



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

Present: Smt. Amrin Sultana. B.A.L, L.L.B.,
I Addl. Civil Judge & JMFC, Kadur.

Dated: This the 25th day of November 2024

OS No.676/2023

Sri. G. Somaiah S/o Govindappa,
Aged about 62 years, Agriculturist,
R/o Subashnagara, Kadur Town,
Kadur Taluk, Chikmagalur District.

Applicant

(Reptd by K.S.R. Advocate)

Vs

1. Sri. Hanumanthappa S/o Holeyappa,
Aged about 85 years, Agriculturist,
2. Sri. Govindappa S/o Hanumanthappa,
Aged about 60 years, Agriculturist,
3. Sri. Somanna S/o Hanumanthappa,
Aged about 58 years, Agriculturist,

All are Residing at Halakattanayakanahalli,
Kadur Town, Kadur Taluk,
Chikmagalur District.

Defendants

(Reptd by C.R.M. Advocate)

I.A.No.II

Sri. G. Somaiah

Applicant

Vs

Sri. Hanumanthappa and others

Opponent



1.	Provision under which the application is filed.	U/O 39 Rule 1 & 2 of CPC
2	Relief sought for	Ad-interim Temporary Injunction against defendants.
3	The date on which the application is filed	27.09.2024
4	Number of application	I.A.No.II
5	The date on which the objections are filed by different opponents	04.11.2024 filed by defendant No.2.
6	The date of order	25.11.2024

ORDERS ON I.A No. I

I.A No.1 is filed by the Learned Counsel for the Plaintiffs Under Order 39 Rule 1 and 2 of C.P.C seeking the relief of Temporary Injunction in favour of the Plaintiff and thereby temporarily restraining the Defendants their agents, servants or anybody on their behalf, from interfering, disturbing, tress passing over the plaint schedule property, till the disposal of the suit.

2. The Plaintiff sworn to an affidavit in support of the application and stated that, the suit is filed by the plaintiff for the relief of Specific Performance of registered sale



agreement with respect to the suit schedule property. The defendants have sold the plaint schedule property to the plaintiff on 30.04.2001 and on the same day the defendants have deliver the possession of the property by virtue of sale agreement. The plaintiff is in possession of property bearing Sy.No.2/1 measuring 1 acre situated at Ullingarvu village, Birur Hobli, Kadur Taluk. Meanwhile the defendants their agents, servants are trying to interfere and obstruct the plaintiffs possession over the suit schedule property and trying to erase the crops which was grown by the plaintiff. If the defendants are not restrain the plaintiff will be put to lot of hardship. Hence, he has filed the present suit and present I.A.

3. The Defendants have appeared through their counsel and filed the statement of objections to IA No.1 wherein they have stated that, the plaintiff himself is trying to interfere with the defendants possession and enjoyment over the suit schedule property. For this reason the defendants have filed suit against this plaintiff in OS No.471/2023 which is pending for adjudication. The plaintiff



has concocted the said agreement and issued the notice to the defendants in order to grab the property belonging to the defendants by creating concocting the sale agreement and by putting the signature of the defendants and their family members. The defendant also have filed a private complaint which is registered as PCR No.32/2024 against the plaintiff. On basis of the said private complaint FIR has been registered as per Cr.No.65/2024 on 25.03.2024. By suppressing the said fact the plaintiff has come up with this present suit and prayed to dismiss the application with costs.

4. Heard the learned counsel for plaintiff. Learned counsel for defendant not submitted their arguments and perused the materials on record.

5. The following points arose for consideration of this Court:

Point No.1: Whether the Plaintiffs have made out prima-facie case for grant of Temporary Injunction as sought for?



Point No.2: Whether the balance of convenience lies in favour of the Plaintiffs?

Point No.3: Whether the Plaintiffs will be put irreparable loss and hardship, if IA No.1 is not allowed?

Point No.4 : What Order?

6. The findings of this Court on the above said Points are as under:

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:

R E A S O N S

7. POINT No.1: The Learned Counsel for the Plaintiff argued before the Court that, the defendants have executed sale agreement and handed over the possession of suit schedule property in favour of the plaintiff, but not came forwarded to registered the same. Hence, the plaintiff has paid the duty and penalty before the sub register office and stayed in the possession of the suit schedule property. Per



contra, the defendants have filed their objection contending that, the plaintiff has created the agreement and defendants have not executed any sale agreement as alleged by the plaintiff and also not handed over the possession to the plaintiff. It is further contention of the defendants that, they have already filed a suit for bare Injunction against the defendant which is pending before II Addl. Civil Judge court, Kadur for adjudication. After registration of the said suit, plaintiff has filed present suit with an intention to grab the suit schedule property.

8. In the light of the aforesaid arguments canvassed by the learned counsels for the both parties, this court has carefully perused the list of documents produced by both the parties.

9. At this stage, without going in to the merits of the case and holding mini trial, this court has to considered the aspect of Prima facie case. At this stage, this court makes it very clear that this court is looking towards prima facie case and not prima facie title. Keeping in mind, both the rival contention this court has perused agreement of sale which



is produced by the plaintiff to prove his possession. On perusal of the said agreement it is the agreement written in hand writing on the stamp paper. Wherein there is a recital that, the defendants have executed the sale agreement for their house hold necessities. Later on the back of the paper it is mentioned that, the defendants have handed over the possession of suit schedule property. The agreement relied upon by the plaintiff is the unregistered document therefore, the sale agreement cannot be looked into to prove the possession. In the present case in hand the defendant not only denied the execution of the sale agreement but also lodged the private complaint against the plaintiff alleging the fabrication of alleged sale agreement.

10. When the alleged sale agreement was executed and the transferee in part performance of contract taken the possession of the property or any part there of, or the transferee, being already in possession, continues in possession in part performance of contract or willing to perform his part of the contract then the agreement of sale must be registered in view of Section 17(1-A) of Registration



Act 1908. Hence the plaintiff claiming the possession of suit property under a document which is compulsarily registerable document, could not be looked into for the purpose of the deciding the possession

11. Such being the situation, the defendants denied the agreement and also contended that, they have already filed a suit against this plaintiff for permanent injunction. Subsequent to that, the plaintiff has filed this suit. When the agreement is in question and disputed then it is just and necessary that, the agreement shall be proved at full fledged trial. This court can not hold mini trial to dispose the present application and grant the relief in favour the plaintiff. Hence, this court is of the opinion the plaintiff has not made out the prima facie case. When the prima facie case is itself not proved then point No.2 and 3 i.e., balance of convenience and irreparable loss and injury does not arise for consideration. **With these observations, this Court has answered Point Nos. 1 to 3 in the Negative.**

12. POINT No.4 : For the aforesaid discussion on Point No.1 to 3, this Court proceeds to pass the following:

**ORDER**

I.A. No.I filed by the plaintiff/applicant under Order 39 Rule 1 and 2 of C.P.C. is hereby dismissed.

No order as to costs.

(Dictated to the Stenographer on computer, corrected and then pronounced by me in the Open Court on this 25th day of November 2024)

Sd/-
(SMT. AMRIN SULTANA)
I Addl. Civil Judge & JMFC,
Kadur.

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