

KARN320027492024



**IN THE COURT OF THE I ADDL., CIVIL JUDGE AND
J.M.F.C., AT KANAKAPURA**

Dated: This the 07th day of March 2026

PRESENT

Smt. LATHASHREE B.V., B.A.,LL.B.,
I Addl., Civil Judge & JMFC,
Kanakapura.

O.S No.390/2024

<u>Plaintiff</u>	:	Sri. Basavaraju.C.B S/o late. Basavegowda, Aged about 45 years, R/at Cheeluru Village and Post, Maralavadi Hobli, Harohalli Taluk, Ramanagara District.
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-Vs-

<u>Defendants</u>	:	Smt. Gowramma W/o Thimmegowda, Aged about 47 years, R/at Thimmegowdanadoddi Village, Byalalu Dakle, Kasaba Hobli, Harohalli Taluk, Ramanagara District.
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INTERLOCUTORY APPLICATION No.1

Plaintiff/ Applicant	:	Sri. Basavaraju.C.B
		(By Sri. M.A.G., Adv.)

-Vs-

Defendants /Opponents	:	Smt. Gowramma
		(By Sri. A.B.S., Adv.)

1	Provision under which the applications are filed	:	Under Order 39 Rule 1 and 2 of C.P.C.
2	Relief Sought for	:	Temporary Injunction
3	The date on which the application is filed	:	28.11.2024
4	Number of the application	:	One
5	The date on which the objection is filed by different opponents	:	To treat the W/s as objection to the said I.A
6	The date on which the order was passed on the said application	:	07.03.2026

Sd/-

(Lathashree B.V.)

I Addl., Civil Judge & JMFC,
Kanakapura.

ORDERS ON INTERLOCUTORY APPLICATION No.I
FILED UNDER ORDER 39 RULE 1 & 2 OF C.P.C.

The plaintiff has filed the Interlocutory Application No.1 under Order XXXIX Rule 1 and Rule 2 r/w Sec.151 of CPC with a prayer to pass an order of Temporary Injunction by restraining the defendants, their members. Agents or servants and whomsoever claiming through them from alienating or creating any encumbrances with respect to suit schedule property in favour of others, pending disposal of the suit on merits.

2. In the annexed affidavit, it is the submission of the plaintiff that, the suit is one for specific performance of contract. It is further submitted that, the defendant is the absolute owner of the suit schedule property and the katha of the same is made out in the name of defendant vide M.R No. H44/2018-19 and she also obtains pahani in her name.

3. It is further submitted that, on 10.04.2019 the defendant has offered to sell the suit schedule property in favour of plaintiff in order to meet her legal and domestic necessities which includes house hold expenses and clearing of hand loan which was accepted by the said plaintiff. Hence, they entered into an agreement of sale transaction for total sale consideration amount of Rs.4,50,000/-. On the same day, the defendant has executed the sale agreement by receiving an amount of Rs.1,00,000/- in advance by way of cash from the plaintiff. Hence, the defendant agreed to execute the registered sale deed in favour of plaintiff within three months from the date of executed of the said agreement and also after getting the sketch and demarcation by obtaining necessary documents and agreed to receive the balance sale consideration amount of Rs.3,50,000/-. However, she failed to execute the same and perform her part of contract but the plaintiff is ready and willing to perform his side of contract. It is further submitted that, he approached the defendant many times for the said reason but she kept on dodging the matter and

thereafter with an intention to grab the advance amount and give unnecessary trouble she got issued a legal notice on 30.08.2024 calling upon the plaintiff to execute a cancellation of registered of sale agreement. Hence, he has given reply notice dated 11.09.2024 through his counsel but it is contended that, the plaintiff has learnt through well-wisher and elders in locality that, defendant is making hectic efforts to alienate the suit schedule property in favour of third persons. Hence, it is submitted that, he has got a prima-facie case and balance of convenience lies in his favour and if the application is not considered he would be put into hardship and great injustice which cannot be compensated in any manner. Hence, prays to allow the application.

4. On the other hand, the defendant has filed written statement and she has filed memo to adopt the written statement as objection to the above said I.A.

5. On perusal of the said written statement of defendant, she has denied the said transaction as stated by the plaintiff in the plaint and application and she has sought the plaintiff to be placed for strict proof of the same. She has also submitted that, the suit of the plaintiff is not maintainable either in law or on facts and the suit of the plaintiff is barred by limitation. It is the specific contention of the defendant that, she had approached the plaintiff for the purpose of hand loan of Rs.1,00,000/- on 10.04.2019 and plaintiff agreed and

gave the loan accordingly and also demanded the defendant to execute one security property documents and he prepared one more document with respect to land bearing Sy. No.318/1 measuring 0.05 guntas for the purpose of security which came to be registered and the said defendant is an illiterate person and used to give interest amount to the plaintiff till January 2020 through cash and clear the loan amount unfortunately the plaintiff did not come forward to cancel the security document. Hence she issued a legal notice on 30.08.2024 and received a reply notice from plaintiff. Hence, it is her contention that, plaintiff has not approached the court with clean hands. Accordingly, prays to reject the application.

6. Heard both the sides and perused the materials placed on record.

7. The learned counsel for the plaintiff has furnished the certain list of documents along with the suit which comprises the copies of sale agreement dated 10.04.2019, Encumbrance certificate, RTC extracts of Sy. No.318/1 and office copy of legal notice, reply notice, postal receipt and endorsement. On the other hand, the defendant after coming on record has filed the written statement but has not filed any single material before the court.

8. The following points arise for the consideration by this court is as under:

1. Whether the Interlocutory Application No.1 filed under Order 39 Rule 1 & 2 r/w Sec.151 of C.P.C. filed by the plaintiff deserves to be allowed?

2. What Order?

9. Upon hearing of the arguments and on perusal of documentary evidence available on record, the findings of this court to the above points are as under:

Point No.1 : In the Affirmative:

Point No.2 : As per final order
for the following:

REASONS

10. The facts and circumstances of the present matter i.e., the said Interlocutory application as well as the objections raised therein has been duly summarized in the factual aspects of the matter above, hence, in order to avoid repetition of facts, this court proceeds to discuss the important contentions which is taken for due ascertainment in pursuance to the said application made therein along with the objections.

11. Before proceeding further, it is just and necessary to discuss certain points relating to the ingredients of temporary injunction which includes prima-facie case, balance of convenience and irreparable loss. Wherein, the prima-facie case means the case in which there is serious question which needs to be tried by this court and the same requires detailed trail. It is true that burden of proving the prima-facie case through the pleadings and documents is on the plaintiff. If the plaintiff proves the prima-facie case and balance of convenience and irreparable loss then the applicant/plaintiff is entitled for temporary injunction.

12. Further, the temporary injunction granted at the initial stage will be in force until further orders or until the final disposal of the suit on merits depending on the nature of each case. Similarly, proving of prima-facie case is harbinger to consider the other aspects such as balance of

convenience and irreparable loss. In the light of above well settled principles of law, this court proceeds to analyze the present application.

13. **Point No.1:** Admittedly the suit is one for the relief of specific performance of contract. Now, the apprehension through the said application is that, the defendant may alienate the suit schedule property without complying or acting in accordance to the sale agreement as executed by her. In this regard, the copy of the registered sale agreement dated 10.04.2019 is furnished and RTC extracts is also furnished. Now according to the plaintiff, the said defendant due to her own necessities had offer to sell the suit schedule property for sale, which was accepted by the plaintiff for a total sale consideration amount of Rs.4,50,000/-. Accordingly, Rs.1,00,000/- was taken advance at the time of registering the sale agreement in the presence of witnesses on 10.04.2019 and three months plus time was taken

to obtain the sketch for demarcation and other necessary documents and the same was the duration for compliance of the same by receiving the balance sale consideration amount of Rs.3,50,000/-.

14. Hence, it is the contention of the plaintiff that, even after sufficient time and request made she did not turn up for acting in accordance of the agreed terms of sale agreement. However, she got issued legal notice on 30.08.2024 calling upon the plaintiff to cancel the registered sale agreement and he issued a reply on 11.09.2024 but later he learnt that, she is under arrangement of alienating the property for third persons. Hence, with no other alternative he has approached before this court.

15. On the other hand, it is the contention of the defendant that, she approached plaintiff hand loan on 10.04.2019 and obtained a hand loan of Rs.1,00,000/- for her necessities for which the plaintiff got executed a security purpose document

over the suit schedule property and she kept on paying interest to the plaintiff till January 2020 and later after completion as the plaintiff did not return the security document or cancel the same she got issued a legal notice on 30.08.2024. Hence, it is her case that, the same is a fraudulent document and she had entered in to the agreement only for security purpose.

16. On perusal of the entire record, the ownership of the property is not in dispute and the execution of the said alleged instrument is also not in dispute. However, the only contention is that, according to the defendant, she had executed the said agreement as security purpose document for the hand loan obtained by her and not otherwise.

17. At present, in a suit for specific performance the prima-facie material is the document i.e., sale agreement and the E-copy of the same is produced before the court. Now, whether the said document is

a genuine one or fraudulent one is a subject matter of trial. As of now, the existence of the suit schedule property has been admitted and agreement executed on the said alleged deed is admitted by the defendant. Though, she takes up the contention that, according to her, it is a security purpose agreement and not sale agreement.

18. Further, the present agreement is a registered document before the court and there is no dispute regarding the amount taken on the said date of execution of the agreement as well as the signature. It is true that, in this case, the defendant has issued the legal notice to cancel the agreement. However, a reply is furnished by the plaintiff to the said extent. The copy of legal notice is shown to be issued on 30.08.2024 and reply is given on 11.09.2024 and after receiving the reply what legal action was taken by the defendant if at all her contentions were true is not shown before the court.

Hence, her contention in this regard becomes a subject matter of trial. As because the plaintiff on the said background has already taken legal action by approaching to the court, which on prima-facie shows that, the plaintiff initially had taken measures with regard to performance of his part of contract but the veracity of the same is however a subject matter of trial. As of now, the very purpose of the plaintiff coming to the court and protecting the subject matter of interest is based upon the said prima-facie materials available before the court and it becomes the important aspect as because prima-facie case is different from prima-facie title and at this stage as this court cannot hold a mini trial only prima-facie case is to be looked upon and in this regard, the materials on record and pleadings before the court shows that, the plaintiff has a prima-facie case and an arguable matter in which the court has to adjudicate.

19. On the other hand, the contention raised by the defendant is not backed up with materials but the same would be placed for adjudication through a full fledged trial. But as of now, the protection of the interest of the plaintiff with respect to the suit schedule property becomes a crucial point as because if he succeeds in the suit he would be entitled for execution of the said sale agreement on the other hand if the application is not considered at this stage there is a every chances to the defendant to alienate the same and in that point, if the plaintiff inturn succeeds in the suit will serve no purpose and would suffer loss and injury. Hence, it would be stated that, the plaintiff at this stage has made out sufficient grounds to consider the present application. Hence, this court answers the **Point No.1 is in the Affirmative**".

20. **Point No.2:** In view of above made observations on Point No.1, this court proceeds to pass the following:

ORDER

I.A No.1 filed by the plaintiff U/o 39 Rule 1 and 2 R/w Sec.151 of CPC is hereby allowed.

The defendant, his agents, servants or anybody acting on his behalf are hereby restrained from alienating the suit schedule property in favour of third persons till further orders.

No order as to costs.

(Dictated to the Stenographer directly on computer, corrected, signed and then pronounced by me in the Open Court on 07th day of March 2026)

Sd/-

(Lathashree B.V.)

I Addl., Civil Judge & JMFC,
Kanakapura.