



**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: 7th Day of February 2025
ORIGINAL SUIT NO.502/2023

PLAINTIFF/s:

Sri. Vikram K.,
S/o. Kalyam Mal M Jain,
Aged about 22 years,
R/at: Dr. Raj Kumar Road,
Ward No.22, Magadi Town,
Ramanagara District.

(Reptd. By : Sri. N.V., Advocate.)
Vs.

DEFENDANT/s:

Sri. Jagadeesh H. G.,
S/o. Gangarevanna H. G.,
R/at: Honnapura Village,
Karalamangala Post,
Madabal Hobli,
Magadi Taluk,
Ramanagara District.

(Reptd. By : Sri. S.G.U., Advocate)

PARTIES TO I.A.NO.I

Applicant : Sri. Vikram K.,

Vs.

Opponent : Sri. Jagadeesh H.C.,



ORDER ON I.A.NO.I

The applicant/plaintiff has filed this interlocutory application under Order XXXIX Rule 1 and 2 r/w. Sec.151 of C.P.C., for the relief of temporary injunction restraining the defendant or his agents, attorney holders or anybody acting on his behalf from alienating the suit schedule property to any person in any manner till disposal of this suit.

2. The I.A., is supported with the affidavit of the plaintiff. In the affidavit he has stated that, he has filed the above suit against the defendant for the relief of specific performance of contract in respect of suit schedule property. The defendant is the absolute owner in peaceful possession and enjoyment of the suit schedule property. The defendant was in dire need of funds for his family necessities and other commitments, had negotiated with the plaintiff for sale of suit schedule property in his favour and accordingly the defendant has entered into a Registered Agreement of Sale dated 23.05.2022 with the plaintiff. Under the said Agreement, the



defendant had agreed to sell the schedule property to the plaintiff for a total sale consideration of Rs.7,00,000/- and further he has received the advance sale consideration of Rs.5,00,000/- from the plaintiff by way of cheque and cash as on the date of the agreement, which amount was received and acknowledged by them. It was agreed that, the defendant shall execute the sale deed in favour of the plaintiff within 11 months.

3. It is further stated that, the plaintiff has been approaching the defendant and demanding to execute the registered sale deed in his favour by receiving the balance sale consideration. Despite several requests and demands, the defendant has not come forward to execute registered sale deed in favour of the plaintiff and whenever the plaintiff requested the defendant for registration of the sale deed, he has been dragging on the execution of sale deed on one pretext or the other. But for the reasons best known to him,



the defendant is not coming forward to execute the sale deed in favour of the plaintiff. The plaintiff was/is always ready and willing to perform his part of contract and to get the sale deed registered in the name of the plaintiff. But, the defendant has been deliberately avoiding to execute the sale deed in favour of the plaintiff. The plaintiff learnt from reliable source that the defendant is making hectic efforts to alienate the suit schedule property in favour of third parties and hence the plaintiff caused a legal notice dated: 17.03.2023 calling upon the defendant to come and execute the registered sale deed. The said notice was duly served to the defendant. Instead of complying the same, the defendant has issued untenable reply. It is further stated that, the plaintiff came to know that, the defendant is trying to alienate the suit schedule property to the third party by suppressing the agreement as stated supra took place between plaintiff and defendant. Hence, this application.



4. After service of suit summons, the defendant has appeared through his counsel and filed the written statement and resisted the suit of the plaintiff. The defendant has filed the memo adopting written statement averments as objections to I.A.No.1. The defendant admitted in the written statement that, he is the owner of the suit schedule property and denied the rest of the plaint pleadings. The defendant has contented that, there is no sale of any property or portion of property as agreed in registered sale agreement dated: 23/05/2022 in favour of plaintiff, the same facts also plaintiff aware that it is executed for security purposes, which defendant had borrowed the amount of Rs.5,00,000/- and plaintiff also aware that Sy.No.46/1 measuring 00.05.8 guntas of Thirumale village, Kasaba hobli, Magadi town is valued more than Rs.3,00,000/- per gunta which connecting highway road and suit schedule property was valued more than rupees Fifteen lakhs as on the date of registered sale



agreement. For all these grounds, the defendant has prayed to reject the above I.A.

5. Heard arguments on both sides.

6. 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) What order?

7. 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 : As per the Order,
for the following:

REASONS

8. **POINT NO.1 TO 3:** 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 placed on record, the plaintiff has filed this suit against the defendant for the relief of specific performance of contract dated: 23.05.2022 in respect of suit schedule property. I have already narrated in brief what is the case of the plaintiff is and what is the defense of the defendant is. It is the urge of the plaintiff that, the defendant is the absolute owner of the suit schedule property. He has executed the registered agreement of sale dated: 03.08.2017 in favour of plaintiff and received an advance amount as narrated in the plaint pleadings in various dates from the plaintiff and agreed to execute the registered sale deed in favour of plaintiff by receiving balance



sale consideration. The plaintiff is always ready and willing to perform his part of contract. The defendant refused to execute the sale deed as per the sale agreement. After service of legal notice to the defendant which was issued by the plaintiff, the defendant has not comply the same, but he had issued reply to the notice issued by the plaintiff. The plaintiff is learnt that, the defendant is trying to alienate the suit schedule properties by suppressing the said agreement.

9. In order to substantiate the case of the plaintiff, the plaintiff has produced the original copy of the registered agreement of sale dated: 23.05.2022, RTC Extracts, xerox copy of the registered Gift Deed dated: 21.10.2005, Legal Notice dated: 17.03.2023, Postal Receipts, Postal Acknowledgment, the copy of the Reply Notice dated: 29.04.2023, Encumbrance Certificate and Statement of Account.



10. On the other hand, the defendant admitted that, in his written statement that, he is the owner of the suit schedule property and denied the rest of the plaint pleadings and contended that, he has intention to sell the suit schedule property to the plaintiff, but he has executed the registered sale agreement in favour of the plaintiff for the security of loan amount borrowed by him from the plaintiff. In order to substantiate the case of the defendant, at this stage the defendant has not produced any documents.

11. At this stage, without going through the merits of the case and conducting mini trial, 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 original copy of the registered agreement of Sale dated: 23.05.2022. On perusal of the same, at this stage it appears that, the defendant has



executed the sale agreement in favour of plaintiff in respect of suit schedule property. On perusal of the RTC Extract for the year 2023-24 in respect of suit schedule property. At this stage the khata of the suit schedule is standing in the name of defendant. It is the apprehension of the plaintiff that, the defendant is trying to alienate the suit schedule property to the third parties by suppressing the agreement stated supra.

12. Admittedly, it is a suit for specific performance of contract against the defendant 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 properties 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. For considering all these reasons the Point No.1 to 3 is answered in the Affirmative.

13. **POINT NO.4:** In the light of the above discussion on Point No.1 to 3, I proceed the following :

ORDER

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

Consequently, the defendant is hereby temporarily restrained from alienating the suit

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O.S.NO.502/2023(Or.)

schedule properties to anybody in any manner
till disposal of this suit.

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 **7th day of February, 2025.**)

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