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**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE
AND J.M.F.C AT HUNSUR**

Present: Smt.Anitha, B.A. (Law) L.L.B.,
Addl. Senior Civil Judge & JMFC.,
Hunsur.

Dated this the 15th day of January, 2025.

OS No.301/2023

Plaintiff: Govinda, S/o Late Doddathimmaiah,
Aged 70 years, R/at Ielwala Village, Ielwala
Hobli, Mysore Taluk.

-Vs-

Defendants:1. Manjula, W/o Late Ravikumar,
Aged 52 years,

2. Sarika, D/o Late Ravikumar,
Aged 30 years,

3. Geetha, D/o Late Ravikumar,
Aged 29 years,

4. Tejkumar, S/o Late Ravikumar,
Aged 25 years,

5. Deepika.R., D/o Ravikumar,
Aged 22 years,

All are R/at Somanahalli Village,
Kasaba Hobli, Hunsur Taluk,
Mysuru District.

1.	Provision under which the application is filed	:	Under Order 39 Rule 1 and 2 of CPC
2.	Relief sought for	:	Temporary Injunction
3.	The date on which the application is filed	:	20.12.2023
4.	Number of the application	:	IA No.I
5.	The date on which the objection is filed by opponent	:	29.08.2024
6.	The date on which the orders passed on the said application	:	15.01.2025

ORDERS PASSED ON IA NO.I

The learned counsel for the plaintiff filed IA No.I under Order 39 Rule 1 and 2 of CPC seeking for an order of temporary injunction restraining defendants No.1 to 5, anybody acting on their behalf or their legal heirs from alienating the suit schedule property infavour of anybody till disposal of the suit.

2. The application is supported with the affidavit of the plaintiff wherein he has stated that, he filed the suit against the defendants seeking the relief of specific performance of the sale agreement dated 01.07.2022. It is further stated that, himself and the defendants are known to each other and towards the family necessities and in order to repay hand loans the defendants come forward to sell the suit schedule property and after mutual discussion they entered

into sale agreement dated 01.07.2022 for total consideration of Rs.13,00,000/-. The plaintiff also alleged that, he had paid Rs.6,50,000/- as advance sale consideration and the defendants assured to execute the sale deed after furnishing all the documents. Thereafter on several requests made by the plaintiff, the defendants postponed the execution of sale deed for want of some documents. On 16.11.2023 the plaintiff issued legal notice to the defendants and they have not issued any reply. The plaintiff has already paid 50% of the total sale consideration and he has got apprehension about alienation of the suit schedule property during pendency of the suit. He has made out a prima-facie case, the balance of convenience lies in favour of the plaintiff. If an order of temporary injunction is not granted the plaintiff will be put to great hardship which cannot be compensated in terms of money. Hence, prayed to allow the application.

3. On the other-hand the defendants have filed the written statement. In the written-statement the defendants have specifically denied the entire case of the plaint. The defendants contended that, one Jayamma W/o Late Vairaiiah was the mother-in-law of 1st defendant and grandmother of other defendants. Said Jayamma used to borrow hand loans from the plaintiff at Rs.5,000/- or Rs.10,000/- and used to repay it. As such the plaintiff and the defendants are known to

each other. Thereafter, Jayamma borrowed Rs.1,00,000/- from the plaintiff. At that time the plaintiff got executed sale agreement as security towards the said loan. It is also contended that, the plaintiff obtained the signature of Jayamma and defendants on blank stamp paper. Jayamma was paying interest at Rs.2,000/- every month and she passed away on 25.02.2023. Thereafter, defendants could not able to repay the hand loan due to accidental injuries upon 4th defendant. The plaintiff got concocted the sale agreement with an intention to make unlawful gain. Hence, prayed to dismiss the application with costs.

4. Thereafter, heard arguments addressed by learned counsels for the plaintiff and the defendants and perused the case papers. After hearing the arguments and on perusal of the case papers, the points that arise for consideration are as hereunder:

POINTS

1. Whether the plaintiff has made out a prima-facie case?
2. Whether balance of convenience lies in favour of the plaintiff?
3. Whether irreparable loss and hardship is going to be caused to the plaintiff which cannot be compensated in terms of money if an order of temporary injunction is not granted?
4. What order?

5. The findings of the above points are as hereunder:

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

6. **Point No.1 to 3:** Since, these points are interconnected with each other and needs common discussion on the same set of facts and to avoid repetition of facts, these points are taken up together for discussion.

7. This is the suit the plaintiff against the defendants seeking the relief of specific performance of sale agreement dated 01.07.2022 directing the defendants to execute the sale deed after receiving balance sale consideration. The suit schedule property is situated in Sy.No.101/1 measuring 1 acre situated at Somanahalli Village, Kasaba Hobli, Hunsur Taluk. As per the plaintiff the defendants have executed a sale agreement infavour of the plaintiff agreeing to sell the suit schedule property for total sale consideration of Rs.13,00,000/-. The sale agreement was executed on 01.07.2022 and the plaintiff specifically stated that, he had paid Rs.6,50,000/- as advance sale consideration. In spite of it the defendants not chosen to execute the registered sale deed infavour of the plaintiff.

8. On 16.11.2023 the plaintiff issued legal notice to the defendants and inspite of service of notice the defendants not chosen to issue reply notice which made the plaintiff to file the suit. On the other-hand in the written-statement the defendants contended that, one Jayamma who is mother-in-law of 1st defendant and grandmother of other defendants availed hand loan of Rs.1,00,000/- from the plaintiff to which as security the plaintiff obtained signature of the defendants on blank paper. As per the defendants, Jayamma agreed to repay it with interest at the rate of 2% and she was regularly paying Rs.2,000/- every month to the defendants. In the year 2023 Jayamma died and thereafter the defendants could not able to repay the loan amount. It is specifically contended that, the sale agreement has been created by the plaintiff in order to get wrongful gain.

9. Insupport of the case the plaintiff got produced the original sale agreement dated 01.07.2022. He has also produced the office copy of the legal notice with postal receipts and property documents of the suit schedule property. On going through the entire case papers it prima-facie shows that, there is an agreement between the plaintiff and defendants. Whether it was executed as security for any other reason should be determined after fullfledged trial. At this stage the apprehension of the plaintiff about alienation of the suit

schedule property during the pendency of the suit appears to be proper. As such this court comes to the conclusion that, in order to protect the suit schedule property till the disposal of the suit it is necessary to restrain the defendants from alienating the suit schedule property. Accordingly, point No.1 to 3 are answered in the affirmative.

10. **Point No.4:** In view of the reasons discussed above, this court proceeds to pass the following:

ORDER

IA No.I filed by the plaintiff under Order 39 Rule 1 and 2 of CPC is hereby allowed with costs of Rs.500/-.

Accordingly, defendant No.1 to 5 or anybody acting on their behalf or their legal heirs are hereby restrained by an order of temporary injunction from alienating the suit schedule property infavour of anybody till the disposal of the suit.

(Dictated to the Stenographer, transcribed and computerized by her on the computer, transcript corrected and pronounced by me in the open court on this the 15th day of January, 2025)

(Anitha)

Addl. Senior Civil Judge and JMFC.,
Hunsur.