

(2024) 07 KAR CK 0051

Karnataka High Court At Bengaluru

Case No: Miscellaneous First Appeal No. 4780 Of 2024 (CPC)

Nagaraju S

APPELLANT

Vs

Ashwathaiah & Others

RESPONDENT

Date of Decision: July 26, 2024

Acts Referred:

- Code Of Civil Procedure, 1908 - Order 39 Rule 1, Order 39 Rule 2

Hon'ble Judges: Ravi V Hosmani , J

Bench: Single Bench

Advocate: Vijaya Kumar K

Final Decision: Disposed Of

Judgement

Ravi V Hosmani, J

1. Appeal is filed against order dated 18.07.2024 passed by Principal Senior Civil Judge and CJM, Tumakuru in O.S.no.512/2024 on I.A.no.1 filed under Order XXXIX Rules 1 and 2 of Code of Civil Procedure, 1908 ('**CPC**' for short).

2. Sri K. Vijaya Kumar, learned counsel for appellant submitted that appellant was plaintiff in suit filed for specific performance of agreement of sale. In said suit, I.A.no.1 was filed for temporary injunction to restrain defendants from alienating or creating any third party rights over suit schedule 'A' and 'B' properties. It was submitted, though in plaint as well as affidavit filed in support of application, plaintiff had made assertions to substantiate **prima-facie** case and had also produced relevant records, trial Court refused to grant **ad-interim** injunction and ordered issuance of notice returnable by 03.08.2024. It was submitted, since there was imminent threat of alienation by respondents even after plaintiff/appellant had made substantial payments and was ready and willing to pay balance amount, refusal to grant **ad-interim** injunction was

contrary to law and called for interference.

3. Perusal of order impugned reveals that upon considering material on record, learned trial Judge felt fit to hear respondents/defendants before considering application. Said order would not admit of appeal.

4. Under these circumstances, it would be appropriate to dispose of appeal by directing trial Court to dispose of application as expeditiously as possible within a period of 30 days and by permitting appellant/plaintiff to take out hand summons to respondents/defendants. For said purposes, appellant is at liberty to seek for pre-ponement of date of hearing of suit also.

Accordingly, appeal is disposed of.