

KACM510002662022



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC  
N.R.PURA, ITINERATE AT KOPPA**

**PRESENT:** Smt. B.S.Rayannawar, B.A. L.L.B.  
Senior Civil Judge & JMFC.  
N.R.Pura, Itinerate at Koppa.

**OS.No.23/2022**

**Dated this the 07<sup>th</sup> day of September 2023**

**BETWEEN:**

Mrs. Girija Dhruva  
Represented by GPA Holder  
Sri.K.S.Rajagopala

...Plaintiff.

V/s.

**AND:**

MR. H.M.Ramachandra and others

...Defendants.

**I.A.NO. III**

Mrs. Girija Dhruva  
Represented by GPA Holder  
Sri.K.S.Rajagopala

...Applicant/Plaintiff.

V/s.

**AND:**

MR. H.M.Ramachandra and others

...Opponents/Defendants.



**ORDER ON IA.NO.III**

Applicant/plaintiff have filed this application U/o. 39 Rules 1 and 2 of CPC to pass an ad interim order of temporary injunction restraining the defendants and their representatives, agents or men acting through them from alienating the suit schedule properties in any manner, pending disposal of the suit.

**SCHEDULE PROPERTIES ITEM No.1 TO 6**

All that piece and parcel of the immovable property bearing;

| Sl. No. | Sy. No. | Type of land        | Total Measurement<br>Acre- Gunta | Village   | Kathedar        |
|---------|---------|---------------------|----------------------------------|-----------|-----------------|
| 1       | 42      | Wet/Paddy           | 1.38.00.00                       | Huligardi | H.M.Ramachandra |
| 2       | 44      | Bagayathu/ Arecanut | 2.07.00.00                       | Huligardi | H.M.Ramachandra |
| 3       | 41/P1   | Wet/Paddy           | 5.30.00.00                       | Huligardi | H.M.Ramachandra |
| 4       | 45      | Wet/Paddy           | 3.12.00.00                       | Huligardi | H.M.Ramachandra |
| 5       | 43      | Wet/Paddy           | 0.18.00.00                       | Huligardi | H.M.Ramachandra |
| 6       | 44      | Wet/Paddy           | 2.20.00.00                       | Huligardi | H.M.Ramachandra |

All are situated at Huligardi Village, Megunda Hobli, Koppa Taluk, Chickmagaluru District and bounded as per the survey sketch and village map.



2. Application is supported with the affidavit of applicant/GPA holder of plaintiff. In the affidavit it is stated that, he is the Power of Attorney holder of the plaintiff in the said suit. He conversant with the facts of the case. The plaintiff has filed the said suit against the Defendants for Specific Performance of the Sale Agreement dated 19.07.2018 with respect of the Schedule Property; for the Judgment and Decree, directing the Defendants to execute and register the sale deed in favour of the plaintiff with respect of the Schedule Property. The defendants are the joint owners of the suit Schedule Properties. The First to Sixth defendants have entered into a Sale Agreement dated 19.07.2018 with the Plaintiff to sell the Schedule Properties, to the Plaintiff, for the sale consideration a sum of Rs.1,26,00,000/-. The said Sale Agreement dated 19 07 2018, the Plaintiff has paid the advance sale consideration



of the Schedule Properties a sum of Rs 40,00,000/- (Rupees Forty Lakhs only) by cheques to the First and Sixth Defendants and the First to Sixth Defendants have acknowledged the receipt of the said amount.

**Under the said Sale Agreement dated 19.07.2018;**

The First to Sixth Defendants have agreed to execute the Absolute Sale Deed with respect of the Schedule Property in favor of the Plaintiff within 6 (Six) months from the date of the said sale agreement.

The First to Sixth defendants have agreed to furnish entire documents such as RR, IL, RTC for the period from 1965-66 to till date, encumbrance certificate for 13 years, No Tenancy Certificate, 11 E Sketch, Partition Deed, Sale Deeds, Will, death certificates family tree, to establish their title to the Schedule Properties.

Only on furnishing the said documents, if it is found that any other person have right over the Schedule Properties; the First to Sixth Defendants shall get such person consents to the proposed sale deed to be executed in favour of plaintiff or her nominee.

It is mutually agreed between Plaintiff and Defendants that the time limit of the sale agreement would be continued until furnishing the documents.



3. In spite of the above, in spite of completion of six months to execute the absolute sale deed with respect of the Schedule Property, in favor of the Plaintiff, the First to Sixth defendants have failed and neglected to furnish the above said required title deeds and revenue documents with respect of the Schedule Properties to plaintiff till March 2019.

4. On the other hand, to furnish the said required title deeds and revenue documents with respect of the Schedule Properties to the Plaintiff, the First to Sixth Defendants have demanded the Plaintiff to pay further advance sale consideration of the Schedule Properties, and accordingly the Plaintiff has paid;

A sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) by the Cheque bearing No.301627 dated 19.07.2018, drawn in favour of the first of you;



A sum of Rs.10,00,000/- (Rupees Ten Lakhs only) by the Cheque bearing No.301949 dated 18.03.2019, drawn in favour of the first of you;

A sum of Rs.10,00,000/- (Rupees Ten Lakhs only) by the Cheque bearing No.301950 dated 18.03.2019, drawn in favour of the first of you;

A sum of Rs.8,00,000/- (Rupees Eight Lakhs only) by the Cheque bearing No.445455 dated 29.06.2019, drawn in favour of the Fifth of you,

5. All drawn on Karnataka Bank Ltd., Ayanur Branch, State Bank of India, Shivamogga Branch, as further advance sale consideration of the Schedule Properties. And the First to Sixth defendants have acknowledged the receipt of the same by way of three different Endorsements dated 18.03.2019, 18.03.2019 and 29.06.2016.

6. Out of the sale consideration a sum of Rs.1,26,00,000/-, the plaintiff has paid substantial



advance sale consideration a sum of Rs.88,00,000/- (Rupees Eighty Eight Lakhs only) to the Defendants.

7. The Plaintiff has been ready and willing to pay the remaining/ balance sale consideration a sum of Rs.38,00,000/- to the First to Sixth Defendants, on the day of execution of Absolute Sale Deed in favour of the Plaintiff.

8. Even after receipt of the further advance sale consideration, the First to Sixth of Defendants have failed to furnish the said required documents with respect of the Schedule Properties and have delayed to execute the sale deed with respect of the Schedule Properties in favour of the Plaintiff, on one or another pretext till February 2020, the First to Sixth defendants have created charges on the Schedule Properties in favour of Co-Operatives Banks/ Financial Institution and therefore First to Sixth Defendants are also liable to discharge the said charges,



before registration of the sale deed with respect of the Schedule Properties in favour of the Plaintiff.

9. In spite of Plaintiff's ready and willingness to get execute the Sale Deed with respect of the Schedule Property in her favor, well within six months from the date of the said Sale Agreement dated 19.07.2018; and in spite of completion of six months to complete the sale; the First and Sixth Defendants have failed and neglected to execute the absolute sale deed with respect of the Schedule Property in favor of Plaintiff. The plaintiff issued Notice dated 19.05.2022, called upon the Defendants to complete the said Sale Agreement dated 19.07.2018, by furnishing documents. The said Legal notice was duly served on the Defendant No. 1 to 4 and the Notice sent to the Defendant No.5 and 6 to the addresses mentioned in the Sale Agreement, were returned un- served Since the Defendant



No.5 and 6 are the family members of the Defendant No.1 to 4; the Defendant No.5 and 6 were also aware of the said notice. In spite of service of said legal notice, the Defendants did not come forward to execute the Sale deed with respect of the Schedule Properties in favour of the Plaintiff. The Defendants have neglected and refused to carry out their part of contract. Therefore, the Plaintiff is entitled to enforce the Sale Agreement dated 19.07.2018 against the Defendants. In order to defeat the purpose of Plaintiff under the said Sale Agreement dated 19.07.2018, the Defendants went on dragging the registration of the Schedule Property in favour of the Plaintiff on one or another pretext and simultaneously trying to dispose of the Schedule Property to the third person for unlawful gain. The Defendants have no right to sell the Schedule Properties to the third parties. In the circumstance above,



the plaintiff has filed the above suit against the Defendants for specific performance. And also filed the accompanying application for the relief of temporary injunction preventing the defendants from alienating the Schedule Properties to the third parties. There is a prima facie case in favor of the Plaintiff and against the Defendants to grant temporary injunction. The balance of convenience is in favour of the Plaintiff. If the defendants are not restrained by an order of temporary injunction, the Plaintiff will be put to hardship and justice will suffer, and the suit will become infructuous. On these grounds plaintiffs prays to allow the application.

10. The defendants contest this application by filing memo to treat the written statement filed by them considered as objection to I.A. No.3. In the written statement defendants interalia contending that, plaintiff is



represented by his GPA Holder K.S. Rajagopala there is no knowledge to the plaintiff with regard to execution of GPA to K.S. Rajagopala plaintiff has to prove the same.

11. Further admitted that the defendants are entered in to an agreement but No.1 to 3 and 5 and 6 have entered in to an agreement on 19-07-2018 for sale consideration of Rs.1,26,00,000 is also true. But defendant No. 4 was not a party in the said agreement. the Defendant No.1 to 3 and 5 and 6 have received advance consideration of Rs.40,00,000/- from the plaintiff is also true. Defendant No. 1 to 3, 5 and 6 have agreed to furnish necessary documents for register the land. And the defendants were kept ready the necessary documents and same was informed to the plaintiff. But the plaintiff was not ready to register the Sale deed inspite of repeated remainder and request made by the Defendant No.1 to 3, 5 and 6. Plaintiff



has issued legal notice to the defendants on 19-05-2022, but the defendants have issued legal notice to the plaintiff on 12-02-2022 i.e., before issuing the Legal notice to the defendants by the plaintiff. In spite of repeated request and remainder made by the defendant no1 to 3, 5 and 6 and showed their ready and willingness to register the land the plaintiff has dragging the time to register the suit schedule property by paying balance consideration of Rs.86,00,000/- to the defendants. In spite of repeated request and remainder made by the defendant no1 to 3, 5 and 6 when the plaintiff not showed interest to registered the property then the defendants have issued the Legal notice on 12-02-2022 to the plaintiff to the both address of the plaintiff as mentioned in the Agreement dated 19-07-2018. The notice sent to the address of the plaintiff of Rajarajeshwari Nagara Bangalore is returned as unclaimed



in spite of intimation delivered. And notice sent to another address of the plaintiff of Hosuru, Ayanuru of Shivamogga Taluk was also returned as addressee left. inspite of issuance of legal notice and after completion of 15 days receipt of the Notice. plaintiff has not came forward to register the sale deed. Hence the defendant has forfeited the Advance consideration of Rs.40,00,000/- which the plaintiff paid to the defendant no.1 to 3, 5 and 6. The defendants have given the reply to the said notice to the plaintiff to the address of the plaintiff which is shown in her legal notice dated 19-05-2022,But the replay notice was return to the counsel of the defendants with a shara of No such address. the plaintiff has intentionally avoided to receive the notices sent by the defendants with mollified intention.



12. The defendants have already forfeited the advance consideration due to the plaintiff has not abide the terms and conditions of the agreement dated 19-07-2018 and plaintiff is miserably filed to perform her part of contract as per agreement dated 19-07-2018, hence she is not entitle for any relief as claimed in the suit. On these grounds defendants prays to dismiss I.A. No.III.

13. Heard arguments by both respective counsels.

14. Upon hearing arguments and on perusal of materials placed on record the following points that would arises for my consideration.

**POINTS**

1. Whether the plaintiffs have established prima facie case?
2. Whether the balance of convenience lies in favour of plaintiffs?
3. Whether irreparable loss or hardship will be caused to the plaintiffs if injunction is not granted?
4. What order?



15. My findings to the above points are as under.

Point No.1: In the Affirmative

Point No.2: In the Affirmative

Point No.3: In the Affirmative

Point No.4: As per order for  
the following.

**REASONS**

16. **Points No.1 to 3:-** Since these points are interlinked with each other, they are taken up together for consideration in order to avoid repetition, as here under.

17. The present suit filed by the plaintiff for the relief of specific performance of Contract. The execution of agreement of sale dated 19.07.2018 between the plaintiff and defendants no.1 to 3 , 5 and 6 is not in dispute. It is the contention of plaintiff that the defendants have entered into a sale agreement dated 19.07.2018 to sell the suit schedule property, for the Rs.1,26,00,000/- received advance amount of Rs.88,00,000/-, the plaintiff is ready to willing his part of contract, but the defendants postponing



to execute the register the schedule property. Now the defendants are trying alienate the property to third persons.

18. The defendants stoutly deny this aspect. On the contrary, defendants have taken up a contention that, they requested the plaintiff to register the land, they also issued notice to the plaintiff but the plaintiff has not come forward to register the sale deed hence the defendant has forfeited the advance consideration of Rs.40,00,000/- which the plaintiff paid to the defendant no.1 to 3, 5 and 6.

19. Plaintiff denied service of notice, it is the contention of plaintiff that the notice issued by the defendant not served on the plaintiff. And moreover it is the contention of the plaintiff that the plaintiff has paid advance amount of Rs.88,00,000/- But the Defendants denied receiving advance amount of Rs.88,00,000/-,



defendants admits receiving advance amount of Rs.40,00,000/-. Hence there is dispute with respect to payment of advance sale consideration amount. Moreover learned counsel for defendant submits that the power of attorney Mrs.Girija Druva is alive or not is in doubtful. Now, these all questions required to decided in the trial is whether really the plaintiff paid earnest amount of Rs.8,00,000/-, and whether the defendant issued notice even though the plaintiff not came and got executed sale deed and hence the defendant has forfeited the advance consideration of Rs.40,00,000/- paid to the defendant no.1 to 3, 5 and 6. Executing of agreement of sale is not dispute, hence, Considering all these aspects of the case, this court is of the opinion that the plaintiff has made out a case fit for trial. Hence, it has made out prima facie case.



20. Now let us proceed to consider whether the balance of convenience tilts in favour of plaintiff or tilts in favour of defendants. Vide I.A.No.I plaintiff has contended that, defendants are trying to alienating the suit schedule property to third person. It is well settled principles of law regarding grant of temporary injunctions emerges from the catena of the decisions by the Hon'ble Supreme Court and Hon'ble High Courts. If plaintiff succeeds in the suit, if meanwhile defendants alienate the suit property, it will results in multiplicity of proceedings and causes inconvenience to the parties.

21. It is trite that the very intention of granting of temporary injunction is to maintain the state of things as it. This well settled legal proposition can be borne out from the ratio laid down by the Hon'ble High Court of Karnataka



reported in 1991 (1) page 577 (Smt.Rathnamma V/s

**B.A.Srinivasa Gupta and others) wherein it is held that,**

“(C) CPC 1908, ).39 R.1 – Temporary injunction Grant of-Primary purpose of temporary injunction which is only preventive relief, is to preserve property in dispute till legal rights of parties are settled- It is issued to keep things in status quo pending litigation so that suit is not rendered infructuous by unilateral act of party- Where party seeking temporary injunction has satisfied Court that there is question of law or fact to be tried in suit, that court's interference is necessary to save him from irreparable injury and that comparative mischief which is likely to issue from with holding injunction will be greater than that which is likely to arise from granting it, party is entitled to relief.”

**And also in ILR 2004 Karnataka page 4076 (Fakirasab**

**V/s Syedusab and others) wherein it is held that,**

“(B) CPC – 1908-O-39 R.1 & 2-OBJET OF – While considering an application for grant of temporary injunction, the right and need of respective parties should be considered and the schedule property should also be protected and preserved so that if ultimately,



the plaintiff who is the initiator of the suit, succeeds in the suit, he would not be put to irreparable and uncompensatable loss. The object is to keep the property in status quo so that it would be available to the plaintiff if he ultimately succeeds in the suit.”

**And also in ILR 2007 Karnataka page 1214 (Smt. T.K.Gowramma V/s C.K.Raviprasanna) wherein is is held that,**

“CPC, 1908-O.39 R.1 & 2- TEMPORARY INJUNCTION UNDER-GRANT OF HELD, The relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before which that uncertainty could be resolved- The object of interlocutory injunction could be resolved- the 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 were resolved in his favour at the trial”.

22. In the light of principles enunciated in the above cited cases, in the instant case also question of law and fact is to be ultimately determined and the injury to the moving party will be immediate, certain and great, if



denied. While the loss or inconvenience to the defendants will be comparatively small and insignificant if injunction is granted, as merely they will be deprived of their right of alienation. Defendants are required to be injected to avoid multiplicity of proceedings and to avoid future complications. Hence, considering all these aspects of the case and totality of circumstances, this court is of the opinion that, plaintiff has made out case for granting temporary injunction in its favour as it has established prima-facie case, balance of convenience also tilts in its favour, irreparable loss and hardship will be cause plaintiff if injunction is not granted Hence, **points no.1 to 3 answered in the Affirmative.**

23. **Point No.4:-** In view of the reasons assigned above, above, I proceed to pass the following.

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OS No.23/2022

**ORDER**

IA.No.III filed by the Applicant/  
GPA holder of plaintiff U/o. 39 Rules 1  
and 2 of CPC is hereby allowed.

Defendants are hereby restrained  
from alienating the suit properties till  
disposal of the suit.

No order as to costs.

(Dictated to the stenographer directly over computer, corrected and  
pronounced by me in open court on this 07<sup>th</sup> day of September, 2023)

Sd/-

**(B.S.RAYANAWAR)**

Senior Civil Judge & JMFC  
N.R.Pura, Itinerate at Koppa.