therefore, the present



suit is filed for the relief of specific performance of contract. Upon preliminary hearing on IA No I this court granted the Ex-parte T.I against the defendant which is still in operation, hence prayed to grant T.I till dispossession of the suit.

3. Per contra, the defendant has filed written statement and also filed memo stating that, the contention taken in the written statement be treated as objections to the IA I. It is denied by the defendant that, the defendant is not having any intention to alienate the suit property to the plaintiff. The father of plaintiff was former Minister of Government of Karnataka. It is requested by the plaintiff's father to the defendant to contest the MLA election of Shiggoan constituency in the year 2023. The defendant has wanted money to contest the election, therefore, he has availed a sum of Rs.27,00,000/- with interest at the rate of 5%. The defendant has regularly paid interest to the plaintiff. It is also contended that, the defendant had tendered reply notice to the demand notice of the plaintiff. Therefore, prayed to reject the IA I filed by the plaintiff and to allow the IA II.

4. Heard both side.
5. Perused the materials of this case.
6. The points that arose for the consideration of this court are as here under:-



- 1 Whether the plaintiff /applicant has got prima-facie case for the grant of temporary injunction?**
- 2 Whether the balance of convenience lies in favour of the plaintiffs/ applicants?**
- 3 Whether the plaintiffs will be put to irreparable loss or injury, if an order of temporary injunction is not granted?**
- 4 Whether the defendant/ applicant has made out grounds to vacate the exparte temporary injunction granted by this court upon preliminary hearing on IA I?**
- 5 What order?**

7. My answer to the above points are as here under:-

Point No.1:- In the Negative

Point No.2:- In the Negative

Point No.3:- In the Negative

Point No.4: In the Affirmative

Point No.5:- As per final order

for the following:



REASONS

8. **Point No.1 to 4:-** Point No.1 to 4 are inter linked with each other and based on same material facts those are made available in the form of plaint, affidavit and documents produced by the plaintiff. The written statement and sworn affidavit of defendant. Therefore, I have taken point No.1 to 4 for discussion jointly to avoid repetition.

9. This is a suit for specific performance of contract on the basis of agreement for sale dated 20.12.2021. Therefore, it is relevant here to discuss the terms of agreement for sale dated 20.12.2021. The agreement for sale is a registered document which prima facie disclose that, there was a proposal by the defendant to the plaintiff for the reason of sale of suit property for a consideration of Rs. 40,00,000/-. It is also appears in agreement for sale that, the defendant had received earnest money of Rs.27,00,000/- from plaintiff through cheque No.449496 dated 20.12.2021. The terms and conditions mentioned in the agreement for sale is that, the defendant shall execute the final sale deed within 3 months from the date of agreement for sale. The defendant has also agreed to that, he bound to prepare all the relevant documents pertaining



to the suit property to execute final sale deed. Now it appears from the case of plaintiff that, the defendant did not come forward to execute the sale deed and hence the litigation taken place between the parties. These are the prima facie materials on the part of plaintiff.

10. The relationship of the plaintiff and defendant pertaining to the terms of agreement for sale is not in dispute. The defendant contentions towards the agreement for sale is that, the relied agreement for sale is time barred document. Hence, it is not executable for the simple reason that, time is essence of contract and there is clear condition in the agreement of sale that, plaintiff shall get registered the sale deed within 3 years from the date of agreement of sale i.e., from 20.12.2021. Therefore, since suit is not maintainable and barred by law of limitation injunction order cannot be granted. Further, apart from this the defendant has pleaded about the amount received by him on the basis of interest of 5% and paid interest regularly etc.

11. In order to substantiate his pleadings, the plaintiff has produced copy of sale deed which is agreement for sale without possession. The said document is duly registered before Sub-Register,



Shiggoan. Further the plaintiff has produced RTC of land Sy. No.53/3 wherein, the name of defendant is appearing as cultivator. Upon perusal of the said RTC it prima facially appears that, the said land converted into non agriculture land reserved for a commercial purpose. The MR No.21/2010-11 and MR No.H-14/2014-15 disclosing the said fact. No doubt that, the defendant has executed agreement for sale in respect of said property but here as per terms of the agreement for sale the said transaction shall be completed within 3 years from the date of agreement. Here, upon perusal of the agreement for sale same is registered on 20.12.2021. Therefore, the terms of the agreement for sale which bound to the both parties is in between 20.12.2021 to 20.12.2024. The defendant has much relied on the said aspect by stating that, the plaintiff ought to have get register the agreement for sale within this period as time is essence of contract for him and hence, the suit is barred by law of limitation. In this regard, the agreement for sale is legally enforceable as per will and wish of the plaintiff and defendant either in between **20.12.2021 to 20.12.2024**. The materials of present matter prima facially reveals that, as per plaintiff's version he is and was ever ready and willing to purchase the property in between that time but the defendant did not came forward to execute the final sale deed. However, the defendant has also taken



contrary version in respect to the both the terms of agreement for sale and the relied consideration received by him for some other purpose. Meanwhile, the defendant has also taken stand in respect of suit barred by law of limitation. Here, as the matter of present application is concerned this court is bound to look the fact that, whether as of now the defendant intending to sale the suit property to the others or not. The comparative hardship to the parties is also paramount consideration in a matter of specific performance of contract. No doubt that, during the pendency of the suit any alienation taken place then it will cause much hardship to the plaintiff as the base foundation of the matter are the agreement for sale and keeping the property in tact untill the final order of this court by deciding real lis between parties. The terms of agreement for sale and its proof are very much necessary elements as to create right over the suit property by the plaintiff. At this stage of proceedings it cannot be said that, the agreement reduced into writing are all false just because the agreement cannot be enforceable by law and there is no legal strength on it to perform the contract. The plaintiff has already approached this court seeking specific performance of contract as against the defendant. The defendant is well aware of the fact that, the suit being instituted against him in respect of subject suit property. Under



the circumstances, the plaintiff can take recourse of **Section 52 of Transfer of Property Act.**

12. As the prima facie case and balance of convenience is taken into consideration then it is prima facie appears that, the plaintiff has not at all issued any legal notice to the defendant within the stipulated period of time starting from 20.12.2021 to ending on 20.12.2024. Though it prima facie appears in the agreement for sale that, the burden is shifted on the defendant to prepare all the necessary documents pertaining to the suit property in order to make it available for final registration but the plaintiff cannot keep mum for waiting the action and reaction of defendant for all these days from 20.12.2021 to 20.12.2024. Because the plaintiff is well educated and he represents from the family of Ex-MLA. Therefore, since the time is essence of contract the plaintiff shall bound to offer the defendant to call for registration of final sale deed in respect of suit property. Therefore, the prohibitory order as sought for by the plaintiff bars the prima facie case for all these reason and also it will effect on the balance of convenience. However, the strong weapon is available to the plaintiff that is by taking recourse of **Section 52 of Transfer of Property Act.** It is the duty of defendant to **bring notice to the plaintiff** while making any transfer of suit property to



the third party that to during pendency of this suit. Because, the defendant has taken contention as against the registered agreement for sale executed by himself in favour of the plaintiff. It does not mean to say that the defendant can alinate the suit property that to during pendence of this suit. He bound to place evidence on all aspects as against the agreement for sale. Hence, he cannot go beyond all his contentions that to help this court to decide the matter on merits. Meaning thereby the defendant shall bound to keep the suit property preserved or intact till disposal of the suit on merits. Hence, no need to restrain the defendant from alienating the suit property to the others and no merits to grant temporary injunction in this matter. Therefore, in the considered opinion of this court the exparte temporary injunction granted by this court need to vacate for the all above reasons. This court make it clear that, the observation in the above said manner are only based on prima facia materials of the present matter and these reasonings will not came on the way of merits of the case. The parties are bound to place evidence on all the aspect of the case based on their rival contention taken in the matter.

Therefore, considering all these aspects I answer point No.1 to 3 are in the **Negative** and point No.4 is the **Affirmative**.



13. Point No.5:- In view of the above discussion, I proceed to pass the following:

ORDER

The I.A.No.I filed by the plaintiff /applicant U/Order XXXIX Rule 1 and 2 of CPC is hereby rejected.

The IA II filed by the defendant/applicant under Order XXXIX Rule 4 of CPC is hereby allowed.

The exparte temporary injunction granted by this court which is till in operation is hereby vacated.

Looking to the facts and circumstances of the case the parties shall bear their own cost.

Issues. Call on 22.07.2026.

(Dictated to the Stenographer, typed by him, revised and corrected by me and then pronounced in the open court on this the 9th day of July 2026)

**(Sunil.S. Talawar)
Senior Civil Judge and JMFC,
Shiggaon.**

