

KARN020007112024



I.A.No.	1
I.A filed by the	Plaintiffs
Date of filing of I.A	31.05.2024
Date of filing objection by the Defendants	02.12.2024
Date of Order	05.06.2025

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

Dated:- This the 5th day of June, 2025

Present:-

Sri. Lokesha

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

Prl. Senior Civil Judge & CJM.,
Ramanagara.

O.S.No.279/2024

Plaintiff :- M/s The Mico Associates Housing
Co-operative Society Ltd.,

V/s.,

Defendants :- Smt. Huchamma and others

I.A.No.1

Applicant :- M/s The Mico Associates Housing
Co-operative Society Ltd.,



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- (Plaintiff)

-V/s-

Opponents :- Smt. Huchamma and others
- (Defendants)

* * *

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

This application is filed by the President of Plaintiff Housing Co-operative Society requesting the Court to pass an order of temporary injunction against the Defendants restraining them from alienating the suit schedule property pending disposal of suit.

2. In the affidavit filed accompanying this application, Sri. Sadashivamurthy President of Plaintiff Housing Co-operative Society states that the plaintiff society has filed the suit against defendants for the relief of specific performance of contract based on the sale agreement dated:12.07.2013 executed by defendants in



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favour of the plaintiff society. It further states that under the sale agreement total sale consideration of Rs.66,00,000/- has been paid by the plaintiff in favour of the defendants out of total sale consideration of Rs. 69,00,000/-. It is further states that the defendants have also executed necessary endorsement confirming the execution of the sale agreement dated:12.07.2013 as well as receipt of advance sale consideration from the plaintiff society. It is further states that when the plaintiff called upon the defendants to execute the regular sale deed both orally and by issuing a notice dated:21.06.2023, the defendant did not comply with the request of the plaintiff's society and they have sent a reply dated 07.07.2023 putting forth a false, frivolous and untenable contention refusing to perform their part of contract. As such, present suit is filed. It further states that the plaintiff's society learnt that the defendants are making attempt to alienate the suit property. If they were to



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succeed in their attempts, it would result in great hardship and loss to the plaintiff. The defendants having the gift to sell the suit property to the plaintiff and having received substantial advance amount of Rs.66,00,000/- and this would lead to multiplicity of proceedings and result in irreparable injury and hardship to the plaintiff's society. Hence, it is prayed for allow this application.

3. On the other hand the Defendants have appeared before this court through their counsel and they have filed their written statement by denying the actual sale of the sale agreement, but that in para 21 of their written statement, the defendants have pleaded that Since G. Krishnamurthy failed to pay the agreed sale consideration amount within 11 months but only paid a portion of the sale consideration and balance amount was never paid to the defendants within stipulated time, due to which the defendants were unable to purchase

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alternate and sustained huge loss. It is further states that since Krishnamurthy had no funds and he was unable to get the sale registered and he was never ready and willing to perform his part of contractual obligation by paying entire sale consideration but protracted several years, the defendants suffered loss of hardship and mental agony. Thereafter the defendants informed the said G. Krishnamurthy to cancel the sale agreement and to take back the advance share conceded as an amount paid to these defendants by deducting losses incurred by the defendants. In spite of it, Krishnamurthy did not turn up for long term. As such sale agreement came to be canceled. They further plead that the Krishnamurthy had agreed to purchase the suit property for Rs.2,17,50,000/-. But he did not come forward to get the sale registered after fixing the revised sale consideration which was then market value of the suit property in the year 2021. Hence, it is further stated that the plaintiff's



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society is not party to the sale agreement dated. As such plaintiff's society is not entitled for any relief. Hence it is prayed for dismissal of application and suit.

4. I have heard the learned counsel for the Plaintiff housing cooperative society and defendants. Both the counsels have filed their written argument. I have perused the materials on record.

5. The following Points arise for my consideration:-

(1) Whether the Plaintiff housing co-operative society has made out a prima-facie case?

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

(3) Whether the Plaintiff housing cooperative society would suffer irreparable loss and injury, if temporary injunction is not granted in favour of the Plaintiff housing Co-operative Society?



(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:- Admittedly, present suit is filed by the plaintiff, Myco Associate Housing Co-operative Society Limited against the defendants seeking decree for specific performance of contract based on the sale agreement dated:15.03.2013 executed by the defendants in favour of G. Krishnamurthy who had executed an assignment deed in favour of the plaintiff society, assigning the right of the plaintiff society to get the sale deed registered by the defendants in respect of the suit property by virtue of the sale agreement dated:15.05.2013.



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8. The plaintiff society is claiming order of temporary injunction against the defendants by filing this application. In the affidavit filed accompanying this application, the authorized officer of the plaintiff society states that the defendants are trying to alienate the suit property to third party. If they were succeed in their attempt to alienate the suit property, the plaintiff's society would be put to great hardship and injury. It is to be noted that the defendants have admitted the execution of the sale agreement dated:15.03.2013 in favour of G. Krishnamurthy and receipt of partial consideration by Krishnamurthy. So, the defendants have admitted the execution of the agreement in question in favour of G. Krishnamurthy with respect to suit draft.

9. Before going to discuss the facts in it, it is necessary to know the ingredients of prima facie case. Prima-facie case is a substantial question raised bona-fide

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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.

10. The principles on which the court grants or confirms a temporary injunction pending the 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 enquiry, all the plaintiffs are required to show is firstly that they have a strong prima facie case in support of the right

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which they have usurped. When the court is called upon to examine whether plaintiff has a prima facie case in a suit for the purpose of determining whether a temporary injunction should be granted, the court must per phase examine the merits of the case and it will be compelled to consider whether there is a likelihood of the suit being decreed. The depth of investigation which the court must necessarily pursue for that purpose will vary with each case. Where the determination must be made with reference to factual material, the scope of examination must be confined to the evidence on record including affidavit evidence available at that stage. The circumstances under which temporary injunction may be granted have by now been more or less crystallized. Wherein any suit it is proved by affidavit or otherwise that any property is disputed 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



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relating to the same property or right the court may grant a temporary injunction at its discretion on such terms as to the duration of the injunction and subject to the conditions as the court thinks fit.

11. The plaintiff's housing co-operative society has produced a xerox copy of the sale agreement dated 12.07.2013 executed by defendants Smt. Huchamma, Smt. Komala and Sri. Chethan in favour of G. Krishnamurthy, under which the defendants have agreed to sell the property mentioned therein in the agreement and as well as in the plaint schedule in favour of G. Krishnamurthy for total sale consideration of Rs.69,00,000/-. Under this agreement the defendants have received Rs.5,00,000 as advance amount from the defendants. It is not in dispute that the suit property has been granted in favour of defendant No.1 by the government in the year 1975. The factum of grant of suit



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property in favour of defendant No.1 has not been disputed by the defendants. The defendants also admits the execution of the sale agreement by them in favour of G. Krishnamurthy. It is significant to note that the plaintiff's society has produced a xerox copy of the nomination agreement executed by G. Krishnamurthy in favour of the plaintiff's Micro Associates Housing Cooperative Society Limited, assigning the right of getting the sale deed executed by the plaintiff's society from the land owners of the lands mentioned in the nomination agreement including the survey No.106/P1 measuring 1 acre 20 guntas from the defendants. This document has not been seriously disputed by the defendants during the course of argument. The plaintiff's society has also paid advance sale consideration receipt said to have been executed by defendants No.1 and 2. Under this advance sale consideration amount advance receipt the defendants No.1 and 2 have received. Rs.50,00,000/- from the

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plaintiff agreed to register the regular sale deed after completion of the 40th work and allotment of new survey number with respect to the suit property. It is to be noted that the plaintiff society has also produced a reply sent by the defendants to the notice issued by the plaintiff society, under which the defendants have admitted the execution of the sale agreement in favour of G. Krishnamurthy. Whether the plaintiff's society is entitled for decree for specific performance of contract or not has to be decided only after full fledged trial. The admitted sale agreement executed by defendants in favour of G. Krishnamurthy and the deed of assignment and the deed of nomination agreement executed by G. Krishnamurthy in favour of plaintiff Housing Co-operative Society assigning his right of getting the sale deed executed by the defendants with respect to suit property by the plaintiff society and advance receipt document produced by the plaintiff society are sufficient to hold that plaintiff has made out

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case for trial. The documents produced by the plaintiff society are sufficient to hold that the plaintiff society has strong probabilities of ultimate success. So the documents produced by the plaintiff society are sufficient to hold that plaintiff society has a fair and arguable case and a serious question to be tried. Considering the nature of the relief sought for by the plaintiff and the defence raised by the defendants, this court is of the opinion that the plaintiff's society has made out a prima facie case. While considering the question of prima facie case, what the court is required to see is whether there is a fair question involved in the suit for decision and it will suffice if it is found that the plaintiff has strong probabilities of ultimate success. All that the plaintiff is required to show is that he has a fair and serious question to be tried. Considering the quality of materials placed by the plaintiff's society and the nature of interim relief sought by the plaintiff, this court is of the opinion that there is a

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serious question to be tried at the hearing of the suit and a very probability tilts in favour of the plaintiff's society for the relief sought for. That is prima facie case in favour of the plaintiff's society. Considering the circumstances of the case, this court is of the opinion that interference of this court is very much necessary, without which a right accrued in favour of plaintiff's society cannot be protected from species of injury which is known as irreparable injury and comparative mischief which is likely to cause in the absence of injunction will be greater and not compensatable. For the foregoing reasons, I come to conclusion that plaintiff's society has made out a prima facie case. **With these reasons, I answer Point No.1 in Affirmative.**

12. Point No.2 and 3:- As I have already discussed above, the authorized officer of the plaintiff's housing co-operative society has clearly stated in the affidavit that

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the defendants are trying to alienate the suit property to third party and if the defendants were able to succeed in their attempt of alienation the plaintiff's society would be put to irreparable loss and injury. So it is proved by the affidavit filed accompanying this application that the property is being alienated by the defendants. This fact is sufficient to hold that balance of convenience lies in favour of the plaintiff rather the defendants. So, if the defendants are succeeded in their attempt of alienation of the suit property and in the event of plaintiff society succeeding the suit, it would be difficult for the plaintiff society to get the decree executed in accordance with law. Under such circumstances, suit property is to be protected intact pending disposal of suit. The defendants are to be restrained from alienating the suit property pending disposal of suit, which would not cause any injustice to the defendants. It is well settled that the grant of injunction is always in the discretion of the court.

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However, that discretion is to be exercised in accordance with well established principle of law and exercise of discretion must be based on judicial consideration alone. If two views can be taken by Civil Court, and both are supported by law. It is free to take any of the views, either granting the injunction or rejecting the prayer can grant of them for injunction. So, considering the facts and circumstances of the case, this court is of the opinion that if order of injunction is not granted, it would cause injustice and irreparable loss and injury to the plaintiff's society. Therefore, order of injunction before the plaintiff's society is very much necessary. By interference of this court is very much warranted. **Therefore, I answer Point No.2 and 3 in 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's society under Order XXXIX Rule 1 and 2 r/w Sec.151 of the CPC., is hereby allowed.

The defendants are hereby restrained by order of temporary injunction from alienating the suit schedule property pending disposal of suit in any manner.

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

(Order is dictated to the laptop by me through Dictaphone and same is corrected signed and pronounced by me on this day of 5th June 2025.)

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