

IN THE COURT OF SENIOR CIVIL JUDGE, HUNAGUND

AT:HUNAGUND

Present:

**Sri. Hanamantarao R.Kulkarni,
B.Com., LL.B.,
Senior Civil Judge, Hunagund.**

O.S. No.24/2023

Dated this the 2nd day of December, 2023

1. Shankaragowda s/o Basavantagowda Dadmi
...Plaintiff

-Versus-

1. Smt.Nagaveni w/o Jagadish Dadmi and others
... Defendants

I.A. No.II

1. Shankaragowda s/o Basavantagowda Dadmi
...Applicant/
Plaintiff

-Versus-

1. Smt.Nagaveni w/o Jagadish Dadmi
2. Chetan s/o Jagadish Dadmi
...Opponents/
Defendant 1 and 2

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(By Sri.S.S.T., Advocate for the Plaintiff)

(By Sri. P.B.H., Advocate for the defendant no.1 to 3)

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ORDER ON I.A. NO. II

1. I.A.No.II is filed by the plaintiff under Order 39 Rules 1 and 2 of the Code of Civil Procedure, seeking to restrain the defendant no.1 and 2 from alienating the suit schedule B properties till the disposal of the suit.
2. The learned Counsel for the defendant no.1 and 2 has filed memo that the contents of the written statement may be treated as objections to the I.A.No.II.
3. I have heard the learned Counsel for the plaintiff and the learned counsel for the defendant no.1 and 2 on I.A.No.II.
4. On perusal of the records of the case, the following points would emerge for my consideration:
 1. Whether the plaintiff has made out a prima-facie case?
 2. Whether the balance of convenience tilts in favour of the plaintiff?
 3. Whether the plaintiff would be put to irreparable loss if the temporary injunction is not granted?
 4. To what order?
5. My findings on the above points are as under:
 1. in the affirmative.
 2. in the affirmative.
 3. in the affirmative.
 4. As per final order for the following:

REASONS

6. **Point Nos.1 to 3:** I have taken these three points together for my common discussion as they are inter-linked with each other.
7. In an affidavit appended to I.A.No.I, it is stated by the plaintiff that deceased Jagadish s/o Girigowda Dadmi was the owner of the suit schedule B properties and he has executed an agreement of sale in respect of the suit schedule B properties for a consideration amount of Rs.40,00,000/- and he has also received an amount of Rs.12,00,000/- from him as an earnest money. He has also further stated that he has requested several times to the deceased Jagadish s/o Girigowda Dadmi to execute the sale deed but he has not executed and he has expired on 30/12/2018. He has also further stated that he has also issued a legal notice to execute the sale deed by receiving the balance amount but it went in vain. He has stated that the defendants are in hurry to alienate the suit schedule properties. If the defendants alienate the suit schedule B properties, he will put to untold hardship and which cannot be compensated in terms of money. Hence, the instant application.
8. The defendant no.1 has filed the written statement. She has denied all the averments of the plaint. She has contended that the deceased Jagadish s/o Giregouda Dadmi has not executed the agreement of sale. She has further contended that the suit is barred by law of limitation and the document is question was executed

for the purpose of protecting the properties in another litigation and the alleged agreement of sale came to be executed without passing any consideration and further there is no privity of contract between the plaintiff and the deceased Jagadish. She has further contended that the plaintiff and his two sons as a security to the alleged agreement of sale given consent agreement i.e., Oppige Pathra dated 30/06/2016 on the same day of execution of alleged agreement of sale and one of the attesting witnesses to the alleged sale agreement and consent deed is one and the same and the plaintiff is never ready and willing to perform his part of the contract and the deceased Jagadish Dadmi never agreed to sell the suit schedule B properties and accordingly, among other grounds she prays to reject the application.

9. In view of the rival contentions put forth by both the parties, now, let me see as to whether the plaintiff has made out a prima facie case in his favour.
10. It is pertinent to note that the plaintiff has stated that the deceased Jagadish Dadmi has executed an agreement of sale and after the execution he has expired and now the defendants are in hurry to alienate the suit schedule properties. On the other hand, the defendant no.1 has contended that the deceased Jagadish never agreed to sell the suit schedule properties and in order to protect the properties in another litigation he has executed nominal registered sale agreement and there was no necessity to sell the

suit schedule properties. It is pertinent to note that the plaintiff has produced the copy of the agreement of sale which shows that the deceased Jagadish has executed an agreement of sale in favour of the plaintiff by taking Rs.12,00,000/- as an earnest money. He has also produced the R/R bearing S.No.11 and S.No.292 which show the name of the deceased Jagadish and who was the owner of the suit schedule B properties. He has also produced the copy of the legal notice. The defence of the defendant no.1 is that the deceased Jagadish has executed nominal registered sale agreement and he never intended to sell the above said properties. It is pertinent to note that whether the deceased Jagadish has executed nominal registered sale deed or real registered sale deed, it requires trial and at this stage prima facie appears that the deceased Jagadish Dadmi has executed an agreement of sale and his name is appeared in the R/R. If at all the defendant no.1 and 2 alienate the suit schedule properties after their names are entered in records, the plaintiff will be put to great hardship and which cannot be compensated in terms of money and on the other hand, the defendants will not be put to any hardship.

11. From the above discussion, it becomes clear that the plaintiff has established prima-facie case and the plaintiff is entitled to the equitable relief of temporary injunction and as such, the balance of convenience tilts in his favour in respect of the suit schedule properties.

Therefore, I have arrived at the conclusion of answering points No.1 to 3 in the affirmative.

12. **Point No.4**: In view of my discussion made supra, I proceed to pass the following:

ORDER

I.A.No.II filed by the plaintiff under Order 39 Rules 1 and 2 of the Code of Civil Procedure, is hereby allowed.

Consequently, issue temporary injunction restraining the defendant no.1 and 2 from alienating the suit schedule properties till the disposal of the suit.

Under the facts and circumstances of the case, no order as to costs.

(Directly I have typed on my laptop, corrected and then pronounced by me in the open Court on this the 2nd day of December, 2023.)

(Hanamantarao R.Kulkarni)
Senior Civil Judge, Hunagund.