

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE
AND JMFC., AT DEVANAHALLI**

Present: Smt. Sukanya.C.S, B.A. LLB.
Addl. Civil Judge & JMFC.,
Devanahalli.

Dated this the 16th Day of November 2024

O.S.No.286/2014

- Plaintiff/s:
1. Mr. Pradeep Krishnaswamy,
S/o Mr. D.S Krishnaswamy,
Aged about 52 years.
 2. Mrs. Anuradha Arora,
W/o Mr. Pradeep Krishnaswamy
Aged about 49 years.

Both residing at:
10557, 155th Ave NE,
Redmond WA 98052,
USA.

Rep by their GPA
Mrs Prarthana Simha,
Aged about 47 years,
W/o Mr. Vijay Simha,
R/at:
JP 37, 5th Cross,
1st Main,
LIC Colony, Jayanagar
3rd Block East
Bangalore – 11.

V/s

Defendant/s : M/s Metro Corp rep by its partner
Mr. Deepak Krishnappa & others

PARTIES IN IA

Applicant/ Plaintiff : Mr. Pradeep
Krishnaswamy, & others

V/s

Opponent/Defendant : M/s Metro Corp rep by its
partner Mr. Deepak
Krishnappa & others

ORDER PASSED ON I.A. I

The plaintiffs have filed I.A No. 1 U/o 39 Rule 1 and 2 section, 94 R/w Section 151 of CPC, seeking to pass an ad interim temporary injunction restraining the defendants, their representative and claiming anyone under them from interfering with the peaceful possession and enjoyment of their plaint schedule properties.

The plaintiffs sought relief in I.A No. 1 to restrain the defendants from interfering with their peaceful

possession of the properties mentioned in the plaint schedule. However, the plaintiffs later filed a memo restraining their prayer in I.A no. 1 to only the B schedule property.

In support of the application, the GPA holder of plaintiffs has sworn to an affidavit stating that on 31-10-2005, the plaintiffs have entered into an agreement to sell with defendant No. 1 regarding the B schedule property. According to this agreement, defendant No. 1 and 3 to 14 executed a sale deed in favour of them. The B schedule property was carved from the A schedule property, which included survey numbers 94, 95, 96, 97 and 98 in Ellthore village, owned by defendants No. 3 to 13.

After converting this agricultural land for non agricultural purposes, defendants No. 3 to 13 entered into a development agreement and executed a general power of attorney on 31-10-2005 and facility agreement on 03-11-2005, with defendant No. 14 for developing the

property. Defendant No. 14 assigned its rights to defendant No. 1 on 05-08-2005. Following this, defendant No. 1 proposed a scheme for ownership of plots named 'Metrocrop Nirvana', a gated community with villas.

The plaintiffs signed an agreement of sale with defendant No. 1 on 31-10-2005, for the B schedule property. Upon payment as per the agreement, defendants No. 1 and 3 to 14 executed a sale deed in favour of the plaintiff on 10-08-2006, granting possession of the B schedule property to plaintiffs.

They have borrowed the total amount of Rs. 35,25,500/- from their hard earned money. The B schedule property was assigned the number 105 as per the sanctioned plan by BIAPPA. Additionally, they entered into a construction agreement and a facilities agreement with defendant No. 2 on 03-11-2005. This

agreement was for constructing a villa on the B schedule property and providing amenities such as roads, external water supply, sewage, networks, manholes and a water treatment plant for the common benefit enjoyment of all villa occupants in the project.

Despite making regular payments, defendant No. 2 has excessively delayed the construction of the villas. Various communications exchanged with defendants No. 1 and 2 have not led to any results. When they visited the main office of defendants No. 1 and 2, they found it non functional. Additionally, construction equipments, that was previously on site had been removed by defendants No. 1 and 2. When they attempted to visit the property to resume construction at their plot, they were stopped at the gate and prevented from entering associates of defendants No. 1 and 2. The defendants No. 1 and 2 have no legal right or title over the B schedule property. Hence they have filed this application.

3. In spite of service of summons, defendant No. 1, 3 to 8 and 11 to 14 have appeared before court through their counsel. The defendant No. 3 filed objection to I.A No. 1. Defendant No. 4 to 8 and 11 to 13 have adopted objection filed by the defendant No. 3 by filing memo. Defendant No. 14 filed its written statement and adopted contents written statement as objection to I.A No. 1 by filing memo. In spite of service of notice defendant NO. 2, 9 and 10 have failed to appear before court and they have been placed ex parte. Defendant No. 1 appeared before the court through its counsel but has not filed any objections to I.A No. 1.

Defendant No. 3 to 8, 11 to 13 contended in their objections that plaintiffs were never put in possession and enjoyment of the suit schedule B property by virtue of the alleged sale deed, they have not sought the relief of declaration and possession. Hence suit is not maintainable. Further contended that, the plaintiffs have

not made any allegation against defendant No. 3 to 13, therefore the suit against them is liable to be dismissed. Further contended that plaintiffs are not entitled for the any kind of reliefs against them. The plaintiffs alleged that defendants No. 1 and 2 prevented them from entering the B schedule property but suit is filed against them also. The said allegation made by plaintiffs itself indicates that plaintiffs are not in possession and they want to recover possession. Therefore, plaintiffs have not made out any prima facie case. It is further contended that they are in the peaceful possession and enjoyment over the entire A schedule properties. Hence they pray to dismiss the I.A No. 1.

Defendant No. 14 contended that as per desire of the defendant No. 1 he executed a sale deed on behalf of defendants No. 3, 7 and 12 under a power of attorney, but lacked authority from defendants No. 4, 5, 6, 8, 9, 10 and 11. Consequently, he was not empowered to execute the sale deed. Furthermore, the plaintiffs did not

receive possession of the B schedule property as it was explicitly stated in both the agreement and the general power of attorney that possession was not transferred. Thus, any action taken by the defendant No. 1. It is further contended that he is not a party to the proposed scheme of Metrocorp Nirvana. Paragraph 11 of the plaint statement shows that the plaintiffs are not in possession of the B schedule property and their grievance is against defendant No. 1 and 2 not the other defendants. The real owners are in possession of the properties. Hence he prays to dismiss the I.A No. 1.

4. Heard the arguments addressed by the learned counsel for plaintiffs and defendant number 1. After hearing the arguments and on perusal of the documents the points that arise for consideration are as hereunder:

POINTS

- 1. Whether the plaintiffs have made out a prima-facie case on I A no. 1 ?**

2. Whether balance convenience lies in favour of the plaintiffs on I A no. 1 ?

3. Whether the plaintiffs will be put to irreparable loss and hardship if I.A.No.1 to is rejected?

4. What order?

5. My answer to the above Points are as under:-

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:

REASONS

6. **POINT NO. 1:** It is settled Law that in order to obtained the relief of temporary injunction it is necessary to show the prima-facie case, balance of inconvenience or irreparable hardship as could be seen from the pleadings. The power to grant a temporary injunction is at the discretion of the court. At very outset it is relevant to note here that plaintiffs have claimed an order of

temporary injunction under I.A.No.I restraining the defendants their representative and claiming anyone under them from interfering with the peaceful possession and enjoyment of their plaint schedule properties in any manner till disposal of suit.

7. The plaintiffs claimed that they have purchased the suit B schedule property, which is curved out of the A schedule property on 10-08-2006 by way of sale deed on 10-08-2006 from defendant No. 1 and 3 to 14 and thereby plaintiffs have became owner and in peaceful possession over the B schedule property.

8. The plaintiffs have also stated that defendants 3 to 13 have entered into a development agreement with defendant No. 14 on 03-11-2005, to develop the property. Defendant No. 14 assigned certain powers to defendant No. 1 on 05-08-2005. Following this, defendant number 1 proposed a scheme for ownership of

plots named Metrocorp Nirvana, a gated community with villas.

9. The plaintiffs have entered into constructions agreement with defendant No. 1 and 2 under which it was agreed that defendant No. 1 and 2 shall constructive villas in the B schedule property within the stipulated period fixed in the construction agreement. However, the defendant No. 1 and 2 have not performed their part of contract as per constructions agreement. The plaintiff have also alleged that defendants have been trying to interfere with their peaceful possession and enjoyment over the B schedule property.

10. On the other hand though the defendant No. 3 to 8 and 11 to 14 have filed separate written statement by raising various contentions as noted above, in support of their contentions they have not placed any piece of documents before the court to resist the case of the plaintiffs and to substantiate their defense.

11. The defendant No. 3 to 8 and 11 to 14 in their written statement denied the execution of GPA in favour of defendant No. 14 and defendant No. 14 has also denied the sale deed executed in favor of plaintiff. However, there is nothing on record to show that the GPA as well as sale deed have been questioned or challenged by defendant No. 1 to 14 before the competent court of law for cancellation or setting aside.

12. The plaintiffs in support of their case have produced copy of sale deed as well as constructions agreement and cash paid receipts. The photocopy of sale deed indicates that they purchased suit B schedule property from defendant No. 3 to 14 and interns of constructions agreement the plaintiffs entered into constructions agreement with defendant No. 2 entrusting them to construct villa in the B schedule property. A copies of the cash received acknowledgements issued by an authorized representative of defendant number 2' company confirms that the company has received

approximately Rs 35,00,000/- from the plaintiffs in different dates for constructing a villa in a the B schedule property.

13. It is also relevant to note that defendant No. 1 though appeared before the court through its learned counsel but did not filed written statement and objection to I.A No. 1. While defendant No. 2 after receipt of summons absent before the court and has been placed ex-parte. The documents such as sale deed, construction agreement cash paid receipts and confirmation letter issued by an authorized representative of defendant number 2's company placed on record by the plaintiff's prima facie makes out a case in favour of the plaintiffs.

14. However, the plaintiffs in the prayer Coolum as sought for temporary injunction order against the all the defendants but the entire pleadings of the plaint as well as I.A No. 1 are read carefully it could be seen that the

allegations with regard to interference is only against defendant No. 1 and 2 but not against remaining defendants who are resisted the I.A No. 1. As such this court is of opinion that temporary injunction order can only be granted against defendant No. 1 and 2. With this observation point No. 1 is answered in the affirmative.

With these observations this court has answered Point No.1 in the affirmative.

15.Point No.2: Since dispute revolves around the construction work in the suit B schedule property. The plaintiff's having sale deed and construction agreement in respect of suit B property. The defendant's number appeared before court but it has not resisted the I A number 1 by filling objections. Defendant number 2 remained absent. The only contesting defendants of the application are defendant number 3 to 8 and 11 to 13. Though they denying the sale agreement, sale deed and construction agreement and facilitates agreement in favor of plaintiffs, but they are clearly and unequivocally

admitted the execution of registered GPA in favour of defendant number 14 with development agreement dated: 19-05-2005. A copies of the cash received acknowledgements issued by an authorized representative of defendant number 2' company confirms that the company has received approximately Rs 35,00,000/- from the plaintiffs in different dates for constructing a villa in a the B schedule property. If the application is not allowed definitely the plaintiffs will be put to irreparable loss and injury than the defendants. The balance of convenience lies in favour of the plaintiffs. The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicants. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it. On weighing the pleadings as well as the

documents of the plaintiffs, the balance of convenience lies in favour of the plaintiffs, whereas balance of convenience does not lie in favour of the defendants. Hence, point No.2 is answered in affirmative.

16. Point No.3 :The existence of the prima facie case alone does not entitle the applicant for a temporary injunction. The applicants must further satisfy the court about the third condition by showing that they will suffer irreparable injury if the injunction as prayed is not granted and that there is no other remedy open to them by which they can protect themselves from the consequences of apprehended injury. This court is of the opinion that if the present I.A.No.1 is rejected more mischief and hardship will cause to the Plaintiffs when compared to the mischief and hardship will cause to the Defendants. **Hence this Court has answered Points No. 3 in the Affirmative.**

17. **Point No.4:-** For the aforesaid discussion on Points No.1 to 4, this Court proceeds to pass the following:

: O R D E R :

I.A.No.1 filed by the Plaintiffs under Order XXXIX Rule 1 and 2 of CPC is hereby allowed.

The defendants No. 1 and 2 or anybody claiming under them are hereby restrained by means of temporary injunction from interfering with the plaintiff's peaceful possession and enjoyment of the plaint schedule B property till disposal of the suit.

No order as to costs.

(Dictated to the stenographer directly on computer, corrected by me and then pronounced in the open Court, this 16th day of November 2024)

(Sukanya C.S)

**Addl Civil Judge & JMFC.,
Devanahalli.**

Order pronounced in open court vide separate

ORDER

I.A.No.1 filed by the Plaintiffs under Order XXXIX Rule 1 and 2 of CPC is hereby allowed.

The defendants No. 1 and 2 or anybody claiming under them are hereby restrained by means of temporary injunction from interfering with the plaintiff's peaceful possession and enjoyment of the plaint schedule B property till disposal of the suit.

No order as to costs.

For compliance U/s 89 of CPC

Addl Civil Judge and JMFC,
Devanahalli.

