



I.A.No.	1
I.A filed by the	Plaintiff
Date of filing of I.A	30.03.2023
Date of filing objection by the Defendant	09.10.2023
Date of Order	24.03.2025

**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE  
AND CJM., AT RAMANAGARA**

**Dated:- This the 24<sup>th</sup> day of March, 2025**

**Present:-**

**Sri. Lokesha**

**B.A., L.L.B.,**

**Prl. Senior Civil Judge & CJM.,  
Ramanagara.**

**O.S.No.197/2023**

**Plaintiff** :- Sri. Jayarama P.

**V/s.,**

**Defendants** :- Smt. Leelavathi and others

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**Applicant** :- Sri. Jayarama P.

- (Plaintiff)

**-V/s-**

**Opponents** :- Smt. Leelavathi and others

- (Defendants)

**\* \* \***



**ORDER ON I.A.No.1 UNDER ORDER 39 RULE 1 AND 2  
OF CPC.,**

This application is filed by the Plaintiff Sri. Jayarama P. requesting the court to pass an order of temporary injunction against the defendants restraining them from alienating suit schedule property pending disposal of suit.

2. In the affidavit filed accompanying this application, Plaintiff states that he has filed a suit against the defendants for specific performance of contract and the defendants have executed an agreement of sale dated 23-10-2019, agreeing to sell the suit schedule property for Rs.8,00,000/- and they have issued advance amount of Rs.6,00,000/-. In the plaint, it is stated that the defendants have agreed to execute the regular sale date by receiving balance amount of Rs.2,00,000/- within 11 months by obtaining RTC, survey sketch and other



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documents required for registration. Subsequently, due to COVID-19, the defendants could not execute the regular sale date. As such, on 23-10-2023, the plaintiff called upon the defendants by issuing notice to execute the regular sale deed, but the defendants have not come forwarded to execute the sale deed. That plaintiff has always been ready and willing to perform her part of contract. In the affidavit filed accompanying this application, plaintiff states that there is a reasonable apprehension that the defendants are making effort to alienate the suit property. Therefore, an order of injunction is necessary. Otherwise, this plaintiff would be put to irreparable loss and injury. Hence, the plaintiff prays to allow this application.

3. On the other hand the defendant No.1 and 4 have filed their written statement denying the execution of the sale agreement. They contended that the alleged



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document was executed towards the security of the loan amount of Rs.3,00,000/- borrowed by the defendants from the plaintiff. The plaintiff, by misusing the document executed towards the security of the loan amount, has filed the suit only to grab the property of the defendants, which is worth more than Rs.70,00,000/-. Hence, plaintiff is not entitled for any relief. The defendants filed memo adopting the written statement as objection to this application. Hence, they have sought for dismissal of application and suit.

4. I have heard the learned counsel for the Plaintiff and defendants No.1 and 4 and perused the materials on record.

5. The following Points arise for my consideration:-

*(1) Whether the Plaintiff has made out a prima-facie case?*



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*(2) Whether the balance of convenience and comparative hardship is made out by the Plaintiff?*

*(3) Whether the Plaintiff would suffer irreparable loss and injury, if temporary injunction is not granted in her favour?*

*(4) What order?*

6. My answers to the above points are as under:-

Point No.1 to 3 : In the Affirmative;

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

### **REASONS**

**7. Point No.1:-** Undisputedly, present suit is filed by the plaintiff against defendants seeking decree for specific performance of contract based on registered sale agreement:23-10-2023, contending that the defendants have executed the sale agreement agreeing to sell the suit shell property for Rs.8,00,000/- and they have received advance amount of Rs.6,00,000/- under the sale agreement. Subsequently, they have not come forward to



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execute the sale deed. On the other hand, the defendants have taken up a defence that they had borrowed loan of Rs.3,00,000/- from the plaintiff and towards security of the loan amount, the plaintiff got executed this sale agreement and by misusing the same, he has filed this suit.

8. Before going to discuss the documents, it is necessary to know the meaning of prima facie case. Prima facie case is a substantial question raised bona-fide which needs investigation and a decision on merits. Prima facie case for temporary injunction generally means that the plaintiff's affidavit and annexure if any go to show that he has a case to go to trial. Prima-facie contemplates that if material placed before the Court, as such issue arise which requires to be investigated by the Court at the trial prima-facie case is made out. It only means substantial question raised in the pleadings which at first sight appears worth investigation and decisions.



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9. I have produced the registered sale agreement produced by the plaintiff from which it reveals that reveals that on behalf of 4<sup>th</sup> defendant minor, the 1<sup>st</sup> defendant being mother of the 4<sup>th</sup> defendant have executed this registered sale agreement in favor of the plaintiff Sri Jayarama agreeing to sell the property bearing Sy.No.267/10, measuring 20 Guntas situated at Urugahalli Village, Bidadi Hobli, Ramnagara Taluk, for sale consideration of Rs.8,00,000/-. As per this document they have received advance of Rs.6,00,000/- from the plaintiff and they had agreed to execute the regular sale deed within 11 months from the date of sale agreement by obtaining survey sketch and other records required for registration of the sale deed. There is a recital in the agreement of sale that in case of defendants' fail to execute a regular sale, the plaintiff had liberty to get the sale registered through process of the court by depositing



the balance amount and by filing the suit for specific performance of contract.

10. It is to be noted that, it is specific case of the defendants that this document was executed towards accrued of the loan amount borrowed from the plaintiff by the defendants to the tune of Rs.3,00,000/-. This fact has to be established only during trial. At this stage, mini-trial cannot be conducted. Whether the sale agreement is executed towards security of the loan amount as alleged by the defendants or not has to be decided only after full-fledged trial. The principle on which the court grants or confirms a temporary injunction pending disposal of a suit are now well settled. An interlocutory injunction is merely provisional in its nature. It does not conclude or purport to conclude a right but is intended to keep the matters open pending further orders based on inquiry. All that plaintiffs are required to show is firstly that they have



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a strong prima facie case in support of right which they asserts. When the court is called upon to examine whether plaintiff has a prima facie case in a suit for purpose of determining whether temporary injunction should be granted, the court must examine the merits of the case and it will be compelled to consider whether there is likelihood of the suit being decreed. The depth of investigation which the court must necessarily Pursue for that purpose will vary with each case. Considering the fact that the plaintiff has relied upon the registered sale agreement in the present suit, this court is of the opinion that the plaintiff has made out arguable and triable case. This is sufficient to hold that the plaintiff has made out prima facie case. **Hence, I answer point No.1 in Affirmative.**

**11. Point No.2 and 3:-** The balance of convenience means so on. At this stage, it is necessary to know the meaning of balance of convenience.



Only Where the legal injury likely to be caused to the plaintiffs appears more than those that may be caused to the adversary, grant of temporary injunction would be proper. The underlining principle of balance of convenience is judicial doctrine where by a Court, the materials on record, which are affidavits sworn by rival parties and the annexures made therewith, measures the competing interests between the parties and decides which interest should prevail till the disposal of suit.

12. As per the affidavit of the plaintiff filed accompanying this application, the defendants are trying to alienate the suit property. Order 39 Rule 1A of CPC provides that where in any suit it is proved by affidavit or otherwise, that any property in dispute is in danger of being wasted, damaged or alienated by any party to the suit or to restrain the defendant for committing injury of any kind relating to the same property or right, the court



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may grant a temporary injunction as its discretion on such terms as to the duration of the injunction and subject to the condition as the court thinks fit. So, in the case on hand, as I have already discussed above, by filing affidavit while accompanying this application, the plaintiff proved at this stage that the suit property is being alienated by the defendants. It is sufficient to hold that it is a fit case to grant order of temporary injunction as against the defendants in favour of the plaintiff as sought for in the application by exercising discretionary power. If the defendants are alienated the suit property pending disposal of suit, rule of dependence would apply and if the defendants succeeded in their attempt of alienation of the property during pendency of the suit and in the event of decreeing the suit, it would be difficult for the plaintiff to get the decree executed. At this juncture, it is useful to refer the Judgment of Hon'ble Apex Court in **Civil Appeal No.1301 of 2024 in case of Ramakant Ambalal**



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***Choksi v. Harish Ambalal Choksi and others.*** In this decision, at paragraph 45, their lordships have held that, “it must be noted that Rule 1 of Order 39 of the Code clearly provides for interim injunction restraining the alienation or sale of the suit property and if the doctrine of lis-pendens as enacted in section 52 of the Transfer of Property Act was regarded to have provided all the financial against pendente lite transfers the legislature would not have provided in Rule 1 for interim injunction restraining the transfer of suit property. Rule 1 of order 39 in our view clearly demonstrates that notwithstanding the rule of lis pendens in section 52 of Transfer of Property Act, there can be occasion for the grant of injunction restraining pendency transfers in a fit and proper case. In the case on hand, considering the facts and circumstances of the case and in view of the execution of the registered sale agreement by the defendants and also the defence raised by the defendants,



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this court is of the opinion that if order of injunction is not granted, plaintiff would be put to irreparable loss and injury, and balance of convenience certainly lies in favor of the plaintiff, rather the defendants. Therefore, this court comes to conclusion that this is a fit case to grant order of temporary injunction against the defendants, restraining them from alienating the suit property pending disposal of suit by exercising discretionary power. Otherwise, it would cause injustice to the plaintiff. If order of injunction is granted, no injustice would be caused to the defendants. With these reasons, **I answer Point No.2 and 3 in the Affirmative.**

**13. Point No.4:-** In view of my answers to Point No.1 to 3, I proceed to pass the following :-

**ORDER**

I.A.No.1 filed by the Plaintiff under Order XXXIX Rule 1 and 2 r/w Sec.151 of the CPC., is hereby allowed.



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The Defendants are hereby restrained by an order of temporary injunction from alienating the suit property pending disposal of the suit.

The cost of this I.A. shall follow the final result of this suit.

*(The order is dictated by me in the Lap-top in Adalat ai through dicta-phone, corrected by me and then pronounced by me in the Open Court on this the 24<sup>th</sup> day of March 2025).*

(Lokesha)  
Prl.Senior Civil Judge & CJM,  
Ramanagara.