

**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE
& J.M.F.C., AT DEVANAHALLI.**

PRESENT

**SRI. PATIL HARISH RANGANAGOWDA,
B.A., LL.B.(Hon's)**

Addl. Senior Civil Judge & J.M.F.C.
Devanahalli.

Dated this day of 18th October, 2022.

O.S.No.458/2022

Sri. Venkatasamappa, : **Plaintiff**

(Plt. - By Sri. R.T.N., Advocates)

- V/s. -

Sri. Chandrashekar Reddy, : **Defendants**

(Def. 1 to 7- By Sri. M.S.H.,
Advocates)

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**ORDERS ON I.A. FILED BY PLAINTIFF U/O.39 RULE 1 & 2
OF C.P.C.**

The plaintiff has filed this I.A. U/o.39 Rule 1 and 2 of C.P.C. seeking to injunct the defendants No.1, 5, 6 & 7 from alienating the suit property to the 3rd parties during pendency of suit.

2. Facts of case are unfurled here under : It is pleaded by the plaintiffs that the defendants No.1 to 5 have executed agreement of sale on 18.07.2017 by agreeing to convey the suit property for valuable sale consideration of Rs.20,00,000/-. They received advance sale consideration of Rs.19,00,000/-. He paid advance sale consideration through cheque and cash. He paid Rs.5,00,000/- through cheque and 14,00,000/- through cash. The defendants have agreed to convey the suit property by receiving remaining sale consideration of Rs.1,00,000/-. He insisted them to execute sale deed. They evaded to execute sale deed. Meanwhile they executed registered sale deed in favour of defendants No.6 & 7 on 27.01.2022. He issued notice calling upon the defendants to execute sale deed. They failed to execute the same. Hence he approached this court.

3. The defendants No.1 to 7 appeared through their counsel. The defendant No.1 to 5 filed their written statement by denying the claim of plaintiff over suit property as prospective purchaser of suit property under agreement of sale. According to them the defendant No.1 has availed loan of Rs.5,00,000/- from the plaintiff to construct commercial building. Accordingly the plaintiff lent an amount of Rs.5,00,000/- as loan and got signed on the blank paper as security of said loan. He also got un-dated, unfilled cheques for securing the said loan transaction. Therefore the said document was written on the stamp paper purchased as a bond under article 12 of stamp Act. The plaintiff has also presented the cheque by filing an amount of Rs.10,00,000/- which was

dishonored. He issued notice calling upon them to pay the said amount. Therefore there is no truth in the case of plaintiff in claiming that the said Deed is an agreement of sale. **Hence they seek to dismiss the suit.**

4. As indicated above the defendants No.6 and 7 did not choose to file written statement and objections to I.A. Heard counsel for plaintiff and defendants No. 1 to 5.

5. Having heard counsel for plaintiff and defendants No.1 to 5, the following points would arise for my consideration:

1. Whether the Plaintiff made out prima-facie case for issuance of injunction ?
2. Whether the Plaintiff proves that, the balance of convenience lies in his favour?
3. Whether the Plaintiff proves that, if injunction is refused, he would be put to irreparable loss which cannot be compensated in terms of money?
4. What order?

6. Having heard and having perused the material on record my findings to above points is as under :

Point Nos.1 to 3 : **In the Affirmative**
Point No.4 : **As per final Order
for the following :**

REASONS

7. Point Nos.1 to 3 : In order to avoid the repetition of facts, these points are taken together for common consideration. It is the assertion of plaintiffs that the defendants No.1 to 5 have executed agreement of sale on 18.07.2017 agreeing to convey the suit property for valuable sale consideration of Rs.20,00,000/-. They received advance sale consideration of Rs.19,00,000/- through cash and cheque. They failed to execute sale deed as agreed by them. They executed sale deed in favour of defendants No.6 & 7 on 27.01.2022 in conveying suit item No.3 property. Therefore he approached this court seeking to enforce his alleged agreement dated 18-07-2017. As indicated above the defendants No.1 to 5 have denied the factum of execution of agreement of sale with an intent to convey the suit property. According to them the defendant No.1 has obtained loan of Rs.5,00,000/- from plaintiff to construct commercial building. The plaintiff lent the said amount by obtaining signature on blank paper and unfilled cheques. Therefore they have contended that they did not intend to convey the property as allege by the plaintiff.

8. Based on rival contentions of parties, the following undisputed facts can be culled out hereunder :

1. It is not in dispute that, the plaintiff and defendants No.1 to 5 are knew to each other.
2. It is also not in dispute that the

defendant No.1 to 5 have received Rs.5,00,000/- from the plaintiff.

3. It is also not in dispute that, the agreement of sale claimed by the plaintiff has been typed on the stamp paper purchased under Article 12 of Stamp Act.

9. The only dispute between parties is in regard to execution of agreement of sale dated 18.07.2017 with an intent to convey the property. The plaintiff buttress his case by placing reliance on unregistered agreement of sale and copy of order passed by deputy registrar, copy of notice, gift deed and copy of sale deed executed in favour of defendants No.6 and 7. On the other hand the defendants have not produced any document. The main dispute between parties is in regard to execution of agreement of sale dated 18.07.2017. The said question requires to be examined in the full pledge trail. Admittedly the said agreement of sale indicate the date of execution as 18-07-2017. The plaintiff has enforced the said contract after lapse of nearly about 5 years from the date of said agreement of sale. He has issued notice in the year 2022. He has contended in his plaint that he has consistently demanded the defendants to executed sale Deed and which they evaded. The main contention of defendants No.1 to 5 is that the said agreement has been engrossed on the stamp paper which was purchased under Article 12. Admittedly the said bond paper more particularly the description

indicates as agreement. The defendants No.1 to 5 did not dispute the signature appearing on the said document. They only denied the contents of said document. They have also not produced the alleged notice issued by the plaintiff asking them to pay the amount which was mentioned in the cheque which got dishonored. Therefore it would indicate that the plaintiff has made out case for trail. The issue of execution of agreement of sale or the defense of defendant about signing the blank paper requires complete adjudication by framing appropriate issues. The present suit is filed after execution of sale deed in favour of defendant No.6 & 7 in respect of suit item No.3 property. The property has to be saved for trail. If the defendants allowed to alienate the property it may create hurdle to the plaintiff in agitating his alleged right over suit property. Therefore in order to protect the interest of both the parties over said property, I deem it appropriate to injunct the defendants from alienating the suit property during pendency of suit. However this order will not come in the way of defendants in enjoying the property. **Therefore I hold above points in the Affirmative.**

10. Point No.4 : In the light of aforesaid finding on the above said point, I proceed to pass the following :

ORDER

The I.A. filed by the plaintiff U/o
39 Rule 1 & 2 of C.P.C. is hereby
allowed and defendants and their

agents or anybody acting under them are hereby temporarily restrained from alienating the suit property till disposal of suit.

**Call on: 07.11.2022 For
ascertainment of element of
settlement.**

(Dictated to the Stenographer, transcribed and computerized by her, same is corrected and then pronounced by me in the open court on this the 18th Day of October 2022).

**(SRI. PATIL HARISH RANGANAGOWDA)
Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.**