

**IN THE COURT OF PRL. CIVIL JUDGE & J.M.F.C. HOSADURGA  
AT : HOSADURGA**

**PRESENT :-**

**SHRI. SUNIL S. HOSAMANI ,  
B.COM., LL.M.  
CIVIL JUDGE & J.M.F.C.  
HOSADURGA.**

Dated this, the 29<sup>th</sup> day of August 2015

**O.S. No.203/2015**

Petitioner/ Plaintiff : R. Kantharaj S/o Late Rudrappa,  
Dead by Smt. S.L Anuvani  
represented by GPA holder.

**(Reptd By Sri. H.G.K., Advocate)**

**-Vs-**

Respondent/defendants: B.M. Veerabhadrappe  
S/o Late Marulappa,  
and others

**(D1 to 5 Reptd By Sri. M.S., Advocate,)**

**:: ORDER ON IA No-IX::**

The petitioner/plaintiff advocate filed IA No. I under order XXXIX rule 1 & 2 CPC to restrain the defendants or any body on their behalf from dispossessing the plaintiff from suit schedule property file disposal of suit..

2. In support of IA No-I, the petitioner/plaintiff GPA holder filed the affidavit and contended that, the plaintiff filed this suit for specific performance for agreement. The defendants being the

owner of suit property have executed agreement infavour of deceased R. Kantharaj on 14-08-2006. Accordingly they have received advance amount of Rs.1,50,000/-. But mean while Kantharaj was died. To the said agreement, the defendants No. 2 to 5 have also signed as witnesses. But now the defendants are not ready to execute the sale deed as per the agreement. Hence, he being the G.P.A holder of plaintiff has filed this suit. Now the defendants were trying to disposes the plaintiff from the suit schedule property. In the said agreement it is also mentioned about giving of possession. Accordingly till today the plaintiff is in possession of suit property and growing the crops. But now the defendants are trying to evict the plaintiff from suit property. He being the GPA holder filed IA No. I for seeking interim relief. He having prima-facie case in his favour. This balance of convenience lies in his favour. If the temporary injunction is not granted he will be put to loss. Hence, he prays to allow IA No.I.

3. The defendant have appeared through their advocate and filed their written statement. Further they also filed memo adopting the said written statement as objection to IA No. I. As per the defendants, the suit of the plaintiff is not maintainable. The agreement which claimed by the petitioner /plaintiff GPA holder is a created document. Further they contended that the suit property still standing in the name of Marulappa who is the father of defendant No1. Hence the question of executing the agreement by the defendant No. 1 cannot be arias. Further they contend that earlier the defendant No.1 Veerabadrappa

divided the family properties with his brother. At the time of making partition, the Kantharaju has taken the signature of defendant No 1 on blank papers. Further O.S 217/2003 filed for partition in their family properties subsequently the Kantharaj has created documents as sale agreement. Now on the basis of created document this suit is filed. But when the suit O.S 217/2003 was pending the alleged agreement was created. Hence, it attract lis pendency. Hence this suit is not maintainable. Now they are in possession of suit schedule property. Now the Kantharaj wife claiming the agreement which is created document filed this suit through her GPA holder who do not know the earlier suit proceedings. Hence, they pray to dismiss the IA No. I.

4. Heard from both side. Perused the entire records.

5. The points that arise for my consideration is as under:-

- 1) Whether the petitioner/plaintiff having prima-facie case in his favour?
- 2) Whether the balance of convenience lies infavour of petitioner/plaintiff??
- 3) If the temporary injunction is not granted whether petitioner will be put to loss and irreparable injury?
- 4) What order?

6. My answer to the above points is as follows:

Point No-1 : In the Negative.

Point No-2 : In the Negative.

Point No-3 : In the Negative.

Point No-4 : As per final order for the following reasons.

**::REASONS::**

7. **Point No-1, to 3:** The Points No.1 to 3 are taken for discussion together to avoid repetition of facts. The petitioners being the GPA holder of plaintiff has filed this suit for specific performance of agreement. As per petitioner/GPA holder, the defendant No. 1 has executed sale agreement on 14-08-2006 for Rs.1,83,000/-. Accordingly he has received Rs.1,50,000/- as advance amount. Further as per the petitioner GPA holder, the defendant No. 2 to 5 have signed to said agreement as a witnesses. But now they are not ready to execute the sale deed. Hence, he field this suit as a GPA holder of plaintiff.

8. So in this case as per the petitioner /GPA holder, the defendant No. 1 has executed agreements in favour of Kantharaj who is the husband of S.L. Anurani has not filed this suit. But the petitioner claiming to be a GPA holder has filed this suit. But as per the defendants the said Kantharaj by claiming as a partition deed has taken the signature of the defendants and created false document.

9. So in this case the plaintiff GPA holder has filed this suit for specific performance of agreement. But this suit has been filed

by the GPA holder who has alleged to be power of attorney holder by wife of Kantharaj. But the said Kantharaj wife has not personally filed this suit. Now the GPA holder filed this IA No.I by claiming that he is in possession of suit property as per sale agreement.

10. The alleged agreement was executed on 14-08-2006. The said agreement alleged to executed by defendant No. 1 and defendants No. 2 to 5 have also alleged to be signed as a witnesses. But till filing of this suit in the year of 2015 neither the Kantharaj nor his wife has taken any action against the defendants for execution of sale deed as per the agreement. But Now GPA holder has filed this suit claiming the execution of sale agreement by the defendants. As per the defendants the said document was not a sale agreement. But the deceased Kantharaj has created said documents by claiming a partition deed. Now by creating false documents, this false suit is filed by GPA holder.

11. The advocate for the petitioner argued that the agreement was executed on 14-08-2006 and possession was also delivered on the same day. But as per the defendants, the possession was with them. Even they denied the execution of agreement on 14-08-2006. Further the alleged agreement executed in the year 2006. But till death of Kantharaj no notice was issued nor filed any suit by claiming the execution of sale deed. Now after laps of 9 years, alleged GPA holder of Kantharaj wife i.e. the petitioner filed this suit.

12. Further as per the defendants the O.S. 217/2003 was pending in the year 2006 regarding the partition. Hence, the question of execution of sale agreement cannot be ariases. When the suit was pending, if any documents is executed it amounts to lis pendency. But merits of the case cannot be consider at this stage. But now the petitioner who is claiming to be the GPA holder of wife of Kantharaj filed this suit. But the petitioner has failed to show that he having a prima-facie case in his favour and balance of convenience lies in his favour.

13. Further the RTC of the suit property still standing in the name of father of defendant No. 1. Hence the question of executing sale agreement by the defendant No. 1 cannot be arias. Even though defendant No. 1 to 5 have put their signature in the alleged agreement, but the said document is executed an insufficient stamp paper. But the petitioner without paying the deficit stamp duty and penalty produced the said document which is unregistered document. Now on the basis of unregistered document the possession was also alleged to be given. Hence the petitioner is not entitled sought the relief in the IA No. I. Even though exparte statusquo is granted, but only on that ground the petitioner/GPA holder is not entitle temporary injunction. Therefore, Points No.1, 2 and 3 are answered in Negative.

14. **Point No. 4 :-** In view of the reasons and discussion made in point No.1 to 3, I proceed to pass the following.

**ORDER**

IA No. I filed by the petitioner/ plaintiff  
GPA holder under order XXXIX rule 1 & 2 CPC  
is dismissed, on cost of Rs.200/-.

(Dictated to the Stenographer, typed by her and corrected by me, then  
pronounced in the Open Court on this the 29<sup>th</sup> day of August, 2015)

**(SUNIL S.HOSAMANI)**  
**PRL. CIVIL JUDGE & JMFC,**  
**HOSADURGA.**