

**IN THE COURT OF ADDL. SR. CIVIL JUDGE & JMFC-I,
AT:RAICHUR.**

PRESENT: Sudeen Kumar.D.J.
B.A.,LL.B.,
Sr.Civil Judge

Dated this the 20th Day of November-2024

OS No.07/2024

PLAINTIFF : Santosh kumar kothari
- VERSUS-

DEFENDANT : G.Yeshwanth kumar.,
I.A.NO.I

BETWEEN	Rank in suit	Rank in IA
Santosh kumar kothari Vs G.Yeshwanth kumar	Plaintiff Defendant	Applicant Opponent

Provision under which the application is filed	Under order 39 rule 1 and 2 R/w section 151 of CPC
Relief sought for	Specific performance
The date on which the application is filed	20-12-2023
Number of the application	I
The date on which the objections are filed by different opponents	No objection
The date on which the orders passed on the said application	20-11-2024

ORDER

Plaintiff filed this application under Order 39 Rule 1 & 2 R/w 151 of CPC praying grant of temporary injunction order restraining the defendant from alienating suit schedule lands till the disposal of this suit.

Schedule :

- 1) Description of the Agriculture land bearing By No.2 hissa 2 measuring 05 acres-15 guntas, dry land, assessed at Rs 2.37Ps, situated within the limits of Appandoddi village, Hobli Chandrabanda, To & District: Raichur and bounded by:
East: land of G.Hanumanth North: Land of Hanumantha
West: Land of Bogala Rangappa South : land of G.Bhaskar Reddy
- 2) Description of the Agriculture land bearing Sy No.21 hissa 3 measuring 02 acres-04guntas, dry land, assessed at Rs.0.82Ps, situated within the limits of Appandoddi Village, Hobli Chandrabanda, Tq & District: Raichur and bounded by:
East: Land of Bugala Rangappa North: Land of G.Bhaskar Reddy, West: Land of G.Bhaskar Reddy and South: Land of Smt. Mahadevamma.

3) Description of the Agriculture land bearing Sy No.22 hissa 1 measuring 04 acres-25guntas, dry land, assessed at Rs.2.45Ps, situated within the limits of Appandoddi Village, Hobli Chandrabanda, Tq & District: Raichur bounded by: East: Road North: Village Boundary, West: Hillock South: land of Thimmareddy.

4) Description of the Agriculture land bearing Sy No.22 hissa 2 measuring 04 acres-27guntas, dry land, assessed at Rs.2.48Ps, situated within the limits of Appandoddi Village, Hobli Chandrabanda, Tq & District: Raichur bounded by: East: Road North: Land of G.Bhaskar Reddy West: Hillock and South: land of Thimmareddy.

5)Description of the Agriculture land bearing Sy No.22 hissa 3 measuring 04 acres-30guntas (including 00-03guntas A-Pot karab), cultivable land is measuring 04acres-27guntas, dry land, assessed at Rs.02.48Ps, situated within the limits of Appandoddi Village, Hobli Chandrabanda, Tq & District: Raichur bounded by: East: land of G.Bhaskar Reddy North: Land of Thimmappa, West: Road and South: land of Mahadevamma.

6) Description of the Agriculture land bearing Sy No.23 hissa 1 measuring 04 acres-21guntas, dry land, assessed at Rs.02.40Ps, situated within the limits of Appandoddi Village, Hobli Chandrabanda, Tq & District: Raichur bounded by: East: land of G.Bhaskar Reddy, North: Land of G.Bhaskar Reddy West: Land of G.Bhaskar Reddy South: land of Thimmappa.

7) Description of the Agriculture land bearing Sy No.81 measuring 04 acres- 07guntas (including 00-02 guntas A-Pot karab), cultivable land is measuring 04acres-05guntas, dry land, assessed at Rs.2.12Ps, situated within the limits of Appandoddi Village, Hobli Chandrabanda, Tq & District: Raichur and bounded by: East: land of Venkatesh North: land of Sanna Narasappa West: Land Sy No.80 South: Land Sy no.80.

2. No objection is filed on this IA.
3. Heard counsel for plaintiff. Defendant is ex-parte.
4. Perused the IA, affidavit and documents available in the file.

5. On the basis, the following points would arise for consideration;

POINTS

- 1) Whether the plaintiff made out a Prima facie case?
 - 2) Whose favour a balance of convenience lies?
 - 3) Who will be put to irreparable loss or injury?
 - 4) What Order?
6. Findings to the Points are as under:
- Point No.1 : In the **Affirmatively**
- Point No.2 : In favour of the **Plaintiff**.
- Point No.3 : In the **Affirmatively**
- Point No.4 : As per final order for the following;

REASONS

7. **Point 1 :** The suit is for specific performance of contract. The relief sought in the IA is against the defendant. It is averred that the defendant entered into agreement of sale with respect to above said schedule lands with the plaintiff on 24-03-2023 and the agreement is registered on 01-04-2023, as per the agreement the time is essence of contract, but the defendant is negotiating with prospective purchasers as

to avoid the plaintiff. In spite of service of emergent notice on this IA with suit summons the defendant neither appeared nor contested the matter, remained ex-parte, which allows this court to draw inference against him on his attempt to dispose of the schedule lands to the 3rd parties. Accordingly, the plaintiff has a prima facie case subject to proof of the averments. Thus, here is a prima facie case in favour of the plaintiff. Hence, **this point is answered affirmatively.**

8 Point No.2: It is sworn to state that the defendant is trying to negotiate with prospective purchasers on the schedule lands to avoid the plaintiff from alienating of the schedule lands. If the defendant succeeded in his act of alienation the plaintiff would be put to injustice as his right would be deprived of or there is a scope for multiplicity of proceedings. To know the balance of convenience, the inconvenience must first be ascertained, herein ; if the suit lands are sold out actual inconvenience would cause to the plaintiff. On the other hand, the defendant may not have caused with any inconvenience as he had already received the earnest money. Thus, the balance of convenience is in favour of

plaintiff. Hence, this point is answered in favour of the plaintiff.

9. Point No.3: In view of discussion on point No.2 if the lands are sold out then the actual loss would be caused to the plaintiff as he is the registered agreement holder. Hence, the plaintiff would suffer the irreparable loss. Hence, **this point is answered affirmatively.**

10. Point No.4: For foregoing reasons on points 1 to 3 the following order is passed:

ORDER

IA No.I is allowed.

The defendant is temporarily restrained from alienation of suit schedule lands till disposal of this suit.

(Dictated to the Stenographer, transcript and typed by him, script corrected, signed and then pronounced in the open Court by me on this the 20th day of November-2024).

Sd/-

(Sudeen Kumar.D.J)
Addl.Sr.Civil Judge Court & JMFC-I,
Raichur.