IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE AND JMFC., AT K.R.PETE

DATED THIS 05TH DAY OF JULY- 2025

Present : DEVARAJU, H.R BA., LLB.,
Addl. Sr. CJ & J.M.F.C.,
K.R.Pete.

O.S.No.92/2023

PLAINTIFF/S:
Sri. M.K.Manjegowda
S/o Karigowda
aged about 51 years,
R/o Margonahalli village,
Kasaba hobli,
K.R.Pete taluk,
Mandya district.

(By Smt.**K.M.,** Advocate)

-V/s-

DEFENDANT/S:

1. Sri. Marigowda
S/o Bhairegowda
aged about 62 years,

2. Sri.Bhairegowda @ Manu
S/o Marigowda
aged about 34 years,

Both are R/o
Agrahara, Elekere street,
Shravanabelagola road,
K.R.Pete town,
Mandya district.

(By Sri. **B.K,** Adv)

I.A.NO.VIII

Applicant/Plaintiff :

Sri.M.K.Manjegowda

-V/s-

Opponents/Defendants :

Sri. Marigowda and another

ORDERS ON I.A.NO.VIII

This is an application filed by the plaintiff/applicant under Order XXXIX Rule 1 and 2 of CPC for seeking Temporary Injunction order against the defendants to restrain them from alienating the suit schedule property by way of sale, mortgage, lease, gift and in any other mode of transfer till pending disposal of the present suit.

SCHEDULE

1. The land bearing Sy. No. 352/7 measuring 02.00 guntas out of 0.20 guntas (Present 0.12 guntas) situated at K.R.Pete, Kasaba hobli, K.R.Pete taluk, Mandya district bounded on:

East :	**Shravanabelogola road,**
West:	**Land belongs to Huchegowda S/o Nagegowda**
North:	**Remaining property of defendant and 10 feet road thereafter land belong to Kalegowda S/o Kalegowda.**
South:	**Land belongs to Kalegowda S/o Sidduregowda**

2. Case of the plaintiff in brief is as under:

The plaintiff in his affidavit accompanying to this I.A has stated that, the plaintiff has filed present suit against the defendants for Specific Performance of Contract. The defendants for their legal requirements i.e., construction of the house, they have executed the sale agreement for valid sale consideration amount of Rs.11,00,000/- on 11.11.2020 by receiving advance sale consideration amount of Rs.5,00,000/-on the same day in presence of witnesses and agreed to receive remaining sale consideration amount of Rs.6,00,000/- at the time of registration of sale deed. The defendants promised that, whenever the plaintiff called with balance sale consideration and along with required documents and they will ready to execute the sale deed as per the agreement. This being a fact even the requests made by the plaintiff in many occasions the defendants postponing the execution of same for one and another reason. Even provide sufficient opportunity, the defendants have failed to do so. Further defendants are not ready to perform their part of contract and they are trying to alienate the suit schedule property to the 3rd person in order to cause hardship to the plaintiff.

3. The plaintiff further submits that he has issued notice to the defendants on 07.10.2023 calling upon them to come and execute the sale deed as per agreement

of sale dated 11.11.2020. However, after receiving the notice the defendants have sold out the property to the 3rd person. Hence, he has requested the defendants to execute the registered sale deed. But defendants have refused to perform their part of contract. Thereafter the defendants have entered into partition. Accordingly 01.08 guntas allotted to daughter of 1st defendant namely Dhanalakshmi. Only 12 guntas stands in the name of 1st defendant herein. Now, he is trying to alienate the said property also. Hence, he has filed present application.

4. The plaintiff further submits that, he has made out prima facie case and balance of convenience lies in his favour. If Temporary Injunction is not granted much hardship causes to him, hence, he prays for allow the application.

5. **Per contra,** the defendants have filed memo by adopting the contention of the written statement as objection to IA No.1. The defendants have denied the allegation of facts made by the plaintiff that, they have executed the agreement of sale in favour of plaintiff by agreeing to sell the suit schedule property for valid consideration amount on Rs.11,00,000/- and they have received Rs.5,00,000/- from him as advance amount. Further they have contended that, the defendants have entered into agreement of sale with Devaraju K. S/o Late Nagegowda of K.R.Pete town on 05.02.2015 by agreeing to sell the suit schedule property for Rs.6,20,000/-

thereby they have received Rs.2,00.000/-. The said Devaraju brought the defendants by saying that he get registered sale deed into his name. But he committed fraud and created the agreement of sale into the name of plaintiff without giving any consideration amount. After enquiry of Devaraju they came to know the fraud committed by them. The defendants have not executed the any agreement of sale in favour of plaintiff. Hence, they pray for dismiss the application.

6. Heard both sides and perused the documents placed on record.

7. The following points arise for the consideration of this Court:

1. **Whether the plaintiff/applicant has made out *prima-facie* case?**
2. **Whether the balance of convenience lies in favour of the plaintiff?**
3. **Whether the plaintiff will be put to great hardship and irreparable loss if temporary injunction is not granted, as prayed?**
4. **What Order?**

8. My findings on 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;

REASONS

9. **Point No.1**: It is the case of the plaintiff that, the defendants have agreed to sell the suit schedule property in his favour for valuable sale consideration amount of Rs11,00,000/- and executed an agreement of sale dated 11.11.2020 in favour of him and have received a sum of Rs.5,00,000/- as earnest amount and agreed to receive the balance sale consideration amount of Rs.6,00,000/- at the time of registration of the sale deed. The plaintiff is always ready and willing to perform his part of contract. But, defendants fail to perform their part of contract and they are trying to alienate the suit schedule property to the 3rd person. He personally contact the defendants and requested them to execute the registered sale deed. But, the defendants fail to perform their part of contract. Hence, the plaintiff has approached his counsel and got issued legal notice on 07.10.2023 and said notice was served to the defendants. Hence, plaintiff has filed present suit along with this application.

10. Counsel for the plaintiff has argued that the plaintiff is having interest over the suit schedule property, the defendants are trying to alienate the suit schedule property to the 3rd person to deprive the right of the plaintiff over the suit schedule property, if defendants alienated the suit schedule property to the 3rd person, it creates multiplicity of proceedings and if this application is not allowed much hardship and irreparable loss causes to the plaintiff. Hence, he prays for allow the application as prayed.

11. For support of his contention the plaintiff has furnished registered agreement of sale dated 11.11.2020 On perusal of the said documents it recited that the defendants have agreed to sell the suit schedule property to the plaintiff for valuable sale consideration amount of Rs11,00,000/- and they have received a sum of Rs.5,00,000/- as earnest amount. Further he has furnished registered sale deed, legal notice and RTC extract of the suit schedule property.

12. On perusal of the above documents it appears that, katha of the suit schedule property stands in the name of defendant No.1. It is well settled that agreement of sale with respect to immovable property does not itself created any interest or charge over the immovable property. In the instant case, it is the case of the plaintiff that the defendants have entered into an agreement of sale for valuable sale consideration amount of Rs.11,00,000/-. On the other hand the defendants have denied the very execution of agreement of sale. It is relevant to note here decision of Hon'ble Supreme Court of India in decision reported in **AIR 2020 SC 307** (**Ambalal Sarabhai Enterprise Limited vs Ks Infraspace Llp Limited**) at para No. 15 to 24 has held that,

> ***"Chapter VII, Section 36of the Specific Relief Act, 1963 (hereinafter referred to as 'the Act') provides for grant of preventive relief. Section 37 provides that temporary injunction in a suit shall be regulated bythe Code of Civil Procedure. The grant of relief in a suit for specific performance is itself a***

discretionary remedy. A plaintiff seeking temporary injunction in a suit for specific performance will therefore have to establish a strong prima-facie case on basis of undisputed facts. The conduct of the plaintiff will also be a very relevant consideration for purposes of injunction. The discretion at this stage has to be exercised judiciously and not arbitrarily.

16. The cardinal principles for grant of temporary injunction were considered in Dalpat Kumar vs. Prahlad Singh, (1992) 1 SCC 719, observing as follows :

"5...Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is

likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

17. The negotiations between the plaintiff and the defendant is reflected in approximately 17 e-mails exchanged between them commencing from December 2017 to 31.03.2018. The file size of the attachment to the mails has varied from 48-50-52-48-57-6 KBs indicating suggestions and corrections from time to time. The WhatsApp messages which are virtual verbal communications are matters of evidence with regard to their meaning and its contents to be proved during trial by evidencein-chief and cross examination. The e-mails and WhatsApp messages will have to be read and understood cumulatively to decipher whether there was a concluded contract or not. The use of the words 'final draft' in the e-mail dated 30.03.2018 cannot be determinative by itself. Th e-mail dated 26.02.2018 sent by the defendant at 11:46 AM had also used the same phraseology. The plaintiff was well aware from the very inception that the defendant was negotiating for sale of the lands simultaneously with two others. The plaintiff was further aware on 30.03.2018 itself that the deal with it had virtually

fallen through as informed to the escrow agent. The fact that a draft MoU christened as 'final-for discussion' was sent the same day cannot lead to the inference in isolation, of a concluded contract. There is no evidence at this stage that the acceptance was communicated to the defendant before the latter entered into a deal with defendant no.2 on 30.03.2018 and executed a registered agreement for sale on 31.03.2018. Defendant no.2 paid Rs.17.69 crores and Rs.2.20 crores towards the income tax dues of the defendant the same day, as part of the consideration amount. It is only thereafter the plaintiff purports to have communicated its acceptance to the defendant on 31.03.2018 at 01.13 PM. The prolonged negotiations between the parties reflect that matters were still at the 'embryo stage' as observed in Agriculture Produce Market Committee, Gondal and ors. vs. Girdharbhai Ramjibhai Chhaniyara and ors., (1997) 5 SCC 468. The plaintiff at this stage has failed to establish that there was a mutuality between the parties much less that they were ad- idem.

18. The pleadings in the suit acknowledge the awareness of the plaintiff of the ongoing negotiations with defendant no.2. The advance of Rs.2.16 crores was refunded to the plaintiff in the evening on 31.03.2018 by RTGS. No effort was made by the plaintiff to again remit the sum by RTGS immediately or the next day. Only a public notice was published on 03.04.2018 refuted by the defendant on 04.03.2018. The suit was then filed seven months later on 01.10.2018. The

explanation that the plaintiff waited hopefully for a solution outside litigation as a prudent businessman before finally instituting the suit is too lame an excuse to merit any consideration.

19.In a matter concerning grant of injunction, apart from the existence of a prima facie case, balance of convenience, irreparable injury, the conduct of the party seeking the equitable relief of injunction is also very essential to be considered as observed in Motilal Jain (supra) holding as follows :

"6. The first ground which the High Court took note of is the delay in filing the suit. It may be apt to bear in mind the following aspects of delay which are relevant in a case of specific performance of contract for sale of immovable property:

(i) delay running beyond the period prescribed under the Limitation Act;

(ii) delay in cases where though the suit is within the period of limitation, yet:

(a) due to delay the third parties have acquired rights in the subject-matter of the suit;

(b) in the facts and circumstances of the case, delay may give rise to plea of waiver or otherwise it will be inequitable to grant a discretionary relief."

20. The defendant no.2, in addition to the dues of the Income Tax department as aforesaid, made further payments to the defendant of Rs.25,44,57,769/ by 16.01.2019 aggregating to a total payment

of Rs.45,84,71,869/. The defendants had also proceeded to utilize a sum of Rs.36.20 crores also and had therefore materially altered their position evidently by the inaction of the plaintiff to institute the suit in time and having allowed third party rights to accrue by making substantial investments. In Madamsetty (supra) it was observed :

"12.....It is not possible or desirable to lay down the circumstances under which a court can exercise its discretion against the plaintiff. But they must be such that the representation by conduct or neglect of the plaintiff is directly responsible in inducing the defendant to change his position to his prejudice or such as to bring about a situation when it would be inequitable to give him such a relief." Similar view has been expressed in Mandali Ranganna (supra).

21. We are therefore of the considered opinion that in the facts and circumstances of the present case, and the nature of the materials placed before us at this stage, whether there existed a concluded contract between the parties or not, is itself a matter for trial to be decided on basis of the evidence that may be led. If the plaintiff contended a concluded contract and/or an oral contract by inference, leaving an executed document as a mere formality, the onus lay on the plaintiff to demonstrate that the parties were ad- idem having discharged their obligations as observed in Brij Mohan (supra). The plaintiff failed to do show the same on admitted facts. The draft MoU

dated 30.03.2018 in Clause C contemplated payment of the income tax dues of Rs.18.64 crores as part of the consideration amount only whereafter the agreement was to be signed relating back to the date 29.03.2008. Had this amount been already paid or remitted by the plaintiff, entirely different considerations would have arisen with regard to the requirement for execution of a written agreement remaining a mere formality. Needless to state the balance of convenience is in favour of the defendants on account of the intervening developments, without furthermore, inter-alia by reason of the plaintiff having waited for seven months to institute the suit. The question of irreparable harm to a party complaining of a breach of contract does not arise if other remedies are available to the party complaining of the breach. The High Court has itself observed that from the negotiations between the parties that "some rough weather was being reflected between the plaintiff and the defendant ....". The Special Civil Judge failed to address the issue of delay. The High Court noticed the arguments of the defendants with regard to delay in the institution of the suit but failed to deal with it.

22. In M.P. Mathur vs. DTC, (2006) 13 SCC 706, this Court observed :

"14. The present suit is based on equity...In the present case, the plaintiffs have sought a remedy which is discretionary. They have instituted the suit under Section 34 of the 1963 Act. The discretion which the court has to exercise is a judicial discretion. That

discretion has to be exercised on well-settled principles. Therefore, the court has to consider—the nature of obligation in respect of which performance is sought, circumstances under which the decision came to be made, the conduct of the parties and the effect of the court granting the decree. In such cases, the court has to look at the contract. The court has to ascertain whether there exists an element of mutuality in the contract. If there is absence of mutuality the court will not exercise discretion in favour of the plaintiffs. Even if, want of mutuality is regarded as discretionary and not as an absolute bar to specific performance, the court has to consider the entire conduct of the parties in relation to the subject-matter and in case of any disqualifying circumstances the court will not grant the relief prayed for (Snell's Equity, 31st Edn., p.366)...."

23.Wander Ltd. (supra) prescribes a rule of prudence only. Much will depend on the facts of a case. It fell for consideration again in Gujarat Bottling Co. Ltd. vs. Coca Cola Co., (1995) 5 SCC 545, observing as follows :

"47....Under Order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the

> ***relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest...."***
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> ***24. The aforesaid discussion leaves us satisfied to conclude that in the facts and circumstances of the present case, the grant of injunction to the plaintiff is unsustainable. Resultantly the orders of injunction are set aside. Nothing in the present order shall be deemed or construed as any expression of opinion or observation by us at the final hearing of the suit which naturally will have to be decided on its own merits. The High Court has already given directions to expedite the hearing of the suit and we reiterate the same".***

13. As per the ratio laid down in the above said decision the grant of relief in a suit for specific performance is itself a discretionary remedy and plaintiff seeking temporary injunction has to establish strong prima facie case on the basis of undisputed facts. Further the conduct of the plaintiff will also be a very relevant consideration for the purpose of granting injunction. In case on hand the plaintiff has furnished registered agreement of sale dated 11.11.2020. On the other hand defendants have denied the very execution of registered agreement of sale. Further it

shows that after notice issued by the plaintiff defendants have sold out the property out of total extent of the property measuring 20 guntas. Now only 12 guntas standing in the name of defendant No.1 herein. Hence, it is clear that after filing of the suit defendants have sold out the property to the 3rd persons. If defendants have sold out the remaining property it causes hardship to the plaintiff and it creates multiplicity of proceedings. Hence, on perusal of the documents and conduct of the defendants it appears that plaintiff has strong prima facie case. Hence without much discussion, I hold Point No.1 in the **Affirmative.**

14**.** **Point Nos. 2 and 3**: These two points are inter-connected with each other. Hence, they are taken up together for common discussion to avoid repetition of facts.

15. It is the contention of the plaintiff that, he has entered into agreement of sale with the defendants in order to purchase the suit schedule property. As already stated above, plaintiff has made-out prima facie case, if defendants have alienated the suit schedule property, it caused much hardship to the plaintiff rather than the defendants. Hence, I am of the opinion that, if temporary injunction is not granted, hardship causes to him and balance of convenience lies in favour of plaintiff. Hence, I Hold point Nos. 2 and 3 in the **Affirmative**.

16. **Point No.4**:- On above made discussions on points No.1 to 3, this court proceeds to pass following:-

ORDER

I.A.No.VIII filed by the plaintiff under order 39 rule 1 and 2 of CPC is hereby Allowed.

Consequently, Defendants are hereby temporarily restrained from alienating the suit schedule property to the 3rd person by way of sale, mortgage, relinquishment or in any other mode of transfer to anybody till pending disposal of the present suit.

(Dictated to the Stenographer directly on the computer, typed by her, corrected and then pronounced by me in open court, this the **05th** day of **July-2025**)

(DEVARAJU H.R.)
Add.Sr.CJ & J.M.F.C.,
K.R.Pete.

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