

IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC.,
KOLLEGALA.

Dated 15th day of November 2021

O.S.No:15/2020

Plaintiffs : 1.N.V.Nataraju
2. N.Suresh

Vs.

Defendant: S.Mahadevaswamy

IA NO.2

Applicants: N.V.Nataraju and another

Vs.

Opponent: S.Mahadevaswamy

ORDER ON IA NO.2

The applicants/plaintiffs have filed this I.A. No.2 U/O 39 Rule 1 and 2 r/w Sec.151 of CPC seeking an order of Temporary injunction restraining the defendant from alienating the suit schedule property pending disposal of the suit.

2. In the annexed affidavit the applicants/plaintiffs have stated that, they have filed the suit against the defendant for the relief of Specific Performance of Contract. The defendant is the absolute owner of the suit schedule property. The defendant has entered into an Agreement to sale with the plaintiffs to sell the suit schedule property for a valuable sale consideration of Rs.29,00,000/-. The plaintiffs have agreed the same and they have paid Rs.28,00,000/- as an advance amount as per the registered Agreement to sale and remaining

amount of Rs.1,00,000/- will be paid within 20 months from the date of agreement to sale. In default the defendant has to pay Rs.56,00,000/- to the plaintiffs as compensation. The plaintiffs have ready and willing to perform their part of contract and to give remaining amount of Rs.1,00,000/- to the defendant and requested him to execute the sale deed in respect of the suit schedule property. But the defendant has failed to execute the sale deed inspite of repeated demands. The plaintiffs have issued Legal Notice through their Advocate on 27.07.2020 and mentioned that, they have ready to pay Rs.1,00,000/- as per the Agreement to sale and execute the sale deed in favor of plaintiffs. But the defendant has not executed the sale deed. Further, the defendant is trying to alienate the suit schedule property to third parties. Hence, the plaintiffs have filed this suit along with this Application. If the application is not allowed, they will be put to irreparable loss and injury and on the other hand no hardship or injury would be caused to the defendant. Accordingly, they prayed to allow the application.

3. The defendant/opponent has filed objection to the I.A. No.2 and denied all the allegations made in the affidavit. Further, he has denied that he has entered into an Agreement to sale 17.12.2018 with the plaintiffs for valuable sale consideration of Rs.29,00,000/-. He has not received consideration amount as mentioned in the said Agreement. The plaintiffs have created the said Agreement to get the loan

amount borrowed by him in order to grab the suit schedule property. He is not intend to sell the suit schedule property. He has further submits that, he is doing Mitayi business in Hanuru town and for his business purpose, he approached the plaintiff No.1 for financial assistance of Rs.5,00,000/- on 20.04.2016. For that the plaintiffs on 25.04.2016 get the loan of Rs.7,00,000/- from one T.Venkatesh s/o Thimmegowda on interest at the rate of 2% per annum and as a security to the said loan amount, he has executed the registered sale agreement in respect of suit schedule property. Out of Rs.7,00,000/- the 1st plaintiff has kept Rs.2,00,000/- in his custody and informed him that he will repaid the said amount with interest after some time. The plaintiffs have played fraud on the defendant and created the Agreement to sale in respect of the suit schedule property. He is ready to repay the said borrowed amount. He never intend to sell the suit schedule property. In order to grab the suit schedule property the plaintiffs have filed the present suit. Hence, he prayed to dismiss the application with cost.

4. I have heard the arguments and gone through the materials available on record.

5. The following points arise for my determination:

Point No.1:Whether the plaintiffs have made out a prima facie case?

Point No.2: Whether the plaintiffs prove that the balance of convenience lies in their favour?

Point No.3: Whether the Plaintiffs establishes that they would be put to irreparable loss and injury if temporary injunction as prayed in the application is not granted?

Point No.4: What order?

6. My findings to the above points are:

POINT Nos.1 to 3: In the Affirmative

POINT No.4: As per final order for the following:

REASONS

7.**Point No.1:** This suit is filed by the plaintiffs against the defendant for the relief of Specific Performance of Contract. Further in the present I.A. the plaintiffs have seeking the relief of Temporary injunction restrain the defendant from alienating the suit schedule property in any manner till disposal of the suit.

8. It is well settled law that the grant of temporary injunction is a discretionary relief. The burden of proof is lies on the plaintiffs to establish by evidence that, there is a prima-facie case. If a person is to get entitled to the relief of temporary injunction he must show that he has a prima-facie case. In order to get himself entitled to the relief of temporary injunction, the person seeking temporary injunction must show that, not only he has made out a prima-facie case but

also the balance of convenience lies in his favor and that irreparable injury which cannot be compensated in terms of money would be caused to him in the event the injunction sought is refused. Bearing in mind these legal principles with regard to the grant or refusal of temporary injunction we shall turn our attention to the case made out by both sides and find out as to whether the plaintiffs have made out a prima-facie case.

9. The learned Counsel for the plaintiffs argued that, the defendant has entered into an Agreement to sale with the plaintiffs to sell the suit schedule property for a valuable sale consideration of Rs.29,00,000/-. The plaintiffs have paid Rs.28,00,000/- as an advance amount and remaining amount of Rs.1,00,000/- will be paid within 20 months from the date of agreement. But the defendant has failed to execute the sale deed by receiving balance amount of Rs.1,00,000/-. Hence, the plaintiffs have filed this suit for the relief of Specific performance of contract. Further the defendant is trying to alienate the suit schedule property to the third parties. Hence, he prays to allow the I.A.No.2.

10. The learned Counsel for the defendant has argued that, the defendant has not received the consideration amount as mentioned in the said Agreement. The plaintiffs have created the said Agreement to get the loan amount borrowed by him in order to grab the suit schedule property. The defendant is not intend to sell the suit schedule property. The

defendant is doing Mitayi business in Hanuru town and for his business purpose, he approached the plaintiff No.1 for financial assistance on 20.04.2016. The plaintiff No.1 on 25.04.2016 get the loan of Rs.7,00,000/- from one T.Venkatesh s/o Thimmegowda on interest at the rate of 2% per annum and as a security to the said loan amount, the defendant has executed the registered sale agreement in respect of suit schedule property. Hence, he prays to dismiss the I.A.No.2.

11. In support of the plaintiffs case they have produced the registered Sale agreement dated 17.12.2018, postal acknowledgment, Postal receipt, Legal Notice, Encumbrance Certificate, property extract in respect of the suit schedule property standing in the name of the defendant.

12. Admittedly, there is no dispute that, the defendant is the absolute owner of the suit schedule property. But here the defendant denies the Sale Agreement dated 17.12.2018. However, it is to be noticed that, the said Agreement is a registered document. Therefore, the contention of the defendant requires full pledged trial. Both parties have at liberty to prove their case and defence through the trial. Considering the documents produced by the plaintiffs more particularly, the Sale agreement is the registered one. The apprehension of the plaintiffs is that, the defendant is trying to sell the suit schedule property to the third parties. Admittedly, the defendant is the absolute owner of the suit

schedule property and all the documents relating to the suit schedule property are standing in the name of the defendant. Therefore, if the defendant is succeeded to alienate the suit schedule property to the third parties, it will again lead to multiplicity of proceedings. Hence, to avoid the multiplicity of proceedings, it is just and necessary to restrain the defendant from alienating the suit schedule property. Therefore, considering the facts and circumstances of this case, at this stage, the documents produced by the plaintiffs shows that, the plaintiffs have made out prima-facie case. Hence, I answer Point No.1 in the Affirmative.

13.Point No.2 and 3: These points are inter-linked to each other, they are taken up together for common discussion in order to avoid repetition of facts.

14. As discussed in Point No.1, at this stage, the plaintiffs have made out the prima-facie case. Further, at this stage the documents produced by the plaintiffs show that, the balance of convenience lies in favour of the plaintiffs. Moreover, if the temporary injunction is not granted, the plaintiffs will be put to irreparable loss and injury more than the defendant. On the other hand, if the temporary injunction is granted no hardship would be caused to the defendant. Therefore, in view of the above discussion, Point No.2 and 3 are answered in the Affirmative.

15.Point No.4: For the aforesaid reasons, I proceed to pass the following:

ORDER

I.A. No.2 U/O 39 Rule 1 and 2 r/w Sec.151 of CPC filed by the plaintiffs is hereby allowed.

The defendant is hereby restrained from alienating the suit schedule property till disposal of the suit.

No order as to costs.

(Dictated to the stenographer and transcribed by him, corrected and then pronounced by me in the open court on 15th day of November 2021)

(ANANDA.M)
Senior Civil Judge and JMFC,
Kollegala.