

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

Present: Sri. **Santosh Siddappa Palledh,**
B.A. LL.B.,(Spl)
Senior Civil Judge & JMFC.

O.S. No. 53/2015

Dated this the 20th day of **Sept.** 2016

Plaintiff: . C.Swamiyappa S/o A.Chinnappa Gownder
Aged about 57 years, Agriculturist,
R/o N. H-4 Bypass, Near Madderahalla,
Hiriyur.

(By Sri. D.G.G. Advocate)

// Versus //

Defendants: 1.Smt. V.Kavitha W/o C.Sukumar
Aged about 45 years,

2. Sushmitha D/o C. Sikumar
Aged about 18 years,

All are Agriculturists, R/o B.L .Gowda
Nagara, Near T.B. Circle, HIriyur Town.

(By Sri. D.G.G. Advocate)

PARTIES TO I.A. NO.II**APPLICANT/ Plaintiff : C. Swamiyappa****V/S****OPPONENT /Defendants: Smt. V.Kavitha and another****ORDER ON I.A. NO. III. FILED U/O 39 RULE 1 and 2
OF CPC**

The plaintiff has filed this application seeking to restrain the defendants from alienating the suit property till disposal of the suit.

2. It is contended that, the suit property is agreed to be sold in favour of plaintiff by the defendants for Rs.5,10,000-00 and they received Rs.5,00,000-00 as advance money. Now they are declining to perform their contract as such the suit is brought for specific performance of the contract and the application is filed to restrain the defendants from alienating the suit property till disposal of the suit in order to protect the rights of plaintiff.

3. The defendants have appeared through counsel and have filed Written Statement and objections to this application. The defendant No. 1 has filed Written Statement and objections wherein it is contended that, they have not agreed to sell the suit property and have not received any money from plaintiff. It is contended that,

plaintiff is money lender and defendant No. 1 had many transaction with plaintiff since 3 years. Loan was raised by defendant No. 1 from the plaintiff and the plaintiff got executed the agreement of sale for security purpose. For so many times after clearing the loan the agreements were cancelled. It is agreed that Rs.5,00,000-00 loan was borrowed on 21-04-2014 for security purpose agreement was executed. In 2015 Jan month Rs.5,00,000-00 with interest is paid and it was asked to cancel the agreement but, plaintiff went on dragging and filed this frivolous suit. Therefore, seeks to dismiss the application.

4. Heard arguments from both sides.

5. In view of the rival submissions the points arise for consideration as under:

1. Whether the plaintiff proves Prima Facie case.?

2. Whether the plaintiff proves balance of convenience lies in his favour and irreparable loss would be caused to him if injunction is denied ?

3. what Order ?

6. My finding on the above points is as under:

Point No. 1 and 2 : In the Negative.

Point No.3 : As per final order for the following

REASONS

7. **Point No.1 & 2 :** In this case plaintiff claims that, defendants agreed to sell the suit property for Rs.5,10,000-00 and executed agreement of Sale on 21-04-2014 by accepting Rs.5,00,000-00 as advance amount. Thereafter in spite of best efforts and approach by the plaintiff, defendants did not come forward to receive the balance amount and execute sale deed. Thereby he has brought the suit for specific performance of the contract.

8. On the other hand defendant No. 1 contents that, it is only the security document for the loan borrowed from the plaintiff. It is vehemently argued by the plaintiff that, the agreement of sale is registered one and there is every chance that, the alienation of property may be done and it will cause prejudice to the rights of plaintiff and has to fight with many more litigants and strangers. To counter this the counsel for defendant No. 1 argued that, the plaintiff is a money lender and defendant No. 1 has borrowed money from him since 2013 and it was habit to execute agreement of Sale for security purpose and on repayment of loan those agreements were cancelled . To support his arguments he has produced 4 Xerox copies of the agreement of Sale which were appearing to be registered one with the Sub-registrar. These documents show that, the plaintiff of this case has entered into agreement of Sale with defendants of this case for the property Assessment No. 437/1375/437

measuring 40 X 30 feet situated at water tank road in Hiriyr. It is the common property which is involved in the agreement of Sale dated: 12-02-2013, 14-05-2013, 28-08-2013 and 12-04-2013. The parties are also plaintiff and defendants of this case in all these agreements. There is noticeable point that, all these agreements are executed in 2013.

9. It is pertinent to note here that, in order to avail the order of Injunction which is equitable relief, party approaching the court must approach with clean hands. He shall not claim equitable relief unless he shows equity. In this case the plaintiff averments never disclosed about the earlier agreements entered into between the plaintiff and defendants for suit property. But the defendant No. 1 has taken the contention that, the agreements were cancelled after payment of loan amount. No doubt it requires full pledged trial to hold that, it is not for sale of suit property but for the security of the loan amount borrowed from plaintiff. But at this stage it is noticeable that, plaintiff never disclosed these facts and what was the reason for not disclosing is not canvassed in the arguments also and even after the written statement filed by defendant No. 1 also plaintiff was not vigilant to disclose these facts by way of amendment. The agreement of Sale documents produced by defendant No. 1 are 4 documents which are of the year 2013 itself. Therefore what was the necessity for executing so many documents is not properly explained by

the plaintiff. On the other hand it creates doubt to believe the case of plaintiff at this stage. It is required to be proved by the plaintiff that, the agreement of Sale is executed for the true purpose of Sale of suit property by the defendants. At this stage the plaintiff failed to prove genuine ground of claim made by him and the defendant No. 1 has shown Prima Facie case in her favour. Since the plaintiff has not shown his clean hands for approaching the Court, the equitable relief cannot be granted. The balance of convenience lies in favour of defendant No. 1 rather plaintiff. The irreparable loss could be compensated if the plaintiff is able to prove his case. But, at this stage I am of the opinion that, it is doubtful case and hence, I am declining to grant injunction in favour of plaintiff. **Hence, I answer the points No. 1 and 2 in the Negative.**

10. POINT NO. 3: As the point No. 1 and 2 are answered in the Negative, I proceed the following:

:ORDER:

The I.A. 2 filed U/o 39 rule 1 and 2 of CPC is hereby rejected.

(Dictated to the Stenographer, transcribed and computerized by her, script corrected and then pronounced by me in Open Court on this the 20th day of Sept. 2016.)

(Santosh Siddappa Palledh)
Senior Civil Judge & JMFC., Hiriur

