

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

PRESENT

Sri. MADHUSUDHANA D.K., B.A. LL.B.
Prl. Senior Civil Judge & J.M.F.C.
Devanahalli.

Dated this the 1st Day of July, 2023

O.S.No.830/2022

1. Sri. Dinesh Sipani : **Plaintiffs**
(By Sri. R.M.G., Advocate)

V/s.

1. Sri. Sonnappa and Others : **Defendants**
(By G.S., Advocate)

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**ORDERS ON I.A.Nos.1 and 5**

The plaintiff has filed the I.A.No.1 under Order 39 Rule 1 and 2 of C.P.C. by seeking ad-interim Temporary Injunction to restrain the defendants from alienating the land bearing Sy.No.92 (Old Sy.No.64) measuring 1A 20G of Channahalli Village. The above property will be called as the suit schedule property in future.

2. The defendants have filed the I.A.No.5 under Order 39 Rule 4 read with Section 151 of C.P.C by seeking to set-aside the exparte Temporary Injunction Order granted by the Court on 15.07.2022.

3. In support of I.A.No.1, the plaintiff Sri. C.Dinesh Sapani has filed his affidavit by deposing on oath. In brief, he has averred in his affidavit that, the defendants are the owners of the suit schedule property and the defendants have executed a Sale Agreement on 29.05.2008 in favour of the plaintiff by receiving an amount of Rs.14.5 Lakhs out of total sale consideration amount of Rs.20 Lakhs. At the time of execution of the Sale Agreement, there was a pending dispute in **PTCL: SR. (De) 149/2006-07** pending before the Assistant Commissioner. The said dispute was registered on the application of the defendant No.1 Sri. Sonnappa for restoration of the suit schedule property which was sold in violation of non-alienation clause. Therefore, it was agreed between the plaintiff and the defendants that, after disposal of the said dispute, by receiving balance sale consideration, the defendants have agreed to execute the Sale Deed in favour of the plaintiff after obtaining permission from the Government. As per the Order dated 23.10.2009, the said case has been disposed off by the Assistant Commissioner and in spite of that, the defendants did not come forward to execute the Sale Deed in favour of the plaintiff. Therefore, the plaintiff has filed the suit and he has also filed the I.A.No.1 for Temporary Injunction. The plaintiff has contended that, he is having a prima

facie case and balance of convenience in his favour and if the Injunction is refused, he will be put to untold hardship and therefore, the plaintiff has prayed for allowing the I.A.No.1.

4. The defendants have appeared and they have filed their written statement along with memo of adoption to treat the same as objections to the I.A.No.1. Apart from that, the defendants have also filed the I.A.No.5 under Order 39 Rule 4 of CPC by seeking setting aside of the Ex-parte Temporary Injunction Order granted on 15.07.2022.

5. The averments made by the defendants in their written statement and affidavit of defendant No.1 to the I.A.No.5 are almost similar and identical. Therefore, in brief, the averments made by the defendants are that, they are the absolute owners of the suit schedule property. The defendants have not executed any Sale Agreement in favour of the plaintiff and they have not received any amount from him. The value of the property is fixed at Rs.20 Lakhs and the plaintiff's Sale Agreement is written on Rs.200/- Stamp Paper and therefore, the Agreement is compulsorily registrable document and it suffers from Stamp Duty and Penalty. The date of Sale Agreement is 29.05.2008 and the suit is filed on 12.07.2022 and therefore, there is a lapse of 14 years from filing the suit. The defendants belong to SC/ST community and the suit schedule property was granted under the provisions of PTCL Act by issuing the Saguvali Chit on

25.10.1980 in favour of the defendant No.1. There was a condition of non-alienation for 15 years from the date of grant. On 02.08.1995 one C.Muniraju had created a Sale Deed without the knowledge of the defendant No.1. Therefore, the defendants have approached the Authorities for restoration of the property by cancellation of Sale Deed of C. Muniraju. The defendants belong to weaker section of the society and therefore, C. Muniraju, K. Rajanna, Madhu Sipani along with plaintiff Dinesh Sipani have created forged documents without the knowledge of the defendant No.1. For all these reasons, the defendants have prayed for the dismissal of the I.A.No.1 and also for allowing their I.A.No.5 and to set aside or vacate the Ex-parte Temporary Injunction Order dated 15.07.2022.

6. Heard arguments of both parties. The plaintiff's counsel has relied on the judgments reported in **(1) KLJ 2012 (2) 641** in between **L.Krishnoji Rao V/s. Agarbathi Workers House Building Co-operative Society Ltd. (2) (2012) 6 KantLJ 453** in between **M. Bhujangaveni V/s. C. Sarasa K.S. Reddy and (3) 2021 SCC OnLine Kar 12401** in between **M. Suresh Kumar V/s. Deputy Commissioner.**

The defendants have relied on copy of the Orders passed by the Deputy Commissioner in **LND SC/ST (A) 02/2022-23.**

7. The Points that arise for my consideration are as follows:

**POINTS IN I.A.No.1**

1. **Whether the plaintiff has made out a prima-facie case for grant of an order of equitable relief of temporary injunction against the defendants?**
2. **Whether the balance of convenience lies in favour of the plaintiff?**
3. **Whether the plaintiff will be put to irreparable injury and hardship, in case an order of temporary injunction is not granted against the defendants?**
4. **What Order?**

**POINTS ON I.A.No.5**

1. **Whether the defendants show that, the exparte temporary injunction order is liable to be vacated?**
2. **What Order?**

8. My answers to the above points on I.A.No.1 are as follows:

- Point No.1: In the Affirmative**  
**Point No.2: In the Affirmative**  
**Point No.3: In the Affirmative**  
**Point No.4: As per the final order  
for the following;**

9. My answers to the above points on I.A.No.5 are as follows:

- Point No.1: In the Negative**  
**Point No.2: As per the final order  
for the following;**

### **REASONS**

10. **Point No.1 in both the I.A.No.1 and 5:-** To avoid repetition of discussion, the above Points in both the I.A.No.1 and 5 are taken together for discussion.

11. I have already narrated the case pleaded by both parties and therefore, it is not necessary for me to reiterate the same again and again.

12. The plaintiff has filed the suit based on the Sale Agreement dated 29.05.2008 written on Rs.200/- Stamp Paper. It is contended by the defendants in their objections and in their I.A.No.5 that, the value of the suit schedule property is fixed at Rs.20 Lakhs and therefore, the Sale Agreement written on

Rs.200/- Stamp Paper requires compulsory registration and it is written on insufficient Stamp Paper and hence, the document is suffering from deficit Stamp Duty and Penalty. I have carefully perused the Sale Agreement and the recitals of the Sale Agreement does not show any delivery of possession under the said document and therefore, the Sale Agreement written on Rs.200/- Stamp Paper is appears to be written on sufficient Stamp Paper. The next objection raised by the defendants is that, the Agreement was entered on 29.05.2008 and the suit is filed on 13.07.2022 and therefore, there is a delay of 14 years in filing the suit and hence, the suit is barred by limitation. But, the recitals in the Sale Agreement shows that, **after grant of land under Saguvali Chit, the suit schedule property was sold in favour of Muniraju and the said Muniraju had sold it to one Rajanna and the said Rajanna has sold it to Madhu Sipani. But, the permission of the Government was not obtained. Therefore, a case No.PTCL SR 149/2006-07 is pending before the Assistant Commissioner. After disposal of the said case, the defendants have agreed to execute the Sale Deed in favour of the plaintiff.** Since the disposal of pending PTCL SR 149/2006-07 does not depends on the acts of the parties and it is not known to the parties about the exact date on which the said case will be disposed off and therefore, the contentions of the defendants about suit is barred by limitation cannot be accepted.

13. In his written statement and affidavit of the I.A.No.5, the defendant No.1 has contended that, without obtaining any money either from C. Muniraju or from other persons like the plaintiff, Sale Deed and Sale Agreement are created without his knowledge. The defendants have furnished the copy of the Orders passed by the Deputy Commissioner in **LND SC/ST (A) 02/2022-23** dated 17.04.2023. In paragraph No.2 of page No.2 of the Orders passed by the Deputy Commissioner, there is an observation made by the Deputy Commissioner about the defendant No.1 Sonnappa submitting that, **he had sold the 2A in favour of Muniraju on 02.08.1995 and said Muniraju had sold 1A 20G in favour of Rajanna on 23.09.2004.** The conduct of the defendants show that, they are claiming to belong to an SC/ST community and in spite of knowing about the non-alienation condition, the defendant No.1 had sold 2A in the year 1995 in favour of C. Muniraju and thereafter, the defendants have approached the Revenue Authorities to set aside the Sale Deed and to get the restoration of the property to them. Therefore, the defendants have no equities to seek the vacating of the Temporary Injunction as they are blowing hot and cold at the same stretch. On the other hand, the plaintiff has been directed by this Court on the first date of hearing to deposit the balance sale consideration amount of Rs.5.5 Lakhs and he has deposited the amount to show his readiness and willingness.

14. The plaintiff has relied on the judgment **2021 SCC OnLine Kar 12401** in between **M. Suresh Kumar V/s. Deputy**

**Commissioner** wherein, the Hon'ble High Court of Karnataka has held that, **admittedly, the possession of land has not been handed over under the Agreement of Sale, the transaction in question would not amount to transfer within the meaning of PTCL Act.** Therefore, the provisions of the said PTCL Act are not attracted to the plaintiff's case and in order to protect the rights of the plaintiff, either in respect of Specific Performance of Contract or in respect of alternative relief of Recovery of Advance paid by him, the Temporary Injunction is necessary. For these reasons, the plaintiff has showed a prima facie case and the defendants have failed to show reasons for vacating the Ex-parte Temporary Injunction Order. Therefore, I answer **the Point No.1 of I.A.No.1 in the Affirmative and the Point No.1 of I.A.No.5 in the Negative.**

15. **Points No.2 and 3 in I.A.No.1:-** These two points are interlinked and therefore, to avoid repetition of discussion, they are considered together.

16. The material on record shows that, the defendant No.1 had sold the 2A of granted land in favour of C. Muniraju in the year 1995 in violation of the conditions of non-alienation imposed on the Grant Certificate. The defendants have contended that, they belong to a down trodden community and they are exploited by the plaintiff and others. But, the documents produced by the parties show that, once having sold the property

in violation of conditions of non-alienation, the defendants have approached the Revenue Authorities for setting aside the Sale Deed and during the pendency of the said proceedings itself, the defendants dealt with plaintiff and plaintiff's wife Smt. Madhu Sipani by executing different Sale Agreements. It appears that, if the Injunction is refused and if the defendants are successful in getting the cancellation of the Sale Deed of C. Muniraju, they will obtain sale permission from the Government and they will sell the property in favour of third parties. In such an event, it will be very difficult for the plaintiff to get the relief, either in respect of Specific Performance or in respect of alternative relief of Refund of amount paid by him. Therefore, the balance of convenience lies in favour of the plaintiff and when compared to the hardship in refusing the injunction to the plaintiff with that of the hardship that would be suffered by the defendants in granting Injunction, the hardship suffered by the plaintiff will weigh more. Therefore, I answer **the Points No.2 and 3 on I.A.No.1 in the Affirmative.**

17. **Point No.4 in I.A.No.1 and Point No.2 in I.A.No.5:-**

For the above discussion, I hereby proceed to pass the following:

**ORDER**

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

**I.A.No.5 filed by the defendants under Order 39 Rule 4 read with Section 151 of C.P.C is hereby dismissed.**

**Till disposal of the above suit, the defendants are restrained from alienating the suit schedule property by way of ad-interim Temporary Injunction.**

(Dictated to the Stenographer directly on computer, same is corrected and then pronounced by me in the open court on this the 1<sup>st</sup> day of July, 2023).

**(MADHUSUDHANA D.K.)  
Prl. Senior Civil Judge & JMFC.,  
Devanahalli.**