

**IN THE COURT OF THE IVTH ADDL. CIVIL JUDGE AND
J.M.F.C. BELAGAVI, AT; BELAGAVI.**

PRESENT: Smt. Vijayalaxmi Ghanapur,
B.A.L., L.L.B (Hons); L.L.M
**IV Addl. Civil Judge & J.M.F.C.,
Belagavi.**

Dated: On this the 9th day of December, 2015

: ORIGINAL SUIT NO. 1191/2015 :

Plaintiff:-

1. Shri. Basavant S/o. Devappa Hunkari Patil,
Age: 75 years, Occ: Pensioner and Business,
R/o: GPC No.886, Bazar Galli,
Sulebhavi-591134,

(By Shri. V. S. Deshpande (Hebbalkar), Advocate)

V/s.

Defendants:-

1. Smt. Savitri W/o. Siddappa Gounale,
Age: 67 years, Occupation: Household work,
R/o: Temple Road, Chinchalli,
Taluka : Raibag, District: Belagavi.
2. Shri. Mallikarjun S/o. Appayya Vannur,
Age: 45 years, Occupation: Weaver,
R/o: Bazar Galli, Sulebhavi-591134.
3. Smt. Mallavva W/o. Irappa Narendra,
Age: 51 years, Occupation: Household work,
R/o: Naikwadi, Gokak,
Taluka and District: Belagavi.

4. Smt. Neelavva W/o. Iranna Halajol,
Age: 48 years, Occupation: Household work,
R/o: Dasanur, Taluka: Bailhongal, Dist: Belagavi.
5. The Chairman,
Siddeshwar Devastan Jeernodhar
Trust Committee Sulebhavi.
Sulebhavi, Bazar Galli, Sulebhavi,
Taluka and District: Belagavi.

(Deft No.4 and 5 by Shri. A. G. Mulawadmath, Advocate)

: ORDERS ON I.A.I :

This is the suit filed by the plaintiff for the relief of specific performance of contract and for the relief of declaration and consequential relief of permanent injunction and the application filed by the plaintiff under Order XXXIX Rule 1 and 2 R/w Section 151 of C.P.C. with a prayer to restrain the defendants or anybody acting on their behalf from making construction over the suit property till the disposal of the suit.

2. The brief averments of the application are as follows;-

(a) The plaintiff reiterated the plaint averments and averred in the said accompanying affidavit that, the defendant No.1 executed an agreement of sale styled as sale deed on 14/05/2015 for consideration amount Rs.30,000/- and defendant

No.1 received entire consideration and hand over the actual physical possession to the present plaintiff. Hence, he come up with the application with a prayer to restrain the defendants and their servants from making any construction over the suit property.

3. The defendant No.5 appeared through his counsel and filed objection to this application.

(a) The defendant No.5 denied the claim and contents of the application filed by the plaintiff in toto. The defendant specifically contended that, the suit property is not exclusively owned and possessed by defendant No.1. The defendants No.2 to 4 have also their joint title and interest in the suit property. The defendant No.5 is a registered Trust and the plaintiff is totally stranger to the suit property and he is owner of adjacent property and the defendant No.1 filed O.S.No.970/2015 for the relief of partition and separate possession and the said suit was dismissed as not pressed on 07/10/2015 by suppressing all the material facts the present suit filed by the plaintiff is not at all tenable in the eye of law.

(b) The defendant further contended that, the defendant No.1

is an illiterate lady and she is not at all executed any consent deed hence, she executing an agreement of sale styled as sale deed is totally concocted story and moreover, the defendant No.1 published a notice in the news paper on 16th September 2015 that, power of attorney dated 14/05/2015 is concocted document and she denied the execution of said power of attorney.

(c) The defendants further averred that, defendant No.1 to 4 have already executed a registered gift deed in favour of defendant No.5 and the said gift deed is registered one and confirmed the possession of entire suit property bearing No.532 with the defendant No.5. They further contended that, as on the date of the suit the defendant No.5 was in possession of the suit property. Hence, the plaintiff is not having prima-facie case and the balance of convenience is not at all leans in favour of the plaintiff to seek such temporary injunction relief against these defendants. Hence, the defendant prayed for rejection of I.A.

4. Heard both side and perused material on record.

5. The points that arises for my consideration are as under:-

: POINTS :

1. Whether the plaintiff has made out prima facie case?

2. Whether the balance of convenience is in favour of plaintiff?
3. Whether the plaintiff would suffer irreparable injury if, the prayer for interim injunction disallowed?
4. What orders?

6. My findings on the above said points are as under:-

Point No.1 : In the Negative

Point No.2 : Does not survive for consideration

Point No.3 : Does not survive for consideration

Point No.4 : As per final order for the following:-

: REASONS :

7. **POINT No.1:** It is well settled law that, first Rule for grant of temporary injunction is that, applicant must make out a prima-facie case in support of right claimed by him. The Court must satisfied that, there is bonafide dispute raised by the applicant, that there is strong case for trial which needs investigation and a decision on merits and on the facts before the Court. There is a probabilities of applicant being entitled to the relief claimed by him. The existence of prima-facie right and infraction of right is a condition precedent for grant of temporary injunction. The burden is on the plaintiff to satisfy the Court by leading evidence of otherwise that, he has a prima-facie in his favour.

8. It is specific case of the plaintiff that, the defendant No.1 executed an agreement of sale styled as sale deed on 14/05/2015 for consideration amount Rs.30,000/- and defendant No.1 received entire consideration and hand over the actual physical possession to the present plaintiff. Hence, he come up with the application with a prayer to restrain the defendants and their servants from making any construction over the suit property.

9. Per contra the defendants contended that, the suit property is not exclusively owned and possessed by defendant No.1. The defendants No.2 to 4 have also their joint title and interest in the suit property. Admittedly the defendant No.5 is a registered Trust and the plaintiff is totally stranger to the suit property and he is owner of adjacent property and the defendant No.1 filed O.S.No.970/2015 for the relief of partition and separate possession and the said suit was dismissed as not pressed on 07/10/2015 by suppressing all the material facts the present suit filed by the plaintiff is not at all tenable in the eye of law. They further contended that, the defendant No.1 is an illiterate lady and she is not at all executed any consent deed hence, she

executing an agreement of sale styled as sale deed is totally concocted story and moreover, the defendant No.1 published a notice in the news paper on 16th September 2015 that, power of attorney dated 14/05/2015 is concocted document and she denied the execution of said power of attorney. The defendants further averred that, defendant No.1 to 4 have already executed a registered gift deed in favour of defendant No.5 and the said gift deed is registered one and confirmed the possession of entire suit property bearing No.532 with the defendant No.5. They further contended that, as on the date of the suit the defendant No.5 was in possession of the suit property as the donee.

10. The plaintiff specifically contended that, on the strength of General Power of Attorney and he himself is a General Power of Attorney holder of defendant No.1 has instituted the original suit bearing No.970/2015 before Hon'ble III Addl. Civil Judge and JMFC., Belagavi for the relief of partition and separate possession. Admittedly, the said suit is filed by the plaintiff in the capacity of Power of Attorney holder. On careful perusal of the entire order sheet of O.S.No.970 /2015, it reveals that, the present defendant No.1 personally appeared before the Hon'ble III Addl. Civil Judge and JMFC., Belagavi filed an affidavit that, she is illiterate lady

and she has not executed any power of attorney to anybody and she further deposed that, she along with defendant No.2 to 4 executed registered gift deed in favour of defendant No.5 in the present suit hence, she prayed for withdrawal of the suit. On the base of this affidavit Hon'ble III Addl. Civil Judge and JMFC., Belagavi dismissed the said suit as not pressed. Admittedly, the plaintiff i.e., power of attorney holder of said suit not preferred any appeal.

11. Admittedly, the present suit filed by the same plaintiff and admittedly, he has stranger to the suit property. It is also admitted fact that, the present plaintiff is the adjacent property owner. It is also admitted fact that, the suit property is/was jointly owned and possessed by present defendant No.1 to 4 as the plaintiff himself averred the defendant No.1 had agreed to sell her undivided share.

12. In view of the above contentions now the Court has to analyse and consider the factum of possession.

Admittedly, the suit is for specific performance of contract and for the relief of declaration and for the relief of consequential

relief of injunction and the present application is sought for restraining the defendants from making any construction over the suit property by granting temporary injunction. Possession is the main ingredient to prove the prima-facie of the plaintiff. So, it is admitted that the possession is with defendant No.5 and the defendants contended that, the possession is already hand over to the defendant No.5 long back and by way of the registered gift deed the possession of the defendant No.5 is confirmed. The counsel for plaintiff vehemently argued that, the defendant No.5 obtain construction permission prior to the gift deed and all these are created documents.

13. On the basis of the unregistered gift deed the possession is transferred to the defendant No.5 on 1st January 2001. On the basis of said unregistered gift deed the name of the defendant No.5 entered in the concerned records and the defendant No.5 moved for construction permission. Hence, I decline to accept the contention of the plaintiff that, he sought the permission before the registered gift deed. Moreover, the defendants themselves pleaded that, by way of this registered gift deed they are confirmed the possession of the defendant No.5. So, at this juncture the validity of the documents cannot be looked into.

14. The plaintiff himself is also claiming the suit property by way of unregistered agreement of deed styled as sale deed. In the said agreement also possession is hand over to the plaintiff and the plaintiff himself averred on the date of the execution of that sale deed/agreement of sale the actual physical possession is hand over to the present plaintiff by the defendant No.1. So, it is also nothing but conveyance of the title. So, his claim is also based on unregistered sale deed/agreement of sale.

15. It is admitted fact that, the defendant No.1 to 4 are owners of the suit property and the present plaintiff is the stranger to the suit property. It is also admitted fact that, O.S.No.970/2015 withdrawn by the present defendant No.1 as not pressed. Hence, looking to the circumstances at this juncture the possession of the suit property is with the defendant No.5. So, the present plaintiff cannot restrain either defendant No.1 to 4 or defendant No.5 for putting construction over the suit property. On strength of the unregistered sale deed/ agreement of sale the present plaintiff cannot restrain true owners of the property. The admissibility of the documents etc., are the matter of trial at this juncture there is no prima-facie in the claim of the plaintiff. on

this point I would relied upon the ruling reported in 2014(3) KLJ 486, in the said ruling our own High Court held at the same circumstances of the present case the plaintiff is not entitled for the relief of grant of temporary injunction. It is well settled principles of law that, the true owners cannot be restrained by any third party on the basis of agreement of sales. Admittedly this suit is also for the relief of specific performance and declaration and for the consequential relief of injunction. So, the suit document is agreement of sale/sale deed which was unregistered one. Hence, at this juncture the Court is of considered opinion that, prima-facie is not established by the plaintiff. I have perused the citations submitted by the learned counsel for plaintiff but the said citations are not applicable to present set of facts in case on hand. **Hence, I answer point No.1 in the negative.**

16. **POINT No.2 and 3 :-** These points are taken together for discussion as they are having nexus with each other and also to avoid repetition.

Existence of prima-facie case alone does not entitled the applicant for a temporary injunction. The applicant must further

satisfy the Court the second condition by showing that, she will suffer irreparable injury if the injunction as prayed is not granted, and that, there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury. In other words, this Court must be satisfied that, refusal to grant injunction would result in irreparable injury to the party seeking relief and she need to be protected from the consequences of apprehended injury. It is well settled law that, granting of injunction is an equitable relief and such a power can be exercised when judicial intervention is absolutely necessary to protect rights and interests of the applicant. The third condition for granting interim injunction is that, the balance of convenience must be in favour of the applicant. In other words, the Court must be satisfied that, the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

17. It is well settled principles of law that, when a party fails to prove prima-facie case at this stage the question of considering balance of convenience and irreparable loss to the party concerned is not at all material. It is not proper to grant

temporary injunction in favour of applicant even if balance of convenience lies in his favour and non-granting of temporary injunction would result in irreparable loss and injury. In the case on hand the plaintiff is failed to prove prima-facie in his favour therefore, the question of balance of convenience and irreparable loss does not survive for consideration. **Hence, I answer Point No.2 and 3 as does not survive for consideration.**

18. **POINT No.4:-** In view of my finding on points No.1 to 3 in negative, I proceed to pass the following:-

: ORDER :

The I.A.No.1 filed by the plaintiff under Order 39 Rule 1 and 2 R/w. Section 151 of C.P.C. is hereby rejected.

Looking to the nature of application, no order as to cost.

(Dictated to the Stenographer, transcribed and typed by her, corrected by me and then order pronounced in the open Court on this 9th day of December, 2015)

Sd/-

**(Smt. Vijayalaxmi Ghanapur)
IV Addl. Civil Judge & JMFC., Belagavi.**