HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF APRIL, 2026

BEFORE

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

MISCELLANEOUS FIRST APPEAL NO.1576 OF 2026 (CPC)

BETWEEN:

SRI MADHUSUDHAN RAO BADIPETLA,
AGED ABOUT 53 YEARS,
S/O SRI BADIPETLA BABAJI RAO,
RESIDING AT NO.9, "NAKSHATRA",
1ST MAIN ROAD, ASHIRWAD COLONY,
HORAMAVU, BANGALORE-560043.

...APPELLANT

(BY SRI ABHILASH P., ADVOCATE FOR
SRI CHANDRA SHEKAR R., ADVOCATE)

AND:

1. SRI ARIGELA BALAIAH
AGED ABOUT 56 YEARS,
S/O SRI A. SREENIVASULU

2. SMT. ARIGELA SUMALATHA,
AGED ABOUT 44 YEARS,
W/O SRI ARIGELA BALAIAH,

BOTH ARE RESIDING AT FLAT NO.301,
3RD FLOOR, "SHREE SHAKTHI VEL APARTMENT"
3RD MAIN ROAD, MUNIREDDY LAYOUT,
HORMAVU MAIN ROAD, HORAMAVU,
BANGALORE-560113.

...RESPONDENTS

(BY SMT. JAITHRA J. NARAYANA, ADVOCATE FOR C/R-1 & R-2)

THIS MFA IS FILED UNDER ORDER 43 RULE 1(r) OF THE CPC., AGAINST THE ORDER DATED 24.01.2026 PASSED ON I.A.NO.1 IN O.S.NO.8758/2024 ON THE FILE OF THE XXXVIII ADDITIONAL CITY

Digitally signed by
MAHALAKSHMI B M
Location: HIGH
COURT OF
KARNATAKA

CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-39), DISMISSING 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 ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

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

ORAL JUDGMENT

This miscellaneous first appeal is directed against the order dated 24.01.2026 passed on I.A. No.1 in O.S. No.8758/2024 on the file of XXXVIII Additional City Civil and Sessions Judge, Bengaluru (CCH-39) ('Trial Court' for short), whereby the application filed by the plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 CPC seeking temporary injunction restraining the defendants from alienating or encumbering the suit properties was dismissed.

Brief facts:

2. The appellant/plaintiff filed suit for recovery of money and for consequential relief of permanent injunction. The case of the plaintiff is that, he had developed a residential apartment project known as 'Shree

Shakti Vel Apartment', situated at Horamavu Village, Bengaluru belonging to one Sri Arcot Venugopal Sathyanarayana. According to the plaintiff, he had invested substantial amount towards construction and development of apartment building consisting of several flats and terrace areas. It is the case of the plaintiff that, pursuant to a settlement agreement with the land owner, Flat Nos.101, 102, 301, 302 and 402 were allotted to his share. The defendants, who initially intended to purchase other flats, subsequently agreed to purchase Flat Nos.301, 302 and 402 under an agreement of sale dated 27.12.2018 for total consideration of ₹1,23,00,000/-. It is stated by the plaintiff that the defendants paid only ₹93,00,000/- and agreed to pay balance of ₹30,00,000/- on or before 15.05.2019. It is further stated that relying upon the assurance of the defendants, that the balance amount would be paid after completion of interiors and fittings, the sale deeds came to be executed in favour of the defendants on 11.10.2019. According to the plaintiff,

despite repeated demands and issuance of legal notice, the defendants failed to pay the balance amount and are now attempting to alienate the suit schedule properties, with an intention to defeat the plaintiff's claim. Hence, the present suit.

3. Along with the suit, the plaintiff filed an I.A. No.1 seeking temporary injunction restraining alienation of the suit properties.

4. The defendants entered appearance and filed objections, denying the plaint averments and contending that the suit itself is not maintainable and that no grounds exist for grant of temporary injunction.

5. Learned counsel for the appellant contends that the Trial Court has failed to appreciate the agreement of sale, the recitals therein, and subsequent conduct of the parties, which clearly establish that the defendants were liable to pay the balance sale consideration of ₹30,00,000/- to the plaintiff. It is contended that the

documents produced by the plaintiff *prima facie* establish the plaintiff's claim and therefore, the Trial Court was not justified in refusing interim protection. Further, it is contended that the material produced by the plaintiff specifically show that the defendants are attempting to alienate the suit schedule properties, through advertisements published on the 'No Broker Platform' and therefore, there exists a genuine apprehension that the defendants would dispose of the property and defeat the plaintiff's claim.

6. *Per* contra, learned counsel for the caveators-respondent Nos.1 and 2 sought to justify the impugned order and submits that the Trial Court has rightly held that the appellant has failed to establish a *prima facie* case, balance of convenience or irreparable injury and the same does not warrant any interference by this Court.

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

"Whether the impugned order passed by the Trial Court warrants any interference by this Court?"

8. The Trial Court, upon consideration of the pleadings and material on record, held that the suit filed by the plaintiff was essentially one for recovery of money and the mere existence of a monetary dispute would not automatically entitle the plaintiff to an order restraining alienation of immovable properties.

9. The Trial Court observed that the sale deeds had already been executed in favour of the defendants and therefore, the plaintiff was required to establish the subsisting liability and enforceability of the alleged dues, during the course of trial. The Trial Court, held that the pleadings of both parties disclose disputed questions of facts, which require a full-fledged adjudication.

Accordingly, the Trial Court held that the plaintiff has failed to establish a *prima facie* case, balance of convenience and irreparable injury and consequently, dismissed I.A. No.1.

10. At the outset, it is to be stated that, admittedly registered sale deeds dated 11.10.2019 have been executed in favour of defendants in respect of the suit schedule properties. The grievance of the plaintiff, is essentially with regard to the alleged non-payment of balance sale consideration of ₹30,00,000/-. At this stage, it is relevant to consider Section 54 of the Transfer of Property Act, 1882 ('TP Act' for short), which reads 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.*
>
> ***Sale how made****.—Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of 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.

Contract for sale.—*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."

11. Section 54 contemplates that a sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Therefore, mere non-payment of a portion of sale consideration after execution and registration of the sale deed, does not invalidate the sale transaction nor render the transfer incomplete.

12. The said principle is not *res integra* as held by 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*

[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 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.

38. The real test is the intention of the parties. 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

> *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."*
>
> *(Emphasis supplied)*

13. It is also well settled that once the title has passed under a registered sale deed, the remedy available to the vendor, in the absence of any vitiating circumstances affecting execution itself, would ordinarily be recovery of the balance sale consideration and not restraint against purchaser's enjoyment or alienation of the property. The dispute raised by the plaintiff is a monetary claim, requiring adjudication in the pending suit.

14. The present application seeking restraint against alienation of the suit properties is in substance, an attempt to secure alleged decreetal amount, prior to the adjudication of the rights of the parties. Though the application is filed under Order XXXIX Rules 1 and 2 CPC, the nature of relief sought substantially partakes the character of an order *akin* to attachment before judgment.

The Trial Court has considered the pleadings and materials available on record and has recorded a finding that the plaintiff has failed to establish a *prima facie* material. The said finding cannot be termed either arbitrary or perverse.

15. At this juncture, it is relevant to refer to the principles laid down by the Apex Court in the case of ***Wander Ltd., Vs. Antox India Pvt. Ltd.***[2] *(Wander Ltd.),* wherein the Apex Court 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*

[2] 1990 (Supp) SCC 727

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 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. The Apex Court held that the Appellate Court would not interfere with the exercise of discretion of the Trial Court of the first instance and substitute its own discretion, except where such discretion is shown to have been exercised arbitrarily, capriciously or perversely or where the Court has ignored the settled principles governing the grant or refusal of interlocutory injunction.

17. The discretion exercised by the Trial Court cannot said to be arbitrary or contrary to the settled principles of law, warranting any interference and hence, the point framed for consideration is answered and this Court pass the following:

ORDER

i. The miscellaneous first appeal is hereby ***dismissed***.

ii. The impugned order dated 24.01.2026 passed on I.A. No.1 in O.S. No.8758/2024 on the file

of XXXVIII Additional City Civil and Sessions Judge, Bengaluru (CCH-39) is hereby ***confirmed***.

iii. It is made clear that the observation made herein is a *prima facie* in nature and shall not influence the Trial Court while deciding the suit on merits.

Sd/-

JUSTICE K.S. HEMALEKHA

MBM
List No.: 1 Sl No.: 37