

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

PRESENT: Smt. LAKSHMI. G.M.,
B.A., L.L.B.,
III Addl. Civil Judge & JMFC.,
Belagavi.

Dated: This, 23rd day of November, 2015.

ORIGINAL SUIT No.1427/2014

BETWEEN:

1. Smt. Kanchan Wd/o Kisan Tashildar,
Age: 43 years, Occ: Household and Agriculture,
R/o: House No.2586, Mali Galli,
Belagavi.
2. Shri. Kuldeep S/o Kisan Tashildar,
Age: 23 years, Occ: Agriculture Wrok,
R/o: House No.2586, Mali Galli,
Belagavi.
3. Shri. Kunal S/o Kisan Tashildar,
Age: 21 years, Occ: Agriculture,
R/o: House No.2586, Mali Galli,
Belagavi.

... Plaintiffs

(By Mrs. S.A. Shitnre, Advocate)

AND:

1. Jotiba Ishwar Patil,
(Since deceased his L.Rs.)
- 1A. Smt. Shobha Wd/o Jotiba Patil,
Age: 50 years, Occ: Household work,
R/o: 1132, Bichu Galli, Shahapur,
Tal & Dist: Belagavi -590003.
- 1B. Shri. Vidhyadhar S/o Jotiba Patil,
Age: 21 years, Occ: Agriculture work,
R/o: 1132, Bichu Galli, Shahapur,
Tal & Dist: Belagavi -590003.

- 1C. Smt. Vaishali W/o Vilas Mutagekar,
Age: 32 years, Occ: Household work,
R/o: Lokalli village, Khanapur,
Tal & Dist: Belagavi.
2. Shri. Ashok Balu Patil,
Age: 48 years, Occ: Private Service,
R/o: House No.1132, Bichu Galli,
Shahapur, Belagavi.
3. Shri. Anant Balu Patil,
Age: 46 years, Occ: Private Service,
R/o: House No.1132, Bichu Galli,
Shahapur, Belagavi.
4. Shri. Vijay Balu Patil,
Age: 44 years, Occ: Private Service,
R/o: House No.1132, Bichu Galli,
Shahapur, Belagavi.
5. Shri. Sanjay Balu Patil,
Age: 50 years, Occ: Private Service,
R/o: House No.1132, Bichu Galli,
Shahapur, Belagavi.
6. Shri. Ishwar Balu Patil,
Age: 50 years, Occ: Private Service,
R/o: House No.1132, Bichu Galli,
Shahapur, Belagavi.
7. Smt. Sugandha Wd/o Balu Patil,
Age: 65 years, Occ: Household work,
R/o: House No.1132, Bichu Galli,
Shahapur, Belagavi.

... Defendants

(D-1A & D-1C, D-3 to 7 by Shri. R.N. Patil, Advocate,
D-1B Exparte)

ORDER ON I.A.No.I & II

The I.A.No.I & II filed by the plaintiffs under Order XXXIX
Rule 1 and 2 R/w. Section 151 of C.P.C. restraining the

defendants, their agents, servants or anybody on thri behalf from alienating and disturbing the peaceful possession and enjoyment of the suit property, along with accompanying with affidavits.

2. The plaintiffs have filed this suit for Specific Performance of Contract. It is averred in the affidavit by the plaintiff No.1, the defendants have executed an agreement of sale with possession on 1/2/1994 in favour of late husband of plaintiff No.1 in respect of the suit property for avalubalbe consideration of Rupees 74,250/-. It is further averred that, the defendants have received the entire sale consideration amount and put them in actual, physical possession of the suit property since the date of the agreement. It is further averred that, the husband of plaintiff No.1 continuously requesting the defendant to execute a registered Sale Deed in his favour in terms of the agreement of sale with possession dated 1/2/1994. But the defendants postponed the same. After the death of the husband of plaintiff No.1, are also requesting the defendants to perform their part of contract. It is further averred that, inspite of sincere request towards the execution of Sale Deed, defendants now trying to avoid the execution Sale Deed. Hence, issued legal notice by counsel and the same was also refused. Hence, filed this suit to execute a Sale Deed in favour of them and to register

it.

3. On the other hand, inspite of granting sufficient time, the defendants have failed to file objections to the said applications. Hence, objection and written statement of defendants taken as not filed.

3. Heard plaintiffs side. Perused the materials placed before me.

4. Based on the above said pleadings, the following points are arises for my consideration;

POINTS

1. Whether the plaintiffs have made out prima facie case?
2. Whether the plaintiffs prove the balance of convenience lies in their favour?
3. Whether the plaintiffs prove that, if T.I. are not granted in their favour, they will be put into great hardship and inconvenience?
4. What order?
6. My answers to the above said Points are 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;

:REASONS:

7. **POINTS No.1 to 3** :- As these points are interlinked with each other, to avoid repetition of discussion, these points are taken together for common discussion.

8. The plaintiffs have filed this suit for Specific Performance of Contract. It is averred in the affidavit by the plaintiff No.1, the defendants have executed an agreement of sale with possession on 1/2/1994 in favour of late husband of plaintiff No.1 in respect of the suit property for valuable consideration of Rupees 74,250/-. It is further averred that, the defendants have received the entire sale consideration amount and put them in actual, physical possession of the suit property since the date of the agreement. It is further averred that, the husband of plaintiff No.1 continuously requesting the defendant to execute a registered Sale Deed in his favour in terms of the agreement of sale with possession dated 1/2/1994. But the defendants postponed the same

9. Perused the materials placed before me and it is noted that, the plaintiffs to prove the prima-facie case has produced R.T.C. where it goes to show that, the defendants are the owners and in possession of the suit properties. It is further noted that, the plaintiffs filed this application to restrain defendants from

alienating and to disturb the peaceful possession of the suit property which is alleged to be in their favour. Its noted that, the contention taken by the plaintiffs are only the apprehension that, they may alienate the suit property. At this stage have not produced valid documents to prove the prima facie case. Hence, the said contentions can only be ascertained only after full fledged trial. Hence the plaintiffs have failed to prove the prima-facie case and balance of convenience nor failed to prove irreparable loss causes if the application is rejected. Hence, **I answer Points No.1 to 3 are in Negative.**

10. **POINT NO.4:-** For the foregoing reasons and answering Points No.1 to 3 in the Negative, I proceed to pass the following;

: O R D E R :

I.A.No.I & II filed by the plaintiffs under Order 39 Rule 1 and 2 R/w. Section 151 of C.P.C. are hereby dismissed.

(Dictated to the Stenographer directly on computer, typed by her, corrected by me and then pronounced in the open Court on this the 23rd day of November, 2015.)

Sd/-

(Smt. Lakshmi G.M.)
III Addl. Civil Judge & JMFC, Belagavi.