



**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 08th November, 2024.

O.S.No.733/2024

Sri. B. Srinivas : **Plaintiff**

(Plt. - By Sri. S.V.Sridhar., Advocate)

V/s

Sri. Muniyappa & Others : **Defendants**

(Def.1 to 6 - By Sri. M.D. Srinath., Advocate)

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i	Provision under which the application is filed	Order XXXIX Rule 1 and 2 of C.P.C.
ii	Relief sought for	Specific Performance
iii	The date on which the application is filed	23-07-2024
iv	Number of the application	I.A.No.I
v	Date of filing objection	04-10-2024
vi	Date of Pronouncement of Order	08.11.2024

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

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 R/w.Sec.151 of C.P.C, seeking ad-interim order of Temporary Injunction by restraining the defendant No.1, his family members or anybody claiming through him from alienating the suit schedule property in favour of 3rd party till disposal of suit.

2. In the affidavit accompanying the application, the plaintiff has stated that the suit is filed for the relief of Specific Performance of Contract. The defendants being the absolute owners in possession over the suit schedule property executed an agreement of sale dated 21.03.2011 in favour of the plaintiff by



agreeing to sell the suit schedule property for a sum of Rs.22,50,000/- on 21.03.2011. The defendants have received earnest money of Rs.6,50,000/- by way of cash as advance sale consideration. It was also agreed upon that after getting necessary sale permission in respect of the suit schedule property and after receipt of the balance consideration amount of Rs.16,00,000/-, the Sale Deed will be executed and the possession will be delivered. In the last page of the agreement of sale there is a recital to the effect. The defendants have agreed to provide all the necessary documents for registration of the Sale Deed. The plaintiff applied for pody durasthi in respect of the suit schedule property in the month of February 2013. The defendants informed the plaintiff about the pendency of O.S.No.172/2007 before Addl. Civil Judge and J.M.F.C. Devanahalli in respect of the suit schedule property. It is informed that the plaintiff shall not proceed with phody durasthi and sale permission until disposal of the said suit. The defendants also informed the plaintiff that they will settle the dispute and demanded for money. The defendants No.1 and 3 have received a total amount of Rs.9,00,000/- by way of cheques in the year 2020 and 2023. The said part payment is sufficient to show that the plaintiff is ready and willing to perform his part of contract. The plaintiff demanded the defendants to register the Sale Deed in respect of suit schedule property. However, there is no positive response from the defendants. The plaintiff got issued legal notice dated 24.05.2024 by demanding to execute the registered



Sale Deed by receiving the balance sale consideration of Rs.7,00,000/-. The defendants failed to comply the same and sent untenable reply dated 24.06.2024. The defendants are trying to alienate the suit schedule property. Hence, the application.

3. In response to suit summons, the defendants No.1 to 6 appeared through their counsel and filed written statement and adopted the same as objection to I.A. No.I. In the written statement, the defendants have denied the case of the plaintiff in toto. It is stated that the plaintiff has created the sale agreement dated 21.03.2011. The suit schedule property was granted to the defendants, who belong to the Schedule Cast. There is a condition not to alienate the suit schedule property permanently. The suit is hit by provisions of Section 4 and 5 of PTCL Act. The present suit is not maintainable under law. In the alleged agreement dated 21.03.2011 there is a specific clause to the effect that the sale permission shall be obtained from the Government before execution of Sale Deed. Unless and until the said permission is obtained, the sale is not permissible in the eye of law. The defendants never agreeing to sell the suit schedule property in the year 2011 nor received any amount of Rs.6,50,000/- from the plaintiff on 21.03.2011. The plaintiff got created the agreement by taking advantage of the helpless conditions of the defendants. The defendant sent a suitable reply dated 24.06.2024 to the notice issued by the plaintiff. The plaintiff obtained the signature of the defendants on blank papers and by playing fraud he successfully created the documents



styled as agreement of sale. There is no cause of action to file the suit. The defendants entered into an agreement of sale dated 04.07.2024 with one Ramesh son of Muniswamappa as they were in need of money. There is no prima facie case in favour of the plaintiff. Hence, prayed to reject the application with cost.

4. Heard both the sides.

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

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

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

Points No.1 & 2 : **In the Negative**

Point No.3 : **As per final Order
for the following;**



REASONS

7. **Point No.1:** In order prove the prima facie case, the plaintiff has to establish the prima facie right over the suit schedule property. It is the case of the plaintiff that the defendants entered into an agreement of sale dated 21.03.2011 by agreeing to sell the suit schedule property for a valuable sale consideration of Rs.22,50,000/- and received an amount of Rs.6,50,000/- as earnest money. It is agreed upon in the agreement that the defendants shall get necessary permission for sale of the suit schedule property and shall also arrange necessary documents for registration of Sale Deed. The defendants informed the plaintiff that O.S.No.172/2007 is pending before the court of Devanahalli and in order to resolve the same, there is need of money. Accordingly, the plaintiff has paid an amount of Rs.9,00,000/- in the year 2020 and 2023 in favour of defendants No.1 and 3. After receiving the amount through cheques, the defendants failed to executed the registered Sale Deed in favour of the plaintiff. On the other hand the defendants have taken a contention that the suit agreement is a created documents. It is stated that the suit property has been granted by the Government in favour of the defendants and the same is covered under PTCL Act. As per Section 3 and 4 of PTCL Act the present suit is not maintainable. There is no sale permission obtained by the plaintiff and the defendants to execute the Sale Deed. The plaintiff has taken the advantage of



the helpless position of the defendants and created the Sale Agreement without paying any consideration amount. It is also stated that the plaintiff has obtained the signatures of the defendants on the blank papers.

8. In view of rival contentions, the plaint averments indicate that the suit schedule property is a land granted under PTCL Act. In para No.3 of the plaint the plaintiff has clearly stated that the parties have agreed that Sale Deed to be executed after obtaining necessary sale permission. However, the plaintiff has cleverly not disclosed the nature of the suit property. The defendants have taken a contention that the suit property has been granted by the Government under PTCL Act with a condition not to alienate the same. Under such circumstances, the capacity of the defendants to alienate the suit schedule property by entering into the agreement of sale in favour of plaintiff itself is under doubt. In a decision of Hon'ble High Court of Karnataka reported in **2022(4) KCCR 3203, Satyam Lakshmi V/s K.M. Krishnamurthy and others**, it is held that as per section 20 of Specific Relief Act, agreement to sell entered into without obtaining the prior permission of Government is void and unenforceable under law and in view of the same the suit filed by the plaintiff for the relief of Specific Performance of contract is not maintainable and the suit is restricted only in respect to relief of refund of advance sale consideration amount. The Hon'ble High Court has clearly held in the above decision that the plaintiff is not entitled to relief of Specific Performance and the same is



barred under section 4 of PTCL Act. In this suit, there is no dispute that the suit property was originally granted in favour of a person belonging to scheduled Caste/ scheduled Tribe. In a decision reported in **ILR 20112 KAR 4261**, wherein it is held that as per section 4 of PTCL Act there is prohibition of Transfer of land which has been granted in favour of a person belonging to scheduled Caste/ scheduled Tribe. Under such circumstances, the above decisions are clearly applicable to the case on hand. It is settled position of law that when when the main relief itself cannot be granted, the question of granting Temporary Injunction in favour of plaintiff does not arise.

9. On going through the suit agreement, it is clearly appearing that the same is an unregistered document. The plaintiff has subsequently paid the deficit stamp duty and penalty on the said instruments. The parties have agreed upon that the sale consideration should be Rs.22,50,000/-. It is also appearing that the plaintiff has paid an amount of Rs.6,50,000/- as advance consideration. It is pertinent to note that the sale agreement is dated 21.03.2011. The present suit came to be filed in the year 2024. Before institution of the suit the plaintiff got issued legal notice dated 23.05.2024. The plaintiff has explained the inordinate delay in filing the suit in the plaint and the affidavit accompanying the present application. It is to be noted here that the plaintiff has orally contended that the defendants have delayed the execution of registered Sale Deed and also informed



the plaintiff about the pending litigation in O.S.No.172/2007 in February, 2013. In para No.6 of the plaint the plaintiff has stated that an amount of Rs.9,00,000/- has been paid to the defendants No.1 and 3 by way of cheques. The learned counsel for the defendants has argued that the plaintiff has falsely contended that the defendants were not ready to execute the Sale Deed and also not obtained the necessary documents. It is also denied that the plaintiff approached the concerned authorities for obtaining sale permission and phody durasthi and at that time the defendants have disclosed about O.S.No.172/2007. They have also denied that the amount of Rs.9,00,000/- has been received from the plaintiff as part consideration amount. It is to be noted that the plaintiff has not obtained any endorsement regarding payment of an amount of Rs.9,00,000/- in the year 2020 and 2023 in favour of defendants No.1 and 4. There is also no explanation in the plaint as to the difficulty in obtaining such endorsement on the sale agreement. The defendants have clearly contended that the amount is transferred to the accounts of defendants No.1 and 3 only in order to show the ready and willingness on the part of the plaintiff. On going through the records of the case, it is appearing that after entering into the agreement of sale dated 21.03.2011 there is no documentary evidence to establish that the plaintiff has made any attempt to get execute registered Sale Deed in his favour. The oral contention of the plaintiff is not supported by even a single piece of paper. Suddenly, the plaintiff became



active and deposited the amount through cheques in favour of the defendants No.1 and 3 and also issued legal notice in the year 2024. As per defendants the plaintiff has done such acts only in order to bring the suit within limitation and also to show the ready and willingness on his behalf. The plaintiff has not produced any material to show that he has approached the defendants at any point of time between 2011 to 2023. Under such circumstances, there is no prima facie case in favour of plaintiff and the balance of convenience does not tilt in his favour. Hence, I answer **Point No.1 in the Negative.**

10. **Point No.2:** While answering Point No.1 it is held that there is no prima facie case in favour of the plaintiff. When there is no prima facie case in favour of plaintiff, the question of considering the irreparable harm and injury to be caused to the plaintiff does not arise. If the Temporary Injunction is granted, the defendants will suffer irreparable harm and injury. Hence, I answer **Point No.2 in the Negative.**

11. **Point No.3:** In view of the above findings, I proceed to pass the following:

ORDER

I.A. No.I filed by the plaintiff
U/o. XXXIX Rule 1 & 2



R/w.Sec.151 of C.P.C is hereby
rejected.

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 08th Day of November, 2024).

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

***B.S.M**

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