

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
DODDABALLAPUR.

PRESENT: Sri. Arvind Saibanna Hagargi.,
B.Sc., LL.B (Spl)
Senior Civil Judge & JMFC., Doddaballapur.

Dated this 23rd AUGUST 2023

O.S.No.203/2023

Plaintiffs:

1. Smt. Jayamma,
W/o late Gangappa,
Aged about 71 years,
2. Smt. Yallamma,
D/o late Gangappa,
Aged about 43 years,

Both residing at:
Sunnaghattahalli Village,
Thubagere Hobli,
Doddaballapura Taluk,
Bengaluru Rural District.

(Represented by Advocate Smt. M.Geetha)

Versus

Defendants:

1. Sri. Shankara.T.A,
S/o Anjinappa,
Aged about 43 years,
59, Thindlu Village,
Jalige Post, Kundana Hobli,
Devanahalli Taluk,
Bengaluru Rural District.

Represented by Advocate
Sri.Channegowda for Defendant)

* * * * *

Date of Institution of the suit : 04-03-2023

Nature of the suit : Declaration and injunction

Date of the commencement

Recording of the evidence : - Nil -

(ARAVIND SAIBANNA HAGARGI)

Senior Civil Judge and JMFC.

Doddaballapura

ORDERS ON I.A.No.I and II

1. These are two applications filed by the plaintiffs against the defendant under order 39 Rule 1 and 2 of CPC for two different reliefs. In I.A.No.1 plaintiffs have prayed to restrain the defendants from interfering with possession and enjoyment of over suit schedule property and I.A.No.2 the plaintiffs has prayed to restrain the defendant from alienation of suit schedule property pending disposal of the suit.

2. FACTS IN BRIEF:

Sl. No.	Sy.No.	Acres-guntas	Situated at
1	Sy.No.32, New Sy.No.174	Measuring 00- 30 Guntas	Karanala Village, Thubagere Hobli, Doddaballapura Taluk,

3. The plaintiff No.1 has acquired the suit land by way of government grant vide orders of Tahasildar Doddaballapura dated: 30.09.1994 issued on 25.05.2006 in LND RUC-495/1994-95. The plaintiff No.1 is put in possession of the suit property. The plaintiff No.2 is the daughter of plaintiff No.1. M.R.NO.05/2010-11 is sanctioned in the name of plaintiff No.1. Suit land is renumbered as Sy.No.174. This renumbering of suit land is not at dispute. The plaintiff on basis of grant is in possession of the suit property.

4. It is specific case of plaintiff that the plaintiff No.1 was in financial crisis in October 2021. Hence, she approached defendant with a request to monetary help to the tune of Rs.10,00,000/- (Rupees Ten lakhs only) promising that she will repay the same with in they year. The defendant has informed the plaintiff that he is ready to lend money to the plaintiff on the condition that the plaintiff shall subscribe their signature on the bank papers on the blank sheet for executing loan security document. As the plaintiff where in urgent need of money they agreed to subscribe their signatures on the blank sheets. It is the allegations of the plaintiff that on 25.10.2021 the defendant have took the plaintiffs to the office of sub-registrar stating that he is required to loan security document and obtained the signature on the various blank sheets and defendant has assured the plaintiffs that he will cancel the loan security document immediately after repayment

of loan. On this promise the plaintiffs have executed the document by receiving an amount of Rs.8,70,000/- (Rupees Eight lakh seventy thousand) in total through Cheque and Google pay and also by cash. It is the case of the plaintiff that they have never executed in the G.P.A or sale deed in favour of defendant.

5. It is specific allegations of plaintiff that in the end of December-2022 the relationship of plaintiff and defendant were cordial. In the first week of January -2023 the plaintiffs have heard that the defendant got executed the power of attorney making false representation executing loan security document. As such try to meet the defendant. But the defendant has avoided the plaintiff. The plaintiff has said to verify revenue record and found that M.R.No..H25/2022-23 was sanctioned in favour of defendant on the basis of sale deed dated: 13.12.2022 and G.P.A dated: 25.10.2021. It is specific allegation of the plaintiff the defendant had got created that the above referred GPA and sale deed by playing fraud on the plaintiffs. And the sale consideration of suit property in sale deed dated: 13.12.2022 was stated to be Rs.13,12,500/- (Rupees Thirteen lakhs twelve thousand five hundred only). But the plaintiffs did not receive any consideration amount on 13.12.2022.

6. The suit property is worth Rs.50,00,000/- (Rupees Fifty lakhs only) at the spot. The plaintiffs are having entered an agreement of sale deed dated: 12.06.2015 in favour of one Sri. Munegowda.K of Khanisandra along with another property in his favour. Therefore executing the GPA in favour of

defendant by the plaintiff is not need for the plaintiffs. The defendant is said to be making efforts to alienate the suit schedule property creating third party charge over the suit property. The plaintiffs are still in possession of the suit property. The defendant is alleged to interfering with the possession of plaintiff over the suit property. In this regard the plaintiffs have approached the jurisdictional police. But police have informed the plaintiff the dispute of civil nature and therefore approach the civil Court. Hence present suit by the plaintiff.

7. Suit summons are issued. Defendant duly served. Defendant have appeared through his advocate and filed his written statement. In the written statement the defendant has denied the title of plaintiff No.1 over the suit property and relationship of plaintiff No.1 and 2 with Gangappa. The defense of the defendant is that suit land was originally granted in the name of Defendant No.1 under the land grant order dated: 20.05.2006 and grant certificate was said to be issued. It is specific defense of the defendant that plaintiff No.1 and 2 have agreed to sell the suit property to the defendant and in furtherance of the same the plaintiff are said to have executed the agreement of sale and general power of attorney dated: 25.10.2021 in favour of defendant. The defendant is said to have paid an amount of Rs.7,70,000/- (Rupees Seven lakhs seventy thousand only) to the plaintiffs through Google pay and by Cheque and also cash. The defendant is also said to have paid an amount of Rs.1,30,000/- (Rupees One lakh thirty thousand only) to Sri. Munegowda who was also holding the

agreement of sale in respect of suit properties. Therefore entire sale consideration amount was said to be paid by the defendant to the plaintiffs and Sri. Munegowda in respect of suit properties and defendant is said to have become absolute owner of the suit property. By virtue of registered sale deed dated: 13.12.2022. The defendant has further contended that the plaintiffs after executing the sale deed dated: 13.12.2022 have filed this false suit with dis-honest intention to extract additional money from the defendants. Hence on this contentions defendant prayed to dismiss the suit of the plaintiff.

8. The plaintiff have filed I.A.No.1 and 2 under order 39 Rule 1 and 2 of CPC against the defendant with a prayer of interim injunction order restraining the defendant from alienation of suit property and creating third party charge and also restrain the defendant from interfering with the plaintiff possession over the suit property pending disposal of the suit.

9. An affidavit is filed by the plaintiff No.1 along with I.A.No.1 and 2 the entire plaint averments and allegations are restated in the affidavit accompanying I.A.No.1 and 2 and prayed to allow the I.A.No.1 and 2.

10. The defendant has filed memo stating that the contents of written statement may be treated as his objections to I.A.No.1 and 2. Heard advocate for plaintiff Smt. Geetha.M and Sri. Channegowda advocate for the defendant. Heard both sides on I.A.No.1 and II.

11. The points that arises for my consideration are:

1.) Whether the plaintiff has made out prima facie case for consideration on I.A.No.1 and 2.

2.) In whose favour in balance of convince and lies in respect of I.A.No.1 and 2.

3.) Who will be put to irreparable loss in the event of refusable of injunction order as claim in the I.A.No.1 and 2.

4.) What order?

12. My findings on aforesaid points are as under:

Point No.1 : In affirmative.

Point No.2 and 3 : In favour of plaintiff

Point No.4 : As per final orders.

REASONS

13. Point No.1

These applications filed by the plaintiffs against the defendants under order 39 Rule 1 and 2 of CPC with a distinct prayers restraining the defendants from alienation and creating charge and encumbrance over the suit land and also restrain the defendants from causing disturbance in the possession of plaintiff till disposal of suit. The relief of interim injunction is governed by order 39 Rule 1 and 2 of CPC and Section 37 of Specific Relief Act. The plaintiffs have filed the present application under order 39 Rule 1 and 2 of CPC. Therefore, plaintiffs have to make out a prima-facie case for grant of

interim injunction order. Prima-facie case includes maintainability of the suit, whether there is a triable issue which is made out by the plaintiffs at the stage of this case. Whether this Court has got jurisdiction to try this suit is also falls under the prima-facie case. Making out of prima-facie case is really a harbinger for consideration of application under order 39 Rule 1 and 2 of CPC. **This principle of law is laid down by the Hon'ble High Court of Karnataka in the case of Gowrishankara Swamigalu V/s. Siddaganga Mutt** reported in **ILR 1989 KAR Page No.1701** where in it is held that-

“Order 39 Rules 1 & 2 – Grant of ad-interim injunction – Principles applicable - Existence of prima-facie case is harbinger to investigate other aspects – If no prima facie case, balance of convenience, irreparable loss etc., need no consideration – Existence of prima-facie case does not permit leap-frogging by plaintiff to injunction directly without evaluation of other considerations unmindful of other consequences – Even if unbeatable prima-facie case exists injunction not to be granted, if consequences of grant, detrimental in nature”.

And also by **Hon'ble Supreme Court of India** in the case of **Kashi Math Samsthan and others V/s. Srimad Sudhindra Thirtha Swamy and another** reported in **AIR 2010 SCC Page No.296** wherein it is held that –

“Grant of interim relief – requirements – Balance of convenience and irreparable loss – When not required to be considered – Held, in order to obtain order of injunction, party has to show (i) prima-facie case to go for trial, (ii) balance of convenience in his favour, and (iii) irreparable loss and injury if injunction is not granted – Question of considering balance of convenience or irreparable loss and injury to the party does not arise if party fails to prove prima-facie case to go for trial.”

14. This is a suit of plaintiff for declaration of title of plaintiffs on the basis of land grant made on 30.09.1994 and issued on 25.05.2006 in LND RUC-495/1994-95 and also declaration to declare that GPA dated: 25.10.2021 sale deed dated: 13.12.2022 in respect of suit property are not binding on the right and title of the plaintiff No.1 over the suit property and consequential relief of permanent injunctions to restrain the defendant from causing interference with the plaintiff possession over the suit property and also alienation suit property permanently.

15. The acquisition of the title of plaintiff over the suit property under the land grant is an admitted fact by the plaintiff No.1. This can be same from the paragraph No.24 and 25 of the written statement of the defendant. Therefore the title of plaintiff No.1 is admitted. The transactions in between the plaintiff and defendant is disputed. The plaintiff has contended that they have obtained the loan from the defendant. But the defendant with the false representations or mis-representations

facts have got executed the GPA dated: 25.10.2021 stating that it is a loan security document. On the contrary the defendant contends that the plaintiffs with free consent to have executed the said general power of attorney. The execution of agreement of sale by the plaintiff No.1 and 2 in favour of one Munegowda.K on 12.06.2015 is also admitted fact both by the plaintiffs and defendants.

16. Now only the dispute that whether there is a sale transaction under section 54 of transfer of property act in between the plaintiff No.1 and 2 and defendant No.1 and 2 on the strength of GPA dated: 25.10.2021 and sale deed dated: 13.12.2022. The sale deed dated: 13.12.2022 is executed by the defendant No.1 in his favour both as vendor and vendee. The defendant has got executed the sale deed in his favour as power of attorney holder of plaintiff No.1 and 2. The sale consideration is shown as Rs.13,12,500/- and the sale consideration was said to be received by the plaintiff on the date of sale deed dated: 13.12.2022 then what about and how about the adjustment of payment of Rs.7,70,000/- to the plaintiff by the defendant is not clarified in the sale deed.

17. The plaintiffs have admitted the receipt of an amount of Rs. 7,70,000/- before execution of disputed GPA dated: 25.10.2021 but that amount is not referred in the sale deed dated: 13.12.2022 to fulfilled the ingredients of section 54 of TP act that is the consideration paid or part paid or got promised to pay extra. The defendant in the written statement states that he had Rs.7,70,000/-(Rupees Seven lakhs seventy thousand only) to the plaintiff and Rs.1,30,000/- (Rupees One lakh thirty thousand only) to Sri. Munegowda.K. But disputed sale deed

dated: 13.12.2022 is silent about this fact. The plaintiffs have denied execution of both the GPA and sale deed referred above. The plaintiffs have contended the transaction between the plaintiff and defendant are only loan transaction and not sale transaction and GPA are doubt full documents. Whether the above referred GPA and sale deeds are genuine or created by playing fraud is a matter of trail. But pending trail the suit property is needs to be protected. When the plaintiff has made out the case for trail that itself is a prima facie case for consideration of I.A.No.1 and 2.

18. Hence, I answer point No.1 in affirmative,

Point No.2 and 3:

19. The plaintiff have made out prima facie case the defendant in paragraph No.24 and 25 of the written statement had admitted the title of plaintiff No.1 over the suit property. The defendant is relying on the GPA dated: 25.10.2021 and sale deed dated: 13.12.2022 to establish the extinguishment of title plaintiff over the suit property. But both the documents are disputed and denied by the plaintiffs. The passing out of consideration in the documents and written statement pleadings are not consistent. One Sri. Munegowda.K was said to have receive Rs. 1,30,000/- (Rupees One Lakh thirty thousand only) as per paragraph of No.27 of written statement. But this fact is not recited in the sale deed dated: 13.12.2022. The admitted fact of receipt of Rs.7,70,000/- (Rupees Seven lakh seventy thousand only) by the plaintiff is not adjusted in the consideration amount reflected in sale deed dated:

13.12.2022 is doubtful circumstances. On these two clinching circumstance the entire dispute transactions seems to doubt full. The title and possession of plaintiff seems to have not extinguished over the suit property. Now the defendant is laying the hand over the suit property by virtue of said doubtful document. The doubtful document has to stand the trail. Pending trail their rights of parties over the suit property has to be kept intact until the final adjudication of the rights of parties after the trail. Such being the fact if the defendant who is making claim on the doubtful document is not restrained then it is the plaintiff who will be put to inconvenience or irreparable loss. **Hence, I answer point No.2 and 3 in favour of plaintiff.**

Point No.4:

20. In view of my findings on point No.1 to 4, I proceed to pass the following orders:

ORDERS

I.A.No.1 and 2 filed by the plaintiffs under order 39 Rule 1 and 2 of CPC are here by allowed.

The defendant, servants, agents or any person claiming through him are hereby restrained by way of temporary injunction from causing interference in the possession enjoyment of plaintiff over the suit properties till further orders.

The defendant, servants, agents or any person claiming through him are hereby restrained by way of temporary injunction from alienation,

encumbering and creating any third party interest over the suit properties till further orders.

(Dictated to the First Division Assistant, typed by him, corrected and then pronounced by me in the open Court today on the 23rd day of August 2023)

(ARVIND SAIBANNA HAGARGI)

Senior Civil Judge & JMFC,
Doddaballapura.