

KABG210055842022



IN THE COURT OF THE III ADDITIONAL CIVIL JUDGE & JMFC

AT: ATHANI

DATED THIS THE 10th DAY OF FEBRUARY 2023

: **PRESENT:**

SRI. SAYED MOHIUDDIN URF KHAWAJA PEERAN., BA. LLB.,(Spl.)

III ADDITIONAL CIVIL JUDGE & JMFC., ATHANI.

O.S. No.1261/2022

PLAINTIFF/s : 1) Sri. Narayan S/o Sidram Shinde,
Age: 28 years, Occu: Agriculture and Driver,
R/o: Yalihadalgi,
Tal. Athani, Dist. Belagavi.

Vs

DEFENDANT/s : 1) Sri. Sidram S/o Dondiba Shinde,
Age: 59 years, Occu: Agriculture,
R/o: Yalihadalgi, Tal. Athani, Dist. Belagavi.

2) Sri. Sadashiva S/o Sidaram Shinde,
Age: 29 years, Occu: Agriculture,
R/o: Athani, Tal. Athani, Dist. Belagavi.

3) Smt. Shalan W/o Sidram Shinde,
Age: 49 years, Occu: Agriculture and Household,
R/o: Yalihadalgi, Tal. Athani, Dist. Belagavi.

4) Sri. Hanumanth S/o Mahadev Borade,
Age: 35 years, Occu: Agriculture,
R/o: Yalihadalgi, Tal. Athani, Dist. Belagavi.

I.A.No.I

APPLICANT/PLAINTIFF: Sri. Narayan Sidram Shinde,

(Rep. by Sri. T.G.A., Advocate)

V/s

**RESPONDENT/DEFENDANTS: Sri. Sidram Dondiba Shinde
and Ors,**

(D.1 to 3 - Rep. by Sri. C.S.V., Advocate)

(D.4 - Rep. by Sri. K.H.A., Advocate)

ORDER ON I.A.No.I

The plaintiff has filed IA No.I under Order 39 Rule 1 and 2 R/w Section 151 of CPC restraining the defendant No.1, 3 and 4 for alienating the plaintiff's 1/4th share in the suit schedule property bearing Sy.No.222/1C situated at Yalihadalgi village of Athani Taluk.

2. In the accompanying affidavit to the IA., it is stated by the plaintiff that, the suit schedule property is the ancestral property of plaintiff and defendant No.1 and 2. He is having 1/4th share in the suit schedule property. The defendant No.1 and 3 have raised hand loan of Rs.1,00,000/- from defendant No.4 and executed the agreement of sale for the purpose of security to the hand loan in favour of defendant No.4 on

18.06.2013. The plaintiff and defendant No.1 and 2 are in lawful possession and enjoyment of the suit property. The defendant No.1 and 2 are willing to transfer or sell the suit schedule property under execution of decree in O.S.No.988/2017. If they are succeeded in their act he will be put to hardship. He has made out prima facie case balance of convenience lies in his favour. If the temporary injunction is granted no injustice will be caused to the defendants. If temporary injunction is not granted he will be put to loss and injury. Hence, he prays to allow the IA.

3. After registration of the suit, ex parte TI order granted, suit summons, notice on ex parte TI order issued against the defendants. In response to the same, the defendants appeared before the Court and filed their written statement. The defendant No.4 filed memo adopting the contents of the written statement as objection to IA No.I. In the written statement the defendant No.1 to 3 admitted the case of the plaintiff and they also prays to decree the suit. The defendant No.4 in his written statement denied the entire contentions of the plaintiff and further contended that, the suit is not maintainable. The defendant No.3 is the absolute owner of the

suit schedule property. She purchased the same under registered sale deed dated.23.10.2009 for valuable consideration amount of Rs.78,000/- from Vilas Anand Jadhav Patil. From the date of purchase she is in possession and enjoyment of the same. For her family and legal necessities she offered to sell the suit schedule property for valuable consideration amount of Rs.5,00,000/- and executed the agreement of sale in favour of defendant No.4 on 18.06.2013 and she received advance sale consideration amount of Rs.1,72,000/- from the defendant No.4. Time fixed for registration of the sale deed was two years. In between 18.06.2015 to 18.11.2017 the defendant No.3 had executed time extension deeds in favour of defendant No.4. The defendant No.3 not performed her part of contract. The defendant No.4 filed a suit against the defendant No.3 for the relief of specific performance of contract with respect of suit schedule property before IV Addl. Civil Judge and JMFC Athani in O.S.No.988/2017. After contest, the said suit was decreed on 18.10.2019. Against the said judgment and decree the defendant No.3 preferred an appeal before the Hon'ble Sr. Civil Judge Athani in R.A.No.150/2019. After contest, the said appeal was dismissed on 04.06.2022. The defendant No.4 filed

execution petition No.176/2019 before IV Addl. Civil Judge and JMFC Athani for executing the decree of the above said suit and he has deposited the balance sale consideration amount of Rs.3,26,000/- before the Court. In the said execution petition Court commissioner also appointed and commissioner warrant issued for execution of the sale deed as per decree of the Court. The plaintiff and defendant No.1 to 3 by colluding with each other with an intention to defraud the rights of the defendant No.4 filed the said false suit. The suit schedule property is the absolute property of defendant No.3. The plaintiff has not included all the joint family properties of the plaintiff and defendants in the present suit. As such, he prays to dismiss the suit.

4. Heard counsel for the plaintiff. Perused the same.

5. The following points arise for my consideration:

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

2. Whether the balance of convenience lies in favour of plaintiff?

3. Whether the plaintiff will be put to irreparable loss and injury, if the order of Temporary Injunction is not granted?

4. What order?

6. My answers to the above points are as under:

Point No.1 : In the **NEGATIVE**

Point No.2 : In the **NEGATIVE**

Point No.3 : In the **NEGATIVE**

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

REASONS

7. Point No.1 to 3:- As the facts involved in point No.1 to 3 are interlinked together, hence they are taken up together for common consideration.

8. The present suit is filed by the plaintiff against the defendants for the relief of partition and separate possession with respect of suit schedule property bearing Sy.No.222/1C measuring 1 Acre 7 Guntas of Yalihadalgi village of Athani Taluk.

According to the plaintiff, the plaintiff and defendant No.2 are the children of defendant No.1 and 3. The defendant No.4 is claimed to be purchaser of the suit schedule property. The suit schedule property acquired by father of the plaintiff under partition between their brothers. From the date of partition, the defendant No.1 is in possession and enjoyment

of the suit schedule property along with family members. Except the source of income from the suit schedule property there is no other source to the plaintiff and defendant No.1 to 3 family. The defendant No.1 availed hand loan of Rs.1,00,000/- from Vilas Anand Jadhav in the year 2002. For the purpose of security to the said hand loan he had executed agreement of sale dated.12.08.2002 for amount of Rs.1,60,000/- and in the said document he shows that Rs.1,20,000/- received by the defendant No.1, but the defendant No.1 availed only Rs.1,00,000/- as hand loan. Accordingly, on 25.10.2005 deed of cancellation of agreement of sale was executed. The defendant No.1 again availed hand loan from the said Vilas Anand Jadhav for Rs.81,500/- and executed the nominal agreement of sale deed dated. 25.10.2005 with respect of suit schedule property in favour of the said Vilas Anand Jadhav for the purpose of security to the said hand loan. The defendant No.1 repaid the said loan amount to the said Vilas Anand Jadhav and re-conveyed the suit schedule property in the name of defendant No.3 for avoiding raising of loan repeatedly by the defendant No.1. The defendant No.1 in the year 2013 raised the hand loan of Rs.1,00,000/- for the period of two years from defendant No.4

behind the back of the plaintiff and defendant No.2. For the purpose of security to the said hand loan the defendant No.1 executed nominal agreement of sale in favour of defendant No.4 through defendant No.3. The defendant No.4 filed a suit in O.S.No.988/2017 against the defendant No.3 for the relief of specific performance of contract with respect of suit schedule property before the IV Addl. Civil Judge and JMFC Athani on the basis of agreement of sale dated.18.06.2013. The said suit was came to be decreed on 18.10.2019. Against the said judgment and decree the defendant No.3 preferred an appeal before the Hon'ble appellate Court in R.A.No.150/2019. The said appeal was also dismissed on 04.06.2022. The said fact is came to the knowledge of the plaintiff very recently. The plaintiff is having 1/4th share in the suit schedule property. As such, he prays to decree the suit.

9. The contention of the defendant No.4 is that, the suit schedule property is the absolute property of defendant No.3. She purchased the same from Vilas Anand Jadhav in the year 2009. For his legal and family necessities, he agreed to sell the suit schedule property in favour of defendant No.4 for valuable consideration amount of Rs.5,00,000/- and executed

the agreement of sale in his favour on 18.06.2013 after receiving advance sale consideration amount of Rs.1,72,000/-. When the defendant No.3 not performed her part of contract as per the above said agreement of sale he filed suit against defendant No.3 for the relief of specific performance of contract in O.S. No.988/2017. The said suit was decreed and the said decree also confirmed in R.A.No.150/2019. He has filed the execution petition No.176/2019 for executing the above said decree and he deposited the balance sale consideration amount in the said execution petition. The Court commissioner also appointed for executing the sale deed in the said execution petition. Now the plaintiff and defendant No.1 to 3 have colluding with each other have filed the false suit against the defendant No.4 without including all the joint family properties in the present suit.

10. I have perused the documents produced by the plaintiff and defendants. At this stage the plaintiff produced xerox copy of RTC extract of Sy.No.222/1 for the year 1975-76 to 1981-82. On going through the said document prima facie it appears that the said suit schedule property was

standing in the name of father of defendant No.1 during the said period. The plaintiff produced RTC extract of Sy.No.222/1K for the year 2005-06. On going through the said document prima facie it appears that, the said property is standing in the name of defendant No.1 during the said period. The plaintiff produced RTC extract of Sy.No.222/1K for the year 2022-23. On going through the said document prima facie it appears that, the said property is standing in the name of defendant No.3. The plaintiff produced RTC extract of Sy.No.222/1A for the year 2022-23. On going through the said document prima facie it appears that, the said property is standing in the name of Shinde Lava Dhondiba. The plaintiff produced RTC extract of Sy.No.222/1B for the year 2022-23. On going through the said document prima facie it appears that, the said property is standing in the name of Shinde Khushaba Dondiba. The plaintiff produced RTC extract of Sy.No.222/1D for the year 2022-23. On going through the said document prima facie it appears that, the said property is standing in the name of Shinde Lava Dhondiba. The plaintiff produced RTC extract of Sy.No.222/1E for the year 2022-23. On going through the said document prima facie it appears that, the said property

is standing in the name of Shinde Lava Dondiba, Shinde Khushaba Shinde and Jadhav Vilas Anand. The plaintiff produced RTC extract of Sy.No.222/1F for the year 2022-23. On going through the said document prima facie it appears that, the said property is standing in the name of Shinde Khushaba Dondiba. The plaintiff produced xerox copy of agreement of sale dated.12.08.2002. On going through the said document prima facie it appears that, the defendant No.1 executed the agreement of sale in favour of Vilas Anand Jadhav with respect of suit schedule property for valuable consideration amount of Rs.1,60,000/-. The plaintiff produced xerox copy of cancellation deed dated.25.10.2005. On going through the same prima facie it appears that, the said Vilas Anand Jadhav had executed the said document in favour of defendant No.1 with regard to cancellation of agreement of sale dated.12.08.2002. Further the plaintiff produced registered sale deed dated.23.10.2009. On going through the said document prima facie it appears that, Sri Anand Vilas Jadhav had executed the said sale deed with respect of suit schedule property in favour of defendant No.3.

11. The contention of the defendant No.4 is that, the suit schedule property is the absolute property of defendant No.3. It is her self acquired property. Further the defendant No.4 contended that, the plaintiff has not included all the joint family properties in the present suit. The above said contentions will be decided only after full pledge trail. On going through the pleadings prima facie it appears that, execution of the agreement of sale by the defendant No.3 in favour of defendant No.4 with respect of suit schedule property is not in dispute. Further it appears that filing of O.S.No.988/2017 by the defendant No.4 against the defendant No.3 with respect of suit schedule property for the relief of specific performance of contract on the basis of agreement of sale dated.18.06.2013 is not in dispute. Further filing of the appeal by the defendant No.3 against the decree of O.S.No.988/2017 before the Hon'ble Sr. Civil Judge Athani in R.A.No.150/2019 and dismissal of the said appeal on 04.06.2022 is not in dispute. The defendant No.4 produced the notarized copy of judgment and decree of O.S.No.988/2017, certified copy of decree of R.A.No.150/2019 and appeal copy of R.A.No.150/2019. On going through the said documents prima facie it appears that

the defendant No.4 filed the suit against the defendant No.3 with respect of suit schedule property for the relief of specific performance of contract. After contest the said suit was decreed. Against the said judgment and decree the defendant No.4 preferred an appeal before the Hon'ble Appellate Court and the said appeal was also dismissed. As already stated above the said fact is not in dispute. Further the defendant No.4 produced xerox copy of IA filed in E.P.No.176/2019. On going through the same prima facie it appears that the defendant No.4 filed the execution petition before IV Addl. Civil Judge and JMFC Athani for execution of the above said judgment and decree. The defendant No.4 also produced the RTC extract of Sy.No.222/2K and Sy.No.222/2A and Sy.No.222/3. On going through the said documents prima facie it appears that, the said properties are standing in the name of defendant No.1.

12. It is the suit filed by the plaintiff against the defendant No.1 to 4 for the relief of partition and separate possession by claiming 1/4th share in the suit schedule property. Whether the plaintiff is having 1/4th share in the suit schedule property or whether the suit schedule property is the ancestral property of plaintiff and defendant No.1 and 2

and whether the said property is the self acquired and absolute property of defendant No.3 will be decided only after full pledge trail. As per the contentions of the parties and as per the documents produced by the defendant No.4 i.e. certified copy of the judgment and decree of O.S.No.988/2017 and R.A.No.150/2019 and documents of E.P.No.176/2019 prima facie it appears that the defendant No.4 purchased the said property under agreement of sale and he filed the said suit before IV Addl. Civil Judge and JMFC Athani for the relief of specific performance of contract. The said suit was decreed. Against the said judgment and decree the defendant No.3 preferred an appeal and said appeal was dismissed. For executing the judgment and decree the defendant No.4 filed execution petition before IV Addl. Civil Judge and JMFC Athani E.P.No.176/2019 which is pending for adjudication. Under such circumstances I am of the opinion that if TI is granted as prayed by the plaintiff it cause injustice to the defendant No.4. Because as per the documents prima facie it appears that, he purchased the said property from defendant No.3. As per the records prima facie it appears that, on the basis of agreement of sale he filed the suit for specific performance of contract before IV Addl. Civil Judge and JMFC

Athani in O.S.No.988/20178 against the defendant No.3 and the said suit is decreed and the said judgment is confirmed by the Hon'ble Appellate Court in R.A.No.150/2019. Under such circumstances if TI is granted ultimately injustice will be caused to the defendant No.4. Furthermore, the plaintiff has claiming 1/4th share in the suit schedule property. Whether the plaintiff is having any right in the suit schedule property will be decided only after full pledge trail. If the plaintiff succeeded in the suit his right will be protected under Section 52 of Transfer of Property Act, as the person who derived title from the pendent light shall be bound by the decision of the Court in pending suit. If TI is granted injustice will be caused to the defendant No.4. If TI is not granted no injustice will be caused to the plaintiff. Because the defendant No.4 appeared to be purchasers of the suit schedule property from defendant No.3, his right confirmed by the trial Court and appellate Court as explained above in detail. Under such circumstances I am of the opinion that, for granting of temporary injunction the plaintiff has failed to made out prima facie case and balance of convenience not lies in his favour and if TI is granted injustice will be caused to the defendant No.4. On the

basis of above reasons and discussions I hold **Point No.1 to 3** in the **NEGATIVE**.

13. Point No.4 :- For the aforesaid reasons and discussions made above, I proceed to pass the following:-

ORDER

I.A.No.I filed by the plaintiff under Order 39 Rule 1 & 2 R/w Section 151 of CPC is hereby dismissed.

Ex parte TI order granted by this Court on 21.10.2022 is hereby vacated.

*(Dictated to the Stenographer, transcribed and computerized by her, corrected by me, and then pronounced in the open court on this the **10th day of February 2023.**)*

Sd/-
(SAYED MOHIUDDIN URF KHAWAJA PEERAN)
III ADDITIONAL CIVIL JUDGE & JMFC., ATHANI.