

IN THE COURT OF THE PRL., CIVIL JUDGE
& J M FC., HOSAKOTE.

PRESENT

Smt.Fairoza H Ukkali, B.A., LL.M.,
Prl.,Civil Judge & JMFC.Hoskote.

Dated this the 26th day of October, 2015.

O.S.NO.546/14.

Plaintiff : Sri. H.S.Chandrashekhara Aradhya
S/o. late M.Shivarudraiah
Aged about years,
Residing near Sri Rama Mandira,
Hoskote town,
Hoskote.
(By Sri. M.Venkataswamy, advocate)

/Vs/

Defendant:- Sri. H.Y.Ramaiah
S/o. Yajaman Yengappa
R/at. Opp. GEF Hospital,
Near Marthi Saw Mill,
Old Madras Road,
Hoskote town,
Hoskote,
Bengaluru Rural District.

(BY Sri. KNS/ANK,advocate)

Order on IA no:I

The plaintiff has filed this IA u/o 39 rule 1 and 2
r/w section 151 of CPC seeking an order of temporary
injunction restraining defendant, his agents, PA holders
nominees or any other person claiming under him from

alienating, creating charge or encumbering the suit schedule property pending disposal of the suit.

2. In the affidavit the applicant has stated that he has filed this suit for specific performance of the agreement of sale. It is averred that on 12.10.1983 an agreement of sale was entered into between the plaintiff and the defendant in respect of the suit schedule property for sale consideration of Rs. 4000/- and defendant has received Rs 500/- as earnest money, in presence of attesting witnesses and had agreed to execute the sale deed, after getting the documents of title and other records. On 14.08.2008 the defendant executed the supplementary agreement by receiving the balance sale consideration in presence of the attesting witnesses. It is averred that since the date of sale agreement dated 12.10.1983, the plaintiff is ready and willing to perform his part of contract and in spite of repeated requests and demands made to the defendant, the defendant has failed to execute the sale deed. It is further averred that now the defendant is making efforts to alienate the suit schedule property to 3rd parties by suppressing the subsisting sale agreement and if he does so, it will cause hardship and loss to the plaintiff. By contending that the plaintiff has made out a prima facie case and balance of convenience leans in his favour, the plaintiff has prayed for allowing the IA.

3. The defendant has filed his written statement and a memo adopting the contents of the written

statement as objection to IA no.1. The defendant has denied the execution of sale agreement in favour of the plaintiff and has denied the receipt of sale consideration of Rs 4000/-. Having denied all the plaintiff contentions, it is the defence of the defendant that the suit schedule property is an ancestral property and he has never executed any documents in respect of the suit schedule property in favour of the plaintiff. It is contended by the defendant that the suit is barred by limitation as same is filed after lapse of 32 years. Further it is averred that if the suit is decreed then the defendant will be put to hardship, loss and injury and it will result in grave, miscarriage of justice. On these grounds the defendant has prayed for the dismissal of suit and IA.

4.I have heard the learned counsel for plaintiff. In spite of sufficient opportunity given the counsel for the defendant has not advanced his argument. I have perused the record.

5.The points that arise for my consideration are :

- 1. Whether the plaintiff has made out a prima facie case for granting an order of temporary injunction?**
- 2. Whether the balance of convenience lies in favour of the plaintiff?**
- 3. Whether any loss or injury will cause to the plaintiff, if an order of temporary injunction is refused?**

4. What order ?

6. My findings to the above points are as under:-

Point No.1;- In the **affirmative**

Point No.2 & 3:-In the **affirmative**

Point No.4:- As per the final order

For the following:-

REASONS

7. Point no:1 : The plaintiff has filed the suit seeking the relief of specific performance of contract in respect of the suit schedule property. It is the contention of the plaintiff that the defendant is the owner of the suit schedule property. This fact has not been disputed by the defendant. The plaintiff has contended that the defendant having agreed to sell the suit schedule property for Rs.4000/- and by receiving Rs. 500/- has executed the agreement of sale dated 12.10.1983. This averment of the plaintiff has been specifically denied by the defendant. It is the further contention of the plaintiff that the defendant by receiving balance consideration of Rs. 3500/- has executed the supplemental agreement on 14.08.2008. This averment has also been specifically denied by the defendant.

8. The plaintiff says that the defendant having agreed to sell the suit schedule property, has executed a

sale agreement on 12.10.1983 and subsequently the supplemental agreement on 14.08.2008. But this plea of the plaintiff has been specifically denied by the defendant. As regards the proof of agreements are concerned the same require evidence. At this stage it is necessary to consider the prima facie case for granting or rejecting the relief of temporary injunction.

9. The plaintiff has claimed the relief of temporary injunction restraining the defendants, his agents or any other person claiming under him from alienating the suit schedule property in any mode. The defendant has not stated anything about he being making any efforts for alienating the suit schedule property. The defendant who had denied the execution of agreement of sale has taken up, the plea of the suit being barred by limitation. The adjudication of limitation is a mixed question of law and fact and hence it requires evidence. Therefore the said aspect cannot be considered at this initial stage.

10. As the suit is for specific performance of contract, it is necessary to keep the property intact till the disposal of the suit. If during the pendency of the suit the defendant alienates the property, then it will lead to multiplicity of proceedings. For the purpose of fair adjudication of the case and in order to avoid the

multiplicity of proceedings, it is just and proper to maintain the status quo of the property. Hence at this stage prima facie case had been made out by the plaintiff for granting an order of temporary injunction. Therefore point no.1 is answered in the **affirmative**.

11. Points no.2 and 3 : Both these points are taken up together for common discussion in order to avoid repetition, as they are inter-related.

12. In view of the reasons and finding on point no.1, as the plaintiff has made out a prima facie case, balance of convenience leans in his favour. If during the pendency of the suit the defendant alienates the suit property, then it will lead to multiplicity of proceedings and the same will cause hardship and injury to the plaintiff, who has approached this court seeking the relief of specific performance of contract in respect of the suit schedule property. If an order of temporary injunction is granted no loss or injury will cause to the defendant as the said order will help in keeping the property in status quo and the defendant is very well having an opportunity to get adjudicate his defence by way of evidence. In view of the above discussion point no.2 and 3 are answered in the **affirmative**.

13. Point no:4 : For the above said reasons and finding on points no.1 to 3, I proceed to pass the following:-

ORDER

IA no:I filed by the plaintiff u/o 39 rule 1 and 2 of CPC is hereby allowed.

An order of temporary injunction is granted restraining the defendant, his agents, PA holder or any other persons claiming under him from alienating, creating charge or encumbering the suit schedule property, pending disposal of the suit.

Under the circumstances of the case, no order as to costs.

(Dictated to the stenographer/typist, after transcribed and typed by her, corrected signed and then pronounced by me in the open court this the 26th day of October, 2015).

(Fairoza H. Ukkali)
Prl., Civil Judge & J.M.F.C.,
HOSKOTE.

