

KABG040028392018



**IN THE COURT OF THE II ADDL. CIVIL JUDGE
& JMFC, AT: BELAGAVI**

Present: Sri. Nagaraj Barki. B.A., LL.B.,
C/c II Addl. Civil Judge & JMFC.,
Belagavi.

Dated: This, the 09th day of June 2023

ORIGINAL SUIT NO.1266/2018

Smt. Parawwa W/o Parappa Betageri
Age: 68 Years, Occ: Agriculture/household
R/o.Inamdar Galli, Marihal village,
Tq & Dist: Belagavi and another

(By P.K. Bagi, Adv.)

.... Plaintiffs

Vs.

Shri. Anant @ Prakash S/o Puttopant Kulkarni,
Age: 55 Years, Occ: Agriculture,
R/o.Chate Galli, Marihal village,
Tq & Dist: Belagavi and another

(By S.C. Jain, Adv.)

.... Defendants

Parties to I.A.No.VI

Applicants/Plaintiffs :

Smt. Smt. Parawwa W/o Parappa Betageri and
another

V/s.

Opponents/Defendants:

Anant @ Prakash S/o Puttopant Kulkarni and another

ORDERS ON I.A.No.VI FILED BY THE PLAINTIFF
U/O XXXIX RULE 1 & 2 R/w. 151 OF C.P.C

An instant application filed by the plaintiff with a prayer to grant the temporary injunction restraining the defendant No.2 from alienating 14 gunthas of N.A land bearing Survey No.254A/6 which includes 08 gunthas of land till disposal of the suit.

2. In support of affidavit to the application wherein she has stated that the present suit filed by the plaintiff for specific performance of contract sale agreement executed by defendant No.1 on 16.07.2007 in respect of 8 guntas of land out of R.S.No.254A/1. As defendant No.1 did not execute sale deed in her favour. The said agreement all plot hissa survey numbers of R.S.No.254A were amalgamated by survey

department and a new survey No.254A/1 measuring 7 acres 11 gunthas 8 annas had given. In the year 2017-18 sub division was made in the land Sy.No.254A/1 measuring 7 acres 11 gunthas 8 annas, the property R.S No.254A/1 measuring 0 acre 34 gunthas 8 annas and the same was entered in the name of Manohar Gopal Kulkarni, R.S.No.254A/3 measuring gunthas and the same was entered in the name of united social welfare association, Belagavi, 254A/4 measuring 34 gunthas 8 annas and the same was entered in the name of Anant Putto Kulkarni, R.S.No.254A/5 measuring 5 acre 11 gunthas 8 annas which was kept joint among the brothers. The land R.S.No.254A/4 measuring 34 gunthas 8 annas includes her suit land and measuring 8 gunthas. The defendant No.1 sold an area measuring 14 gunthas to defendant No.2 from out of R.S.No.254A/4, on the registered sale deed dated 26.07.2018, while

executing the sale deed by the defendant No.1 included her suit land measuring 8 gunthas in 14 gunthas of land sold to defendant No.2. After the purchase of 14 gunthas of land by defendant No.2. the land R.S.No.254A/4 had again subdivided as 254A/4, measuring 20 gunthas 8 annas and the same was entered in the name of Anant Putto Kulkarni and 254A/6, measuring 14 gunthas and the same was entered in the name of defendant No.2. The defendant No.2 got converted this 14 gunthas of land to non agriculture use on 30.10.2021 from the Deputy Commissioner, Belagavi. Now, the defendant No.2 has formed the plots measuring 1 gunthas and 1.1/2 gunthas in this 14 gunthas of land and fixed the boundary poles to each of the plots and has started selling the same to others. The defendant No.1 has sold 14 gunthas of land to defendant No.2 including 8 gunthas of suit land with an intention to make money and cause loss

to him. If the defendant No.2 alienating the land measuring 14 gunthas by making plots, the plaintiff will be put to untold hardship and loss,. Hence, prayed to allow the application.

3. The defendant No.2 has resisted the said applications by filing objection to I.A. No.VI, wherein he has denied the averments of the plaint and he is contending that the plaintiff cannot maintain the present application against the defendant No.2 in respect of 14 gunthas out of R.S.No.254A/6 as such the said property against which the plaintiffs are seeking injunction is not the suit property. Under such circumstances, when the property itself is not a suit property question of granting injunction does not arise. On perusal of alleged agreement of sale dated 16.07.2007, the agreement is unregistered not duly stamped. Under such circumstances as held by the Hon'ble apex Court

and Hon'ble high Court, the such agreements cannot be relied for any purpose even for granting temporary injunction. The plaintiffs are claiming that the suit property false under the property of defendant No.2 without their being any basis or documentary evidence. The defendant No.2 is the bonafide purchaser of an area measuring 14 gunthas out of R.S.No.254A/4 which was totally measuring 34 gunthas 8 annas for valuable consideration from defendant No.1, who are also residence of Marihal village. They are having knowledge of the defendants are lawful possession over the suit property, even then they are proceeded to institute present suit against this defendants. Which demonstrate the malafide intention of plaintiff of filing present suit against the defendant No.2 only after execution of sale deed dated 26.07.2018. Originally property bearing R.S.No.254A/4 was measuring 6 acres 6 gunthas, the same was

came to be subdivided as per MR-T11 dated 28.02.2018 into R.S.No.254A/4 measuring 34 gunthas 8 annas and R.S.No.254A/5 measuring 5 acres 11 gunthas 8 annas, the defendant No.1 sold an area measuring 14 gunthas out of R.S.No.254A/4 to defendant No.2. On perusal of the documents produced by the plaintiffs no property bearing R.S.No.254A/1 measuring 33 gunthas 8 annas was in existence as on the date of alleged agreement of sale. The question executing agreement of sale in favour defendant No.1 does not arise.

4. The suit is barred by law of limitation, the plaintiffs were silent for many years. The time is essence of contract. The plaintiffs have failed in the said proposition of law. On perusal of plaint, schedule of description of suit property, alleged agreement of sale, RTC extracts, property show in IA No.6 is defers therefore, there is no ideal

identification of the suit property. On perusal of signature of defendant No.1 on alleged agreement of sale compared with sale deed dated 26.07.2018 it shows that the signature on alleged agreement of sale is not of defendant No.1. In alleged agreement of sale with sale deed of defendant No.2 they are totally different. The plaintiffs have not made out any prima facie case to grant any interim relief. If the application is allowed it will cause great hardship and irreparable loss to this defendants.

5. The defendant No.1 has resisted the said applications by filing objection to I.A. No.VI, wherein he has denied the averments of the plaint and he is contending that this defendant submit that in respect of the alleged transaction with the plaintiff and other defendants, there is no any document to prove the same and only on oral say and alleged agreement of sale, which is

created by the plaintiff, this suit itself is not maintainable in the eyes of law nor binding upon this defendant in what so ever. The plaintiff is trying to misguide this Hon'ble Court to obtain impugned order. That the suit is bad in law as all the parties are not included in the suit who are necessary parties to this suit and who are owners of the joint property. That the alleged agreement of sale is unregistered, which is having no value in the eyes of law and this defendant is denying the execution of agreement itself. When there is unregistered document, it cannot be marked and lead in evidence unless and until 10 times of the court fee is paid. That the allegation with regard to the notice are also denied by this defendant as no notice is duly served upon him. That the stamp duty paid on the agreement is also not correct and it is completely false the same was notarized before the Notary public etc., the

entire story is got created to dupe this defendant as the plaintiffs are having man power and this defendant is having no influence of anybody. The suit of the plaintiff is barred by law of limitation as the alleged agreement of sale is of the year 2007 and the purchaser shown in the said alleged agreement of sale is also expired long back, so the suit is filed after 12 years i.e., plaintiffs have not mentioned the day today delay caused, the cause of action shown in the plaint is imaginary and concocted and created only to suit the own purpose of the plaintiffs. As there is no cause of action arisen to filed this suit. This Hon'ble court is having no jurisdiction to try and entertain this suit as the plaintiff has not produced any relevant documents and only the false and alleged agreement of sale which itself is created and concocted to suit their own purpose. Hence, prayed to reject the application.

6. On perusal of the pleadings, documents, and applications, the points that arise for my consideration are as under,

POINTS

i) Whether the plaintiffs have made out prima-facie case?

ii) Whether the balance of convenience lies in favour of the plaintiffs?

iii) Whether irreparable loss and hardship would be caused to the plaintiffs if a temporary injunction is not granted?

iv) What order?

7. Heard the argument on behalf of the plaintiffs and the defendants and perused the material placed on record carefully.

8. To the above points have been answered as follows:

Point No.1 : In the Negative

Point No.2 : In the Negative

Point No.3 : In the Negative

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

R E A S O N S

9. POINTS NO.1 TO 3: - In order to avoid repetition, these points are taken together for discussion as they are interlinked with each other.

The preset suit filed by the plaintiffs against the defendants for the relief of specific performance of the contract to execute the registered sale deed in favour of plaintiff by taking balance sale consideration amount of Rs. 1,29,000/- and the relief of declaration to declare the sale dated 26.07.2018 executed by the defendant No.1 in favour of defendant No.2 is not binding upon the plaintiff's right over the suit property.

10. In order to show prima facie case, the plaintiff has produced record of rights pertaining

to the landed property bearing Sy.No.254/A/1, 254/A/6, 254/A/4, 254/A/1, unregistered agreement of sale dated 16.07.2007, registered sale deed dated 26.07.2018 and photos.

11. It is case of the plaintiff that, as per agreement of sale executed by the defendant No.1 on 16.07.2007, the defendant No.1 did not execute regular sale deed. The landed property bearing R.S No.254/A/1 had divided into different Hissas in the year 2017-18 as Sy.No.254/A/3, 254/A/4 and 254/A/5 wherein the suit property involved in property R.S No.254/A/4. As such the defendant No.1 sold an area measuring 14 guntas to the defendant No.2 from out of R.S No.254/A/4 under registered sale deed dated 26.07.2018. Thereafter, the defendant No.2 got converted the purchased property into non agricultural use on 30.10.2021, by the Deputy commissioner Belagavi, Now the defendant No.2

is trying to alienate the plots in 14 guntas land.

12. Per contra, the defendant No.1 and 2 have strongly opposed the application of the plaintiff for grant temporary injunction by restrain the defendant No.2 alienate the property R.S No.254/A/6 on the various grounds that identification of the suit property is doubtful and not in existence as on the date of alleged agreement of sale, the main document of the suit i.e., agreement of sale 16.07.2007 is unregistered and unstamped, the defendant No.2 is in peaceful possession and enjoyment of the property and the suit of plaintiff is barred by law of limitation. That being the fact, the plaintiffs have to show proper identification of the property as contended in the plaint. Further, the plaintiff has to shown prima facie and balance of convenience in favour of him.

13. On perusal of the records, it apparent that the plaintiff has sought the relief of specific performance on document of unregistered agreement of sale dated 16.07.2007. It is material to note that, the possession of the property of agreement of sale has handed over to the plaintiff from the date of agreement as mentioned in the agreement of sale of the plaintiff. In this context, the learned counsel for the plaintiff has relied upon the decision of the Hon'ble High Court of Karnataka AIR 2003 Karnataka 241, K.B Jayaram and another V/s Navineetamma and others.

14. Further, the learned counsel for the defendants has relied upon by the decision of the Hon'ble Apex Court in respect of the plaintiff cannot get the relief of permanent injunction on the basis of an unregistered document of agreement to sell and aware that defendants

entered into a deal with another purchaser as follows,

1) 2022 Live Law SC 800,

2) AIR 2019 SC 1178

3) AIR SC 307

4) Civil Appeal 543/2021 SC

15. It is very interesting that, the defendant No.2 has purchased the property R.S No.254/A/4 measuring 14 guntas from the defendant No.1 on 26.07.2018 under registered sale deed. The plaintiff has filed the present suit without made the party i.e., defendant No.2 on 01.12.2018. It is clear that, before filing the suit of plaintiff, the property R.S No.254/A/4 purchased by the defendant No.2. Even that being the fact, the plaintiff has filed the suit against defendant No.1 only. The defendant No.2 has impleaded as per order on IA No.III Under Order 1 Rule 10 filed by the plaintiff on 26.10.2021. After impleading of

defendant No.2 in the suit, the plaintiff has sought temporary injunction on 30.03.2023, when the matter went to evidence of the plaintiff. It clearly goes to shows that, at the earliest stage of impleading of the defendant No.2, the plaintiff has not filed present application seeking temporary injunction for not to alienate the suit property for 3rd persons.

16. Moreover, the property R.S No.254/A/6 has converted into non-agricultural use as per order of the Deputy Commissioner dated 30.10.2021. It is relevant to note that, the defendant No.2 has purchased the property R.S No.254/A/4 measuring 14 guntas. The plaintiff has sought temporary injunction in the property R.S No.254/A/6. Even though plaintiff has stated that the property R.S No.254/A/1 was divided into different Hissas in the year 2017, the plaintiff would not try to produce PT sheets and

other documents to show the property of agreement of sale of the plaintiff is involved in the property of defendant No.2. On careful perusal of the records it reveals that, there is no sufficient document to show that, the suit property involved in the property of defendant No.2. Only based on the record of rights pertaining to different Hissas and photos, it cannot be ascertained that the suit property is involved the property of defendant No.2 at this juncture. The same might be elicited after full pledged trial on both sides. Because, the landed property R.S No.254 has divided in different survey numbers and in different extent. As such being, the plaintiff would not try to convenience the Court for proper identification and existence of the suit property in the specific Hissa of the Sy.No. 254.

17. Boundaries of the suit property is concerned, there is no materials to show the existence of the suit property in the specific area after conversion the suit property into non-agricultural use as per order of the Deputy commissioner. In the light of above discussion it is clear that, the plaintiff has failed to prove prima facie and balance of convenience in her favour. If, the plaintiff has failed to prove prima facie and balance of convenience, irreparable loss of the plaintiff does not arise. Apart from, the defendant No.2 has invested huge amount to conversion his land for non-agricultural use, apart from if temporary injunction granted in favour of absence of property identification of the suit property, the defendant No.2 will put into hardship and loss. According this Court answered point No.1 to 3 in the **Negative**.

18. POINT NO.4: In the result of points No.1 to 3 and materials available on records, I proceed to pass the following,

ORDER

**IA No.VI filed by the plaintiffs
U/O.XXXIX Rule 1 and 2 R/w Section
151 of CPC is hereby dismissed with no
costs.**

(Directly dictated to the Stenographer on the computer, typed by her, corrected by me, and then pronounced in the open Court on this 9th day of June 2023).*

Sd/-
(Nagaraj Barki)
III Addl. Civil Judge & JMFC,
Belagavi.