HC-KAR

NC: 2026:KHC:21629
MFA No. 426 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF APRIL, 2026

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

MISCELLANEOUS FIRST APPEAL NO.426 OF 2026 (CPC)

BETWEEN:

1. M/S. VAISHNAVI DEVELOPERS,
REGISTERED PARTNERSHIP FIRM,
HAVING ITS REGISTERED OFFICE AT
NO.39, NAGASHREE KRISHNA NILAYA,
39TH CROSS, 7TH BLOCK, JAYANAGAR,
BENGALURU - 560 082.
REPRESENTED BY ITS PARTNER
SRI C.M. RAMESH.

2. SMT. LALITHA B,
PARTNER,
REGISTERED PARTNERSHIP FIRM,
HAVING ITS REGISTERED OFFICE AT
NO.61/P7, LAKSHMIPURA,
KANAKAPURA MAIN ROAD,
NEAR ART OF LIVING,
BENGALURU - 560 062.

3. SRI C.M. RAMESH,
PARTNER,
REGISTERED PARTNERSHIP FIRM,
HAVING ITS REGISTERED OFFICE AT
NO.61/P7, LAKSHMIPURA,
KANAKAPURA MAIN ROAD,
NEAR ART OF LIVING,
BENGALURU - 560 062. ...APPELLANTS

(BY SRI SRIDHAR G., ADVOCATE)

AND:

MR. RAKESH BAGRECHA
S/O LATE SAJJAN RAJ,
AGED ABOUT 49 YEARS,
RESIDING AT NO.182,

CLASSIC ORCHARDS LAYOUT,
BEHIND MEENAKSHI TEMPLE ROAD,
BANNERGHATTA ROAD,
BENGALURU - 560 076.

...RESPONDENT

(BY SRI BASAVARAJ SAPPANNAVAR, ADVOCATE FOR
SRI SUHAS B. SAPPANNAVAR, ADVOCATE FOR C/RESPONDENT)

THIS MFA IS FILED UNDER ORDER 43 RULE 1(r) OF THE CPC., AGAINST THE ORDER DATED 14.10.2025 PASSED ON I.A.NO.1 IN O.S.NO.2038/2024 ON THE FILE OF THE III ADDITIONAL SENIOR CIVIL JUDGE, BENGALURU RURAL DISTRICT, BENGALURU, ALLOWING THE I.A.NO.1 FILED UNDER ORDER 39 RULE 1 AND 2 R/W SECTION 151 OF CPC, 1908.

THIS APPEAL COMING ON FOR DICTATION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

This Miscellaneous First Appeal is filed assailing the order dated 14.10.2025 passed on I.A.No.1 in O.S.No.2038/2024 on the file of the III Additional Senior Civil Judge, Bengaluru Rural District, Bengaluru (‘Trial Court’ for short), whereby the application filed by the plaintiff under Order XXXIX Rules 1 and 2 CPC came to be allowed, restraining the defendants from alienating or creating third party rights over the suit schedule property. The defendants, being aggrieved are before this Court.

Brief facts:

2. The suit is instituted by the respondent-plaintiff seeking the relief of specific performance of an agreement dated 20.02.2018 and a supplementary agreement dated 21.02.2018, in respect of the suit schedule property namely Site No.23 formed in Sy.No.106. According to the plaintiff, the entire sale consideration was paid including an amount of ₹3,00,000/- through RTGS and balance amount of ₹29,00,000/- paid subsequently and that the defendants agreed to execute a registered sale deed. It is stated that the defendants acquired title to the larger extent of land measuring 3 acres in Sy. No. 106 under registered sale deeds dated 19.02.2022, 05.03.2022 and 19.05.2022 and thereafter proceeded with layout formation, in which the suit schedule site was formed.

3. The defendants on the other hand contended that the agreement is fabricated and that the transaction relied upon by the plaintiff was only a loan transaction. It

is their contention that certain blank signed papers have been misused, and fabricated to create the alleged agreement of sale. It is further stated that the defendants had not acquired title to the property as on the date of the alleged agreement, and thus the question of execution of an agreement of sale does not arise.

During the pendency of the suit, the plaintiff filed I.A.No.1 seeking temporary injunction, which came to be allowed by the Trial Court.

4. Learned counsel for the appellants contends that the alleged agreement of sale is fabricated and not genuine. It is contended that the amounts paid were towards loan transactions, and not towards sale consideration. It is contended that the appellants acquired title to the property only in the year 2022, under registered sale deeds, and therefore, the alleged agreement of the year 2018, is improbable and unenforceable. It is contended that the Trial Court has

failed to properly apply the principles of *prima facie* case, balance of convenience and irreparable injury.

5. *Per contra*, learned counsel for the respondent-plaintiff submits that the agreement of sale and supplementary agreement are admitted and supported by payment of entire consideration. It is contended that the defence of loan and misuse of blank papers is a matter of trial and the plaintiff has made out a *prima facie* case, and if the property is alienated, it would lead to multiplicity of proceedings and irreparable injury.

6. Learned counsel for the respondent-plaintiff submits that the contention of the appellants that they had not acquired title to the property as on the date of the agreement and therefore the agreement itself is unenforceable, is wholly untenable in law. It is contended that Section 43 of the Transfer of Property Act, 1882 ('TP Act' for short) embodies the equitable doctrine of "feeding the grant of estoppel," whereby a person who represents

that he is competent to transfer property and receives consideration cannot subsequently defeat the transaction on the ground that he had no title at the time of agreement, once he subsequently acquires such title. In support of his contention, he has placed reliance upon the decision of the Apex Court in the case of ***Tanu Ram Bora Vs. Promod Ch. Das (D) through L.Rs and Others***[1] *(Tanu Ram Bora)* wherein it is held that where a transferor subsequently acquires interest in the property, the transferee is entitled, at his option to enforce the transfer under Section 43 of the T.P.Act.

7. This Court has carefully considered the rival submissions and perused the material on record. The point that arises for consideration is:

> *"Whether the order passed on I.A.No.1 by the Trial Court warrants any interference by this Court?"*

---

[1] *Civil Appeal No.1575/2019 (Arising from SLP (C) No.1135/2016)*

8. It is well settled that while considering an application under Order XXXIX Rule 1 and 2 CPC, the Court is required to examine whether a *prima facie* case is made out, whether the balance of convenience lies in favour of the applicant, whether the applicant would suffer irreparable injury. Further, it is equally settled that interference with the discretion exercised by the Trial Court in the grant or refusal of a temporary injunction is limited to the extent, if the order suffers from perversity, illegality or arbitrariness.

9. Keeping in mind the settled proposition of law, the materials on record are perused. The contention of the appellants is that they have acquired title to the suit schedule property only subsequent to the alleged agreement of sale, and therefore, the very existence of such agreement is rendered improbable, cannot be accepted at this stage.

10. It is well settled that an agreement of sale, does not necessarily postulate that the vendor must have perfected title on the date of agreement. A person can agree to convey the property, the title to which he is capable of acquiring, subsequently and upon such acquisition, the obligation under the agreement becomes enforceable. This principle, is recognized under Section 43 of the TP Act, which reads as under:

> *"**43. Transfer by unauthorised person who subsequently acquires interest in property transferred.—**Where a person fraudulently or erroneously represents that he is authorised to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.*
>
> *Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option."*

11. For the applicability of Section 43, the following conditions must be satisfied:

i. There must be a representation (fraudulent or erroneous by the transferor as to his authority to transfer).

ii. There must be a transfer for consideration.

iii. The transferor must subsequently acquire interest in the property.

iv. The contract of transfer must subsist at the time of such acquisition.

v. The transferee must elect to enforce the transfer.

12. Section 43 of the TP Act embodies the equitable doctrine that a transferor who represented his authority to transfer and received consideration cannot subsequently defeat the transaction, on the ground of absence of title, once he acquires such title, the transferee is entitled to enforce the transfer at his option. In the present case, though the appellants contend that they acquired title only

under the sale deed of the year 2022 and therefore the agreement of sale of the year 2018 is unenforceable, such contention cannot be accepted at this stage. *Prima facie,* since the appellants are stated to have subsequently acquired title, the said principle under Section 43 of the TP Act, would operate in favour of the respondent and the issue as to the enforceability of the agreement, is a matter of trial. Hence, this contention does not negate the existence of a *prima facie* case, so as to deny interim protection.

13. The Apex Court in ***Tanu Ram Bora****'s* case stated *supra* has reiterated the object underlining Section 43 of the T.P Act and at paragraph No.7.5 has held as under:

> *"7. Heard learned counsel on behalf of the respective parties at length.*
>
> *7.1. x x x*
>
> *7.5. The intention and objects behind Section 43 of the T.P. Act seem to be based on the principle of estoppel as well as the equity. The intention and*

objects seem to be that after procuring the money (sale consideration) and transferring the land, thereafter the transferor is estopped from saying that though he has sold/transferred the property/land on payment of sale consideration, still the transfer is not binding on him. That is why Section 43 of the T.P. Act gives an option to the transferee and not the transferor. The intention of Section 43 of the Act seems to be that nobody can be permitted to take the benefits of his own wrong. In the facts and circumstances of the case, Section 43 of the Act would come into play and protect the rights of the original plaintiff."

14. The Apex Court observed that Section 43 embodies the principle of "feeding the grant by estoppel", whereby the transferee is entitled, at his option, to enforce the transfer upon the transferor subsequently acquiring interest in the property.

15. In the facts and circumstances of the present case, the contention of the appellants that they had no title as on the date of agreement and therefore agreement is unenforceable, cannot be accepted at this stage. The

Apex Court in ***Wander Ltd. and Another Vs. Antox India Pvt. Ltd.***[2] *(Wander Ltd.)* has held at paragraph No.14 as under:

> *"14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the*

[2] 1990 (Supp) SCC 727

appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph: (SCR 721)

> *"... These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. v. Jhanaton '...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'."*

The appellate judgment does not seem to defer to this principle."

16. For the foregoing reasons, this Court is of the considered view that the Trial Court having exercised its discretion judicially, in granting injunction to preserve the subject matter of the suit, no ground is made out for interference and the appeal deserves to be dismissed. Accordingly, the point framed for consideration is answered and this Court pass the following:

ORDER

i. The Miscellaneous First Appeal is hereby ***dismissed***.

ii. The order dated 14.10.2025 passed on I.A.No.1 in O.S.No.2038/2024 on the file of the III Additional Senior Civil Judge, Bengaluru Rural District, Bengaluru is hereby ***confirmed***.

iii. Any observation made by this Court is to the limited extent of considering the application and would not affect the merits of the suit, which shall be considered independently by the Trial Court.

Sd/-

JUSTICE K.S. HEMALEKHA

AT/ List No.: 1 Sl No.: 67