IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF APRIL, 2026

BEFORE

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

MISCELLANEOUS FIRST APPEAL NO.697 OF 2026 (CPC)

BETWEEN:

SMT. SRIDEVI K N
W/O. PRASAD S.V,
AGED ABOUT 48 YEARS,
R/AT NO.1629, 6TH CROSS,
20TH MAIN ROAD, NEAR AGARA DIPO,
1ST SECTOR HSR LAYOUT,
BENGALURU-560 102.

...APPELLANT

(BY SRI. NITIN A.M., ADVOCATE)

AND:

1. SMT. ABIDUNNISA
   W/O. LATE SYED SIRAJ AHMED,
   AGED ABOUT 56 YEARS,
   R/AT NO.97, GROUND FLOOR,
   3RD CROSS, WAJID LAYOUT,
   THANISANDRA, KOTHANURU VILLAGE,
   BENGALURU-560077.

2. SMT. SHAMSHAL NAHAR
   D/O. LATE SYED SIRAJ AHMED,
   W/O. MOHAMMED ARIFULLA KALEEMULLA
   AGED ABOUT 34 YEARS,
   R/AT NO.23, GROUND FLOOR,
   3RD CROSS, GOVINDAPURA,
   BENGALURU-560045.

3. SRI. SYED JALEEL PIKAR AHMED
   S/O. LATE SYED ALI,
   AGED ABOUT 65 YEARS,
   R/AT WARD NO.14,
   GAFFAR KHAN MOHALLA,

SRINIVASAPUR-563 135,
KOLAR DISTRICT.

4. SRI. SYED SADATHULLA
S/O. SYED HABIBULLA,
AGED ABOUT 77 YEARS,
R/AT NO.2, MOSQUE STREET,
M.R. PALYA, BENGALURU-560006.

5. SMT. AMEERUNNISA
W/O. SYED MAHABOOB,
AGED ABOUT 80 YEARS,
R/AT NO.37, 4TH CROSS,
MARAPPA THOTA, J.C.NAGAR
BENGALURU-560 006.

6. SRI. SADIQ ANSARI
S/O. LATE ABDUL REHAMAN ANSARI,
AGED ABOUT 55 YEARS,
R/AT NO.12, 2ND MAIN ROAD,
VASANTH NAGAR,
BENGALURU-560 001.

7. SRI. SYED MAQSOOD
S/O. LATE SYED MAHABOOB,
AGED ABOUT 51 YEARS,
R/AT NO.37, 4TH CROSS,
MARAPPA GARDEN, J.C. NAGAR,
BENGALURU-560 006.

8. SRI. KHASIM ANSARI
S/O. ZAMIN ANSARI,
AGED ABOUT 48 YEARS,
R/AT NO.16, 6TH CROSS, 2ND MAIN,
BYRAPPA LAYOUT,
NEAR RASHIDA MASJID,
GOVINDPURA, ARABIC COLLEGE
BENGALURU-560 045.

…RESPONDENTS

(BY SRI SHAFIULLA BAIG, ADVOCATE FOR C/R1 & R2)

THIS MFA IS FILED UNDER ORDER 43 RULE 1(r) OF THE CPC, AGAINST THE ORDER DATED 23.01.2026 PASSED ON IA NO.1 IN O.S.NO.88/2025 ON THE FILE OF THE II ADDITIONAL SENIOR CIVIL

JUDGE AND JMFC AT KOLAR (ITINERATE AT SRINIVASPURA) ALLOWING THE IA NO.1 FILED U/O.39 RULE 1 AND 2 R/W SECTION 151 OF CPC, 1908.

THIS APPEAL, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

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

ORAL JUDGMENT

This Miscellaneous First Appeal is preferred by defendant No.7 calling in question the order dated 23.01.2026 passed in O.S.No.88/2025 on the file of II Additional Senior Civil Judge and JMFC, Kolar (‘Trial Court’ for short), whereby I.A.No.1 filed by the plaintiffs under Order XXXIX Rules 1 and 2 CPC has been allowed, granting an order of temporary injunction restraining the appellant from alienating the suit schedule properties and I.A.No.4 filed by the appellant under Order XXXIX Rule 4 CPC seeking vacating of the said order has been rejected.

Brief facts:

2. The plaintiffs instituted the suit seeking a declaration that the registered sale deed dated 12.08.2022, executed in favour of defendant No.7, is not

binding on them and for consequential relief of cancellation of the confirmation deed 09.02.2024, and for permanent injunction. It is the case of the plaintiffs, that though they have executed confirmation deed, the same was obtained on the assurance of payment of sale consideration, out of which only ₹50,00,000/- was allegedly paid and the balance amount of ₹29,50,00,000/- remained unpaid. It is further contended that the cheques issued towards the said balance considerations were dishonored. On the said premise, the plaintiffs have sought to restrain the appellant from alienating or creating third party rights over the suit schedule properties by filing an application. The Trial Court on consideration of the pleadings, has granted an order of temporary injunction in favour of the plaintiffs holding that a *prima facie* case is made out, the balance of convenience and irreparable injury are in favour of the plaintiffs. Aggrieved by the said order, the present appeal is filed.

3. Learned counsel for the appellant contends that, the impugned order is contrary to the settled principles governing grant of injunction and suffers from non-application of mind. It is submitted that, the appellant has acquired valid title to the suit schedule properties under a registered sale deed dated 12.08.2022 which stands confirmed by the plaintiffs themselves by executing a confirmation deed dated 09.02.2024. Having admitted and ratified the transaction, the plaintiffs are estopped from questioning the same. It is contended that if the averments made in the plaint are carefully examined, more particularly paragraph No.13, the grievance of the plaintiffs is essentially that defendant No.7-appellant has failed to honour the alleged price promise to pay a sum of ₹29,50,00,000/-. On that premise, the plaintiffs have sought cancellation of the registered sale dated 12.08.2022, and confirmation deed dated 09.02.2024. A similar averment, is also found in paragraph No.6 of I.A.No.1. Thus, on a cumulative reading of the plaint and

the affidavit filed in support of the application, it becomes evident that though the suit is coached as one for declaration and cancellation of documents, the real grievance is non-payment of a portion of the sale consideration and the relief sought is in substance one relatable to recovery of money.

4. It is submitted that at this stage, no material has been placed on record to *prima facie* establish that defendant No.7 was legally liable to pay the amount as alleged by the plaintiffs, except a bald assertion in the plaint. In the absence of any supporting document evidencing such liability, the contention remains unsubstantiated.

5. *Per contra*, learned counsel for the respondents-plaintiffs contends that the plaintiffs have been induced to execute the confirmation deed on a false assurances and without reserving substantial portion of the sale consideration. It is submitted that the conduct of

the appellant in issuing cheques which were dishonored clearly establishes fraud and misrepresentation. It is further contended that unless an order of injunction is continued, the appellant may alienate the suit properties and create third party rights, thereby complicating the proceedings and causing irreparable injury to the plaintiffs. The Trial Court having considered these aspects, has rightly granted the order of injunction and the same does not call for interference.

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

> *"Whether the impugned order passed by the Trial Court warrants interference by this Court in the present facts and circumstances?"*

7. The foundation of the plaintiffs' case rests on the allegation that though a registered sale deed dated 12.08.2022 and a subsequent confirmation deed dated 09.02.2024, have been executed, the entire sale

consideration has not been paid. On this premise, the plaintiffs seek to invalidate the transaction and restrain the appellant from dealing with the property. This is said so in view of the pleadings, which is found in the plaint at paragraph No.13. At the outset, it is to be noted that the execution of the registered sale deed as well as the confirmation deed is not in dispute. In this regard, it is necessary to advert to Section 54 of the Transfer of Property Act, 1882 (‘TP Act’ for short), which defines a sale, which as under:

> *"54. “Sale” defined.-“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised."*

8. The language of the above provision itself makes it abundantly clear that the payment of entire consideration is not a condition precedent for a completion of a sale. The said principle is not *res integra* as rightly placed reliance by the appellant's counsel to the decision of the Apex Court in the case of ***Vidhyadhar Vs.***

Manikrao and Another[1] *(Vidhyadhar)*. While interpreting Section 54 of the TP Act, the Apex Court has categorically held that the actual payment of the whole of the price is not a *sine qua non* for completion of sale and even if the entire consideration is not paid, the sale would be valid and title would pass to the purchaser and held at paragraph Nos.35 to 38 as under:

> *"35. Even if the findings recorded by the High Court that the plaintiff had paid only Rs. 500 to defendant No. 2 as sale consideration and the remaining amount of Rs. 4,500 which was shown to have been paid before the execution of the deed was, in fact, not paid, the sale deed would not, for that reason, become invalid on account of the provisions contained in Section 54 of the Transfer of Property Act, 1882 which provide as under:*
>
> > *54. "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.*
> >
> > *Such a transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of*

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[1] *(1999) 3 SCC 573*

a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property, of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs; in possession of the property.

A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

36. The definition indicates that in order to constitute a sale, there must be a transfer of ownership from one person to another, i.e., transfer of all rights and interests in the properties which are possessed by that person are transferred by him to another person. The transferor cannot retain any part of his interest or right in that property or else it would not be a sale. The definition further says that the transfer of ownership has to be for a "price paid *or promised or part-paid and part-promised". Price thus constitutes an essential ingredient of the transaction of sale. The words "price paid or promised or part-paid and part-promised" indicate that actual payment of whole of the price at the time of the execution of sale deed is not sine qua non to the completion of the sale. Even if the whole of the price is not paid but the document is executed and thereafter registered, if the property is of the value of more than Rs. 100/-, the sale would be complete.*

37. There is a catena of decisions of various <u>High Courts in which it has been held that even if the whole of the price is not paid, the transaction of sale will take effect and the title would pass under that transaction. To cite only a few, in Gyatri Prasad v. Board of Revenue it was held that non-payment of a portion of the sale price would not effect validity of sale. It was observed that part-payment of consideration by the vendee itself proved the intention to pay the remaining amount of the sale price. To the same effect is the decision of the Madhya Pradesh High Court in Sukaloo and Anr. v. Punau</u>.

38. The real test is the intention of the parties. <u>In order to constitute a "sale", the parties must intend to transfer the ownership of the property and they must also intend that the price would be paid</u>

<u>either in presenti or in future. The intention is to be gathered from the recital in the sale deed, the conduct of the parties and the evidence on record</u>."

(Emphasis supplied)

9. In the latest decision by the Apex Court in ***Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) (D) Through LRs and Others***[2] *(Dahiben)*, the Apex Court considering the ***Vidhyadhar*** decision has reiterated the said principle and has held at paragraph No.15.3 as under:

"15.3 The Plaintiffs have made out a case of alleged non-payment of a part of the sale consideration in the Plaint, and prayed for the relief of cancellation of the Sale Deed on this ground.

Section 54 of the Transfer of Property Act, 1882 provides as under:

"54. 'Sale' defined. 'Sale' is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised."

The definition of "sale" indicates that there must be a transfer of ownership from one person to

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[2] *Civil Appeal No.9519/2019 (Arising out of SLP (Civil) No.11618/2017)*

another i.e. transfer of all rights and interest in the property, which was possessed by the transferor to the transferee. The transferor cannot retain any part of the interest or right in the property, or else it would not be a sale. The definition further indicates that the transfer of ownership has to be made for a "price paid or promised or part paid and part promised". Price thus constitutes an essential ingredient of the transaction of sale.

In Vidyadhar v. Manikrao & Anr. this Court held that <u>the words "price paid or promised or part paid and part promised" indicates that actual payment of the whole of the price at the time of the execution of the Sale Deed is not a sine qua non for completion of the sale. Even if the whole of the price is not paid, but the document is executed, and thereafter registered, the sale would be complete, and the title would pass on to the transferee under the transaction. The non-payment of a part of the sale price would not affect the validity of the sale</u>. Once the title in the property has already passed, even if the balance sale consideration is not paid, the sale could not be invalidated on this ground. In order to constitute a "sale", the parties must intend to transfer the ownership of the property, on the agreement to pay the price either in praesenti, or in future. The intention is to be gathered from the *recitals of the sale deed, the conduct of the parties, and the evidence on record.*

In view of the law laid down by this Court, even if the averments of the Plaintiffs are taken to be true, that the entire sale consideration had not in fact been paid, it could not be a ground for cancellation of the Sale Deed. The Plaintiffs may have other remedies in law for recovery of the balance consideration, but could not be granted the relief of cancellation of the registered Sale Deed.

We find that the suit filed by the Plaintiffs is vexatious, meritless, and does not disclose a right to sue. The plaint is liable to be rejected under Order VII Rule 11 (a)."

(Emphasis supplied)

10. The Apex Court held that once a sale deed is executed and registered, the sale becomes complete and title passes to the transferee and non-payment of a part of the consideration would not invalidate the transaction. The remedy of the vendor, if any, is only to seek recovery of the balance consideration. Thus, from the aforesaid decisions it clearly lays down that non-payment or part payment of the sale consideration cannot be a ground to

seek for cancellation of a registered sale deed. Applying the said principles to the case on hand, the grievance of the plaintiffs even if accepted to add face value, would at the best give rise to a claim for recovery of money and not a cause of action to invalidate the sale transaction. Therefore, the plaintiffs have failed to establish a legally sustainable *prima facie* right warranting protection by way of an order of injunction.

11. It is no doubt that while considering an appeal against an order of temporary injunction, the Appellate Court would ordinarily be slow to interfere with the discretion exercised by the trial Court. The law in this regard is well settled by the Apex Court in ***Wander Ltd. and Another Vs. Antox India Pvt. Ltd.***[3] *(Wander Ltd.)*, wherein it is held that the Appellate Court will not interfere with the exercise of discretion of the Court of first instance unless such discretion is shown to be arbitrary, perverse, capricious or where the Court has ignored the settled

[3] 1990 (Supp) SCC 727

principles of law, governing grant or refusal of injunction. However, the said principle equally mandates that where the Trial Court has proceeded on an erroneous understanding of law or has failed to apply the settled principles, the Appellate Court could be justified in interfering with such order.

12. In the case on hand, as already observed, the Trial Court has proceeded to grant an order of injunction solely on the premise that there exists a dispute regarding payment of consideration without appreciating the settled position of law under Section 54 of the TP Act, as interpreted by the Apex Court in ***Vidhyadhar*** and ***Dahiben***, the Trial Court thus failed to consider that non-payment of consideration, even if assumed, does not invalidate a registered sale deed nor confirm a *prima facie* right to seek injunction. Therefore, exercise of discretion by the Trial Court is clearly vitiated by misapplication of law and non-consideration of binding precedents and consequently falls within the parameters laid down in

Wander Ltd. warranting interference by this Court. Accordingly, the point framed for consideration is answered and this Court is of the considered view that the impugned order cannot be sustained and is liable to be set aside and this Court pass the following:

<u>ORDER</u>

i. The Miscellaneous First Appeal is ***allowed***.

ii. The order dated 23.01.2026 passed in O.S.No.88/2025 on the file of II Additional Senior Civil Judge and JMFC, Kolar is hereby ***set aside***.

iii. I.A.No.1 filed by the plaintiffs is hereby ***rejected*** and I.A.No.4 filed by defendant No.7 is ***allowed***.

iv. The temporary injunction granted by the Trial Court is hereby ***set aside***.

v. It is made clear that the observation made in this Court is *prima facie* and would not influence the merits of this suit, which shall be independently considered by the Trial Court.

Pending IAs, if any, would not survive for consideration.

Sd/-

JUSTICE K.S. HEMALEKHA

AT
List No.: 1 Sl No.: 69