

**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 01st August, 2022.

O.S.No.317/2022

Sri. Yogesh.S

: Plaintiff

(Plt. - By Sri. M.K.M.,
Advocate)

- V/s. -

Sri. Anjinappa & Others,

: Defendants

(D1 to D5 - By Sri.
A.R.S.R.,
Advocate)

**_*_

ORDER ON I.A.1 FILED UNDER ORDER 39 RULE 1 & 2
OF C.P.C.

The Plaintiff has filed I.A.No.1 Under order 39 Rule 1 & 2 of C.P.C. seeking to restrain the defendants and her agents or anybody acting under them from alienating the suit property till disposal of suit. This court by order dated 09-03-2022 granted interim injunction restraining the defendants and their agents or anybody acting under them from alienating the suit property to the 3rd parties. The said order was extended till further orders. Now the defendants appeared and filed I.A. No.3 U/o.39 rule 4 of C.P.C. seeking to vacate the said interim order granted on I.A.No.1. Heard both the sides on I.A.No.1 & 3.

2. **Facts of case are unfurled here under** : It is pleaded by the Plaintiff that the defendant No.1 acquired the suit property under partition deed dated 20.03.1991. The said defendant No.1 and his family members i.e., defendants No.2 to 5 have offered to sell the suit property to him for sale consideration of Rs.58,30,000/-. Accordingly he paid an amount of Rs.5,00,000/- as advance sale consideration through two cheques. The defendants executed agreement of sale on 09.07.2020 by agreeing to convey the suit property. They agreed to obtain 11-E sketch to complete the said transaction. They obtained the 11-E sketch on 25.11.2020 and failed to intimate him to complete the sale transaction. They postpone the event of completion of sale

transaction. He issued notice on 21.04.2021 calling upon them to execute sale deed. They failed to execute sale deed as agreed by them. Therefore he was perforce to file this suit. The defendants appeared and contested the suit by filing written statement. They admitted the factum of execution of agreement of sale and receipt of advance sale consideration. According to them the time was essence of contract. Three months time was granted to the plaintiff to pay remaining sale consideration and get it execute the registered sale deed. However the plaintiff failed to get it execute the sale deed by paying remaining sale consideration. He insisted the defendants to execute sale deed in favour 3rd parties by mentioning as panchayath katha numbers. He has prepared the said agreement of sale as per his whims and Francis. He failed to obtain 11-E sketch within three months. He failed to pay the remaining sale consideration to the defendants. Therefore the defendants have entered transaction with 3rd parties by receiving money. They met all their necessities on the said money. The plaintiff after lapse of nearly about ten months from the date of actual performance of contract has issued notice asking them to execute sale deed. They suitably replied to the said notice by informing him that, they had canceled the said agreement of sale. The plaintiff after lapse of nearly about ten months from the date of said reply notice has filed this suit with false assertion. Hence they seek to dismiss the suit.

3. The plaintiff shown apprehension of alienation of property by the defendants during pendency of suit. Hence he has filed I.A.No.1 under order 39 rule 1 and 2 of C.P.C. seeking to injunct the defendants from alienating the property. This court by order dated 09.03.2022 granted interim injunction restraining the defendants from alienating the property. The said defendants appeared and sought to vacate the said interim order by contending that plaintiff himself is at fault by not offering remaining sale consideration within three months and get it execute the sale deed within stipulated time. Hence he cannot maintain interim injunction against them. Hence they seek to vacate the said order.

4. Having heard both the sides, the following points would arise for my consideration :

1. Whether the Plaintiff made out prima-facie case in issuing injunction?
2. Whether the Plaintiffs 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. Whether the defendants prove that, the interim order granted in favour of plaintiff is liable to be vacated ?

5. What order?

5. **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 : **In the Negative,**

Point No.5 : **As per final Order for the following :**

REASONS

6. **Point Nos.1 to 4** : In order to avoid the repetition of facts, these points are taken together for common consideration. The claim of plaintiff is that the defendants have executed agreement of sale on 09.07.2020 by agreeing to convey the suit property for sale consideration of Rs.58,30,000/- and received advance sale consideration of Rs.5,00,000/- and failed to convey the property as

agreed by them. Hence he sought to enforce the agreement of sale dated 09.07.2020. The defendants did not seriously dispute the execution of agreement sale and receipt of advance sale consideration. In fact they admitted the execution of agreement of sale and receipt of advance sale consideration. The grievance of defendants is that the plaintiff himself failed to pay remaining sale consideration and get it execute the sale deed within three months from the date of said contract. Therefore they have canceled the said agreement of sale.

7. Based on rival contentions of parties, the following undisputed facts can be culled out here under :

1. It is not in dispute that the defendants have executed agreement of sale in favour of plaintiff on 09.07.2020.
2. It is also not in dispute that the defendants have received advance sale consideration of Rs.5,00,000/- .
3. It is also not in dispute that 11-E sketch was required to complete the sale transaction.
4. It is also not in dispute that said 11-E sketch was prepared on 25.11.2020.

5. It is also not in dispute that the plaintiff has issued notice to the defendants asking them to execute sale deed on 21.04.2021.
6. It is also not in dispute that the defendants have issued reply notice to the plaintiff.

8. The main dispute between parties is in regard to readiness and willingness of the parties in completing the sale transaction. According to the plaintiff the defendants failed to inform him about obtaining of 11-E sketch. On the other hand the defendants have contended that plaintiff himself failed to get it execute the sale deed as mentioned in the agreement of sale. According to them the plaintiff insisted them to execute sale deed in favour of 3rd parties by showing the Panchayath katha numbers in the sale deeds. Therefore these material pleading on record indicate the dispute over their readiness and willingness in conclusion of contract. The counsel for defendants heavily relied upon the reply notice issued by the defendants on .03.05.2021 by informing the plaintiff that the defendants have canceled the agreement of sale for want of readiness and willingness of plaintiff in paying the remaining sale consideration. Admittedly the said notice was issued on 30.05.2021. The present suit is filed on 03.03.2022 that is after lapse of nearly about ten months from the dated of receipt of said notice. The delay in filing suit also need to be considered in the light of havock created by the Covid 19 pandemic

wherein the movements of public have been restricted by issuing standard operating procedures. Therefore the conduct claimed by the defendants about the readiness and willingness of plaintiff needs to be examined in the light of said pandemic. Therefore the conduct claimed by the defendants at this stage cannot be considered to draw an inference that the plaintiff is guilty of culpable negligent in not offering the remaining sale consideration. The said issue requires to be tried in the light of above said situation. Therefore keeping in mind the disputed and undisputed fact I hold that the property has to be saved from the alienation to protect the interest of parties and to avoid multiplicity of proceedings. The averments of written statement indicates that the defendants have already entered transaction with the 3rd parties. Therefore if they allowed to continue with the said transaction, it may certainly affects the right of plaintiff in enforcing the contract. Therefore keeping in mind the interest of parties I hold that property could be saved from the alienation. **Therefore I hold above Points No.1 to 3 in the Affirmative and Points No.4 in the Negative.**

9. **Point No.5** : In the light of aforesaid finding on the above said point, I proceed to pass the following :

ORDER

The I.A.No.1 filed by Plaintiffs
U/o. 39 rule 1 & 2 of C.P.C. is hereby
allowed and defendants are

temporarily restrained from alienating the suit properties till disposal of suit. The I.A. filed by the defendants U/o.39 rule 4 of C.P.C. is hereby rejected.

**Call on : 12.08.2022 for
ascertaining the 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 01st Day of August 2022).

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