KAKL410014882025

IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC., AT MULBAGAL

Present: **Sri.GOWDA JAGADEESHA RUDRE**
B.Com., L.L.B.
Senior Civil Judge and JMFC., Mulbagal.

DATED ON THE 10th DAY OF MARCH-2026

O.S.No.86/2025

Plaintiff/s	**V/s**	**Defendant/s**
Smt.H.Shyamala.		Smt.Manjula
Plaintiff R/by:- Sri.K.G.L., Advocate.		**Defendants R/by:- Sri.A.M.R., Advocate.**

PARTIES TO I.A.No.1

Applicant/Plaintiffs.	**V/s**	**Opponent/Defendants.**
Smt.H.Shyamala.		Smt.Manjula

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Provision under which application is filed.	:	Under Order 39 Rule 1 and 2 read with 151 of CPC.,
Relief sought for.	:	To restrain the Defendant from alienating/disposition of the suit schedule properties till pending disposal of the suit.
The date on which application is filed.	:	18.07.2025.
The date on which the objection is filed.	:	17.10.2025.

The date on which the orders passed on the said application.	:	10.03.2026.

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ORDER ON I.A.No.1

The Plaintiff has filed this application under order 39 Rule 1 and 2 of C.P.C seeking Temporary Injunction order against the Defendant, her agents, servants, relatives and any persons claiming under her from alienating the application schedule properties in favour of anybody till disposal of the suit.

2. The application schedule properties are as follows:-

ITEM NO.1

1) Sy.No.81, measuring 2 acres 32 guntas.
2) Sy.No.82, measuring 2 acres 37 guntas.
3) Sy.No.89, measuring 2 acres 32 guntas.
4) Sy.No.90, measuring 2 acres 32 guntas.

Commonly bounded on: East by: Lakshamamma's property, West by: Peddappayya Bovi's properties, North by: Kere angala and South by: Nareppa's property.

ITEM NO.2.

1) Sy.No.9/P4 measuring 3 acres, bounded on East by: Lakshmakka, Subbanna and Channabasayya's properties,

West by: Peddappayya Bovi, Lakshmayya's property and Tatikallu Border, North by: Kere angala, Basavarajau's property and Sarkari Kharab and South by: Nareppa, Muneppa's property and Sarkhari Kharab, situated at Balamakanahalli Village, Kasaba Hobli, Mulbagal Taluk.

3. The Plaintiff has sworn an affidavit, wherein she stated that Defendant has acquired the suit schedule properties from its erstwhile owner through registered sale deed dated 10.11.2006 thereby she has became absolute owner in possession of the suit property. The Defendant, to meet her urgent family and legal necessities, agreed to sell the suit schedule properties in favour of Plaintiff. The sale consideration in respect of Item No.1 was mutually fixed at Rs.1,94,06,250/- and sale consideration for Item No.2 was mutually fixed at Rs.25,87,500/-. Thereby, the total sale consideration was fixed at Rs.2,19,93,750/-. Accordingly, the Defendant executed unregistered sale agreement dated 22.01.2025 by receiving advance sale consideration of Rs.25,00,000/- through cheques bearing No.008562, 008563 and 008564 drawn on Union Bank of India, Kolar Branch. The Defendant agreed to execute registered sale deed in favour of Plaintiff by receiving balance sale

consideration of Rs.1,94,93,750/- within 3 months by arranging all the documents required for execution of the sale deed. The Plaintiff further stated that, after completion of 3 months she approached the Defendant on several occasions to execute registered sale deed in her favour. However, she evaded the matter with one or other pretext. Therefore, she got issued legal notice through her advocate, calling upon the Defendant to execute said deed by receiving balance sale consideration. The said legal notice was returned unserved as party not in station. The Plaintiff was/is always ready and willing to perform her part of contract. However, the Defendant is evading with one or another reason. The Plaintiff stated that she has got prima facie case for trial and balance of convenience tilt in her favour. If no temporary injunction order is granted in her favour, she will be put to irreparable loss and injury. **With these averments, the Plaintiff prays to allow her application.**

4. The Defendant appeared through her advocate and filed memo to treat contents of written statement as objection to I.A.No.1. She denied the entire plaint averments in toto and called upon the Plaintiff to put strict proof of the same. Under the heading of true facts of the case from Para No.11 of her written statement, the

Defendant admitted that she is absolute owner in possession of the suit properties and she has acquired them from its erstwhile owner through registered sale deed dated 10.11.2006 and her name mutated in MR.No.3/2006-07 dated 13.02.2007. Thereby, the she is in exclusive possession and enjoyment of the suit properties. However, the Defendant contended that, the Plaintiff did not come forward to get the sale deed in her favour within period prescribed under the agreement. She further contended that, she has invested sum of Rs.25,00,000/- towards brick factory in the suit properties and incurred loss of Rs.15,00,000/-. The Plaintiff has not made up a prima facie case and balance of convenience does not tilt in her favour. If temporary injunction order is granted as sought for, the Defendant will be put to more hardship as comparatively than the Plaintiff if temporary injunction order is refused. **With these contentions, the Defendant prayed for dismissal of the application with costs.**

5. The following Points arises for determination:-

    1. Whether the Plaintiff has made out a prima-facie case for trial?
    2. In whose favour the balance of convenience lies?
    3. Who will be put to irreparable loss?

4. What order?

6. Perused the pleadings and documents available on record. Heard the arguments from both sides.

7. The findings to the above Points is as follows:-

Point No.1	:	In the Negative.
Point No.2	:	Does not arise for consideration.
Point No.3	:	Does not arise for consideration.
Point No.4	:	As per final order for the following:-

REASONS

8. **POINT No.1:-** The Plaintiff having sought to relief of ad-temporary injunction under Order 39 Rule 1 and 2 read with Section 151 of CPC restraining the Defendant or any persons claiming under her from alienating suit/application schedule properties pending disposal of the main suit. So, it important for the Plaintiff to establish prima facie case in her favour; that balance of convenience is in her favour and irreparable injury would be caused to it if temporary injunction is not granted. This principle was laid down in *Gujarat bottling Co. Ltd. vs. Coca-Cola Company*, where the Hon'ble Supreme Court observed as follows:- *"The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring*

the exercise of discretion of the Court. While exercising the discretion the Court applies the following tests:- (i) Whether the plaintiff has a prima facie case; (ii) Whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately *compensated. The court must weigh one need against another and determine where the "balance of convenience" lies.”*

9. Before adverting to merits of the case, it is required to be underlined that relief for specific performance of a contract lies in the discretion of the Court and Court is not bound to grant the said relief merely because it is lawful to do so. This is for the reason that a Civil Court in order to exercise the discretion to order specific performance of a contract would require to satisfy itself that the circumstances are such that it is equitable to grant the decree for specific performance. Plaintiff, in such cases, is not only required to prove that there was a valid contract or agreement which is enforceable under law, but he is also obliged to aver and prove the readiness and willingness on his part to perform the contract from the date of agreement till the date of decree, in terms of Section 16(c) of the Specific Relief Act. It is evident from the afore-quoted provision that a suit for specific performance of contract can be decreed only if Plaintiff succeeds to prove the above referred two conditions that there was a valid contract enforceable under law and that he has performed or has always been ready and willing to perform the essential terms of the contract.

10. With this prelude let Court proceed further to ascertain about the prima-facie case for trail. As per recitals of the agreement to sell, the Plaintiff has paid earnest money of Rs.25,00,000/- to the Defendant at the time of execution of the agreement through 3 cheques drawn on Union Bank of India, Kolar Branch. It is pertinent to mention that as per covenants of the agreement to sell, the Plaintiff is obliged to pay the balance amount to the Defendant, within a period of 3 months, at the time of registration of the sale deed. It is, therefore, clear that the Plaintiff is obliged to pay the balance amount at the time of execution of the sale deed, thereby is that the Defendant were bound to obtain the relevant revenue extracts before the stipulated period of 3 months. RTC extracts reveals that, Defendant had alienable interest in the suit properties. The office copy of the legal notices indicates that, Plaintiff has issued legal notice calling upon the Defendant to execute registered sale deed.

11. At this stage Court cannot hold mini trial to ascertain truth in the case of Plaintiff and defence set up in the written statement by the Defendant. Having considered the material on record, particularly the pleadings of the Plaintiff and also the

contention of the Defendant, in a suit for specific performance, when the suit is filed based on the sale agreement, the Court has to take note of whether there is a dispute with regard to the very execution of the sale agreement and in this case, there is no dispute with regard to the execution of sale agreement.

12. At this stage, it is noted that sale agreement is dated 22.01.2025. The sale agreement is written on Rs.2,000/- Stamp paper. The total sale consideration mutually fixed at Rs.2,19,93,750/- out of which Rs.25,00,000/- is paid in advance. The agreement of sale has prepared by Rs.2,000/- Stamp paper.

13. On careful perusal of the said document it reveals that the document is prima-facie insufficiently stamped. As such, a document is not reliable for any purpose, unless the duty and penalty is paid as per the mandate in Section 34 of Karnataka Stamp act. Not even an interim order can be passed on the basis of such an instrument. In this regard, the decision reported in **2003 (5) Karnataka Law Journal 225** between ***K.B.Jayaram & Another V/s Navineethamma & Others***. Wherein the Hon'ble High court of Karnataka observed as follows:- "*Section 34 of Karnataka Stamp Act 1957, interalia provides that no instrument chargeable with duty shall be*

admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped. Proviso to Section 34 makes such documents admissible payment of penalty. In evidence upon The expression "for any purpose" appearing in the section is wide enough to include within its amplitude use of the document for the purposes of issue or refusal of injunctions prayed for in a suit for specific performance or similar other reliefs. The document in question has admittedly been produced by the Plaintiffs/Appellants before the court below. It has come to the notice of the said court that the document in question is not duly stamped. The court would therefore be entitled to impound the same in exercise of its power under Section 33 of the Act. Neither Section 33 nor Section 34 of the Act makes an exception to be general rule or make unstamped or under- stamped documents admissible for the purposes of issuing interlocutory orders …… In that view, therefore the court below was justified in insisting upon the payment of stamp duty and the penalty on the agreement to sell before it could issue an injunction in favour of *the appellants on that basis. Instead of doing so, the court below appears to have taken an indulgent view by which it has issued an injunction but made its continuance subject to the payment of the stamp duty and penalty on the same by appellants. The error committed by the court below is thus for the benefit of the appellants. The court may well have been justified in ignoring the document so long as it was not properly stamped and the penalty on the same not paid"*.

14. The above decision is sufficient to hold that the Plaintiff is not entitled for any relief at this juncture be it interim or otherwise, unless she cures the defect of insufficiency of stamp on the disputed agreement. The Plaintiff herself failed to show the prima facie case and balance of convenience in her favour, such being the case, the question of granting injunction against the Defendant not to alienate the suit schedule properties or create any third party interest does not arise, Accordingly, the Court answers the Point No.1 in the negative against the Plaintiff.

15. **POINT NO.2 AND 3:-** When prima-facie case itself is not made out it is not necessary to discuss the remaining two points. Hence, these two points do not survive for consideration.

16. **POINT No.4:** For the foregoing reasons, the Court proceed to pass the following:-

ORDER

I.A.No.1 filed by the Plaintiff under Order 39 Rule 1 and 2 read with Section 151 of CPC is rejected.

Parties shall bare their own costs.

(*Order dictated to the stenographer directly on computer and computerized by him, corrected and then pronounced by me in the Open Court on this the 10th day of March–2026*.)

GOWDA JAGADEESHA RUDRE

Digitally signed by GOWDA JAGADEESHA RUDRE
Date: 2026.03.10 17:49:47 +0530

(Gowda Jagadeesha Rudre)
Senior Civil Judge & JMFC,
Mulbagal.