

KAMD720014842022

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

Dated this 26th day of June, 2024.

**Present : Sri. HARISHKUMAR. M, B.Com. LLB.
Prl. Civil Judge and JMFC, Srirangapatna.**

O.S. NO. 189/2022.

PLAINT CAUSE TITLE

PLAINTIFF:

Sri. Ramachandra
S/o Late. Patel Krishnegowda,
Age: 55 years,
R/o Darasaguppe Village,
K. Shettahalli Hobli,
Srirangapatna Taluk.
(Rep. by Sri. K. J. V., Advocate)

- Versus -

DEFENDANTS:

1. Smt. Sheela S/o Karigowda,
W/o Marigowda
Age: 32 years,
R/o Mudalahundi Village,
Varuna Hobli,
Mysuru Taluk & District.
2. Kum. Shilpa D/o Karigowda
Age: 26 years,



3. Sri. Karigowda
S/o Late. Honnegowda
Age: 70 years,
D.2 and 3 are R/o
Hebbadi Hundi village,
Kasaba Hobli,
Srirangapatana Taluk.
4. Mahesha
S/o Late. M.D.Shivananda
Age: 50 years,
R/o No.788/47, 9th cross,
Ramanuja Road,
Mysuru City, Mysuru.
(Rep. by Sri. D. S. G., Advocate)

I. A. NO. I CAUSE TITLE.

APPLICANT/PLAINTIFF:

Sri. Channegowda,
S/o Late. Sri. Ninegowda,
Age: 52 years,
R/o Palahalli Village,
Belagola Hobli,
Srirangapatna Taluk.

- Versus -

OPPONENT/DEFENDANT:

Sri. Kanakalakshmi,
W/o Sri. C. V. Raveendra,
Age: 65 years,
R/o Palahalli Village,
Belagola Hobli,
Srirangapatna Taluk.



1	Provision under which the application is filed	Under Order XXXIX Rule 1 read with Section 151 of CPC.
2	Relief sought for	Seeking to restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property till disposal of the suit.
3	The date on which the application is filed	24.05.2022.
4	Number of the application	01
5	The date on which the objections are filed by different opponents	Memo of adoption filed on 05.12.2022.
6	The date on which the orders were passed on the said application	26.06.2024.

ORDER ON INTERLOCUTORY APPLICATION No. 1 UNDER ORDER XXXIX RULE 1 OF CODE OF CIVIL PROCEDURE FILED BY THE PLAINTIFF.

1. The Plaintiff herein filed this suit for the relief of permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property till disposal of the suit.
2. The description of suit schedule property is as hereunder:
The land bearing Sy. No. 68/3 (Old No. 68/2), measuring 1 acre 13 guntas (totally measuring 2 acres 28 guntas),



situated at Belavadi Village, Kasaba Hobli, Srirangapatna Taluk, bounded by.,

East	:	Land of Kuntegowda.
West	:	Land of Akbarsab.
North	:	Land of Karigowda in this Sy. number
South	:	Land of Dhahajansab.

3. The plaintiff averments in the nutshell is that, the suit schedule property is standing in the joint names of defendant No. 1 and 2, the defendant no. 1 and her husband has received the sale consideration of Rs, 14,85,000/- from the plaintiff pertaining to suit schedule property and the 3,00,000/- was deposited in the name of defendant no. 2 as per the order passed in OS No. 359/2011 and the possession of suit schedule property was delivered to the plaintiff. The defendant No. 1 to 3 have executed a registered General Power of Attorney in favour of defendant No. 4 with an intention to cheat the plaintiff.
4. The plaintiff herein further averred that, the defendants herein demanded more money from the plaintiff and he has agreed for the same, accordingly the defendants agreed to execute the registered sale deed in favour of plaintiff. This being the fact, the defendant No. 4 him executed sale deed in his favour as power of attorney and the plaintiff herein filed objections before the Tahasildar office. Hence the plaintiff herein filed this suit.



5. The plaintiff has also filed I.A No.1 under order XXXIX Rule 1 and 2 Civil Procedure Code seeking to restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property till disposal of the suit. In the affidavit annexed to the accompanying IA.No.1, the plaintiff reiterated the plaint averments.
6. On the other hand the defendant No. 1 to 3 have not appeared before the Court, inspite of service of summons. The defendant No. 4 herein appeared before this Court through his counsel and he has filed his written statement, as well as objections to I.A. No. 1.
7. The defendant No. 4 herein contended in his written statement that, the suit of the plaintiff is not maintainable and he has denied the entire averments made in the plaint. But the defendant No. 4 has admitted the execution of general power of attorney and objections filed by the plaintiff. He further contended that the Tahasildar has rejected the objections and changed the katha in favour of defendant no. 4.
8. The defendant No. 4 herein further contended that, the defendant No. 1 to 3 are the absolute owners of suit schedule property and they have received entire sale consideration and executed a registered power of attorney in



favour of defendant No. 4 in respect of suit schedule property. Based on the said General power of attorney he was sale deed was registered on 23.02.2022 and the suit schedule property was mutated in favour of defendant No. 4 and he is in possession and enjoyment of the suit schedule property and the plaintiff is not at all in possession of the suit schedule property and he has not right over the property. On these grounds the defendant No. 4 herein prays to dismiss the suit as well as IA No. 1. The defendant No. 4 has filed memo of adoption to IA No. 1.

9. Both counsels have not addressed their arguments in spite of sufficient opportunity and this Court perused records.
10. The points that arise for consideration of this Court are as follows.

1. **Whether plaintiff has made out prima-facie case for grant of temporary injunction in his favour?**
2. **Does the balance of convenience lies?**
3. **Whether the plaintiff would suffer irreparable loss or injury, if temporary injunction is refused?**
4. **What order?**

11. Findings of this Court on these points is as follows:

Point Nos.1 to 3 : In the Negative.

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



REASONS

12. **Point No.1:-** It is a matter of record that, the plaintiff herein filed this suit for the relief of permanent injunction based on the ground that, he is in possession of the suit schedule property. The defendant No. 1 and 2 have entered into agreement with the plaintiff and he has paid the entire sale consideration and the possession was delivered to plaintiff. This being the fact the defendant No. 4 has executed as sale deed in favour as GPA holder. Hence the plaintiff herein filed this suit.
13. The plaintiff has also filed I.A No.1 under order XXXIX Rule 1 and 2 of Civil Procedure Code seeking to restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property till disposal of the suit. In the affidavit annexed to the accompanying IA.No.1, the plaintiff reiterated the plaint averments.
14. In support of the case of the plaintiff, he has produced the documents hereunder:
1. Copy of sale deed date 23.03.2022.
 2. Copy of RTC extract.
 3. Copy of Objection letter.
 4. Copy of Account statement.



5. Settlement deed dated 03.09.2013.
 6. Copy of ash certificate.
 7. Copy of plaint in OS No. 359/2011.
 8. Cash paid receipt.
15. On the other hand, the defendant No. 4 contended that the defendant No. 1 to 3 are the absolute owners of suit schedule property and they have received entire sale consideration and executed a registered power of attorney in favour of defendant No. 4 in respect of suit schedule property. Based on the said General power of attorney he was sale deed was registered on 23.02.2022 and the suit schedule property was mutated in favour of defendant No. 4 and he is in possession and enjoyment of the suit schedule property and the plaintiff is not at all in possession of the suit schedule property and he has not right over the property. On these grounds the defendant No. 4 herein prays to dismiss the suit as well as IA No. 1.
16. On the other hand the defendant No. 4 has not produced any documents in support of his case.
17. At this stage it is to be noted that, the grant or not to grant the interim injunction has to be taken, 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 interim injunction is granted to mitigate the risk of injustice to the plaintiff during the period before the uncertainty could be resolved. The object of interim injunction is to protect 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 weighted against the corresponding need of the defendant to be protected against injury resulting from preventing him exercising legal right for which he could not adequately be compensated.

18. The primary purpose of granting interim relief is the preservation of the property in dispute till legal rights and conflicting claims of the parties before the court are adjudicated.
19. In the instant case the documents submitted by the plaintiff herein shows that, the suit schedule property has been sold to defendant No. 4 as per the sale deed dated 23.03.2022. The recitals of cash paid receipt reveals the defendant No. 1 is in possession of the suit schedule property and there is no mention about the delivery of possession of property. The plaintiff has not produced any documents to show that he is in possession and enjoyment of the suit schedule property.



20. It is to be noted that, this Court carefully perused the pleading of plaintiff. The plaintiff nowhere stated that the defendants herein interfering in the peaceful possession and enjoyment of the suit schedule property. The plaintiff who approaches the Court must plead and prove the possession and interference. In the absence of such facts, this Court cannot be considered the pleadings of plaintiff. In order to ascertain the above mentioned facts, the detail trial to be conducted. Till then it is duty of the court to protect the interest of both the parties to the suit and the Court has to apply its mind judiciously. Based on the above observation this Court is of the opinion that, the plaintiff has not made out grounds to grant temporary injunction as prayed for and hence this Court answers this point in the negative.
21. **POINT No. 2 and 3:** The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.
22. The existence of the prima facie case alone does not entitle the applicant for a temporary injunction. The applicant must further satisfy the court about the third condition by



showing that he will suffer irreparable injury if the injunction as prayed is not granted and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury.

23. In order to ascertain the balance of convenience and irreparable loss and injury, this Court has carefully perused the materials on record. The plaintiff has produced the documents before this court. Based on the pleadings and documents available on record, this Court is of the opinion that, if the temporary injunction is not granted in favour of the plaintiff, no hardship will be caused to the plaintiff. If the temporary injunction is granted it would lead to multiplicity of proceedings and it is the duty of the Court to protect the rights of both the parties to the suit. With these observations this court answers Point No. 2 and 3 in the Negative.

24. **Point No. 4** : For the aforesaid discussions as mentioned in the point No. 1 to 3, this Court proceed to pass the following order :

ORDER

Interlocutory Application No.1 filed by the plaintiff under Order XXXIX Rule 1 and 2 of Code of Civil Procedure is hereby dismissed.



The contentions raised by both parties are kept open to consider in main case. The observation made by this court in the present order will not come in the way of the parties in proving their respective case and defence on merits.

Considering the facts and circumstances of the case parties shall bear their own cost.

(Typed by me directly on the laptop, corrected by me, initialled by me and then pronounced by me in the open court on this 26th day of June, 2024.)

**Prl. Civil Judge & JMFC,
Srirangapatna.**

ORDER ON IA No. 1

O. S. No. 189/2022

