

KAKB620025652024



IN THE COURT OF THE CIVIL JUDGE & JMFC., JEWARGI

Present

Sri. Kashinath V. Uppar

B.Sc. LL.B.

Civil Judge & JMFC., Jewargi.

Dated on this the 13th day of August-2025

O.S. No. 139/2024

PLAINTIFF:

Maheboob Sab S/o Abdul Saheb Mulla
Age: 45 years, Occ: Agriculture,
R/o Wadagera, tq: Yadrami,

(By. Sri. B.Bassanna, Advocate)

V/s.

DEFENDANTS:

1. Chandappa S/o Bangarewwa Wadagera,
Age: 65 years, Occ: Agricultural,
R/o Wadagera, tq: Yadrami,
2. Ashok S/o Chandappa Madar,
Age: 35 years, Occ: Agricultural,
R/o Wadagera, tq: Yadrami,

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

PARTIES TO I.A. NO.I

APPLICANT/S
PLAINTIFF

: Maheboob Sab S/oAbdul Saheb
Mulla
V/S

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OPPONENT/
DEFENDANTS

: Ashok S/o Chandappa Madar &
another

ORDER ON I.A No.I FILED BY PLAINTIFF

U/O 39 RULE 1 & 2 OF C.P.C.

The plaintiff has filed I.A No.I under Order 39 Rule 1 & 2 R/w. Section 151 of C.P.C., for the relief of temporary injunction against 1st defendant, restraining him from alienating, mortgaging or creating any type of charge over suit schedule property till disposal of the suit.

2. As per the plaint averments and affidavit annexed to the I.A.No.1 the case of plaintiffs/applicants in brief is as under:

3. The suit property is agricultural land bearing Sy.No.208/E, measuring 02 acre 00 guntas, situated at village Wadagera Tq: Yadrami Dist. Kalaburagi.

4. It is case of plaintiff that, the defendants are the father and son in relation. The plaintiff and defendants are inhabitant of same village and having cordial relationship with each other, the defendants approached the plaintiff and offered to sell the said land for total consideration at Rs.3,50,000/-. Plaintiff has agreed to purchase the same and on receipt of an earnest money of Rs. 3,42,000/- defendants have executed an agreement of sale without possession Dated 27.04.2017 through doct No. 485/2017-18 and agreed to execute the registered sale deed on receipt of balance

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consideration Rs. 8,000/- by furnishing the permission from the concerned authorities.

5. That the D-2 being the son of D-1 has also consented for the said transaction and signed as consenting witness in the presence of witnesses by name Shivalingappa and Sharanappa. But thereafter defendants have postponed to provide the necessary permission to execute the registered sale deed for one or other reasons. Meanwhile covid pandemic has started and due to lockdown from time to time, defendants have not made any attempt to get permission from the concerned authorities. However, plaintiff after the lockdown has been lifted, requested the defendants to apply for permission to sell the said land as agreed but they have not done so and said the plaintiff to wait for some time and they would tell the reliable person to get permission soon. Plaintiff waited for the same and recently he has got confirmed that the defendants have still not applied for seeking permission to sell the said land which shows their ill intention and dupe the rights of plaintiff.

6. That the plaintiff has ever ready and willing to perform his part of contract and he has been ready with balance consideration and requested to execute the registered sale deed by furnishing necessary permission. But the defendants are not ready to execute the sale deed. Hence, the plaintiffs constrained to file this suit.

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7. The plaintiff in his sworn to the affidavit that, the plaintiff prayed to consider the plaint averments as part and parcel of the affidavit. Defendant No.1 is executed the agreement of sale in favour of plaintiff. Presently, suit property is standing in the name of defendant No.1. Now, the defendant No.1 trying to alienate the suit property. Plaintiff made out the prima-facie case, balance of convenience lies in favour of plaintiff if the injunction as prayed is not granted plaintiff would be put great loss which cannot be compensated in term of money. With these averments the plaintiffs have sought for allowing I.A.No.I.

8. In pursuance of suit summons defendant has appeared through his counsel and filed written statement and submits that, the defendant has denied the entire plaint averments in toto and called upon plaintiff to prove the same with strict proof. The defendant specially denied the execution of agreement of sale. It is the contention of the defendant that, defendant No.1 approached the plaintiff for obtaining a hand loan amount for doing the agricultural activities in the suit land and plaintiff agreed to give a hand loan amount of Rs.3,50,000/- and plaintiff told that, the defendant No.1 and 2 have to signed the mortgage agreement before the sub-registrar, and the defendant agreed to same. Thereafter, on 27-04-2017 the plaintiff paid to hand loan amount of Rs.3,50,000/- to the defendant No.1 and defendant put the signature on the mortgage agreement. The defendant is illiterate person and he do not know reading and writing. Therefore, he

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signed on the mortgage without reading the contents of the mortgage deed. The defendant already paid Rs.3,00,000/- to the plaintiff. The defendant No.1 has ready to pay Rs.50,000/- for balance consideration amount. The plaintiff fraudulently obtained the signature on the agreement of sale.

9. Heard the arguments on plaintiff side. In spite of sufficient opportunity, the counsel for defendant fails to address argument on I.A.No.I.

10. On considering the I.A No.I, affidavit and objections/written statement to I.A No.I, the points that would arise for my consideration are as under:

POINTS

1. Whether the plaintiff /applicant has made out prima-facie case for grant of temporary injunction?
2. Whether the balance of convenience is lies in favour of plaintiff/applicant?
3. Whether the irreparable loss and injury would be caused to the plaintiff/applicants if the temporary injunction is refused?
4. What order?

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11. The Learned Counsel for plaintiff has produced agreement of sale dated 27-04-2017, and RTC's of the land bearing Sy.No.208/E, legal notice and postal receipts and argued that plaintiff has made out prima-facie case and balance of convenience lies in favour of plaintiff. If temporary injunction is not granted, plaintiff would be put to heavy and untold hardship. Therefore, temporary injunction may be granted to the plaintiff.

12. My answer to the above points are as under:

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : In the Affirmative

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

REASONS

13. **Point No.1:-** I have already set out in brief as to what the case of plaintiff and as to what the objection of defendant is.

14. It is well established and settled position of law that the following propositions are to be established in order to invoke the jurisdiction of the court to grant an interlocutory order of injunction U/O 39 Rule 1 and 2 of C.P.C. (1) plaintiff has to establish a prima-facie case, (2) the balance of convenience is in favour of the party seeking the relief and (3) that the party seeking

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the relief will suffer irreparable injury if injunction is refused. The ingredients are to be established by the party who seeks injunction in his favour. The grant of injunction being a discretionary relief, the party should come to court with clean hands and place all the materials before the court so that, the court will be satisfied about the prima facie case in favour of the party seeking the order.

15. I have considered documents produced by the plaintiff. On perusal of the documents produced by plaintiff it reveals that at this stage it is not in dispute that defendant No.1 is the owner of the suit property and it is also not in dispute that suit property is standing in the name of defendant No.1. The plaintiff produced agreement of sale dated 27-04-2017, which discloses that defendant No.1 executed it in favour of plaintiff. However, defendant denied the execution of agreement of sale and further he contended that, the defendant No.1 obtained the hand loan of Rs.3,50,000/- from the plaintiff and defendant plaintiff is fraudulently obtained the signature on the agreement of sale and defendant No.1 is the illiterate person. Without reading of the agreement of sale, the defendant No.1 put a signature on agreement to sale. At this interlocutory stage the plaintiff has produced agreement of sale which is a registered document and has got presumptive evidentiary value in the eyes of law. Thus it at this stage it can be said that the plaintiff has produced sufficient documents to show that he has made an arguable case. It is the apprehension of plaintiff that defendant No.1 is trying to alienate

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the suit schedule property. The aspects of nature of document, execution of agreement of sale deed, payment of consideration amount, readiness and willingness and do the agreement of sale was created or not are all aspects which are required to be adjudicated in the present suit and it requires a full fledged trial.

16. At this stage, it is necessary to observe here that the court cannot conduct a mini trial at the time of adjudicating the application of this nature, neither the court can express its opinion regarding the merits of the case. While dealing with the applications of this nature the only function of the court is to see do the applicant has made out a prima-facie case and balance of convenience is in whose favour and in case of refusal to grant temporary injunction the loss or hardship would be caused to which side. The plaintiff has produced the agreement which discloses that name of defendant No.1 and it is not in dispute that suit property standing in the name of defendant No.1. The apprehension of the plaintiff that defendant No.1 is trying to alienate the suit schedule property since suit schedule property is standing in the name of defendant No.1 as such said apprehension cannot be ruled out. At this stage of the proceedings, when such being the case it can be opined that plaintiff has made out an arguable case and therefore whenever there is an arguable case then it can be said that plaintiff has made out a prima-facie case. In this sense, I answer **Point No.1 in the Affirmative.**

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17. **Point No.2 and 3**:- Both these points are taken up together for common discussion to avoid repetition of facts. The court has to see that does the applicant will sustain such injuries which cannot possibly and adequately remedied by way of damage and said damage would be in adequate in case of success of applicant. Considering the question of balance of convenience is concerned court has to see the mischief or inconvenience of either parties or otherwise it is necessary or proper to maintain status-quo till the adjudication of dispute is finally decided. The ingredients are to be established by the party who seeks injunction in his favour. The grant of injunction being the discretionary relief the party who claims such relief should come to the court with clean hands and place all the materials before the court so that court will satisfy about the case in favour of the party seeking the order.

18. It is to be noted here that plaintiff has sought for temporary injunction against defendant from alienating the suit schedule property. Admittedly, records of rights of the suit schedule property stands in the name of defendant No.1. Therefore, possibilities of alienating suit schedule property by defendant No.1 in favour of others cannot be ruled out. In this sense, I hold that the balance of convenience lies in favour of plaintiff and not in favour of defendant No.1. Now as regard to the hardship is concerned. If in case temporary injunction is not granted and defendant No.1 alienates the suit property which will lead to multiplicity of proceedings and plaintiff will be put to hardship. On the other hand, if temporary

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injunction order is granted no hardship will be caused to the defendant No.1, since in case if plaintiff fails to succeed in the suit then ultimately defendant No.1 can deal with the property as per his whims and fancies. The plaintiff is under apprehension that defendant No.1 is trying to alienate the suit schedule property in favour of others. Therefore, I am of the view that if the I.A No.1 is not allowed, the plaintiff would be put to heavy and irreparable loss on the other hand defendant No.1 will not be put to any hardship. Hence, I answered **Point No.2 and 3 in the Affirmative.**

19. Point No.4 :- In view of my findings on Points No.1 to 3, the plaintiff is entitled to the relief of temporary injunction which he has sought for. Hence, I proceed to pass the following:

ORDER

I.A.No.I filed by the plaintiff under Order 39 Rule 1 & 2 R/w.Sec.151 of C.P.C. is hereby allowed.

The defendant No.1 is hereby restrained by an order of temporary injunction from alienating, mortgaging or creating any charge over the suit schedule property, pending disposal of the suit.

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Cost of this application will follow the
result of this suit.

(Typed by me on the laptop, corrected and then pronounced
by me in the Open Court on this 13th Day of August-2025).

(Kashinath V. Uppar)
Civil Judge & JMFC,
Jewargi.