



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

**Present:** Sri. Shivakumar R., B.A.L., LL.B.,  
Addl. Sr. Civil Judge & JMFC, Magadi.

**Dated: 20<sup>th</sup> Day of February 2025**  
**ORIGINAL SUIT NO.464/2022**

**PLAINTIFF/s:**

Sri. T. V. Hanumantharayappa,  
S/o. Late. Veeranna,  
Aged about 58 years,  
R/at: No.9, 1<sup>st</sup> Cross,  
Nagasandra Colony,  
Near Shobha Apartment,  
Nagasandra, Bangalore - 560 073.

**(Reptd. By : Sri. K.R., Advocate.)**

**Vs.**

**DEFENDANT/s:**

Smt. Siddagangamma,  
W/o. Late. Shivanappa,  
Aged about 82 years,  
R/at: No.107, C/o. T. S. Suresh,  
Cucle Shop, Hiremat,  
Backside, Chikkapete Main Road,  
Near Hotel Rudresh Mess,  
Panduranganagara,  
Tumkuru Town,  
Tumkuru - 572 101.  
Also R/at: No.13, 1<sup>st</sup> Stage,  
1<sup>st</sup> Cross, Gayathripuram,  
Mysore - 570 010.

**(Reptd. By : Sri. G.N., Advocate)**

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**PARTIES TO I.A.NO.I & IV**

Applicant : Sri. T. V. Hanumantharayappa

Vs.

Opponent : Smt. Siddagangamma

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**COMMON ORDERS ON I.A.NO.I & IV**

I.A.No.1 is filed by the plaintiff under Order XXXIX Rule 1 and 2 of C.P.C., for the relief of temporary injunction restraining the defendant or her agents, legal representatives, assigns, administrators or any other persons claiming through the defendants from alienating the suit schedule property to any person in any manner till disposal of this suit.

2. The I.A.No.1 is supported with the affidavit of the plaintiff. In the affidavit he has stated that, defendant is the absolute owner of the suit schedule. The defendant have agreed to sell the Schedule Property for a valuable sale consideration of Rs.6,75,000/- and executed an Agreement of Sale dated: 11.12.2012 in favour of the plaintiff. That as per terms of the Sale Agreement dated 11.12.2012 the plaintiff had paid a sum of Rs.50,000/- as advance amount towards the total sale consideration at the time of executing the aforesaid agreement to sell in respect of the Schedule Property. The defendant have receive further advance of Rs.1,00.000/- from the plaintiff on



29.12.2012 and the defendant have executed an Advance receipt in favour of the plaintiff.

3. The plaintiff has further stated that, the plaintiff had paid a sum of Rs.1,50,000/- as advance amount towards the total sale consideration i.,e Rs.6,75,000/- at the time of executing the aforesaid agreement to sell in respect of the Schedule Property. The plaintiff state that, in terms of page No.2 of the said agreement, the sale transaction of the schedule property is to be completed after obtaining the 11E Sketch and within 6 months from the date of the agreement.

4. The plaintiff has further stated that, he had contacted defendant over mobile phone on several occasions and also visited personally to defendant as mentioned in the cause title. That thereafter in spite of many telephonic reminders and personal visits by the plaintiff to defendant place, defendant failed to obtaining the 11E Sketch with respect to schedule property.

5. The plaintiff has further stated that, he has agreed to pay the remaining balance sale consideration of Rs.5,25,000/- to the defendant at the time of executing the Sale Deed in favour of the plaintiff. It is further stated that, under the said Agreement, the Defendant has agreed to receive the



balance sale consideration from the plaintiff and execute the sale deed, within six months from the date of agreement and has further agreed to deliver vacant possession of the Schedule Property, at the time of registration of the Sale Deed, but till today the Defendant have been dodging to receive the balance and register the Sale Deed in favour of the plaintiff.

6. It is further stated by the plaintiff that, as per the terms of an Agreement of Sale dated 11.12.2012, the plaintiff is always ready and willing to perform his part of contract by paying the remaining balance sale consideration of Rs.5,25,000/- to the Defendant and also ready with the money for registration expenses/stamp duty charges on the date of agreement of sale itself.

7. The plaintiff has further stated that, he was demanding the Defendant to receive the balance sale consideration and execute the Sale Deed in favour of him in terms of an Agreement of Sale, but the Defendant has evading by giving one or the other reasons and postponing the same. On the other hand, the Defendant has failed to perform her part of contract in terms of an Agreement of Sale and very fact that the Defendant has evading



and escaping as stated above implies the Defendant malafide intention of making wrongful gain at the cost of the plaintiff.

8. It is further stated by the plaintiff that, the Defendant has willfully neglected and failed to perform her part of contract as per the terms and conditions of the Agreement of Sale dated 11.12.2012 and thus committed a breach of contract. The plaintiff has sufficient time to the Defendant and also waiting for all these months to register the sale deed in favour of the plaintiff and he has requested the Defendant several times to perform her part of contract in terms of the agreement of sale, but till today the defendant has not chosen to register the sale deed in favour of the plaintiff.

9. It is further stated that, the plaintiff had issued a Legal Notice dated 16.07.2022 to the Defendant by way of Registered Post calling upon the Defendant for Specific Performance of her part of contract as per Agreement of Sale dated 11.12.2012. The Legal Notice dated 16.07.2022 was duly served to Defendant on 18.07.2022. But, the Defendant refused to execute and register the Sale Deed in respect of the Schedule Property in favour of the plaintiff. In other words, the Defendant after receiving the Legal Notice evaded performing her contract and she also threatened the plaintiff with dire consequences.



10. It is further stated that, the Defendant is making arrangements to sell the Schedule Property to some third party by failing to comply with their part of the contract. Hence, this application.

11. The defendant has filed detailed statement of objection and resisted the I.A.No.4 filed by the plaintiff and interalia contended that, the plaintiff has filed the above said suit for the relief of specific performance of sale agreement dated 11.12.2012 and for other consequential relief and after institution of the suit the defendant came through her advocate, filed her detailed written statement and further it is necessarily brought to the kind notice of this Court the extent of the suit schedule property and as well as the RTC extract filed by plaintiff and when look into the alleged sale agreement dated 11.12.2012 the extent of the property mentioned therein to an extent of 1 Acre 20 Guntas in respect of the suit schedule property, but in contrary to the said fact, the plaintiff has produced the RTC extract for the year 2022-23 marked as an exhibit P4 in which it discloses an extent of the property which it is shown as 1 Acre 18 Guntas in front of the name of the defendant and after through verification of these accept, it clearly speaks volumes that the plaintiff has seeking large extent of property then the extent mentioned in the exhibit P4 i.e., RTC extract and as such the exact extent of the property mentioned



under the plaint schedule and as well as the documents relied upon him is not tallied with each other and accordingly the plaintiff has not made out the prima-facie case, balance of convenience and nature of the injury in prediction and in view of the above reason the ad-interim temporary injunction granted in favor of the plaintiff on 17.08.2022 based upon the IA.No.1 is required to be vitiated in its threshold.

12. Further the defendant has contended that, the plaintiff has filed the instant suit for the relief of specific performance of the sale agreement dated 11.12.2012 and thereby calling upon her to come and execute the registered sale deed in his favor, however when looking into the clauses/terms and conditions mentioned under the sale agreement dated 11.09.2012, its speaks volumes that the time fixed for payment of balance sale consideration was six months from the date of sale agreement i.e., 11.09.2012 and further the plaintiff has taken a categorically contention in his pleadings that defendant has taken amount of Rs.50,000/- by executing the advance receipt on 29.12.2012 in favor of the plaintiff and on the factual position, the time period for filing suit had commenced from 29.09.2012 and would have expired after 3 years i.e. 29.12.2015, but the plaintiff has filed the instant suit on



08.08.2022 that too after lapse of seven years. And the very suit is hit under the limitation act.

13. It is further contended by the defendant that, the plaintiff is required to bring the suit well within the period of 2015 from the date of expiry of six months period given under the sale agreement dated 11.12.2012 but as could be seen from the instant suit the plaintiff has filed the present suit on 08.08.2022 that too after lapse of more than seven years from the date of expiry of limitation and accordingly the suit of the plaintiff is not at all maintainable and when the suit itself is not maintainable, following the same, the ad-interim temporary injunction passed in this suit is also not maintainable in the eye of law and same is liable to be set aside. For all these grounds the defendant prays to reject the aforesaid I.A., with exemplary cost.

14. The defendant has filed the I.A.No.4 U/O.XXXIX Rule 4 r/w. Sec.151 of C.P.C., and prays this Court to please to set-aside the ad-interim temporary injunction order dated: 17.08.2022 passed by this Court on I.A.No.1. In the supportive affidavit of the annexed I.A., the defendant has reiterated the averments made out in the statement of objection to filed by the defendant on I.A.No.1 and prays to allow the said application.





15. Heard arguments on both sides. The defendant counsel has relied upon the following citations;

- (1) 2023(1) CCC 263 (S.C).
- (2) 2014 (SUPPL) CCC (Bombay).
- (3) Civil Appeal No.150/2022 in Supreme Court of India.
- (4) 2020 (1) CCC458 (SC).

16. Upon hearing arguments and on perusal of materials placed on record, the following points that would arise for my consideration are as under:

- 1) Whether the plaintiff/applicant has made out a prima-facie case?
- 2) Whether the balance of convenience lies in favour of the plaintiff/applicant?
- 3) Whether the plaintiff/applicant will be put to irreparable loss and injury, if the temporary injunction is not granted as prayed in the I.A.?
- 4) Whether the defendant has made out sufficient grounds to allow the I.A.No.IV filed under Order 39 Rule 4 r/w. Sec.151 of CPC?



5) What order?

17. My answer to the above points are as under :

Point No.1 : In the Affirmative,

Point No.2 : In the Affirmative,

Point No.3 : In the Affirmative,

Point No.4 : In the Negative,

Point No.5 : As per the Order,

for the following:

### **REASONS**

18. **POINT NO.1 TO 4 :** These points are inter related with each other. Hence, these points are taken up together for common discussion in order to avoid repetition of facts and findings. On perusal of the materials available on record, admittedly, the plaintiff has filed this suit against the defendant for the relief of specific performance of contract dated: 11.12.2012 in the suit schedule property. According to the plaintiff, the defendant is the absolute owner of the suit schedule property. The defendant has executed the Agreement of Sale dated: 11.12.2012 by receiving an advance sale consideration amount of Rs.1,50,000/- out of sale consideration amount of Rs.6,75,000/- and agreed to complete the sale transaction after obtaining 11



E sketch and within 6 months from the date of agreement. The plaintiff is always ready and willing to perform his part of the contract, but the defendant has refused to execute the absolute sale deed in favour of plaintiff in respect of suit schedule property as per the terms and conditions of agreement of sale.

19. In order to substantiate the case of the plaintiff, at this stage the plaintiff has produced the original copy of the registered agreement of sale dated: 11.12.2012, Encumbrance Certificate, RTC Extract, the Deed of shara executed by the executed by the defendant, Postal Receipts, Returned RPAD., Cover, Bank Statements, Mutation Register Extract, Pass Book.

20. On the other hand, the defendant has contented that, the plaintiff has not approached before this Court with clean hand and further contended that, there is a lot of inconsistency, ambiguity and contradictions in the extent of suit schedule property and as well as the RTC Extract produced by the plaintiff. In the alleged sale agreement the extent mentioned therein as 1 acre 20 guntas in respect of suit schedule property, but the RTC Extract produced by the plaintiff for the year 2022-23, which is marked as Ex.P4 in the above matter. It disclose that, the extent of the suit schedule property is



mentioned as 1 acre 18 guntas and moreover the suit of the plaintiff is barred by Limitation as per the Article 54 of the Limitation Act. Hence, the suit of the plaintiff is not maintainable. Under these facts and circumstances, the plaintiff has not made out a prima-facie case in his favour. Therefore, the plaintiff is not entitled for any relief as sought in the I.A., and the exparte orders on I.A.No.1 passed by this Court is liable to be vacated.

21. At this stage, without going through the merits of the case and conducting mini trail, the court is considering the aspect of prima-facie. At this stage, this court makes very clear that this court is looking towards prima-facie case and not for the prima-facie title. In order to show the prima-facie case, the plaintiff has produced the RTC extracts for the year 2013-14. On perusal of the same, at this stage it disclose that, the extent of the suit schedule property is mentioned as 1 acre 20 guntas. The said fact is reflected in the Agreement of Sale also. The learned counsel for the defendant vehemently argued that, as per Ex.P4 i.e., RTC Extract for the year 2022-23 the extent mentioned as 1 acre 18 guntas, but not a 1 acre 20 guntas and also argued that, the suit of the plaintiff is barred by limitation as per Article 54 of Limitation Act, it is well settled Law that, the question of Limitation is a mixed question of Law and facts. The same has to be considered after full



fledged trial. While considering the interim application the aspect of limitation cannot be considered. It is very relevant to note that, the extent mentioned in the alleged sale agreement and the extent mentioned in the RTC Extract for the year 2013-14 is tallied with each other. At this stage the rights of the parties cannot be adjudicated, it needs full fledged trial. On careful reading of the citations relied upon by the defendant counsel is not applicable to the present case on hand, because the facts and circumstances of those cases and present case are different.

22. Admittedly, it is a suit for specific performance of contract dated: 11.12.2012 in respect of suit schedule property. At this stage the rights of the parties cannot be adjudicated, it needs full fledged trial. In order to avoid multiplicity of proceedings and also to keep suit schedule property intact till disposal of the suit. Hence, it is just and necessary to pass an order of temporary injunction restraining the defendant from alienating the suit schedule property to any body in any manner till disposal of this suit. Looking into the pleadings and documents adduced by both the parties, at this stage it appears that, the plaintiff has made out the prima-facie case and balance of convenience is also lies in favour of the plaintiff. If this I.A., is not



allowed, the plaintiff will be put to great hardship and injury. On the other hand, if this I.A., is allowed, there is no harm caused to the other side.

23. On perusal of the materials placed on record, the defendant has not made out any valid grounds to vacate the ad-interim order of temporary injunction on I.A.No.1 dated: 17.08.2022 passed by this court in the above matter. For considering all these reasons the Point No.1 to 3 in the Affirmative and Point No.4 in the Negative.

24. **POINT NO.5** : In the light of the above discussion on Point No.1 to 4, I proceed the following :

**ORDER**

I.A.No.I filed by the plaintiff/applicant under Order XXXIX Rule 1 and 2 of CPC is hereby allowed.

Consequently, the defendant or her agents, legal representatives, assigns, administers or any other persons claiming through the defendant are hereby temporarily restrained from alienating the suit schedule hereby to anybody in any manner till disposal of this suit.



I.A.No.IV filed by the defendant under Order XXXIX Rule 4

r/w. Sec. 151 of CPC is hereby rejected.

No order as to cost.

(Dictated to the Typist directly on computer, typed by her, corrected by me and then pronounced in the open Court, on this the day of **20<sup>th</sup> day of February, 2025.**)

**(SHIVAKUMAR R.,)**  
**ADDITIONAL SENIOR CIVIL JUDGE &**  
**J.M.F.C., MAGADI.**