

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

MA No.20/2024

Reserved on: 18.05.2026
Pronounced on:04.06.2026
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1. Manohar Lal S/o Late Sh. Ram Lal
R/o Krishan Nagar,, Miran Sahib Tehsil
R.S.Pura, District Jammu, age 70 years
 2. Jugal Kishore S/o Late Sh. Ram Lal
R/o Krishan Nagar, Miran Sahib Tehsil
R.S.Pura, District Jammu, age 65 years
- Appellant(s)

Through: Mr. R.K.Jain, Sr. Advocate with
Ms. Kritika Jain, Advocate

Vs

1. Narinder Singh adopted son of Sh. Amar Nath
R/o Village Maralia Tehsil R.S.Pura, Jammu
 2. Niharika D/o Narinder Singh R/o Village
Maralia Tehsil R.S.Pura, Jammu
 3. Vidhushi Mandhar W/o Lt. Raghbir Singh R/o
Village Maralia Tehsil R.S.Pura, Jammu
- Respondent(s)

Through: Mr. Amit Bhardwaj, Advocate for R-1 & 2

Coram: HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

1. Impugned in this appeal is an order dated 15th May, 2024 passed by the Court of learned 1st Additional District Judge, Jammu in an interim application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, arising out of suit titled Manohar Lal and another v. Narinder Singh and others. The appellants pray for setting aside the impugned order with a further direction to the parties not to create third party interest qua the suit property or change the nature of the subject matter.

2. Being owner in possession of 7 kanals of land comprising in Khasra No.43 min situated at village Maralia Tehshil R.S.Pura, District Jammu, respondent No.1 entered into an agreement to sell dated 09.06.1998 with the appellants with respect to aforesaid land for a total consideration of Rs.1.00 lac. The appellants had paid Rs.70,000/- to respondent No.1 towards sale consideration and balance amount of Rs.30,000/- was agreed to be paid at the time of registration of sale deed. The possession of the subject land was handed over to the appellants. Later on, a General Power of Attorney was also executed by respondent No.1 in favour of appellant No.1, which was duly registered before Sub-Registrar, Jammu on 15th November, 1999. Since the land, subject matter of agreement to sell, was mortgaged with State Bank of India, respondent No.1 assured execution of sale deed immediately after release of the land by the bank. According to the appellants, they remained in possession of the subject land till June, 2016 without any hindrance or obstruction. In November, 2013, appellants came to know that respondent No.1 has liquidated the loan and the subject land has been released from mortgage, as such, respondent No.1 was requested to execute the sale deed. Balance sale consideration of Rs.30,000/- was paid in two installments.
3. On 20th May, 2016 at about 11 am respondent No.3 with the help of some musclemen, in the absence of the appellants, trespassed into the subject land and forcibly occupied the land stating that, respondent No.2 on the basis of Power of Attorney dated 5th October, 2014, executed sale deed dated 8th January, 2014 in respect of the subject land

in favour of respondent No.3, who is her sister-in-law. Feeling aggrieved, the appellants preferred a civil suit seeking declaration of sale deed dated 8th January, 2014 as well as General Power of Attorney executed in the month of October, 2013 as null and void, besides specific performance of agreement to sell dated 9th June, 1998 executed by respondent No.1 in favour of the appellants.

4. After filing of the suit, initially the trial Court has passed an interim order dated 20th August, 2016, thereby temporarily restraining respondents from creating 3rd party interest vis-à-vis the subject land or changing its nature subject to filing of objections from the other side. The respondents have been granted liberty to seek alteration, modification or cancellation of the interim order.
5. On being put to notice, respondents appeared before the trial Court and filed their written statements, thereby opposing the suit as well as application for interim injunction, both on legal as well as factual grounds. The trial Court after considering the submissions made on behalf of both the parties, vacated the interim injunction, vide order impugned dated 15th May, 2024, which has been impugned in this appeal. The conclusion part of the order impugned reads thus:

“Keeping in view the facts and circumstances of the case and analyzing the legal and factual position obtaining in the case, I am of the considered opinion that the plaintiffs-applicants can enforce the agreement against defendant No.1 by seeking alternative land or compensation with interest, has, as such, no right to seek temporary injunction against the defendants and no issue on the facts that the defendant No.1 through defendant No.2 has executed a sale deed in favour of defendant No.3 illegally, rather the agreement to sell in

question has to be enforced as per terms thereof and validity of the said agreement to sell is also to be yet determined. The application is found devoid of merit and is dismissed and interim injunction granted vide order dated 20.08.2016 is hereby vacated. Anything said herein above, shall not be construed as an expression of opinion on the merits of the main case and are limited for the disposal of this application only. Application be attached with the main file after its due compilation.”

6. Mr. Jain, learned senior counsel appearing for the appellants would submit that the initial order of temporary injunction restraining the respondents from creating third-party interests was passed after due consideration of the pleadings and material available on record. There was no subsequent change in circumstances warranting vacation of the said protection; in a suit for specific performance, preservation of the property in dispute is of paramount importance. He would further argue that the learned Trial Court failed to appreciate that compensation in terms of money cannot be an adequate substitute in a suit for specific performance. The trial Court failed to exercise jurisdiction vested in it in accordance with law and the impugned order therefore deserves interference by this Hon'ble Court.
7. On the other hand, learned counsel for the respondents while supporting the impugned order, would submit that in terms of Section 41(h) of the Specific Relief Act, 1963, interim injunction, which is a discretionary equitable relief cannot be granted when an equally efficacious relief is available. He would further argue that the settled principle of law is that if the injury suffered by the plaintiff on account of refusal of temporary injunction was not irreparable, the court will refuse temporary injunction even where prima facie case is in favour of

the plaintiff. To substantiate his arguments, reliance has been placed on **M/s Best Seller Retail (I) P. Ltd. v. M/s Aditya Birla Nuvo Ltd. and others, (2012) 6 SCC 792** and a judgment of High Court of Karnataka in **Sri Devera Bhandram v. Srinivasa Rao**.

8. Heard learned counsel for the parties and perused the material available on record.
9. It is a settled principle of law that while considering an application for temporary injunction in a suit for specific performance of contract, the Court is required to examine whether the plaintiff has made out a prima facie case, whether the balance of convenience lies in favour of grant of injunction, and whether refusal of interim protection would cause irreparable loss and injury to the plaintiff. In cases relating to immovable property, preservation of the subject matter of the suit assumes paramount importance so that the final decree, if passed in favour of the plaintiff, does not become illusory or incapable of enforcement.
10. In the instant case, respondent No.1 is stated to have entered into an agreement to sell with the appellants on 9th June, 1998 with respect to the land in question of which possession was also handed over to the plaintiff. According to the appellants, since the property was mortgaged with the bank, as such, it was agreed that after getting the property released from the bank, respondent No.1 will execute a proper sale deed in favour of the petitioners. However, in breach of the agreement to sell, respondent No.1 transferred the property in question in favour of respondent No.3 through respondent No.2, who none other than her

sister-in-law. According to the appellants, exercise to transfer the property in question in favour of respondent No.3 through respondent No.2 has been carried out just to defeat their rights over the property, for which they have already paid full and final sale consideration as per the agreement to sell entered into between the parties. The sale deed is also under challenge.

11. Initially, the trial Court finding a prima facie case besides balance of convenience in favour of the appellants and irreparable loss to be caused to the appellants, in the event of refusal to grant interim injunction, restrained the respondents from creating 3rd party interest vis-à-vis the suit land or changing its nature.
12. Creation of third party interests or transfer of the suit property during trial would not only complicate execution of the decree but may also lead to multiplicity of proceedings and equities in favour of subsequent purchasers. Therefore, even where alternate relief such as refund of earnest money or damages is claimed, the same does not disentitle the plaintiff from seeking temporary injunction, as the primary relief in such suits remains enforcement of the contract qua the immovable property itself.
13. The main point which weighed with the trial Court in vacating the interim injunction granted in favour of the appellants is availability of alternative relief of seeking alternate land or compensation along with interest is not a bar to granting a temporary injunction against the creation of third-party interest.

14. The Supreme Court in the case of **Maharwal Khewaji Trust (Regd.) v. Baldev Dass, (2004) 8 SCC 488** has observed in the following manner:-

“Be That as it may, Mr. Sachhar is right in contending that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings.”

15. The Supreme Court in the case of **Dev Prakash and another v. Indra and others, (2018) 14 SCC 292** has observed that the very essence of the contempt of temporary injunction during the pendency of a civil litigation involving any property is to prevent its threatened wastage, damage and alienation by any party thereto to the immeasurable prejudice to the other side or to render the situation irreversible. Relevant extract of the judgment reads thus:

“As it is, the very essence of the concept of temporary injunction and receivership during the pendency of a civil litigation involving any property is to prevent its threatened wastage, damage and alienation by any party thereto, to the immeasurable prejudice to the other side or to render the situation irreversible not only to impact upon the ultimate decision but also to render the relief granted, illusory. We do not wish to burden this order by the decisions of this Court on the issue except referring to the one in *Maharwal Khewaji Trust (Regd.) Faridkot v. Baldev Dass* AIR 2005 SC 104, wherein it has been underlined that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property to be changed, which may include alienation or transfer thereof leading to loss or damage been cause to the party who may

ultimately succeed and which would as well lead to multiplicity of proceedings. Judicial discretion has to be disciplined by jurisprudential ethics and can by no means conduct itself as an unruly horse.”

16. The observations of the Supreme Court made in paragraph No.45 of the judgment in the case of **Ramakant Ambalal Choksi v. Harish Ambalal Choksi and others, 2024 INSC 913** are noteworthy and are reproduced hereunder:

“45. Quite often, in these types of litigations, it is sought to be argued that an injunction restraining the defendant from transferring the suit property was absolutely unnecessary as no post-suit transfer by the defendant can adversely affect the result of the suit because of the provisions of Section 52 of the T. P. Act whereunder all such transfers cannot but abide by the result of the suit. It is true that the doctrine of lis pendens as enunciated in Section 52 of the T. P. Act takes care of all pendente lite transfers; but it may not always be good enough to take fullest care of the plaintiffs interest vis-a-vis such a transfer. We may give one appropriate illustration of a suit for specific performance of contract based on an agreement of sale. In a suit wherein the plaintiff prays for specific performance and if the defendant is not restrained from selling the property to a third party and accordingly a third party purchases the same bona fide for value without any notice of the pending litigation and spends a huge sum for the improvement thereof or for construction thereon, the equity in his favour may intervene to persuade the Court to decline, in the exercise of its discretion, the equitable relief of specific performance to the plaintiff at the trial and to award damages only in favour of the plaintiff. It must be noted that Rule 1 of Order 39 of the Code clearly provides for interim injunction restraining the alienation or sale of the suit property and if the doctrine of lis pendens as enacted in Section 52 of the T. P. Act was regarded to have provided all the panacea against pendente lite transfers, the Legislature would not have provided in Rule 1 for interim

injunction restraining the transfer of suit property. Rule 1 of Order 39, in our view, clearly demonstrates that, notwithstanding the Rule of *lis pendens* in Section 52 of the T. P. Act, there can be occasion for the grant of injunction restraining *pendente lite* transfers in a fit and proper case. (See: Smt. Muktakesi Dawn and Ors. v. Haripada Mazumdar and Anr. reported in AIR 1988 Cal 25)

17. The judgments relied upon by the learned counsel for the respondents are with respect to the availability of alternate relief and irreparable injury. In the present case, allegation of the appellants is that in order to defeat their claim over the suit property, the respondent No.1 had executed a power of attorney in favour of his daughter and thereafter executed a sale deed in favour of respondent No.3, who is none other than his daughter-in-law. According to the appellants, the respondents are trying to create third party interests over the suit land just to defeat the rights of the appellants. If such alienation is permitted, the same would not only complicate the adjudication of the dispute but would also result in multiplicity of litigation and irreparable injury to the plaintiff. The balance of convenience lies overwhelmingly in favour of preserving the suit property till final disposal of the suit, as any transfer *pendente lite* may seriously prejudice the rights of the appellants and render the decree, if ultimately passed in their favour, ineffective and incapable of proper enforcement.
18. Mere availability of an alternate relief or eventual compensation cannot be treated as a bar to grant of temporary injunction where the subject matter of the suit itself is immovable property and preservation of its status is necessary in the interest of justice.

19. Having regard to the nature of dispute between the parties and the materials on record, I am of the opinion that the property should not change hands any further. Once third party rights are created, the plaintiff would suffer continuing hardship and unnecessary litigation against subsequent purchasers, which cannot be adequately remedied by damages alone.
20. For all what has been said above, this appeal is allowed and the order impugned dated 15th May, 2024 is set aside. The respondents are directed not to create any third party interest over the property in question till disposal of the suit, which is pending before the trial Court. Record be sent back.

Jammu
04.06.2026
Vinod, Secy

