



**IN THE COURT OF PRL. CIVIL JUDGE & JMFC,
KADUR.**

Present: Sri. Ram Prashanth M.N, B.A.L,LL.B.,
Prl. Civil Judge & JMFC, Kadur.

Dated: This the 29th day of November 2023

OS.NO. 156/2023

K.B.Gangadhara & Another **Plaintiff**

Vs

Sri. Zia-Ulla-Khan **Defendant**

IA NO.1

K.B.Gangadhara & Another **Applicant**

Vs

Sri. Zia-Ulla-Khan **Opponent**

Sl.No.	Subject	Remarks
1	Provision under which the application is filed	Order 39 Rule 1 & 2 of CPC
2	Relief sought for	Temporary injunction
3	The date of which the application is filed	I.A.No.1 – Dt.07.03.2023 I.A.No.II Dt.19.04.2023 I.A.No.IV Dt.19.04.2023 I.A.No.V Dt.22.11.2023
4	Number of the application	I.A.No.1, 2, 4 & 5
5	The date of which the objections are filed by different opponents.	30.05.2023 -D.2 25.11.2023 - D.4
	The date of order.	29.11.2023

:: ORDERS ON IA.NO.I, II, IV and V UNDER RULE 1 & 2

OF ORDER 39 R/W 151 OF CPC ::



IA.No.1 is filed to restrain the defendants from restraining the defendants their man agents or anybody claiming through them not to trespass over the suit schedule property and not to disturb the peaceful possession of the plaintiff, not to erect any structure over the schedule property till disposal of the suit.

IA No.2 is filed by the defendants to grant another 30 days time to the defendant No.1 & 2 to file their written statement.

IA No.4 is filed by the plaintiff to permit the plaintiff to restraining the defendant No.4, his men agents or anybody claiming through him not t trespass over the suit schedule prperty and not to dig foundation and not to erect any structure over the schedule property and further not to cause the acts of waste and damage to the suit schedule property till disposal of the suit.

IA No.5 is filed to restrain the defendant no.4 from trespassing or digging foundation, erecting any structure and not to cause acts waste and damage.

2. In the affidavit sworn, the plaintiff No.1 has stated that, he and his father were the absolute owner of the suit schedule property, due to the financial crisis, they have intended to obtain loan, hence approached the defendant No.1 for final assistance, where, as per the demand of the defendant No.1, the plaintiff No.1 and his father executed nominal sale deed for obtaining Rs.1,50,000-00 on 18.06.2014. On the same day,



defendant No.1 has executed an agreement styled as Yaduru Kararu Patra. However the defendant No.1 along with defendant No.3 has sold the property to defendant No.2 on 10.11.2017. Thereafter the defendant No. 2 has executed partition deed, where, the suit schedule has fallen to the share of defendant No.4. Since the defendant No.4 is trying to put up construction, hence, the plaintiff No.1 has come up with the present IA no.5 and also pressed on the remaining applications.

3. The defendant No.2, as well as defendant No.4 have filed objection stating that, the sale deed executed by the plaintiff No.1 and his father is an absolute sale deed, by selling the suit schedule property to defendant no.1 along with possession. The alleged Yaduru Kararu Patra is created by the plaintiffs. Further stated the defendant No.1 and 3 being the absolute owners have sold the property to defendant No.2 by passing the absolute right and possession, thereafter the defendant No.2 has entered into partition on 11.03.2022, where suit schedule fallen to the share of defendant no.4. The defendant No.4 has obtained permission and now putting up construction but the plaintiffs are interfering with out any right, moreover, the defendant no.2 has filed OS 411/2020 on the file of III ACJ & JMFC, Kadur against the plaintiffs herein, where the Hon'ble court has allowed the interim application restraining from interfering. Hence prays to dismiss the applications.



4. Heard arguments.

5. The points that would arise for my consideration are:-

- (1) Whether the plaintiff is entitled for the relief of temporary injunction as sought for?
- (2) What order?

6. My findings on the above points are as follows:

Point No.1 : In the Negative.

Point No.2 : As per final orders
for the following:-

REASONS

7. **Point No.1:** The plaintiffs have filed the above suit for the relief of injunction against the defendants and also maintained the present applications restrain from interfering, alienating and putting up construction in the suit schedule. The defendant No.2 and 4 have filed written statement and objections stating that, plaintiffs are not at all the owners as of now and moreover they are not in possession, as the sale deed executed by plaintiff No.1 and his father is absolute sale deed.

8. It is a settled law that, "a party is not entitled to an order of injunction as a matter of course. Grant of injunction is within the discretion of the court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the court that unless the defendant is restrained by an order of injunction, an



irreparable loss or damage will be caused to the plaintiff during the pendency of the suit.

9. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The balance of convenience must be in favour of granting injunction. The court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted.

10. If on weighing competing possibilities or probabilities of likelihood of injury and if the court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. The court has to exercise its sound judicial discretion in granting or refusing the relief of ad-interim injunction pending the suit. Hence keeping the same in mind, I proceed to discuss the materials on record in the below paragraphs.

11. The **Hon'ble Supreme Court of India in "Hindustan Petroleum Corporation Limited Vs Sriman Narayan And Anr. AIR 2002 SC 2598"** has held



that object of interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action, if the uncertainty was resolved in his favour at the end of the trial. It is also held that balance of convenience should also be determined. While exercising the discretion, the Court normally applies the following tests :

- (a) Prima facie case in favour of the plaintiff.
- (b) Balance of convenience lies in favour of the plaintiff.
- (c) Irreparable or injury shall be suffered by the plaintiff, if the application is not allowed.

12. The plaintiffs have stated that they are in possession of the suit schedule property but defendants are interfering. The plaintiffs contended that the suit property originally belonged to Bhaskar @ Narayana and plaintiff No.1, since they were in need of financial assistance for medical treatment, hence, approached the defendant No.1, where the defendant no.1 paid Rs.1,50,000-00 and got a nominal sale deed executed and also the defendant No.1 has executed Yadur Kararu Patra, however, the plaintiffs are in possession but the defendant No.1 and 3 have sold it to the defendant No.2 and thereafter defendant no.2 has executed partition deed in favour of defendant No.4.



13. The plaintiffs further contended that, though those documents are executed but they are in possession, however the defendant No.4 is now putting up construction and has erected pillars. It is the vehement contention of counsel that now the defendant No.4 is putting up construction and causing hardship to the plaintiffs, hence, the plaintiffs have come seeking declaration of title over the suit schedule and also to declare the sale deeds dated 18.06.2014 and 10.11.2017 are not binding as the same are null and void. Consequently have also sought the relief of permanent injunction.

14. The defendants contended that the sale deed dated 18.06.2014 is absolute sale deed and it is not a nominal sale deed as alleged and moreover the alleged Yaduru Kararu Patra has not seen the light of the court till filing of the present suit. The defendants contended that, though, these plaintiffs have stated about the agreement in OS 411/2020 but the said document was not produced before the court. The Hon'ble III ACJ and JFMC., Kadur has restrained the present plaintiffs from interfering and till today the said order is not challenged and hence the same has reached its finality. The defendants also stated that without disclosing the earlier suit pending in OS 411/2020, the present suit is filed, which is not maintainable nor court fees is paid properly.



15. Keeping the arguments in mind and perusing the documents on hand, the court notices that the plaintiffs admit the execution of the sale deed dated 18.06.2014 but state that it is only a nominal sale deed. Also states that the defendant no.1 has executed the Yaduru Kararu Patra i.e., on 18.06.2014 to sell the suit schedule property back to the plaintiffs. In order to look whether the sale deed dated 18.06.2014 is a nominal sale deed or an absolute sale deed, the contents of the sale deed is very much necessary to be considered, hence, court has meticulously perused the sale deed but there is no recitals regarding the nominal sale.

16. Even the entire sale deed gives the meaning that it is an absolute sale deed, executed for a valid sale consideration. Moreover the document clearly establish that possession has been handed over on the very same day. The contention of the plaintiffs is that the sale deed dated 18.06.2014 is only a nominal sale deed with an option to buy back is not established at this stage, moreover, the same is not in compliance with Sec. 58(c) of T.P. Act. As per the law, the option of buy back of conditional sale, there should be contents in the said document itself, even if, separate document is executed, the same will not touch the lines of Sec. 58(c) of T.P. Act.

17. In **C. Cheriathan v. P. Narayanan Embranthiri and Ors. AIR 2009 SC 1502**, interpreting the



vexed question of whether a deed amounted to one of absolute conveyance with a condition of repurchase or a mortgage with conditional sale, reading the ingredients of section 58(c), the **Hon'ble Supreme Court** held as follows:

"...One of the ingredients for determining the true nature of transaction, therefore, is that the condition of repurchase should be embodied in the document which effects or purports to effect the sale. Indisputably, the said condition is satisfied in the present case...A document, as is well known, must be read in its entirety. When character of a document is in question, although the heading thereof would not be conclusive, it plays a significant role. Intention of the parties must be gathered from the document itself but therefore circumstances attending thereto would also be relevant; particularly when the relationship between the parties is in question."

18. As already discussed the court can clearly make out that the sale deed is only an absolute sale deed and not a nominal sale deed. Now the court looks the alleged Yaduru Kararu Patra, where, by looking it only, the court rises a severe doubt because the signatures seems to be highly doubtful to be executed by defendant no.1. It seems that the carbon paper is used to impress signatures on the Yaduru Kararu Patra. This court is expressing opinion because the plaintiffs have not come before the court seeking specific performance on the Yaduru Kararu Patra nor the same is in question, except producing before the court. The plaintiffs have not set the law into motion to get the property into their name.



19. The absolute sale deed establishes that the plaintiffs have lost right over the suit property on 18.06.2014 itself. Even if the Yaduru Kararu patra is executed, the same will not give any right or ownership to the plaintiffs except to seek specific performance of the contract. This court by looking into the document itself has expressed the doubt. Any prudent man of having little common sense also will clearly say that the document is fishy and there is some foul play. The court doubts the document because the plaintiffs have not furnished the alleged Yaduru Kararu Pathra in O.S.411/2020. The Hon'ble III Addl. Civil Judge & JMFC has clearly stated that the plaintiffs herein i.e., the defendants in the said suit have not furnished the said agreement.

20. If really the agreement was executed on 18.06.2014 itself by the defendant No.1 then why the said document is not furnished to the court till today or even in the O.S.411/2020. Certainly the court was addressed on interim application to not to interfere in the said suit, then, if really, the agreement was present, then, no person, having common sense, will keep quite without producing the said agreement to prove their possession. The plaintiffs have not produced the said agreement in O.S.411/2020 nor have stated about the filing of suit in O.S.411/2020 against them in the present suit, neither have stated about the granting of



interim orders restraining them from interfering till disposal of suit.

21. There is no document before the court to show that the plaintiffs herein have challenged the said order in the Appellate court. The order passed in I.A.No.1 by the Hon'ble III ACJ & JMFC., dated 09.09.2021 is produced before this court by the defendant. The said order is passed on 09.09.2021 and till today, it seems that, the same has not been challenged. The plaintiffs were having the knowledge, but have not stated the same in the present suit. There was no impediment for the plaintiffs in not disclosing the pending of O.S.411/2020. The said court has already held that the plaintiffs herein are not in possession and the defendant No.2 is in possession. The defendant No.2 and 4 are the father and son.

22. The attitude of the plaintiffs in not disclosing the earlier suit i.e., the pendency of O.S.411/2020 shows that they have come to the court with malafide intention to obtain an ex parte order. Certainly, before this court the plaintiffs have addressed argument on I.A.No.1 to obtain ex parte orders in restraining the defendants from interfering, which clearly establishes that the plaintiffs have tried to play fraud upon the court. Mere changing of counsel in the present suit is not a ground to accept that the plaintiffs have not played fraud. If really they had



come to the court with clean hands, then certainly, they would have mentioned the same. Even after the filing of written statement, they could have got the plaint amended by stating the same.

23. The plaintiffs having the knowledge that they are not in possession and the same has been held by the Hon'ble III ACJ JMFC., but intentionally to cause hardship to the defendants herein have filed the present suit for seeking declaration and injunction. However, the plaintiffs should have sought possession in the present suit as the additional relief, but the same is not sought. More interestingly the counsel for the plaintiffs has openly admitted before the court that the plaintiffs are not in possession and hence, atleast an order of status-quo may be granted.

24. Certainly, the plaintiffs have come before the court stating that they are the absolute owners of the suit property and the sale deed dated 18.06.2014 and 10.11.2017 is null and void and not binding on them. The suit property is a site property and hence the plaintiff cannot take shelter and 7(2) nor can pay court fees of Rs.25/-, but has to value the actual market value and pay court fees according to it. The plaintiff seeking declaration of title, has paid by valuing the property for Rs.1,000/-, which is not at all acceptable. The plaintiff has concealed the facts and materials before the court.



Moreover, the plaintiffs prima-facie have to establish that they have title and in possession of the same. As already discussed the sale deed is a out and out regular sale deed and not a nominal sale deed.

25. The plaintiffs have not denied the execution of the sale deed itself. Also the sale deed is a duly registered and has a presumptive value. As per the settled law and as per the judgment of the **Hon'ble Supreme Court in Prem-Singh Vs.Birbal 2006(5) SCC 353**, it is held that *“there is a presumption that a registered document is validly executed. A registered document, therefore, prima-facie would be valid in law. The onus of proof, thus, would be on a person, who leads evidence to rebut the presumption”*. Hence, as per the said judgment the onus shifts on the plaintiff herein to rebut the said presumption, which will take place at the time of trial.

26. The plaintiff has not sought for the cancellation of the sale deed within three years from 18.06.2014 nor have proceeded to seek specific performance on the alleged Yaduru kararu Pathra, even after having the knowledge of execution of sale deed by defendant No.1 infavour of defendant No.2. Even the plaintiffs had the knowledge of filing O.S.No.411/2020, but have not filed a suit for specific performance within time. The court also need to look whether the plaintiff is in possession of the suit property as on the date of suit.



The plaintiffs have not furnished any single piece of document to establish their possession in order to restrain the defendants nor there is valid documents infavour of plaintiffs to restrain the defendants from putting up construction.

27. The most interesting aspect is the plaintiff No.1 has given complaint/information to the Kadur Police on 28.02.2023, where he has clearly mentioned that he has requested the police to get back possession from the defendant No.2. The said application is filed on 28.02.2023 and suit is filed on 07.03.2023, which is very clear that the plaintiffs have admitted that they are not in possession prior to filing of suit, but have claimed to be in possession. Even the III Addl.Civil Judge & JMFC has stated that the plaintiffs herein are not in possession. Without being in possession, the plaintiffs seeking restraining the defendants from interfering cannot be entertained at any stretch. Also have admitted the possession of defendant No.2 in the said police complaint dated 28.02.2023.

28. As already discussed the plaintiffs have lost their right and title on 18.06.2014 itself. The act of the plaintiffs shows that by selling their property now, they have come again to make illegal gain. Prima-facie the plaintiffs does not have any material to support their contention nor there is alleged possession with them.



The defendant counsel has also furnished copy of the execution in Ex.70/2018, where the alleged annexed property is also under execution to execute the sale deed. The plaintiffs have not come to the court with clean hands, neither, there is equity with them. The plaintiffs is trying to make unjust enrichment, which cannot be entertained by the courts. The plaintiffs have not made out a prima-facie case nor the balance of convenience lies in their favor. If an order is granted, then certainly, the defendants will be put to hardship. Hence, plaintiffs are not entitled for the interim relief as prayed for. Hence, with these observations I answer point No.1 in the negative.

29. Point No.2:- In view of my findings on point No.1, I proceed to pass the following:

ORDER

I.A.No.I, II, IV and V filed by the
plaintiffs under Order 39 Rule 1 & 2 R/w
Sec.151 of CPC is dismissed with cost of
Rs.1000/- each.

(Dictated to the Stenographer, typed by her to computer, revised, corrected and then pronounced in the open Court, this the 29th day of November 2023)

Sd/-

(Ram Prashanth M.N.)

Prl. Civil Judge & JMFC, Kadur.

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