

**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE &  
J.M.F.C., BELTHANGADY, D.K. DISTRICT**

**PRESENT: Sri Devaraju H.M.**

B.A., LL.B.,  
Prl. Senior Civil Judge & JMFC,  
Belthangady, D.K.

Dated: This the 18<sup>th</sup> Day of April 2024

**O.S./1/2024**

Plaintiffs: Mr. Gopakumar N.G. and others

-Vs-

Defendants: Rajesh Prabhu and others

**I.A.No.IV**

Applicants: 1. Mr. Gopakumar N.G.

S/o. Gopalan,  
Aged about 53 years,  
R/at G-1-128/1,  
Nadukkudy House,  
Boliyar Post,  
Gardady Village,  
Belthangady Taluk,  
D.K. 574 217.

2. Mrs. Seeja Gopakumar,  
W/o. Mr. Gopakumar N.G.,  
Aged about 47 years,  
R/at G-1-128/1,  
Nadukkudy House,  
Boliyar Post,  
Gardady Village,  
Belthangady Taluk,  
D.K. 574 217.

3. Mr. Sumesh Kumar N.G.  
S/o. Gopalan  
Aged about 48 years,  
R/at G-1-128/1,  
Nadukkudy House,  
Boliyar Post,  
Gardady Village,  
Belthangady Taluk,  
D.K. 514 217.

4. Mrs. Anju Sumesh Kumar,  
W/o. Mr. Sumesh Kumar N.G.  
Aged about 53 years,  
R/at G-1-128/1,  
Nadukkudy House,  
Boliyar Post,  
Gardady Village,  
Belthangady Taluk,  
D.K. 514 217. ....Plaintiffs

(By Sri. K.S.S., Adv.)

Vs

Opponents: 1. Mr. Rajesh Prabhu,  
S/o. Narayana Prabhu,  
Aged about 54 years,  
R/at Door No.23-1-111/2,  
"Srivari Vaishnavi",  
Morgansgate,  
Leewell,  
Mangalore-575 001. ....Def.No.1

2. Mrs. Shanthala Rajesh Prabhu,  
W/o. Rajesh Prabhu,  
D/o. Mr. Laxminarayan Shenoy,  
Aged about 43 years,  
R/at Door No.23-1-111/2,  
"Srivari Vaishnavi",  
Morgansgate,  
Leewell,

Mangalore-575 001. ....Def.No.2

(D1 – by Sri. S.P., Adv.  
D2 – by Sri. P.K.S., Adv)

**I.A.No.VIII**

Applicant: Mrs. Shanthala Rajesh Prabhu,  
W/o. Rajesh Prabhu,  
D/o. Mr. Laxminarayan Shenoy,  
Aged about 43 years,  
R/at Door No.23-1-111/2,  
"Srivari Vaishnavi",  
Morgansgate,  
Leewell,  
Mangalore-575 001. ....Def.No.2

(By Sri. P.K.S., Adv)

V/s

Opponents: 1. Mr. Gopakumar N.G.  
S/o. Gopalan,  
Aged about 53 years,  
R/at G-1-128/1,  
Nadukkudy House,  
Boliyar Post,  
Gardady Village,  
Belthangady Taluk,  
D.K. 574 217.

2. Mrs. Seeja Gopakumar,  
W/o. Mr. Gopakumar N.G.,  
Aged about 47 years,  
R/at G-1-128/1,  
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Boliyar Post,  
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Belthangady Taluk,  
D.K. 574 217.

3. Mr. Sumesh Kumar N.G.  
S/o. Gopalan  
Aged about 48 years,  
R/at G-1-128/1,  
Nadukkudy House,  
Boliyar Post,  
Gardady Village,  
Belthangady Taluk,  
D.K. 514 217.

4. Mrs. Anju Sumesh Kumar,  
W/o. Mr. Sumesh Kumar N.G.  
Aged about 53 years,  
R/at G-1-128/1,  
Nadukkudy House,  
Boliyar Post,  
Gardady Village,  
Belthangady Taluk,  
D.K. 514 217. ....Plaintiffs

(By Sri. K.S.S., Adv.)

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### **COMMON ORDER ON I.A. NO. IV & VIII**

The I.A.No.IV is filed by plaintiffs under Order XXXIX Rule 1 and 2 r/w section 151 of CPC, praying to grant an ad-interim order of temporary injunction, restraining the defendant no.1 and 2, their men, servants, agents or anybody claiming under them from trespassing into the suit properties, alienating, mortgaging and creating any third party interest over the suit properties, pending disposal of suit.

2. The I.A.No.VIII is filed by defendant no.2 under Order XXXIX Rule 1 and 2 and section 151 of C.P.C., praying to grant an ad-interim order of temporary injunction restraining the plaintiffs, their men, servants or anybody claiming under them from trespassing into possession and enjoyment of suit properties, pending disposal of suit.

3. In support of I.A.No.IV, the plaintiff no.1 sworn to an affidavit that plaintiffs have filed the suit for the relief of decree for declaration and consequential relief of permanent injunction that they are in actual possession and enjoyment of suit properties as its absolute owners. The defendant no.1 has brought five fraudulent and void sale deeds in the name of his wife i.e. defendant no.2 in respect of suit properties. Though the sale consideration were stated to have been paid in those five fraudulent sale deeds, no sale consideration was actually paid, either by defendant no.1 or defendant no.2. The defendant no.1 has issued three cheques dated:13.09.2023 for total amount of Rs.6,75,00,000/- towards part sale consideration and the same were bounced as stop payment instruction stated to be given by defendant no.1. The balance

sale consideration of Rs.1,25,00,000/- was also not paid. Inspite of fraudulent sale deeds were brought by defendant no.1 in the name of defendant no.2, the plaintiffs not divested the possession of suit properties in favour of defendant no.1 and 2. The defendant no.1 and 2 have been trying to use criminal force to take the physical possession of suit properties. The defendant no.1 and 2 have also tried to alienate the suit properties and to create third party interest over the same. They have got prima-facie case and balance of convenience lies in their favour. In the event, the order of temporary injunction is not granted, the plaintiffs being absolute owners and in possession of suit properties will not be in a position to protect the possession of suit properties. With these reasons, prayed to allow the application.

4. The defendant no.2 has filed objection to I.A.No.IV and defendant no.1 has adopted the objection of defendant no.2 by filing memo.

5. It is stated in the objection that, application is not maintainable either in law or on facts. The plaintiffs have produced the concocted and fabricated documents in support

of their claim. The suit is not maintainable. It is denied that plaintiffs are in possession and enjoyment of suit properties, as its absolute owners. The documents produced by plaintiffs show that defendant no.2 is absolute owner in possession of suit properties. It is denied that, defendant no.1 has brought five fraudulent sale deeds in the name of defendant no.2 in respect of suit properties. It is denied that, sale consideration has not been paid to plaintiffs. The entire sale consideration of Rs.5,10,00,000/- had been paid to plaintiffs. The alleged three cheques belongs to defendant no.1 were misplaced. The plaintiffs who have come in illegal possession of said cheques have misused the same, only with an intention to make unlawful gain, if possible. It is denied that, plaintiffs have not divested the possession of suit properties to defendant no.1 and 2. She is absolute owner in possession of suit properties. There is no prima-facie case in favour of plaintiffs to grant temporary injunction. The balance of convenience does not lie in favour of plaintiffs. She has got prima-facie case in her favour. The balance of convenience lies in her favour. In the event, the order of temporary injunction is granted in favour

of plaintiffs, the defendant no.1 and 2 will be put to much hardship and injury rather than plaintiffs. At the same time, if the order of temporary injunction is not granted in favour of defendant no.2, as prayed in I.A.No.VIII, she will be put to much hardship and injustice, and the same cannot be compensated by any means. With these reasons prayed to dismiss the application.

6. In support of I.A.No.VIII, the applicant/defendant no.2 sworn to an affidavit. In the said affidavit, the defendant no.2 has reiterated the facts stated in the objection filed to I.A.No.IV. So, there is no need to once again summarize the affidavit contents.

7. On the other hand, plaintiffs counsel filed objection to I.A.No.VIII. The facts sworn to in the affidavit filed in support of I.A.No.IV are stated in the objection filed to I.A.No.VIII. In order to avoid repetition, the contents of objection are not summarized.

8. Heard the argument of learned counsels for both side on I.A.No.IV and VIII. The learned counsel for both side have also filed notes of argument.



9. I have perused the I.A.No.IV, VIII, annexed affidavits, objections and materials placed on record.

10. The following points that would arise for my consideration;

POINTS

1. Whether plaintiffs have made out a prima facie case ?
  2. Whether defendant no.2 has made out a prima facie case ?
  3. Whether balance of convenience lies in favour of plaintiffs?
  4. Whether balance of convenience lies in favour of defendant no.2?
  5. Whether plaintiffs will be put to much injustice and hardship, if an order of temporary injunction is not granted?
  6. Whether defendant no.2 will be put to much injustice and hardship, if an order of temporary injunction is not granted?
  7. What order?
11. My findings to the above points are as under:

Point No.1: In the affirmative

Point No.2 : In the negative

Point No.3: In the affirmative

Point No.4 : In the negative

Point No.5: In the affirmative

Point No.6 : In the negative

Point No.7: As per final order

for the following:-

### **REASONS**

12. **POINT NO.1 & 2:-** Both the points are inter-related to each other. Hence, they are taken up together for discussion, in order to avoid repetition of facts.

13. The plaintiffs have filed the suit for the relief of decree for declaration that sale deeds dated:09.10.2023 in respect of suit properties are null and void and not binding on the plaintiffs and consequential relief of permanent injunction restraining the defendants, their men, agents or anybody claiming under them from causing interference into the suit properties in any manner.

14. The plaintiffs claim that, they have been in possession of suit properties. At the same time, it is the defence of defendant no.2 that she has been in possession and enjoyment of suit properties, as its absolute owner, as on the date of suit.

15. It is well settled principle of law that, while considering the interim application for grant of temporary injunction, the Court has to satisfy three golden principles that, whether plaintiff has made out a prima-facie case, whether balance of convenience lies in favour of plaintiff and whether plaintiff will be put to much hardship and injustice, in the event, order of temporary injunction is not granted.

16. It is the burden on the plaintiffs to prove that they have been in possession of suit properties, as the plaintiffs claimed an ad-interim order of temporary injunction through I.A.No.IV u/s XXXIX Rule 1 and 2 r/w section 151 of C.P.C. The defendant no.2 has filed I.A.No.VIII u/o XXXIX Rule 1 & 2 and section 151 of C.P.C., praying to grant an ad-interim order of temporary injunction restraining the plaintiffs, their men, servants or anybody claiming under them from trespassing and interfering into the peaceful possession and enjoyment of suit properties, till disposal of suit.

17. According to the claim of plaintiffs, they are in possession of suit properties, as on the date of suit. According to defendant no.2, she has been in possession of suit

properties, as on the date of suit. There is a rival claim that they are in possession of suit properties.

18. The suit properties are immovable landed properties situated at Gardady Village of Belthangady Taluk. The plaintiffs have produced the certified copies of sale deeds dated:09.10.2023 executed by plaintiffs in favour of defendant no.2 in respect of suit properties and RTC extract of suit properties for the year 2022-23 and 2023-24. The RTC extract of suit properties for the year 2022-23 reveal that suit properties were standing in the name of plaintiffs. The RTC extract for the year 2023-24 reveal that, suit properties have been standing in the name of defendant no.2 by virtue of sale deeds dated: 09.10.2023. There is a recital in the sale deeds referred to above that, possession of properties were delivered in favour of defendant no.2.

19. It is the case of plaintiffs that, defendant no.1 who is husband of defendant no.2 has agreed to purchase the suit properties for total sale consideration amount of Rs.8,00,00,000/-. The defendant no.1 has handed over the five draft sale deeds pertaining to suit properties to plaintiff no.1.

The defendant no.1 has given three cheques for an amount of Rs.6,75,00,000/- towards part of sale consideration of suit properties. The plaintiff no.1 has requested the defendant no.1 to pay the balance sale consideration of Rs.1,25,00,000/-. The defendant no.1 told the plaintiff no.1 that he was not in a position to pay the said amount of Rs.1,25,00,000/- and he would pay the same little later. On 11.10.2023, the defendant no.1 has called the plaintiff no.1 and told him that on 12.10.2023 the sale deeds will be registered and asked him to come along with other plaintiffs to Sub-Registrar office, Belthangady at 4.30 p.m. On 12.10.2023, the sale deeds prepared by defendant no.1 were kept on the table of defendant no.3, the incharge Sub-Registrar, Belthangady and defendant no.3 asked the plaintiff no.1 and 2 to put their signatures on two sale deeds in respect of "A" and "B" schedule properties. The plaintiff no.1 has requested the defendant no.3 to allow them to go through the sale deeds. The defendant no.1 was not present in the Sub-Registrar office on that day. The defendant no.3 has told the plaintiff no.1 and 2 that the draft sale deeds are already uploaded in

the online registration portal and they have already been approved by him and he did not allow them to do corrections, if any, as the time was running out of registration of sale deeds. Again on 13.10.2023, the defendant no.1 called the plaintiff no.3 and 4 to the Sub-Registrar office at 4.50 p.m. for execution of registered sale deeds in respect of "C" to "E" schedule properties. They have gone to the office of defendant no.3 at 4.50 p.m., but the defendant no.1 was not there on both the dates i.e. 12.10.2023 and 13.10.2023. The defendant no.1 informed the plaintiff no.1 through phone that he is not coming to Sub-Registrar office, Belthangady and pay the balance consideration little later. By believing the words of defendant no.1, the plaintiffs have signed the sale deeds without going through the contents of the same. Thereafter, they have presented three cheques before the bank for encashment, which were issued towards part sale consideration. The said cheques came to be dishonoured. On enquiry, the defendant no.1 did not respond. Thereafter, they got the certified copies of the sale deeds and came to know the fraud played by defendant no.1.

20. According to the case of plaintiffs, the defendant no.1 has committed fraud and got created five sale deeds in the name of his wife i.e. defendant no.2 with respect to suit properties, as if the sale consideration was paid in cash, even though no consideration was paid. The plaintiffs never divested the possession of suit properties, after signing the sale deeds, since the sale consideration was not paid to them.

21. The learned counsel for plaintiffs argued that no sale consideration was paid to plaintiffs, as to sale of suit properties. The defendant no.1 has issued three cheques for an amount of Rs.6,75,00,000/- towards part sale consideration and agreed to pay balance sale consideration of Rs.1,25,00,000/-. Since, the three cheques were not presented for encashment on the date of signing the sale deeds before Sub-Registrar, Belthangady and due to non-payment of balance sale consideration amount of Rs.1,25,00,000/-, the plaintiffs never handed over the possession of suit properties either to defendant no.1 or to defendant no.2. They remain in possession of the suit properties. The plaintiffs have sought for an ad-interim order of temporary injunction restraining the

defendant no.1 and 2 or their agents or servants or anybody claiming under them from trespassing into the suit properties. The pleadings and documents placed on record establish the plaintiffs possession over the suit properties, as on the date of suit. The plaintiffs have made out a prima-facie case that they are in possession of suit properties, as on the date of suit.

22. On the other hand, learned counsel for defendant no.2 vehemently argued that plaintiffs have admitted the execution of sale deeds in favour of defendant no.2 in respect of suit properties. According to contents of sale deeds, the possession of suit properties were delivered on the date of execution of sale deeds. The revenue records of suit properties have been changed in the name of defendant no.2 by virtue of sale deeds. The documents placed on record established that defendant no.2 has been in possession and enjoyment of suit properties. The defendant no.2 has made out a prima-facie case at this stage that she has been in possession and enjoyment of suit properties.

23. The certified copies of sale deeds and RTC extracts reveal at this stage that, plaintiffs have executed sale deeds in



respect of suit properties in favour of defendant no.2 and possession of suit properties being delivered. The plaintiffs have disputed the due execution of sale deeds, passing of sale consideration and delivery of possession of suit properties in favour of defendant no.1 and 2. So, it is to be established that, who is in possession of suit properties, as on the date of suit.

24. The plaintiffs have produced draft sale deeds stated to be executed by plaintiffs in favour of defendant no.1 in respect of suit properties for total sale consideration amount of Rs.8,00,00,000/-. According to the contents of these draft sale deeds, plaintiffs have agreed to sell the suit properties in favour of defendant no.1 and in turn, defendant no.1 has issued three cheques in favour of plaintiffs towards part sale consideration amount of Rs.6,75,00,000/-. The plaintiffs have also produced the true copies of cheques and bank memo regarding dishonour of cheques.

25. The plaintiffs have also produced the xerox copies of F.I.R. in Cr.No.121/23 on the file of Belthangady Police Station, which came to be registered on the first information given by

plaintiff no.1 against defendant no.1 and others on the ground that they have been making an unlawful attempt to interfere into the suit properties. The plaintiffs have also produced the xerox copy of sale deed dated:25.10.2023 executed by Precilla D'Souza in favour of defendant no.2 in respect of sale of 03 cents of property in Sy.No.838/B2A situated at Jeppinamogaru, Mangaluru City for total sale consideration amount of Rs.1,05,00,000/-. The plaintiffs have also produced residential certificate of plaintiffs issued on 07.02.2024 by revenue department that plaintiffs have been residing in the suit properties.

26. Plaintiffs have also produced the caveat petition filed by defendant no.2 against plaintiffs before this court. On perusal of said caveat petition, the address of defendant no.2 is that she is resident of Mangaluru City and plaintiffs are residents of suit properties. The said caveat petition was filed in the month of December 2023.

27. The defendant no.2 in the affidavit filed in support of I.A.No.VIII at para no.3 specifically stated that on the date of execution of registered sale deeds on 09.10.2023, the

plaintiffs have put the defendant no.2 in possession of suit properties and they have returned to their native place at Ernakulam District of Kerala State. According to the facts sworn to in the affidavit filed in support of I.A.No.VIII, the plaintiffs have handed over the possession of suit properties on 09.10.2023 itself in favour of defendant no.2 and on that date itself, they have returned to their native place at Ernakulam District.

28. The caveat petition, which was filed before this court by defendant no.2 in the month of December 2023 reveals that, defendant no.2 is resident of Mangaluru City and plaintiffs are residents of suit properties. The defendant no.2 has not disputed the caveat petition filed by her before this court against plaintiffs. The defendant no.2 has also not disputed the service of caveat notice referred to above. So, the caveat notice issued against plaintiffs was duly served in the address of suit properties. According to the said caveat petition, the plaintiffs are residing in the suit properties and defendant no.2 is not residing in the suit properties, but the defendant no.2 is resident of Mangaluru City.

29. The defendant no.2 has produced the confirmation letters dated:26.08.2021 stated to be executed by plaintiff no.2 and 4, as to receipt of sale consideration amount, office copy of letter given to bank, as to lost of cheque leaves, RTC extract of suit properties, Form no.9, 11A, copy of complaint given to the S.H.O., Belthangady police station, requisition to the Range Forest Officer, Venoor Range for permission to cut and transport the timber from her property, xerox copy of first information report lodged by Forest Officer, mahazar drawn by Forest Officer, letter issued by Forest Officer to the Assistant Director of Land Records to measure the property, endorsement issued by police, office copy of caveat petitions filed before the Hon'ble High Court, postal acknowledgements, statement of account, mutation register, tax paid receipts, xerox copy of order passed by Hon'ble High Court in the Writ Petition filed by plaintiffs, xerox copy of sale deed dated:10.11.2014 executed in the name of plaintiff no.1 and xerox copy of proceedings before revenue authorities.

30. Both the plaintiffs and defendant no.2 claim that they are in possession of suit properties. It is the case of

plaintiffs that, they have signed the registered sale deeds, without knowing the contents and no sale consideration being paid to them, as mentioned in the sale deeds. They have not delivered the possession of suit properties, either to defendant no.1 or to defendant no.2. It is the defence of defendant no.2 that, she has been in possession of suit properties, by virtue of sale deeds dated:09.10.2023.

31. The xerox copies of sale deeds dated:09.10.2023 executed by plaintiffs in favour of defendant no.2 revealed that, defendant no.2 has purchased the suit properties from plaintiffs for total sale consideration amount of Rs.5,10,00,000/-. On going through the xerox copies of sale deeds, it appears that defendant no.2 has paid the sale consideration amount in instalments by way of cash and the said payment commenced in the month of December 2014 and runs till 2023. There is no document produced by defendant no.2, as to payment of sale consideration by way of cash in instalments from December 2014, except the sale deeds. There is no agreement entered into between plaintiffs and defendant no.2, either in the year 2014 or subsequently,

as to sale of suit properties. According to the sale deeds, the entire sale consideration of Rs.5,10,00,000/- was paid in cash by instalments from December 2014 till 2023. Normally, if a person pays the amount to anybody in any transaction, there would be a document to that effect, as to payment of amount. There is no such document in the case on hand. Rs.5,10,00,000/- is not a small amount. At the same time, a person, who pays such amount in favour of unknown person, would get document, as to payment of amount. In the case on hand, except the sale deeds, there is no other documents, as to payment of sale consideration to the plaintiffs.

32. It is the contention of defendant no.2 that she has borrowed unsecured loan and the same being paid towards sale consideration of suit properties. The defendant no.2 has produced the statement of profit and loss and balance sheet for the year 2014 – 15 to 2023 – 24. On going through these documents, the defendant no.2 has borrowed unsecured loan of Rs.2,27,81,250/- in the year 2014-15, Rs.3,04,86,361/- in the year 2015-16, Rs.3,78,54,753/- in the year 2016-17, Rs.3,99,97,062/- in the year 2017-18, Rs.4,19,20,707/- in the

year 2018-19, Rs.4,42,23,707/- in the year 2019-20, Rs.4,61,93,366/- in the year 2020-21, Rs.4,83,26,437/- in the year 2021-22, Rs.5,01,79,737/- in the year 2022-23 and Rs.4,99,82,142/- in the year 2023-24. In all it amounts to Rs. 41,19,45,522/-. The defendant no.2 has not stated from whom, she borrowed such huge unsecured loan. It is also not stated, this amount was borrowed from single person or from different persons. It is also not stated, in what mode, whether the same was obtained by cash or through account. Further, statement of profit and loss account and balance sheet are prepared by accountant of defendant no.2 and it is not the documents issued by any competent authority. These documents have not been submitted before any competent authority. In view of the above, there is no much authenticity is attached to the said documents to believe the same as true.

33. The plaintiffs have produced xerox copy of sale deed dated:25.10.2023 executed by one Smt. Precilla D'Souza in favour of defendant no.2 in respect of 03 cents of converted property in Sy.No.838/B2A for total consideration amount of Rs.1,05,00,000/-. On perusal of this document, the sale

consideration amount of Rs.1,05,00,000/- was paid by cash in instalments commencing from January 2015 to January 2016. All the payments mentioned in the sale deed was by way of cash from 03.01.2015 to 08.01.2016. As already stated above, this property is situated at Mangaluru City. On perusal of the balance sheet for the year 2014-15 and 2015-16, there is no reference in the said balance sheets, as to payment of Rs.1,05,00,000/- to Smt. Precilla D'Souza, as to purchase of property mentioned in the sale deed dated:25.10.2023 referred to above. If really, the sale consideration amount of Rs.1,05,00,000/- mentioned in the sale deed dated:25.10.2023 was paid, the said amount would have been reflected in the balance sheet for the year 2014-15 and 2015-16. There is no such entry found in the said balance sheet. If really, the balance sheets were correct and genuine, the sale consideration as mentioned in the sale deed dated:25.10.2023 stated to be paid to Smt. Precilla D'Souza, would have been reflected in the balance sheet for the year 2014 – 15 and 2015 – 16. So, the said balance sheets produced by the defendant no.2 are not believable at this stage.



34. On going through the pleadings and materials, it creates doubt at this stage, as to passing of consideration to the plaintiffs, as mentioned in the sale deeds.

35. The learned counsel for plaintiffs relied upon the decision reported in AIR 2022 SC 564 (Kewal Krishan v/s Rajesh Kumar), wherein it is held as under:

“(B)Transfer of Property Act (4 of 1882) , S. 54 –  
Sale deed – Without payment of consideration –  
Is void – A document which is void need not be  
challenged by claiming declaration as said plea  
can be set up and proved even in collateral  
proceedings.”

36. I have gone through the decision referred to above. Whether the sale consideration was paid or not is a matter of trial. At this stage, it cannot be come to the conclusion that, the sale consideration is paid or not paid. So, at this stage, the decision referred to above is not applicable to the case on hand. The said decision applies on merits of the matter and not on the interlocutory application. Therefore, with great respect to the Lordships of the decision referred to above, the said decision is not applicable to the case on hand.

37. The learned counsel for plaintiffs referred to the decision of Hon'ble Apex Court reported in (2022) 7 SCC 1 (Veena Singh (Dead) through L.R. v/s The District Registrar/Additional Collector), wherein it is held as under:

“Denial of execution by signatory –  
Permissibility of, even when the person signing the  
instrument/agreement admits signature –  
Execution of document/instrument – What is –  
Mere signing of an instrument/agreement –  
Whether amounts to its execution – Held, the  
execution of a document does not stand admitted  
merely because a person admits to having signed  
the document.”

38. I have carefully gone through the decision referred to by learned counsel for plaintiffs. The execution of document cannot be equated with merely signing the document, even if the signature of a person is admitted, they will can deny the execution, if they did not agree to or contents of the document, while signing it.

39. According to the dictum of Hon'ble Apex Court in the decision of Veena Singh's case referred to supra, the execution of a document does not stand admitted, merely because of a person admits to having signed the document. In the case on hand, the plaintiffs have admitted the signing of sale deeds, but denied its execution on the ground that, defendant no.3 did not allow them to read the contents of sale deeds, so they have signed the sale deeds without knowing the contents of sale deeds. Whether the sale deeds were duly executed or not is a matter of trial. At this stage, the only point is to be considered whether plaintiffs are in possession of suit properties or defendant no.2 is in possession of suit properties.

40. There is a presumption u/s 133 of Karnataka Land Reforms Act that entries in the revenue records shall be presumed to be true, until contrary is proved. As per the entries made in the revenue records, the suit properties are standing in the name of defendant no.2. According to entries in the revenue records, it is to be presumed that, defendant no.2 is in possession of suit properties, as on the date of suit.

The plaintiffs have strongly disputed the due execution of sale deeds in favour of defendant no.2 in respect of suit properties and passing of sale consideration. Further, defendant no.2 herself specifically sworn to an affidavit filed in support of I.A.No.VIII that on 09.10.2023 itself, the plaintiffs have delivered the possession of suit properties and returned to their native place at Ernakulam District of Kerala State. In the caveat petition filed before this court in the month of December 2023, the defendant no.2 has shown her address as she is resident of Mangaluru City and plaintiffs are residents of suit properties. If really, the plaintiffs delivered possession of the suit properties in favour of defendant no.2, then what was forced the defendant no.2 to mention the address of plaintiffs in the caveat petition that the plaintiffs are residents of suit properties is not explained. In the said caveat petition, the address of defendant no.2 is mentioned as she is resident of Mangaluru City. The residential certificate of plaintiffs issued by revenue department substantiate that, plaintiffs have been in possession and enjoyment of suit properties. All the pleadings and materials established at this stage that,

plaintiffs have been in possession and enjoyment of suit properties. So, the presumption u/s 133 of Karnataka Land Reforms Act that entries in the revenue records shall be presumed to be true, does not come to the aid of defendant no.2 to prove her possession over the suit properties, as on the date of suit. On over all considering the pleadings and materials, plaintiffs have made out a prima-facie case at this stage that they have been in possession and enjoyment of suit properties. The defendant no.2 has failed to prove that she has been in possession and enjoyment of suit properties, as on the date of suit. Accordingly, the point no.1 is answered in the **affirmative** and point no.2 is answered in the **negative**.

41. **POINT NO.3 TO 6:-** All these points are inter-related to each other. Hence, they are taken together for discussion, in order to avoid repetition of facts.

42. It is the case of plaintiffs that defendant no.1 and 2 have been making an attempt to cause interference into the possession and enjoyment of suit properties, on the basis of fraudulent sale deeds. It is opined while answering point no.1 and 2 that plaintiffs have been in possession and enjoyment of

suit properties. The defendant no.2 claims that she herself has been in possession and enjoyment of suit properties. The defendant no.2 herself filed a complaint before Belthangady Police Station alleging that plaintiffs have been causing obstruction for the use and enjoyment of suit properties. This act of defendant no.2 amounts to her interference into the peaceful possession and enjoyment of suit properties by plaintiffs.

43. It is well settled principle of law that, even the trespasser cannot be dispossessed, except under due process of law, as held in the decision reported in 1993 SCC Online AP 73 (Acme Tiles and Building Products v/s B. Sudarshan). As already stated above, plaintiffs have been in possession and enjoyment of suit properties. If the defendant no.2 wanted to take possession, she has to take the possession in accordance with law. She cannot take the law into her own hands. If the defendant no.2 cause obstruction for the enjoyment of suit properties, it will cause hardship and injustice to the plaintiffs rather than defendants, as the plaintiffs have been in possession of suit properties.

44. The balance of convenience to enjoy the suit properties lies in favour of plaintiffs, as they have been in possession of the same. The plaintiffs will be put to much hardship and injustice rather than defendants, if the plaintiffs were thrown out of the suit properties. At the same time, the defendant no.2 will not be put to any kind of hardship, if the order of temporary injunction is granted in favour of plaintiffs and against her.

45. Learned counsel for defendant no.2 vehemently argued that order of temporary injunction cannot be granted against true owner. In support of his arguments, he has referred to the decision of Hon'ble Apex Court reported in (2022) 12 SCC 128 [Padhiyar Prahladi Chanaji v/s Maniben Jagmalbhai (Deceased) through lega heirs], wherein it is held that, ordinarily injunction cannot be issued against a true owner or title holder in favour of a trespasser or a person in unlawful possession.

46. I have gone through the decision referred to above. There is no dispute regarding the proposition of law, as held in the decision referred to supra. The plaintiffs have not

admitted that defendant no.2 is absolute owner in possession of suit properties. The sale deeds alleged to be executed by plaintiffs in the name of defendant no.2 under challenge in this suit. Such being the case, the sale deeds, which relied upon by the defendant no.2 cannot be accepted at this stage, as duly executed sale deeds. So, on the basis of said sale deeds, it cannot be accepted that defendant no.2 is absolute owner of suit properties. In view of the above, with great respect to the Lordships in the decision in Padhiyar's case referred to supra, the said decision is not applicable to the case on hand.

47. The learned counsel for defendant no.2 referred to the decision of Hon'ble Apex Court reported in (2020) 7 SCC 366 (Dahiben v/s Arvindbhai Kalyanjii Bhanusali), wherein it is held as under:

“Transfer of Property Act, 1882 – S. 54 – Sale – Expression “price paid or promised or part paid and part promised” - Meaning – Actual payment of entire sale price at the time of execution of sale deed not essential condition for completion of sale – Sale deed can be registered even upon part payment of sale price, whereupon title would pass



to transferee – Non-payment of remaining part of sale price would not invalidate sale – Vendor would have other remedies for recovery of balance sale consideration, but not cancellation of sale for non-payment of balance consideration.”

48. I have gone through the decision referred to above. The said decision applies on merits of the matter and not on considering the interim application for grant of temporary injunction. The matter is at the stage of considering the interim application for grant of temporary injunction. Therefore, the said decision is not applicable to the case at this stage.

49. The learned counsel for plaintiffs referred to the decision of our Hon'ble High Court reported in ILR 2014 KAR 6025 **(FB)** (Smt. Shakunthamma and others v/s Smt. Kanthamma and others), wherein it is held as under:

“The correct legal position as is clear from the statutory provision is as under:

(I) Both the plaintiff and the defendant can maintain an application under Order 39, Rule 1(a) of the Code for the relief's set out in the said provision;

(ii) Insofar as relief under Order 39, Rule 1(b) and 1(c) is concerned, such a relief is available only to the plaintiff and the defendant cannot maintain an application for the said relief's in a suit filed by the plaintiff, irrespective of the fact that his right to such relief arises either from the same cause of action or a cause of action that arises subsequent to filing of the suit."

50. On the other hand, learned counsel for defendant no.2 referred to the decision of Hon'ble Himachal Pradesh High Court in OMP No.169 of 2020 in COMS No.22 of 2019 dated:12.10.2020 in The Himachal Pradesh State Electricity v/s M/s Valecha Engineering Limited, wherein at para 22 has observed what has been held in the decision in Kanthamma's case of our Hon'ble High Court referred to supra.

51. According to the dictum of our Hon'ble High Court in Kanthamma's case and decision of M/s Valecha Engineering Limited case referred to supra, both the plaintiff and defendant can maintain an application under Order 39 Rule 1(a) of C.P.C. The relief under Order 39 Rule 1(b) and 1(c) is concerned, such a relief is available only to the plaintiff and defendant cannot maintain an application for the said relief in

a suit filed by plaintiff.

52. The defendant no.2 has filed I.A.No.VIII u/o XXXIX Rule 1 and 2 and section 151 of C.P.C., praying to order to grant an ad-interim order of temporary injunction restraining the plaintiffs, their men, partisans, servants or anybody claiming under them from trespassing into the suit properties.

53. The relief claimed by the defendant no.2 in the I.A.No.VIII comes within the purview of Order XXXIX Rule 1(c) of C.P.C. So, as held in the decision of our Hon'ble High Court in Kanthamma's case and in the decision of M/s. Valecha Engineering Limited referred to by learned counsel for defendant no.2, the defendant no.2 cannot maintain an interim application u/o XXXIX Rule 1 & 2 of C.P.C., seeking the relief contemplated u/o XXXIX Rule 1(c) of C.P.C.

54. Considering the pleadings and materials and the decisions cited by both the sides, the balance of convenience lies in favour of plaintiffs and the plaintiffs will be put to much hardship and injustice rather than defendant no.1 and 2, if the order to temporary injunction, as prayed in I.A.No.IV is not granted. At the same time, the defendant no.2 will not be put

to any kind of hardship, if the order of temporary injunction is not granted, as prayed in I.A.No.VIII. Accordingly, the point no.3 and 5 are answered in the **affirmative** and point no.4 and 6 are answered in the **negative**.

55. **POINT NO.7:** In view of my findings to point no.1 to 6, I proceed to pass the following-

**ORDER**

The I.A.No.IV filed by plaintiffs under Order XXXIX Rule 1 and 2 r/w Section 151 of CPC, is hereby allowed with cost.

An ex-parte ad-interim order of temporary injunction granted by an order dated:22.12.2023 is made absolute, till disposal of suit.

The I.A.No.VIII filed by defendant no.2 under Order XXXIX Rule 1 & 2 and Section 151 of CPC, is dismissed with cost.

(Dictated to the stenographer, transcribed by her, transcript revised, corrected, signed and then pronounced by me in the open court on this 18<sup>th</sup> day of April 2024)

**(DEVARAJU H.M.)**  
Prl. Senior Civil Judge & J.M.F.C.  
Belthangady, D.K.