



IN THE COURT OF PRL. SENIOR CIVIL JUDGE & CJM
CHIKKAMAGALURU

Present: SRI NANDEESHA.R.P.,
B.A. (Law), LL.M.,
Prl. Sr. Civil Judge and CJM,
Chikkamagaluru

O.S. No.71/2021

Dated 11th day of January 2024

Plaintiff : Smt. Saritha,
W/o Manoj Kumar Jain,
Aged about 37 years,
Agriculturist,
R/o M.G.Road,
Chikkamagaluru City,
represented by her SPA Holder,
Sri.Kantilal Jain
S/o Late Kewalchand Ji,
aged about 67 years,
Businessman and Agriculturist,
R/o M.G.Road, Chikkamagaluru.

(By Sri Harish Singatagere,Advocate)

VERSUS

Defendent: 1. Sri. I.K. Indresh
S/o I.M. Krishnegowda,
Aged about 65 years,
R/o 17/G, Kempanna Road,
Maruthi Seva Nagara,
Banasavadi Main Road,
Bangalore City

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- 2: Sri. I.R.Vishnu
S/o I.K.Revanath
aged about 39 years
R/o No.192
Meghathirtha
Near Inchara School
Gopala Extension
Shimoga City.
- 3: Sri. B.D. Chaithra,
S/o I.K. Revbathi,
aged about 66 years
R/o Kahipura Vinobha Nagar
Shimoga.
- 4: Smt. Dr. Vasavi I.R.,
W/o Dr.Kuldeep Hegde,
Aged about 41 years
R/o Gandhi Nagar
Shimoga.
- 5: Smt. Kavyashri R.,
W/o Rohith D.G.,
Aged about 36 years,
R/o Vijayapura extention,
Chikkamagaluru .

(D.1 & 2 Sri M.N.S., Advocate)
(D.3 by Sri T.K.Vishwanath, Advocate)

PARTIES TO I.A.No.I

Applicant/plaintiff: Smt. Saritha

V/s

Opponent/ defendants : I.K. Indresh and 4 others

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1	Provision under which application is filed	Order XXXIX R.1 & 2 r/w Section 151 CPC
2	Relief sought for	Ad-interim temporary injunction
3	Application filed on	21.08.2023
4	Number of application	XI
5	Date of objection filed	23.09.2023
6	Date of order	11.01.2024

ORDERS ON I.A.NO.I

The plaintiff has filed this application under Order XXXIX Rule 1 and 2 of C.P.C., praying to restrain the defendants from putting up construction over the suit schedule property pending disposal of the suit.

2. The case of the plaintiff is that the defendants have entered into an agreement of sale dated 27.12.2016 with the plaintiff agreeing to sell the suit schedule property for sale consideration of Rs.13,23,000/-, the plaintiff has paid advance amount of Rs.1,23,000/- on 28.12.2016 and has agreed to pay the balance sale consideration at the time of execution of the registered sale deed, subsequently, the defendants have received a

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sum of Rs.90,000/- through cheques. It is further contended that the defendants have agreed to get the 8 guntas of karab land out of the suit schedule property as arable and get the katha to whole extent as arable land within six months, but the defendants used to postpone the same in spite of several requests by the plaintiff. The plaintiff further contended that he is/was always ready and willing to perform his part of the contract and he has requested the defendants to get the karab land change as arable and to execute the registered sale deed by receiving balance consideration amount, but, the defendants did not take any steps to comply with the terms and conditions of the agreement. He has also submitted that he has got issued legal notice to the defendants asking them to execute the sale deed by complying the terms and conditions of the agreement, but the defendants did not come forward to

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get the karab land converted into as arable one and to execute the registered sale deed. The plaintiff further contended that the defendants are making hectic efforts to make constructions over the suit schedule property in order to defeat the rights of the plaintiff, they have already leveled the grounds. The plaintiff further contended that she has got prima-facie case and the balance of convenience lies in her favour, if the application is not allowed, she would be put to untold hardship, injury and irreparable loss, on the other hand, no prejudice will be caused to the defendants. On these grounds, the plaintiff prays to allow the application as prayed for.

3. On the other hand, the defendants have filed objection to this application, wherein they have denied the entire averments of the affidavit, which is annexed to IA.No.XI. They submitted that they have not tried to

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construct any building in the suit schedule property at any point of time and they have not obtained any licence for construction of the building, therefore, the question of constructing the building over the plaint schedule property does not arise. They submitted that if the application filed by the plaintiff is allowed, the defendants would be put to untold hardship, injury and inconvenience, on the other hand, no hardship will be caused to the plaintiff if the application is dismissed. On these grounds, the defendants No.1 and 2 pray to dismiss the application.

4. Heard the arguments of learned counsels for the plaintiff and the defendants.

5. Now the points for arises for my consideration are:

1. Whether the plaintiff has made out prima-facie case in her favour?
2. Whether the balance of convenience lies in

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favour of plaintiff?

3. Whether plaintiff would be put to irreparable loss and injury if temporary injunction is not granted?

4. What order?

6. My answers to the above said points are 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

7. **Point No.1:-** The plaintiff has filed this suit against the defendants for specific performance of the agreement of sale dated 27.12.2016 contending that the defendants have executed an agreement of sale dated 27.12.2016 agreeing to sell the suit schedule property to the plaintiff for total consideration of Rs.13,23,000/-, they have also agreed to get converted 8 gutnas of karab land out of the plaint schedule property as arable land within

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six months, but the defendants have not come forward to execute the sale deed after getting the karab land converted as arable .

8. In the written statement the defendants have admitted that they are the absolute owners and in possession of the plaint schedule property and also execution of agreement of sale in favour of the plaintiff. But, they submitted that the plaintiff herself forced the defendants to sell the plaint schedule property stating that plaintiff and her family members have got the properties and in order to develop the other properties they require the plaint schedule property, hence, the defendants have executed an agreement of sale in respect of the plaint schedule property. The defendants further contended that they have not at all agreed to convert the plaint schedule property from karab land into an arable land. They further submitted that they

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were ready and willing to execute the registered sale deed, but the plaintiff has not come forward to perform her part of the agreement.

9. The contents of the written statement and material placed on record prima-facie show that the defendants have executed an agreement of sale agreeing to sell the suit schedule property in favour of the plaintiff. The contents of the agreement of sale also have also reveal that the defendants have received a sum of Rs.1,23,000/- on 28.12.2016. The contents of the agreement also say that the defendants have agreed to get mentioned the land as Arable land in RTC extract. Apart from that, in the written statement the defendants have specifically admitted the execution of agreement of sale in favour of the plaintiff. But, mere execution of agreement of sale is not a prima facie case to issue an order of temporary injunction against the defendants to

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restrain them from putting up construction on the plaint schedule property. In the present case the plaintiff/applicant has to prima facie show that the defendants are making attempts to put up construction in the plaint schedule property. The principles for granting an interim injunction are (i) prima facie case; it means, bonafide contention between the parties are serious question to be tried, (ii) balance of convenience; it means, probabilities of likelihood of injury, which is likely to be caused if injunction is not issued and (iii) irreparable injury; it means material injury that cannot be adequately compensated by way of damages. If all the three ingredients are satisfied, then applicant is entitled for an order of temporary injunction.

10. But in the case on hand, as aforesaid, though the materials placed on record prima-facie show that the defendants have executed an agreement of sale

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agreeing to sell the plaint schedule property in favour of the plaintiff for consideration, there is no material on record to show that the defendants are trying to put up construction over the plaint schedule property. In order to prima facie show that the defendants are putting up construction, the plaintiff has produced two photos, which have been disputed by the defendants. But these photos are not appear to be putting up construction in the plaint schedule property. Further, if really the defendants are going to put up any type construction over the plaint schedule property, they have to stock some building materials in the plaint schedule property, but photos are not show that the defendants have stocked building materials. Apart from that if the defendants want to put up construction they have to obtain licence from the concerned authorities, but, there is no material on record to show that the defendants

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have got necessary permission or licence from the concerned authorities to put up construction over the plaint schedule property. Therefore, I am of the considered opinion that the plaintiff is not having prima-facie case in her favour. Hence, I answered point No.1 in the negative.

11. POINT Nos.2 and 3: These two points have been taken up together in order to avoid repetition of facts.

12. While granting or refusing to grant temporary injunction, mere prima-facie case is not sufficient, applicant has to show that balance of convenience lies in his favour. The balance of convenience tests must be clearly in favour of the applicant for granting interim injunction. Balance of convenience means, convenience or inconvenience to the parties contesting the application for temporary

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injunction and same may be equated with, what had been left out after weighing prima facie case of both sides. Only when if the applicant would suffer irreparable injury if the interim injunction is not granted, then injunction can be granted. But, in the case on hand, admittedly the possession of the plaint schedule property is with the defendants. Further, as aforesaid, the plaintiff has failed to show prima-facie that the defendants are making efforts to put up construction in the plaint schedule property. It is pertinent to note that even though if the defendants have put up construction in the plaint schedule property, it would amounts to improvement, but it would not in any way cause any damage to the plaint schedule property. The court must be satisfied that refusal of injunction would result in irreparable injury to the party who seeking injunction. In this case, even if the plaintiff

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succeed in the suit, by that time the defendants have put up construction, no hardship or irreparable injury or inconvenience would be caused to the plaintiff, because the Court can order for delivery of vacant possession of the plaint schedule property. Therefore, the question of inconvenience and irreparable injury to the plaintiff does not arise. Hence, I answered point Nos.2 and 3 in the negative.

13. **Point No.4:-** For the reasons given and discussion made above, I proceed to pass the following:

ORDER

IA No.XI filed by the plaintiff under Order XXXIX Rule 1 and 2 of C.P.C., is hereby dismissed.

(Dictated to the Stenographer, transcribed by her, corrected by me and then pronounced in the open court on this the 11th day of January 2024).

sd/-

(NANDEESHA.R.P)
PRL.SR.CIVIL JUDGE & C.J.M.,
CHIKKAMAGALURU.

*mvp/-