IN THE COURT OF ADDL. SENIOR CIVIL JUDGE & JMFC., GUBBI.

Dated on this the 20th day of December, 2024

PRESENT: SMT. POORNIMA .K. YADAV,
B.A.LL.B., LL.M.,
Addl. Sr. Civil Judge & JMFC,
Gubbi.

ORIGINAL SUIT NO. 346/2024

Plaintiff/s	**:**	Sri. H.S. Ravishankar S/o H.S. Shivalingappa, Aged about 54 years, R/at Hebakka Village, Kasaba Hobli, Tumkuru Taluk. **(By Sri. K.S.S., Adv.)**
		Vs.
Defendant/s:	**1.**	Sri. C.N. Hanumantharayappa, S/o Late Nagappa, Aged about 71 years,
	2.	Sri. Balakrishna T.H. S/o C/N. Hanumantharayappa, Aged about 51 years,
	3.	Smt. Thippamma W/o Balakrishna T.H., Aged about 23 years,
	4.	Sri T.B. Yogeesha, S/o Balakrishna T.H., Aged about 23 years,

5. Sri T.B. Adithya
S/o Balakrishna T.H.,
Aged about 21 years,

6. Sri. Varalakshmi @ T.N.
Varalakshmamma,
D/o Late Nagappa
Aged about 69 years.
(D1 to 6 by Sri K.L.D. Adv.)

PARTIES TO I.A.NO.II

Applicant / Plaintiff : Sri. H.S. Ravishankar

Vs.

Opponents/Defendants : Sri. C.N. Hanumantharayappa and another

Provision under the Application	Under Order 39 Rule 1 and 2 of CPC
Application Relief sought for	Temporary injunction restraining the defendants from alienating the suit schedule property.
The date of the application is filed	29.10.2024
Interlocutory Application Number	II
Date of objection filed by the defendants	10.12.2024
Date of order passed	20.12.2024

Sd/-
(POORNIMA K. YADAV)
Addl. Senior Civil Judge &
JMFC, Gubbi.

ORDERS ON IA NO. I

The Plaintiff through his counsel filed this application U/O 39 Rule 1 and 2 of CPC restraining the defendants or anybody acting on their behalf from alienating or creating any charge till disposal of the suit over the suit schedule property i.e., All the piece and parcel of the land bearing Sy. No. 26/1 measuring 14-04.00 guntas, out of which 04-00 acres situated at M.M.N. Kaval Village, Gubbi Taluk, Tumkuru District.

2. The application is accompanied with the affidavit of the of the plaintiff, wherein it is stated that, the present suit is filed seeking relief of specific performance of contract and for other reliefs against the defendants. The defendants are the owners of land bearing Sy. No. 26/1 to an extent of 14.04 guntas and the revenue documents of the said land is standing in the name of defendant No. 1. The defendants together offered to sell an extent of 4 acres out of total extent of land bearing Sy. No. 26/1 for their family necessities to clear Bank loan and for education expenses, as such, the plaintiff agreed to purchase the said property. After negotiation, sale amount was fixed at Rs. 25,00,000/- per acre, in total Rs.1,00,00,000/- for 4 acres of land. The defendants received amount of Rs. 5,00,000/- through Federal Bank, Tumkur Branch cheque bearing No. 149971 dated 20.04.2022 drawn in the name of defendant No. 2 in the presence of witness and agreed to receive the balance consideration amount at the time of sale deed. Accordingly, sale agreement was executed by the defendants in favour of the plaintiff on 13.04.2022. As per the said agreement, the defendants had to execute registered sale deed within six month by getting katha on pouthi-varasu, sketch and other required documents. After execution of the sale agreement the defendants on 06.05.2022 received further advance amount of Rs. 5,00,000/- through Federal Bank, cheque bearing No. 14995 drawn in the name of defendant No. 2. Further, the defendants received advance amount of Rs. 5,00,000/- through Canara Bank, UTR No. CNRBR5202302089896 and amount of Rs. 5,00,000/- through HDFC RTGS UTR No. HDFCR52023122966499854. As such, the defendants have received part consideration amount of Rs. 20,00,000/- from the plaintiff. The plaintiff approached the defendants several times for registration of the sale deed. The plaintiff is ever ready and willing to perform his part of contract but the defendants failed to execute registered sale deed. The plaintiff got issued legal notice to the defendants on 31.05.2024 and the said notices were delivered to the defendant No. 1, 2, 3, 4, 6. The notice of defendant No.5 was returned with untenable shara and all the defendants gave untenable reply to the notice on 11.06.2024. The defendants are conspiring to create 3rd party rights over the suit schedule property. If the defendants succeeded, the plaintiff will be put to irreparable injury. Hence, sought to allow the application.

3. On the other hand, the counsel for the defendants filed objections to the application and contended that the application is not maintainable and it is liable to be rejected. It is further contended that, the defendants are financially sound and they were not in family necessity but the plaintiff got created sale agreement by forging the signatures of the defendants. The defendants are joint family members and there is no division between them. The defendant No. 2 does not have any manner or right to execute sale agreement on behalf of family members. The sale agreement was prepared by the plaintiff by fabricating the signatures of the defendants. The defendant No. 2 received the amount from the plaintiff for the development of the land, its improvement and to obtain electricity supply. The plaintiff is doing real estate business and he intends to sell the property by forming sites. The defendants are dependent on the suit schedule property. The Defendants are not intending to sell the suit schedule property. Hence, sought to reject the application.

4. Heard both the counsel. The counsel for the plaintiff relied on the judgments of Hon'ble Supreme Court of India and High court of Karnataka as under:

1. ***AIR 2005 SC 104 between MAHARWAL KHEWAJI TRUST (REGD), FARIDKOT V/s BALDEV DASS,*** *Where in it is held that,*

"Court should not permit nature of property being changed unless and until a case of irreparable loss of damage made out by party to suit. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate Court and the High Court were justified in permitting the respondent should be permitted to put the scheduled property to better us. We do not think in the facts and circumstances of this case, the lower appellate Court and the

High Court were justified in permitting the respondent to change the nature of property by putting up construction as also be permitting the alienation of the property, whatever may be the condition on which the same is done. In the event of the appellants claim being found baseless ultimately, it is always open to the respondent to claim damages, or, in an appropriate case, the Court may itself award damages for the loss suffered, if any, in this regard. Since the facts of this case to not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think both the Courts below, namely, the lower appellate Court and the High Courts erred in making the impugned orders. The said orders are set aside and the order of the trial Court is restored."

2. ***ILR 2007 KAR 1214 between SMT. T. K.***

GOWRAMMA V/s SRI. C. K. RAVIPRASANNA, *wherein it is held that,*

"The agreement of sale produced by the respondent is disputed by the petitioner. There is no dispute that there is a residential house in the schedule property. Both the Courts below concurrently held, that respondent has made out a prima facie case on the basis of documents like the custody of tax paid receipts, telephone bills, certificate issued by the Secretary of Village Panchayat, Voters List, driving license, postal letters etc. Whether the agreement of sale is genuine or not and the respondent is in unlawful possession are all matters required to be determined at the trial."

3. ***2010 (1) SCC 379 between JULIEN EDUCATIONAL TRUST V/s SOURENDRA KUMAR ROY AND ORS.,*** *wherein it is held* *that, "Whether there was a concluded contract or not between the appellant Trust and the Respondent Nos. 1 to 8 is a matter of evidence and can only be gone into during the trial of the suit. This brings us to the all important question as to whether the balance of convenience and inconvenience lay in favour of the grant of an interim order of injunction in favour of the appellant Trust and as to whether the appellant Trust would suffer irreparable loss and injury, if no such interim order was passed. It is our view that in the light of the principles of balance of convenience and inconvenience, interim relief should be granted to the appellant Trust. Accordingly, we allow the appeals and set aside the order of the High Court and direct that the respondents shall not alienate or encumber the suit property or change the nature and character thereof till the disposal of the suit for* *specific performance field by the appellant Trust."*

4. ***MFA No. 9259 of 2015 (CPC) between D.G. APPAYANNA V/s A.M. SIDDAPPA,*** *wherein it is held that,*

   "It is seen that the Trial Court while dismissing I.A.I., has not taken into consideration the parking of sale consideration to an extent of 40% by plaintiffs with defendants, which amounts to Rs. 67,50,000/-and rights of the parties have not been adjudicated by the Trial Court rejecting the application in I.A. I. Filed by plaintiffs for temporary injunction is unjust and improper."

5. ***2021 (3) KCCR 2699 between SHIVARAJ AND ANOTHER V/s A. RANGASWAMY AND OTHERS,*** *wherein it is held that,*

"It is to be stated that if any party to the suit, either just before or after filing of the suit does something hurriedly in order to change the nature of the property with an ulterior motive for defeating the interest of his opponent in the suit, the Court can take note of it for granting an order of temporary injunction or directing the parties to maintain status quo in order to balance the interest of litigating parties."

5. Upon hearing both the counsel and on perusal of the materials available on record, the points that arise for my consideration are;

1. ***Whether the Plaintiff has made out a prima facie case in his favour ?***
2. ***Whether the plaintiff will be put to irreparable loss ?***
3. ***Whether the balance of convenience lies in favour of the Plaintiff?***
4. ***What order?***

6. My findings 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 final order, for the following:***

<u>**R E A S O N S**</u>

7. <u>**POINT NO.1 :**</u> This suit is filed seeking relief of Specific performance of agreement of sale dated 13.04.2022. It is the case of the plaintiff that the defendants are the owners of land bearing Sy. No. 26/1 to an extent of 14.04 guntas and the revenue documents of the said land is standing in the name of defendant No. 1. The defendants together offered to sell an extent of 4 acres out of total extent of land bearing Sy. No. 26/1 for their family necessities to clear Bank loan and for education expenses, as such, the plaintiff agreed to purchase the said property. After negotiation, sale amount was fixed at Rs. 25,00,000/- per acre in total Rs.1,00,00,000/- for 4 acres of land. The defendants received amount of Rs. 5,00,000/- through Federal Bank, Tumkur Branch cheque bearing No. 149971 dated 20.04.2022 drawn in the name of defendant No. 2 in the presence of witness and agreed to receive the balance consideration amount at the time of sale deed. Accordingly sale agreement was executed by the defendants in favour of the plaintiff on 13.04.2022. As per the said agreement, the defendants had to execute registered sale deed within six month by getting katha on pouthi-varasu, sketch and other required documents. After execution of the sale agreement the defendants on 06.05.2022 received further advance amount of Rs. 5,00,000/- through Federal Bank, cheque bearing No. 14995 drawn in the name of defendant No. 2. Further, the defendants received advance amount of Rs. 5,00,000/- through Canara Bank, UTR No. CNRBR5202302089896 and amount of Rs. 5,00,000/- through HDFC RTGS UTR No. HDFCR52023122966499854. As such, the defendants have received part consideration amount of Rs.

20,00,000/- from the plaintiff. The plaintiff approached the defendants several times for registration of the sale deed. The plaintiff is ever ready and willing to perform his part of contract but the defendants failed to execute registered sale deed. The plaintiff got issued legal notice to the defendants on 31.05.2024 and the said notices were delivered to the defendant No. 1, 2, 3, 4, 6. The notice of defendant No.5 was return with untenable share and all the defendants gave untenable reply to the notice on 11.06.2024.

8. On the other hand the defendants denied the claim of the plaintiff and took contention that they was no family necessity for sale of the property and the sale agreement is a created document by the plaintiff by fabricating the signatures of the defendants. They also took contention that the defendant No. 2 does not have any right to sell the suit schedule property as it is the joint family property of the defendants. It is further contended that the defendant No. 2 received the amount from the plaintiff for the development of the suit schedule property.

9. At this juncture, I would like to place reliance on the ratio of the Hon'ble High Court of Rajasthan in **AIR 2003 RAJ 21 between Sukka Singh Vs. Mahal Singh,** wherein it is held that,

> ***" While considering the question of prima facie case, it is not to be confused with prima facie title. What is required is that the plaintiff has to show that he has bonafide raised a substantial question, which needs to be adjudicated at the trial of the suit."***

10. Hence, it is clear that prima facie case means showing that there is dispute between the parties which has to be decided in a full fledged trial. The said pleadings of the parties shows that the plaintiff is seeking for specific performance of the sale agreement dated 13.04.2022 wherein the defendants agreed to sell the suit schedule property to the plaintiffs for consideration of Rs. 1,00,00,000/- and received part sale consideration amount of Rs. 20,00,000/- from the plaintiff.

11. On the other hand the defendants denied the claim of the plaintiff on the ground that the sale agreement is a created document by the plaintiff. They also took contention that the suit schedule property is joint family property and there is no division among the members of joint family. They further contended that the defendant No. 2 received the amount from the plaintiff for the development of the suit schedule property.

12. The said pleadings on record discloses that the plaintiff has set up his claim over the suit schedule property on the basis of sale agreement dated 13.04.2022 which is denied by the defendants as created document and that the defendant No. 2 received the amount from the plaintiff for the development of the suit schedule property . The said facts discloses that there is dispute between the parties over the suit schedule property which require adjudication by way of trial which shows existence of a prima facia case for trial. Accordingly, Point No.1 is answered **in the Affirmative.**

13. **<u>POINT NO.2 & 3:</u>** These points are taken up for discussion together as they are inter related to each other.

14. Mere existence of prima facia case is not the ground for grant of temporary injunction and existence of balance of convenience as well as irreparable injury in favour of the plaintiff is mandatory to grant such an order. Hence, it is necessary to examine if in this case there is balance convenience and irreparable injury in favour of the plaintiff.

15. The plaintiff through this application sought for an order of Temporary injunction restraining the defendants from alienating or creating any encumbrance over the suit schedule property.

16. Order 39 Rule 1 of CPC, provides for grant of Temporary Injunction till disposal of the suit, when the subject matter of the suit is in the danger of being alienated, damaged or wasted by the defendant or when the defendant threatens or intends to remove or dispossess his property to defraud his creditors or the defendant threatens to dispossess the plaintiffs or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, for the purpose of staying and preventing such alienation, damage or wastage, sale, removal or disposition of the property or dispossession of the plaintiff or causing injury to he plaintiff in relation to any property in dispute in the suit.

17. The materials on record discloses that there is an agreement of sale pertaining to the suit schedule property in favour of plaintiff which is dated 13.04.2022 and the said agreement is executed by the defendant No. 1 to 6. The said agreement is impounded by the District Registrar, Tumkur on 23.10.2024. As per the said agreement, the suit schedule property was agreed to be sold by the defendant to the plaintiff for sale consideration amount of Rs. 1,00,00,000/- and the defendants received part sale consideration amount of Rs. 5,00,000/- from the plaintiff on 20.04.2022 through cheque bearing No. 149971. The said agreement has three endorsements which shows that the defendants have received further part sale consideration amount of Rs. 5,00,000/- on 06.05.2022 through cheque bearing No. 149995, Rs.5,00,000/- on 08.02.2023 through bank transaction UTR No. CNRBR5202302089896 and Rs. 5,00,000/- on 26.12.2023 through RTGS UTR No. HDFCR52023122966499854.

18. That apart the plaintiff produced his statement of account of Federal Bank, Canara Bank and HDFC Bank which shows transfer of Rs. 5,00,000/- on 26.04.2022 to the defendant No. 2, Rs. 5,00,000/- on 10.05.2022 to the defendant No. 2, Rs. 5,00,000/- on 08.02.2023 to the defendant No. 2 and Rs. 5,00,000/- on 29.12.2023 to the defendant No. 2. The said Bank statements tallies with the details of payments reflected in the agreement of sale dated 13.04.2022.

19. The RTC Extracts of the suit schedule property discloses that the it is standing in the name of defendant No. 1, 2, 6 and one Thimmakka W/o Late S. Nagappa. This shows that the suit schedule property is standing in the name of the defendants.

20. In the said circumstances, there is every possibility that the defendants may alienate the suit schedule property. Though the defendants contended that they are not intending to sell the suit schedule property, it is just a pleading and there is no security before the court to that effect. Considering the agreement of sale, payment details read along with the Bank statements of the plaintiff, if the defendants by taking advantage of the revenue records transfers the suit schedule property in favour of 3rd person, it will lead to multiplicity of proceedings and if done so, it will cause hardship to the plaintiff which cannot be compensated in terms of money and in the said circumstances, the balance of convenience tilts more in favour of the plaintiff than the defendants. Accordingly, Point No. 2 and 3 are answered in the **Affirmative.**

21. **POINT NO.4:** In view of the reasons assigned above, I proceed to pass the following;

ORDER

The IA No. I filed by the plaintiff under Order 39 Rule 1 and 2 of CPC is hereby allowed with costs.

The defendants or anybody claiming through them are hereby temporarily restrained from alienating or creating any charge over the suit schedule property, till disposal of the suit.

(Directly dictated to the stenographer on the computer, printed through steno, corrected by me and then pronounced in the open court on this the **20th day of December, 2024**)

Sd/-
(POORNIMA. K. YADAV)
Addl. Sr. Civil Judge & JMFC,
Gubbi.