



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC.,**

**AT: ALAND**

Present: Shri. **Abdul Rahaman Pathan,**  
B.A. LL.M.,  
II Additional Senior Civil Judge & JMFC.,  
Kalaburagi  
**C/c Senior Civil Judge & JMFC., Aland**  
**O.S. No. 63/2025**

Dated this the 19<sup>th</sup> day of December 2025

**PLAINTIFF:** Smt. Shakuntala W/o Hanamanth  
Gayakwaad, Age: 46 years, Occ:  
Household and Agriculture, R/o  
Jamaga (K) village, Tq: Aland, Dist:  
Kalaburagi.

**(By Shri. M.S.A. Adv.,)**

**//Versus//**

**DEFENDANT:** Anasuyabai W/o Hanamanth  
Gayakwaad, Age: 58 years, Occ:  
Household, R/o Jamaga (K) Village,  
Tq: Aland, Dist: Kalaburagi.

**(By Shri. D.H.H. Adv.,)**

**PARTIES TO I.A. No. II**

**Applicant/  
Plaintiff:** Smt. Shakuntala W/o Hanamanth  
Gayakwaad.

**//Versus//**

**Opponent/  
Defendant:** Anasuyabai W/o Hanamanth  
Gayakwaad.

Provision under which instant application is filed	U/Order XXXIX rule 1 and 2 of Code of Civil Procedure
Relief sought for	Temporary injunction
Date of application	17-05-2025
Number	I. A. No. II
Date on which the objections are filed	10-10-2025
Date on which Order is pronounced	19-12-2025

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**ORDER ON I.A. NO. II**

The plaintiff filed instant application U/Order XXXIX rule 1 and 2 of the Code of Civil Procedure seeking for an order of temporary injunction to restrain defendant from alienating, mortgaging or creating charge over Suit Schedule Properties pending disposal of the suit.

**2. The averments made in the affidavit annexed to the application in brief are as under:**

It is averred in the affidavit annexed to the application that, defendant is the owner of land bearing Sy. No. 48/1 measuring 01.20 acres, Situated at Jamaga (K) Village, Aland taluka and House Property bearing No. 119 measuring 40 X 40 square feet, Situated at Jamaga (K) Village, Aland taluka, **(Hereinafter referred as Suit Schedule Properties)**. She was in dire need of money to meet necessity of her family as such, she agreed to sell suit property in favor of plaintiff for total sale consideration of Rs. 10,00,000/- and

executed Unregistered Agreement to Sell dated, 11-02-2025 receiving part sale consideration of Rs. 50,000/-. It was agreed to complete the sale transaction after furnishing relevant documents. This being the state of affairs, plaintiff approached defendant for execution of sale deed in terms of said agreement to sell but she dodged the same on or other pretext. Thus, plaintiff got issued legal notice dated, 01-04-2025 calling upon defendant to execute the sale deed in terms of said agreement to sell but of no avail. The plaintiff has been ready and willing to perform her part of contract. The defendant is highhandedly trying to alienate or to create charge over suit properties in deprivation of rights of the plaintiff. Thus, she constrained to file instant suit and instant application to restrain defendant from alienating or creating charge over Suit Schedule Properties pending disposal of the same. There is prima facie case and balance of convenience lies in her favor. Thus, prayed to allow this application.

3. The defendant filed objection to instant application contending that, instant application is not maintainable either in law or on facts as such, liable to be rejected at the threshold. It is admitted that, defendant is the owner of suit property. It is denied that, defendant agreed to sell suit property in favor of defendant for total sale consideration of Rs. 10,00,000/- and executed Unregistered Agreement to Sell dated, 11-02-2025 receiving part sale consideration of Rs. 50, 000/-. It is also denied that, defendant agreed to execute the sale deed in terms of said agreement to sell after furnishing relevant documents. It is further denied that, defendant handed over possession of the suit property in her favor of plaintiff in pursuance of

part performance of contract. It is further denied that, despite repeated request, defendant dodged to execute the sale deed in terms of said agreement to sell.

4. It is specifically contended that, plaintiff is concubine of husband of defendant. The defendant neither agreed to sell suit property in favor of defendant nor executed Unregistered Agreement to Sell dated, 11-02-2025 receiving part sale consideration mentioned therein. The said agreement to sell is sham and doctored instrument defendant does not derive any right there from. The defendant has no source of income to pay the part sale consideration. There is no prima facie case and balance of convenience in her favor. Thus, prayed to reject this application with costs.

5. On the basis of pleadings and documents produced, following points arise for my consideration:

- 1. Whether plaintiff has made out prima facie case for grant of temporary injunction as prayed?.**
- 2. Whether the balance of convenience lies in favor of plaintiff?.**
- 3. Whether plaintiff will be put to irreparable injury, if order of temporary injunction is not granted?.**
- 4. What order?.**

6. Heard learned counsel for plaintiff and defendant. Perused material placed on record. My answer to above points is as under:

**Point No. 1: In the Negative**

**Point No. 2: In the Negative**

**Point No. 3: In the Negative**

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

**REASONS:**

7. **Point No. 1 to 3:** These points are interconnected as such, are taken together for common discussion to avoid repetition. At the outset, plaintiff filed instant suit for a relief of Specific Performance of Contract to direct defendant to execute the sale deed in terms of Unregistered Agreement to Sell dated, 11-02-2025 and also for Perpetual Injunction to restrain defendant from causing obstruction to the possession of defendant and also from alienating the same in favor of third parties. In support of her case, plaintiff produced Original Unregistered Agreement to Sell dated, 11-02-2025 and translation thereof, RTC Extract, DCB Register Extract, Legal Notice dated, 01-04-2025, Postal receipt, Postal Endorsement and Photographs. Per contra, defendant produced Certified Copy of Order Sheet in Criminal Miscellaneous No. 44/2018 and RTC Extract.

8. In view of above, this Court carefully perused material placed on record. It is undisputed fact that, defendant is the owner of the suit property and she acquired the same in lieu of maintenance. It is also undisputed fact that, plaintiff and defendant both are wives of one Hanumanth. With these admitted facts, this Court carefully perused Unregistered Agreement to Sell dated, 11-02-2025. Wherein it appears that, defendant agreed to sell suit properties in favor of

plaintiff for total sale consideration of Rs. 10,00,000/- and executed said instrument receiving part sale consideration of Rs. 50,000/-. The defendant has denied very execution of the said instrument and receipt of part sale consideration mentioned therein. Thus, the execution of said agreement to sell and receipt of part sale consideration mentioned therein is to be decided by taking evidence in this suit.

9. It is specific contention of defendant that, no stamp duty is paid on Unregistered Agreement to Sell dated, 11-02-2025 as such, no relief based thereon be granted. Per contra, learned counsel for plaintiff stoutly argued that, issue of nonpayment or insufficient payment of stamp duty can only be considered at the time of marking instrument in evidence but not at the time of consideration interim application. In view of the same, this Court carefully perused Unregistered Agreement to Sell dated, 11-02-2025. Wherein it appears that, said instrument is executed on blank paper and no stamp duty is paid thereon. This Court also perused Order Sheet dated, 07-11-2025. Wherein it appears that, defendant vehemently objected to consider Unregistered Agreement to Sell dated, 11-02-2025 as no stamp duty is paid thereon. In view of the same, this Court carefully perused Section 34 of the Karnataka Stamp Act, which envisages that, no instrument chargeable with duty shall be admitted in evidence for any purpose or shall be acted upon, registered or authenticated by any such person or by any Public Officer unless such instrument is duly stamped. The proviso appended thereto makes such instrument admissible only upon

payment of prescribed Stamp Duty and Penalty. It is evident from said provision that, said provision prohibits its user for any purpose whatsoever by the Court. The expression for any purpose appearing in said provision includes the use of such instrument for issue or refusal of interim injunction. The said principle of law is supported by decision of Hon'ble High Court of Karnataka reported in **ILR 2003 KAR 879, (K.B. JAYARAM AND ANOTHER VS., NAVINEETHAMMA AND OTHERS)**. Wherein at Paragraph No. 3 it is held that, Section 34 forbids its user for any purpose whatsoever by the Court, authority or person competent to receive evidence. The expression "for any purpose" appearing in the section is wide enough to include within its amplitude use of the document for the purpose of issue or refusal of injunctions prayed for in a suit for Specific Performance or other similar other reliefs. In this case also, the Unregistered Agreement to Sell dated, 11-02-2025 has not been stamped and despite specific contention, plaintiff has not paid prescribed stamp duty and penalty thereon as such, he cannot be allowed to reap the benefit of instrument, which has not at all been stamped. In such eventuality, the relief of temporary injunction based thereon cannot be granted. In view of above, this Court is of view that, there is no prima facie case and balance of convenience lies in favor of defendant. Thus, plaintiff has not made out any grounds for grant of temporary injunction as prayed for. **Accordingly, I answer Point No. 1 to 3 in the Negative.**

10. **POINT No. 4:** In view of discussion and conclusion arrived at Point No. 1 to 3, this Court proceeds to pass following:

**ORDER**

**I.A. No. II filed by plaintiff U/Order XXXIX  
Rule 1 and 2 of Code of Civil Procedure is hereby  
REJECTED.**

**Parties to bear their own costs.**

(Dictated to the Stenographer directly on laptop, corrected by me and then pronounced in Open Court on this the 19<sup>th</sup> day of December 2025).

**(Abdul Rahaman Pathan)**  
II Additional Senior Civil Judge  
& JMFC., Kalaburagi.