

:1:

KAKL200005162011



**IN THE COURT OF THE PRL., CIVIL JUDGE AND JMFC AT
BANGARPET**

:PRESENT:

SRI.CHANDRASHEKAR ALABUR,
B.A., LL.B.,

C/c PRL. CIVIL JUDGE & JMFC., BANGARPET.

O.S. NO.177/2011

DATED THIS 27th DAY OF SEPTEMBER 2025

PLAINTIFF/S: **Mohammed Ashfaq & Ors.**
(LRs. of Late Mohiyuddin)

(Rep. by Sri.**K.P.M.**, Advocate)

-V/S-

DEFENDANT/S: **Smt. Shilpa (D-6) & Ors.,**
(D1(a) to (h) Rep. by Sri.**N.S.**,
D2 to D5 Rep.by Sri.M.S.
Prop D6 Rep.by N.S., Advocates)

PARTIES TO I.A. NO.14

Applicant: Mohammed Ashfaq.,

-V/S-

Opponent: Shilpa (D-6) & Ors.
(LRs. of Late Mohiyuddin)

ORDERS ON I.A.NO.14

Plaintiff filed an application under Order XXXIX Rules 1 & 2 read with Section 151 CPC seeking a temporary injunction restraining defendant No.6, her agents/servants or anybody claiming through her, from alienating, encumbering or creating any third-party interest in respect of the suit schedule property bearing Sy. No.207/1-A, measuring 0-6-8.00 guntas (6.1½ guntas), Karahalli Village, Kasaba Hobli, Bangarpet Taluk , pending disposal of the suit.

2. In the affidavit accompanying the application it is stated that the original plaintiff, Mohiyuddin, filed a suit in OS No. 177/2011 for declaration and permanent injunction. During pendency, he died, and his LR's, including Mohammed Ashfaq, were brought on record. The plaintiff alleges that the defendants have denied their title and, despite being aware of the factual position, created fraudulent documents and executed release deeds and sale deeds without permission of Court.

3. The plaintiff specifically contends that LR No.1(b) and LR No.1(a) of defendant wrongfully executed release deeds dated 04.12.2023 and 05.12.2023. Thereafter, the property was further alienated in favour of one Mubeen Sarvath and Smt. Shilpa (defendant No.6). These transactions were done suppressing the material facts of pending litigation. The plaintiff claims that defendant No.6 has executed a registered sale deed dated 06.09.2024 in her favour, thereby interfering with plaintiff's peaceful possession. The plaintiff submits that the defendants are now making hurried attempts to alienate, encumber and induct third parties into the suit property, which would change the nature and character of the property. Hence, he has filed the present I.A. under Order 39 Rules 1 & 2 CPC r/w Section 151 CPC praying for temporary injunction restraining the defendants from alienating or encumbering the suit schedule property till disposal of the suit prays to allow the application.

4. On the other hand the defendant No.6 filed his Objections by way of counter affidavit contended that the application is not maintainable either in law or on facts and is liable to be dismissed. The defendants contend that the plaintiff has no right, title or possession over the alleged suit schedule property. Plaintiff's claim is limited only to 0.06 ½ guntas in Sy. No. 207/1-A, whereas defendant No.6 has purchased 1 acre 35 guntas of land in Sy. No. 207/1 (alienated land) under registered sale deed dated 09.12.2024. The written statement schedule property (purchased by defendant No.6) is different and distinct from the plaintiff's alleged suit property. Plaintiff is indirectly seeking injunction over defendant's property by wrongly describing it as suit property. Defendant No.6 asserts that she has invested huge sums of money (nearly 3 crores) in purchasing and developing the property, and any injunction would cause irreparable injury and loss to her. The allegations made by the plaintiff regarding fraudulent deeds, collusion, and suppression of facts are all false and denied. Defendant No.6 submits that the plaintiff has no prima facie case, is not in possession, and balance of convenience lies

:5:

entirely in favour of the defendant. The application is a delaying tactic to harass the defendants, and the plaintiff, if aggrieved, should proceed only against defendant No.1 and his LRs, not against defendant No.6 who is a bona fide purchaser for value. Hence prays to dismiss the application.

5. From the above pleadings the following points arise for my consideration.

1. Whether the plaintiff has made out a prima facie case for injunction under Order XXXIX Rules 1 & 2 CPC?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff would suffer irreparable injury if injunction is refused?
4. What order?

6. My answers to the above points are as follows:

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

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

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

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

:6:

The counsel for plaintiff relied on the following decision.

1. 2024 INSC 913 (Ramakanth Ambalal Choksi Vs. Harish Ambalal Choksi and others)

The counsel for defendants relied on the following decision.

1. 2024(2) KCCR 1150 (SC)
2. 2024(2) KCCR 1163
3. 2024(2) KCCR 3318
4. 2024(2) KCCR 3519

REASONS

7. POINT NO.1:- Prima facie case:

The case stood posted for cross-examination of P.W.1 when this I.A. was moved. The suit is for declaration of title , cancellation of (i) sale deed dated 16.07.2009 (D-1 in favour of D-2) and (ii) sale deed dated 24.09.2009 (D-2 in favour of D-3), and for permanent injunction and costs .

8. On 26.09.2024 , learned counsel for plaintiff filed a memo restricting the interim prayer only to a restraint against D-6 from alienation/encumbrance , expressly withdrawing the earlier prayer for restraining induction of any persons.

:7:

9. The original plaintiff has filed this suit in 2011 for declaration and injunction; on his demise, LRs including the present plaintiff were brought on record. Plaintiff asserts that during pendency, despite knowledge of the litigation, certain release deeds dated 04.12.2023 and 05.12.2023 were executed by LRs of D-1, followed by further alienations culminating in a registered sale deed dated 06.09.2024 in favour of D-6 Smt. Shilpa. It is alleged that defendants are attempting hurried alienations to defeat the suit, warranting protection of the subject-matter.

10. D-6 contends inter alia that the plaintiff has no right, title or possession. Plaintiff's claim concerns only 0-6½ guntas in Sy. No.207/1-A , whereas D-6 purchased 1 acre 35 guntas in Sy. No.207/1 under a registered sale deed dated 09.12.2024 , distinct from suit land she has invested nearly ₹3 crores and will suffer grave prejudice. the I.A. is a delaying tactic. The application is not maintainable under Section 23 of the Karnataka Civil Rules of Practice (KCRP).

11. D-6 has produced copies of prior title deeds (1974/1988), possession certificate, endorsements, encumbrance certificate, conversion certificate, release deed(s), her sale deed, e-Khathas, and tax receipts.

12. It is relevant to note that the objection grounded on Section 23 KCRP does not survive in view of the memo dated 26.09.2024 narrowing the relief exclusively against D-6 and only as regards alienation/encumbrance . Order XXXIX contemplates grant of injunction “at any time” to preserve the subject-matter; moving the I.A. when the suit stood for cross-examination of P.W.1 does not, by itself, render it non-maintainable.

13. The suit directly assails the 2009 conveyances (D-1→D-2 and D-2→D-3) concerning Sy. No.207/1-A . The plaintiff has pleaded that later release deeds in Dec-2023 and the subsequent transfers to Mubeen Sarvath and D-6 were effected pendente lite . D-6, in contrast, asserts her purchase concerns Sy. No.207/1 , not 207/1-A. Whether Sy. No.207/1-A forms a carved-out portion from Sy. No.207/1 , whether the

later transactions trace title through the impugned 2009 deeds, and whether D-6's conveyance overlaps or is distinct, are mixed questions of fact and law requiring evidence. At this interlocutory stage, the materials i.e, chain documents on both sides demonstrate a bona fide, substantial issue to be tried .

14. Another aspect to be taken note of is that of Lis pendens & pendente-lite purchaser. The transfers of 2023–2024 asserted by plaintiff are during pendency of a suit filed in 2011 . The doctrine of lis pendens (Section 52 T.P. Act) operates to bind transferees pendente lite to the outcome of the litigation, irrespective of notice, to prevent frustration of the Court's decree. The Supreme Court has consistently held that a transferee pendente lite is bound by the decree and claims through the transferor; pleas of bona fides or want of notice afford no defence to the binding effect of lis pendens.

15. Given the asserted chain culminating in D-6's deed, the plaintiff has shown a prima facie right meriting preservation of the property from further alienations pending trial.

16. The threefold test for temporary injunction— prima facie case, balance of convenience, irreparable injury —is well-settled by the Supreme Court. On the materials presently placed, the plaintiff clears the prima facie threshold. **Therefore I answer point No.1 in the affirmative.**

17. Point No.2 – Balance of convenience:

The interim restraint sought is narrowly tailored : it does not disturb possession or ordinary enjoyment by D-6; it only prevents creation of third-party interests or encumbrances that would multiply litigation and complicate the lis pendens . If further alienations are permitted during trial, the suit's subject-matter may be rendered intractable , and additional parties would have to be impleaded, defeating expedition. Conversely, D-6, who claims through pendente-lite transactions, suffers no prejudice beyond a temporary embargo on further transfers. The balance of convenience therefore leans decisively in favour of preserving status quo ante as to title . The Supreme Court has also emphasised that

:11:

appellate interference with such interlocutory preservation is limited, and status quo/anti-encumbrance directions are appropriate to protect the suit property. **Therefore I answer point No.2 in the affirmative.**

18. Point No.3 – Irreparable injury:

In matters of title and cancellation of conveyances, subsequent alienations pendente lite often give rise to third-party equities that cannot be adequately compensated by money; they create a cloud over title and fracture the suit property into multiple interests. Mere prima facie case is insufficient where damages are an adequate remedy, that principle strengthens the grant here, because damages are plainly inadequate to neutralise the legal and procedural prejudice flowing from successive pendente-lite transfers of immovable property.

19. The title deeds of 1974/1988 , conversion certificate, e-Khathas, tax receipts and the sale deed in favour of D-6 do evidence a claimed chain of title/possession ; however, they do not conclusively resolve at this stage the inter-se identity and

:12:

derivation vis-à-vis Sy. No.207/1-A and the impugned 2009 sales . Whether D-6 is a bona fide purchaser and whether her purchase is immune from the effect of lis pendens are matters for trial . The Supreme Court has permitted impleadment of transferees pendente lite and held that their rights remain subservient to the pending suit—underscoring the need to preserve the property from further dealings meanwhile.

20. The objection that the I.A. is not maintainable under Section 23 KCRP is untenable after the restriction of relief by memo dated 26.09.2024; further, the present order is confined to restraint on alienation , a recognised protective measure in declaratory suits to minimise multiplicity and secure the efficacy of the eventual decree. **Therefore I answer point No.3 in the affirmative.**

21. POINT NO.4:- The decision relied upon by the counsel for the plaintiff which speaks of guiding principles of granting temporary injunction is applicable to the present case in hand. The decisions filed by the defendants also

:13:

speaks of the triple test in granting the temporary injunction. Applying the settled principles, this Court is satisfied that: (i) the plaintiff has established a prima facie case ; (ii) the balance of convenience favours preservation of the subject-matter by restraining further alienations; and (iii) irreparable injury would ensue if such restraint is refused. For all the foregoing reasons I proceed to pass the following,

ORDER

I.A. No.14 filed under order 39 rule 1
and 2 r/w sec. 151 of CPC is ALLOWED.

Defendant No.6, her agents/servants
or anybody claiming through or under her,
are hereby restrained from alienating,
transferring, mortgaging, creating any
charge, lien or third-party interest in
respect of the suit schedule property
bearing Sy. No.207/1-A, measuring 0-6-
8.00 guntas (6.1½ guntas), Karahalli

:14:

Village, Kasaba Hobli, Bangarpet Taluk ,
pending disposal of the suit.

No order as to costs.

*(Dictated to the Stenographer, transcribed, corrected and pronounced in open Court on this the **27th September 2025.**)*

**C/c Prl., Civil Judge and J.M.F.C.,
Bangarpet.**