KABR310002772023

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

PRESENT

SRI. PRAVEEN NAYAK, LLM.,

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

Dated this day of 21st March, 2024.

O.S.No.219/2023

Sri. Gopalappa	:	**Plaintiff**
		(Plts. - By Sri. V.U., Advocate)

- V/s. –

Smt. Sonnamma & Others	:	**Defendants**
		Def.1 to 4 – Exparte (Def.5 – By Sri. H.T.V., Advocate)

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ORDER ON I.A. No.I

The instant application has been filed by the counsel for the plaintiff under Order XXXIX Rule 1 and 2 of C.P.C, seeking ad-interim order of Temporary Injunction by restraining the defendant No.5 from alienating the suit schedule property in favour of 3rd parties till disposal of the suit.

2. In the affidavit it is stated that the plaintiff has filed the present suit for Partition and declaration. The plaintiff and the defendants No.1 to 4 are the members of joint family and they are in joint possession and enjoyment over the suit schedule property. The defendant No.5 by virtue of concocted Sale Deed dated 03.07.1993 is trying to alienate the suit schedule property by creating 3rd party right. The plaintiff has not signed the said Sale Deed and his signature has been forged. The said Sale Deed is a fraudulent document. The plaintiff is entitle for a share in the suit schedule property and the defendant No.5 is trying to alienate the suit schedule property in favour of 3rd party. The plaintiff has got prima facie case and the balance of convenience tilts in his favour. If the Temporary Injunction is not passed , the plaintiff will suffer irreparable harm and injury. Hence, prayed to allow the application.

3. In response to suit summons, the defendant No.5 appeared through his counsel and filed written statement, wherein he has denied the case of the plaintiff. It is stated that the plaintiff and the defendants No.1 to 4 participated in execution of Sale Deed dated 03.07.1993 in favour of the defendant No.5. The present suit came to be filed after laps of 30 years and the same is barred by limitation. The defendant No.5 sold the suit schedule property in favour of one Chandrashekara for a sale consideration of Rs.3,59,500/- on 28.09.2004. The land of defendant No.5 was acquired for the purpose of industrial development and he has received compensation. Out of the said compensation amount, the defendant No.5 has purchased back the suit schedule property from the said Chandrashekara on 10.10.2005. When the defendant No.5 received compensation amount, the plaintiff and the defendants No.1 to 4 demanded to pay some amount as they have sold the property in the year 1993. The defendant No.5 refused to pay the amount. The suit is not maintainable under law. Hence, prayed to reject the application with cost.

4. Heard both sides.

5. **The following points would arise for my consideration:**

1. Whether the applicant proves that he has got prima-facie case and the balance of convenience tilts in his favour to pass an ad-interim order of temporary injunction on I.A. No.I ?

2. Whether the applicant proves that he will suffer irreparable loss and hardship if temporary injunction order has not been passed on I.A. No.I ?

3. What order or decree ?

6. **My answer to the above points are as follows:**

Points No.1 & 2	: **In the Affirmative**
Point No.3	: **As per final Order for the following :**

R E A S O N S

7. **Point No.1:-** The case of the plaintiff is that the defendant No.5 got created the alleged Sale Deed in the year 1993 and plaintiff has not participated in execution of the Sale Deed. It is further stated that the signature of the plaintiff has

been forged on the alleged Sale Deed. The plaintiff has produced the copy of the alleged Sale Deed, which shows that the same has been executed on 07.07.1993 in favour of defendant No.5. However, it is the clear case of the plaintiff that the defendant No.5 by colluding with other defendants got created the Sale Deed and the same is a fabricated document. The defendant No.5 contested the matter and stated that the plaintiff has also participated in execution of Sale Deed. It is further stated that the suit is barred by limitation and plaintiff has filed the suit by colluding with defendants No.1 to 4 only to seek illegal monetary gain from the defendant No.5.

8. In view of the rival contention, on going through the plaint averments it is clearly appearing that in para no.8 and 9 the plaintiff has specifically pleaded that his signature has been forged in the said document. It is the case of the plaintiff that the alleged Sale Deed of the year 1993 is a fabricated document and the plaintiff and the defendants No.1 to 4 continue to be in possession and enjoyment of the suit schedule property. It is to be noted that when commission of fraud has been pleaded by the plaintiff and it is clearly stated that his signature has been forged on the alleged Sale Deed, the court has to frame issues regarding the same and given an opportunity to the parties to prove their contention. The case of the defendant is that the plaintiff has

participated in execution of Sale Deed and he has been in possession and enjoyment over the same. The learned counsel for the defendant No.5 has vehemently argued that as per the Sale Deed of the year 1993, the possession has been handed over to the defendant No.5 and the plaintiff has no right to seek partition and declaration in respect of the said property. On careful scrutiny of the said document it is not clear that where exactly the alleged signature of the plaintiff is appearing in the document. The plaintiff has signed the plaint and the accompanying affidavits. The defendant No.5 has also not placed the Certified Copy of the alleged Sale Deed, in which the signature of the plaintiff is legible. Under such circumstances, this court is not in a position to compare the signature to prima facie decide that whether the plaintiff has really signed the alleged Sale Deed or the same appear to be a forged signatures. In order to decide the same the detailed trial is required. The plaintiff has made out case which requires trial. Under such circumstances, there is prima facie case in favour of plaintiff and balance of convenience tilts in his favour. Hence, I answer **Point No.1 in the Affirmative.**

9. **<u>Point No.2</u>:-** While answering Point No.1 it is held that the plaintiff has got prima facie case. If the plaintiff is not given an opportunity to prove his contention as to forged

signature on the registered Sale Deed standing in the name of defendant No.5 in respect of suit schedule property, the plaintiff will be put to great hardship, which cannot be compensated in terms of money. If the Temporary Injunction is granted and the defendant is restrained from alienating the suit schedule property for a certain period, it would unable the plaintiff prove his contention. If the suit schedule property is alienated by the defendant No.5 in favour of 3rd party, the same will cause injustice to the plaintiff. Under such circumstances, the plaintiff has made out grounds to pass an order of Temporary Injunction on I.A. No.1. Hence, I answer **Point No.2 in the Affirmative.**

10. **Point No.3 :** In view of the above findings, this court proceed to pass the following:

O R D E R

I.A. No.I filed by the plaintiff U/o. XXXIX Rule 1 and 2 of C.P.C is hereby allowed.

The defendant No.5 is hereby restrained by way of Temporary Injunction from alienating the suit schedule property in favour of 3rd party till disposal of suit.

No order as to cost.

(Dictated to the Stenographer, transcribed and computerized by her, same is corrected and then pronounced by me in the open court on this the 21st Day of March, 2024).

(SRI. PRAVEEN NAYAK)
Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.