

KAUK610000792025



**IN THE COURT OF SENIOR CIVIL JUDGE AND JUDICIAL
MAGISTRATE OF THE FIRST CLASS AT HONNAVAR**

DATED ON THIS 20TH DAY OF SEPTEMBER, 2025

**PRESENT : SRI B.C. CHANDRASHEKAR B.A., LL.B.
SENIOR CIVIL JUDGE AND JMFC
HONNAVAR**

ORIGINAL SUIT NO.05 OF 2025

PLAINTIFF : Sri Akshay S/o Purushottam Naik,
Aged about 29 years,
R/o Guladkeri, Manki,
Taluk: Honavar (U.K)-581348.

(By Sri CG, Advocate)

VERSUS

DEFENDANT : Sri Jagadish S/o Manjappa Naik,
Aged about 52 years,
R/o #3, New Badami Nagar,
Keshwapur, Nagashatti Koppa,
Hubli, Dharwad-580023.

(By Sri MSB, Advocate)

PARTIES IN IA NO.I

APPLICANT : Sri Akshay S/o Purushottam Naik

(By Sri CG, Advocate)

VERSUS

OPPONENT : Sri Jagadish S/o Manjappa Naik
(By Sri MSB, Advocate)

ORDER ON IA NO.I UNDER ORDER XXXIX, RULE 1 AND 2
READ WITH SECTION 151 OF CPC

This is an order arising out of the IA No.I filed by the plaintiff under the above provision praying to grant the interim injunction to restrain the defendant and their family members or any other person claiming under through them from alienating schedule property till disposal of the suit.

02. The application has been supported with the affidavit of the plaintiff and he has sworn to that he has filed the suit for specific performance of sale agreement dated 24-08-2023 executed by the defendant with respect to suit schedule property. The defendant is the absolute owner and person in possession and enjoyment of the suit property bearing survey No.150 measuring 2-19-0 of Melina Idagunji village of Honnavar taluk. The defendant has not complied with the terms and conditions of the agreement. The plaintiff

is ready and willing to pay the balance consideration amount to perform his part of contract. But after expiry of the agreement time he has requested the defendant to receive the balance consideration amount and execute the Sale Deed but he has not come forward to do the same and denied to execute the Sale Deed.

03. It has further sworn to that now the defendant is trying to dispose the property by creating third party interest and to execute the Sale Deed in favour of the third party. Hence it is just and necessary to restrain the defendant or family members or any other person claiming the rights through him from not to alienate the schedule property till disposal of the suit.

04. The defendant has filed the written statement and requested to consider it as an objection on IA No.I. The defendant has contended that the suit schedule property bearing survey No.150/2 measuring 0-19-0 is not the self-acquired property of the defendant but it is an ancestral and joint family property. The father of the defendant Manjappa Naik and his wife and three sons have partitioned their family properties under the Registered Partition Deed dated 07-08-2009 and by virtue of the said Partition Deed schedule property has been allotted to branch of the defendant. Thus though schedule property is standing in the name of

defendant and his wife and children are having the rights and he is representing as a manager of the joint family. Thus the wife and children of the defendant are also having the joint rights in the schedule property but it is not the self-acquired property as contended by the plaintiff.

05. It has further contended that the plaintiff himself has prepared the Agreement of Sell and without allowing the defendant to read it and abruptly took his signature. This defendant has admits the payment of Rs.5,00,000/- through his bank account. Thus the said agreement is just binds on the defendant and he is ready and willing to execute the Sale Deed with respect to his 1/4th share if the plaintiff is ready to get execute the Sale Deed or he is ready to return back the advance amount with interest. Since the schedule property is joint family property of the defendant and family members, the suit is not maintainable. Hence he requested to dismiss the IA as well as suit.

06. Heard the arguments of both sides.

07. Perused.

08. On the basis of the above the following points are arises for my consideration:

POINTS

01. Whether the plaintiff has established prima facie case?
 02. Whether the balance of convenience lies in favour of plaintiff?
 03. Whether irreparable loss or hardship will be caused to the plaintiff if temporary injunction as sought in IA No.I is not granted?
 04. What order?
09. My answers to the above points are as follows:

Point No.1 to 3	:	In the affirmative,
Point No.4	:	As per final order for the following:

REASONS

10. Point No.1 to 3: Since all the points are in inextricably mixed up with each other, I have taken them together for common discussion in order to avoid the repetition. The plaintiff has filed the suit for specific performance of the Agreement of Sell dated 24-08-2023 by contending that the defendant being the absolute owner of the schedule property agreed to sell it for a lawful consideration of Rs.17,50,000/- and executed the said Agreement of Sell by receiving the advance consideration amount of Rs.5,00,000/-. Again the plaintiff has paid

another Rs.4,00,000/-. Thus in toto he has already paid Rs.9,00,000/-. The defendant is bound to execute the Sale Deed in pursuance of the agreement but he failed to do so. Hence this suit. As already stated above the defendant has admits that he put the signature on the agreement and also admits payment of advance consideration amount of Rs.9,00,000/- in his written statement. But according to him the schedule property is not the self-acquired property but it is an ancestral and joint family property and his wife and children are also having equal share. Thus there is a fact in issue required to be answered by the court whether the defendant being an absolute owner of the schedule property agreed to sell it in favour of the plaintiff and execution of the Agreement of Sell or not is required to be answered by the court.

11. Further the defendant has admits the signature found in the agreement and its execution but his contention is the plaintiff has not allowed him to read it but took his signature abruptly. Thus the agreement between the plaintiff and defendant is a fact of admission and also admits the payment of consideration. Hence without further discussion it could be hold that there is a balance of convenience in favour of the plaintiff.

12. So far as much injustice is concerned since the defendant being the executant of the agreement now contending that it is the joint family property and his wife and children are having the rights. Under such circumstances if the defendant or any other person claiming the right through him would transferred or alienates or create any charge certainly much injustice will be caused to the plaintiff rather than the defendants. On the other hand if the court directs the defendant for not to alienate the schedule property till disposal of the suit no injustice will be caused to the defendant.

13. During the course of arguments the counsel for the plaintiff has argued that mere pending of the suit is not attracts the provision of section 52 of Transfer of Property Act and there should be order from the court to restrain the alienation. Hence they requested to grant the relief of temporary injunction restraining further alienation.

14. In support of their arguments they have relied upon decision of ***Hon'ble Supreme Court of India in Civil Appeal No.7305/2024 in between Yogesh Goyanka V/s Govind and Others.*** Wherein the Hon'ble Supreme Court of India in para-16 of the decision it is held as here under:

16. The fulcrum of the dispute herein concerns the impleadment of a transferee pendente lite who undisputedly had notice of the pending litigation. At the outset, it appears pertinent to reiterate the settled position that the doctrine of lis pendens as provided under Section 52 of the Act does not render all transfers pendente lite to be void ab-initio, it merely renders rights arising from such transfers as subservient to the rights of the parties to the pending litigation and subject to any direction that the Court may pass thereunder.

15. As per the dictum of Hon'ble Supreme Court the provision of lis pendens under section 52 does not render all transfers pendente lite to be void ab-initio, but it merely renders rights arising from such transfers as subservient to the rights of the parties to the litigation subject direction that the courts. Under such circumstances as already discussed above since agreement and payment of consideration is admitted and there is a chances of alienation it is just and necessary to restrain the defendant or any other person claiming the right under him from any kind of alienation of the schedule property till disposal of the suit. Thus in view of the detail discussion made above there is a prima-facie case and balance of convenience lies in favour of the plaintiff. Similarly much injustice will be caused to the plaintiff if the IA is rejected. On the other hand no injustice will be caused to the defendant if IA is allowed. Hence, I answered **Point No.1 to 3 in the affirmative.**

16. Point No.4: In the result, I proceed to pass the following:

ORDER

The plaintiff has filed IA No.I under Order XXXIX, Rule 1 and 2 read with section 151 of CPC is hereby allowed.

The defendant or any other person claiming the right through him are hereby restrained from any alienation of the schedule property till disposal of the suit.

Under the facts and circumstances, no order as to cost.

(Dictated to the stenographer, transcribed by her, corrected, then signed by me and pronounced in the open court on this 20th day of September, 2025)