

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 29th day of June, 2024

1. Shankaragouda S/o Basavantagouda Dadmi

...Plaintiff

-Versus-

1. Smt.Nagaveni W/o Jagadish Dadmi and others

... Defendants

I.A. No.III

1. Smt.Nagaveni W/o Jagadish Dadmi and others

**...Applicants/
Defendants**

-Versus-

1. Sri.Shankaragouda S/o Basavaraj Dadmi

**...Opponent/
Plaintiff**

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

(By **Sri.P.B.H, Advocate** for the defendants)

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ORDER ON I.A. NO. III

1. I.A.No.III is filed by the defendant no.1 under Order 39 Rules 1 and 2 of the Code of Civil Procedure, seeking to restrain the plaintiff or his men, agents, assigns, successors, executors and all such other persons claiming interest through him from interfering with the defendants' peaceful possession and enjoyment of the suit schedule property till the disposal of the suit.
2. The learned counsel for the plaintiff has filed the objections to the said application.
3. I have heard the learned Counsel for the defendants and the plaintiff on I.A.No.III.
4. On perusal of the records of the case, the following points would emerge for my consideration:
 1. Whether the defendant no.1 has made out a prima-facie case?
 2. Whether the balance of convenience tilts in favour of the defendant no.1?
 3. Whether the defendant no.1 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.III, it is stated by the defendant no.1 that late Jagadish was in possession and enjoyment of the suit schedule properties till his death and after his death, she being the wife and the defendant no.2 and 3 being the children of the deceased Jagadish are succeed to his estate and they are in the possession and enjoyment of the suit schedule properties without anybody interference. She has further stated that the plaintiff is no way concerned to the suit schedule properties nor he is having any title or interest over the suit schedule properties and he is trying to interfere with the peaceful possession and enjoyment of the suit schedule properties and trying to trespass into the suit schedule properties and also threatening the labour who are working in the suit schedule properties. She has further stated that the suit schedule properties are agricultural lands and rainy season has commenced as such they have started cleaning process for harvesting the said lands and now the plaintiff and his hench men are obstructing to cultivate in the suit schedule properties on 29/11/2013 and tried to tress pass into the suit schedule properties and if he is not restrained the defendants will be put to untold hardship and which cannot be compensated in terms of money and if this application is allowed no hardship will be caused to the plaintiff. Hence, the instant application.

8. The plaintiff has contended that the defendants are not in the possession of the suit schedule properties and he is cultivating in the suit schedule properties since 25 years and he has further contended that the deceased Jagadish has executed an agreement of sale in favour of him by receiving Rs.12,00,000/- on 30/06/2016. He has further contended that the deceased Jagadish has executed power of attorney to cultivate the suit schedule properties on 10/06/2016 and since 2016 he is in the possession of the suit schedule properties and he has asked the defendants to execute the sale deed but the defendants have refused to execute the sale deed for which he has filed the suit for specific performance against the defendants and accordingly, among other grounds prays to reject the application with costs.
9. In view of the rival contentions put forth by the defendant no.1 and the plaintiff, now, let me see as to whether the defendant no.1 has made out a prima facie case in her favour. It is pertinent to note that the plaintiff has filed the suit for specific performance against the defendants to execute the sale deed by receiving the balance consideration amount and the defendants have appeared before the court and filed the written statement and denied the plaint averments. The plaintiff has produced the registered agreement of sale and I have perused the same. The agreement of sale which has been produced by the plaintiff in which the possession of the suit schedule properties has not been transferred to the plaintiff and it is with the late Jagadish and now with the defendants. It is pertinent to note that the plaintiff has contended in the objections to the said application that the deceased Jagadish has executed power of attorney to him to cultivate the suit schedule properties but, the plaintiff has not produced any document to show that the deceased Jagadish

has executed power of attorney in favour of him. Mere plea without proof does not hold any water. On perusal of the documents ie., the Record of Rights which show the name of the deceased Jagadish which goes to show that the defendants are in the possession of the suit schedule properties. Further, it is pertinent to note that an agreement to sell is not a conveyance and it does not transfer ownership rights or confers any title to the intended purchaser. At this stage, the documents speak that the defendants are in the possession of the suit schedule properties and if this application is not allowed, the defendants will be put to untold hardship which cannot be compensated in terms of money and on the other hand, the plaintiff will not be put to any hardship.

10. From the above discussion, it becomes clear that the defendant no.1 has established prima-facie case and the defendant no.1 is entitled to the equitable relief of temporary injunction and as such, the balance of convenience tilts in her 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.
11. **Point No.4:** In view of my discussion made supra, I proceed to pass the following:

ORDER

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

Consequently, issue temporary injunction restraining the plaintiff or his men, agents, assignees, successors, executors and all such

other persons claiming interest through him from interfering with the defendants' peaceful possession and enjoyment of the suit schedule properties till the disposal of the suit.

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

(Dictated to the Stenographer directly on the computer, corrected and then pronounced by me in the open Court on this the **29th** day of **June, 2024**.)

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