

KABK710025452022



O.S./228/2022
{CASE_CAUSE_TITLE}

**IN THE COURT OF ADDITIONAL CIVIL JUDGE &
JMFC, JAMKHANDI, AT: JAMKHANDI.**

PRESENT :
SHRI.ARASHAD ANSARI,
B.Com, L.L.M.,
Addl. Civil Judge & JMFC,
Jamkhandi.

Dated this 31st day of October – 2023

O.S. No.228/2022

1. Shri.Amasidda S/o Sidaraya Lonar @ Lonari,
Age: 38 years, Occ: Agriculture,
R/o Gadyal, Tq: Jamkhandi, Dist: Bagalkot.

..... Plaintiff.

(By Shri.D.T.B., Advocate)

Vs.

1. Shri.Adiveppa S/o Bandu Lonari @ Lonar,
Age: 63 years, Occ: Agriculture,
R/o Gadyal, Tq: Jamkhandi, Dist: Bagalkot
and Others.

..... Defendants.

(D-1 to 3 - By Shri.G.I.H., Advocate)

I. A. No.I

1. Shri.Amasidda S/o Sidaraya Lonar @ Lonari,

**..... Applicant/Original Plaintiff.
Vs.**

1. Shri.Adiveppa S/o Bandu Lonari @ Lonar
and Others.

.....Opponents/Original Defendants.

* * *

Sl.No.	Details	Particulars
1	Provision under which the application is filed	Under Order 39 Rule 1 and 2 of CPC R/w Section 151 of CPC
2	Relief sought for	Ad-interim Ex-parte Temporary Injunction
3	The date on which the application is filed	15-11-2022
4	Number of the applications	I.A.No.I and III
5	The date on which the objections are filed by the different opponent/s	27-10-2023
6	The date on which the orders were passed on the said application/s.	31-10-2023

**ORDERS ON I.A. No.I and III FILED BY
PLAINTIFF/APPLICANT UNDER ORDER 39
RULE 1 AND 2 R/W SECTION 151 OF C.P.C.**

Both these applications have been filed by the plaintiff/applicant under order 39 rule 1 and 2 CPC with

similar prayer restraining defendants No. 1 to 3 from alienating suit schedule property in any manner till disposal of the suit. After filing of I.A.No.1 ex-parte temporary injunction was granted and extended for some time, since no extension application was filed and same was discontinued. Hence applicant come up with I.A.No.3 with same prayer, hence both applications were taken up together for consideration, since one application was not withdrawn.

2. In support of application, the plaintiff has sworn to an affidavit, wherein he stated that, defendants No.1 to 3 are owners of the suit property. Defendant No.1 is the father, defendant No.2 is the mother of defendant No.3. Since the defendants No.2 and 3 wanted to sell the suit property, plaintiff agreed to purchase for the highest price of Rs.5,00,000/-. Accordingly on 12-11-2019 defendants agreed to sell the suit property and executed agreement of sale by receiving the earnest money of Rs.4,50,000/- and agreed to execute the sale deed on or

before 12-11-2022 by receiving the balance amount. Since they failed to do so in spite of his requests plaintiff is constrained to file this present suit. To maintain the status-quo of the suit property it is necessary to issue temporary injunction. Further submits that hardship will be caused to the plaintiff if temporary injunction is refused. In another application stated that defendants are trying to transfer to 3rd person and hence on these grounds prayed to allow this both applications.

3. On the contrary, defendants filed objections to IA No.3 stating that, wrongly mentioning as IA No.4. IA is not maintainable. This I.A. is earlier I.A.No.5 was filed for similar relief, hence second I.A. is not maintainable. The contents of affidavit are all false. Hence this I.A.No.4 is not maintainable and hence same is liable to be dismissed. It is also seen from the records the defendants have not filed any objections to I.A.No.1.

4. Heard the arguments of both the learned counsels. Also perused the records placed before the court.

5. The points that arose for my consideration is as under:

- 1) Whether plaintiff has made out prima-facie case to grant the temporary injunction in his favour?
 - 2) Whether the balance of convenience lies in favour of plaintiff?
 - 3) Whether plaintiff proves that irreparable loss will be caused to them if TI is not granted?
 - 4) Whether the IA No.3 is maintainable under this circumstances?
 - 5) What Order?
6. My findings to the above points is as under:

Point No.1:- In the Affirmative,

Point No.2:- In the Affirmative,

Point No.3:- In the Affirmative,

Point No.4:- In the Negative,

Point No.5:- As per final order for the following :

: REASONS :

7. **POINT No.1 AND 2:-** For the sake of convenience and to avoid repetition of facts, these points are taken together for common discussion.

8. It is the case of plaintiff that, defendants No.1 to 3 are owners of the suit property. Defendant No.1 is the father, defendant No.2 is the mother of defendant No.3. Since the defendants No.2 and 3 wanted to sell the suit property, plaintiff agreed to purchase for the highest price of Rs.5,00,000/-. Accordingly on 12-11-2019 defendants agreed to sell the suit property and executed agreement of sale by receiving the earnest money of Rs.4,50,000/- and agreed to execute the sale deed on or before 12-11-2022 by receiving the balance amount. Since they failed to do so in spite of his requests plaintiff is constrained to file this present suit. To maintain the status-quo the suit property it is necessary to issue temporary injunction.

9. The object of granting an interlocutory injunction is to preserve the matter pending the trial. It is well settled that the grant or refusal of a temporary injunction is covered by three well established principles viz., (1) Whether the petitioners have made out a prima-facie case, (2) Whether the balance of convenience is in their favor i.e., whether it could cause greater inconvenience to them if the injunction is not granted than the inconvenience which the opposite party or persons claiming through the opposite party would be put to if the temporary injunction is granted and (3) Whether the petitioners would suffer irreparable injury with the first condition as sine qua non at least two conditions should be satisfied by the petitioner conjunctively and a mere proof of one of the three conditions does not entitle the petitioners to obtain a temporary injunction in their favor.

10. On perusal of I.A.No.1 and contents of I.A.No.1 same were not opposed by filing any objections. Only filed

objections to I.A.No.3 as not maintainable. During the course of arguments learned counsel for defendants they have no intention to alienate the suit property. If property is alienated during the course of trial it will leads to multiplicity of proceedings and hardship will be caused to plaintiff/applicant. The plaintiff would have insisted for passing orders on I.A.No.1 when it is not completely adjudicated. Filed similar application by way of I.A.No.3 which is not maintainable.

11. Considering the above discussed facts and circumstances plaintiff's has made out prima-facie case, balance of convenience also lies in their favour. If temporary injunction as prayed by plaintiff is not granted, it would cause irreparable loss and injury to plaintiff, rather than defendant. Hence for the above said reasons, I answer point No.1 and 2 in the '**Affirmative**'.

12. **POINT No.3 AND 4:-** For the sake of convenience and to avoid repetition of facts, these points are taken up together for common discussion.

13. As discussed in Point No.1 and 2 irreparable loss and injury would be caused to the plaintiff's in case of refusing of grant of temporary injunction. Thus I answer Point No.3 in the '**Affirmative**'. Since I.A.No.1 is to be considered which is not adjudicated question of filing I.A.No.3 does not arises. No reasons are made out to allow this application, hence same is liable to be dismissed, accordingly I answer point No.4 in the '**Negative**'

14. **POINT No.5:-** For the reasons and findings given to point No.1 to 4, I proceed to pass the following :

: O R D E R :

I. A. No.I filed by plaintiff under Order 39 Rule 1 and 2 of C.P.C is hereby allowed.

Defendants No. 1 to 3 is hereby restrained by an order of temporary injunction from alienating suit schedule property to anybody else in any manner till disposal of the suit.

The I.A.No.3 is hereby dismissed
as not maintainable.

No order as to costs.

*(Dictated to the Stenographer directly on computer and typed by
him, and corrected, printout taken, signed by me and then pronounced in
the open court on this the **31st day of October - 2023**)*

Sd/-
(Arashad Ansari),
Addl. Civil Judge & JMFC,
Jamkhandi.