

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE AND
J. M. F. C., DHARWAD**

Present :Sri. Girisha R.B.,
B.A.L., LL.B.,
Principal Civil Judge & JMFC, Dharwad.

Dated: This, the 15th day of November, 2022

O.S. No. 454/2021

Plaintiff : Sri. Davalsab S/o Mehaboobsab Kalkeri,
Age: 41 years, Occ: Business,
R/o: Lakamanahalli Industrial area,
Dharwad, Tq & Dist: Dharwad.

(By Shri. S.S.Patil., Advocate)

-V/s -

Defendants: 1. Sri. Parappa S/o Fakkirappa Salaki,
Age: 53 years, Occ : Agriculture,
R/o: Menasinakai Oni, Mangavarpeth,
Dharwad, Tq & Dist: Dharwad
and another.

(D-1 By Shri. G.S.Savadatti., Adv.)

(D-2 By Shri. G.R.Kallapur., Adv.)

PARTIES TO IA No. I & II

Applicants : Sri. Davalsab S/o Mehaboobsab
Kalkeri,

- V/s -

Opponent : Sri. Parappa S/o Fakkirappa Salaki,
and another.

**COMMON ORDER ON I.A NO. I & II U/O 39 RULE 1
& 2 R/W Sec.151 OF CPC**

The present applications are filed by the plaintiff and sought to restrain the defendant No.2 from alienating and interfering over the suit property till disposal of the suit.

2. In support of this applications plaintiff has filed affidavit and averred that :

a) Property bearing No.19/1C measuring 3 acres originally belongs to father of the defendant No.1. It further stated that, plaintiff has purchased item No.1 of the suit property through register sale deed dated 19-11-2005 from the father of defendant No.1. Thereafter, he has entered with an agreement of sale for another 1 acre 20 guntas on 19-11-2005 and paid Rs.80,000/- towards advance consideration amount. It is further stated that fist defendant has filed suit in O.S NO.27/2006 before Hon'ble Prl. Senior Civil Judge

and CJM., Dharwad for Declaration and Injunction. That, in that particular suit plaintiff was second defendant and sought counter claim. That, after considering the materials facts the Hon'ble Prl. Senior Civil Judge and CJM., Dharwad in O.S.No.27/2006 as decree the suit in part and also allowed the counter claim of the plaintiff in the said suit. Therefore, the plaintiff has sold suit property to the second defendant only for security purpose and it was not for absolute sale. Taking advantage of the sale deed dated 01-10-2018 the defendant No.2 has managed to enter his name in the Revenue records. It is further stated that, defendants has colluded with each other trying to defeat the valuable rights of the plaintiff over the suit property, thereby trying to alienate and interfering over his peaceful possession. On the above said grounds prayed to consider the I.A No.I & II.

3. On the other hand, defendant No.2 has filed written statement and denied the entire averments of the plaint. Further, during course of arguments learned counsel for the defendant No.2 has vehemently argued that defendant No.2 is in possession and title holder of the suit property on the strength of register sale deed dated: 01-10-2018 which has got registered in accordance with law. It is further argued that, the defendant No.2 is in possession and enjoyment his respective property from the date of purchase. Therefore, it is the specific contention of the defendant No.2 that plaintiff has made false claim against the defendant No.2 just in order to harass him. Hence, prayed to reject both the I.A.

4. On the basis of the rival pleadings of the parties, the following Points would arise for the consideration of this Court.

1. Whether the plaintiff has made out a prima-facie case in his favor?
2. Whether the balance of convenience lies in favor of the plaintiff?
3. Whether the plaintiff suffers irreparable loss and damage, if the temporary injunction as sought for is not granted?
4. What order?
5. Heard both sides. Perused the materials available on record.
6. This court has answered the above points 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 the final order
for the following:

REASONS

7. **POINT No. 1 to 3** : Since these points are interlinked together, I take up these points for consideration together to avoid repetition.

8. The present suit is filed for the relief of Declaration. While dealing with these kinds of the application the court has to consider the following classical ingredients.

1. The prima- facie case
2. Balance of convenience
3. In reparable loss or injury
4. Other factors.

9. It is significant to note that, 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. 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. Thus the court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending of the suit. At the stage of deciding the application for temporary injunction, the Court is not required to go into the merits of the case in detail.

10. The present suit is came to be filed for the relief of Declaration and Permanent Injunction. Along with suit plaintiff has maintained these I.As and sought relief's accordingly. On perusal of records it appears that O.S.No.27/2006 was came to be decreed infavour of the defendant No.1 in part. Then, plaintiff herein has also right over his respective property as per his counter claim in the said suit. On perusal of the plaint

averments it appears that, the plaintiff claimed to be seeking the present relief as per the direction in O.S.No.27/2006. On perusal of the Judgment passed by Prl. Senior Civil Judge and CJM., Dharwad in O.S.No.27/2006 it appears that there was no direction as claimed by the plaintiff to seek preliminary decree by this Court. Further, it is better to refer the operative portion of O.S.No.27/2006 wherein it reads as under:

“The Defendant No.2 is restrained by way of Perpetual Injunction from interfering with the plaintiff’s possession of the suit property till suit property is divided by metes and bounds between him and the plaintiff”

Form the above said order it is very clear that plaintiff herein restrain from interfering with first defendant possession over the suit property. Till the suit property is divided by metes and bounds between plaintiff and defendant No.1. Further, plaintiff has not

properly explained why he has not filed final decree proceedings in respect of O.S.No.27/2006. On careful perusal of sale deed of the second defendant it appears that plaintiff has sold the suit property for legally necessities and there was not recital regarding security purpose as claimed by the plaintiff. The said register sale deed being registered one, it has got its own presumptive value in eye of law unless and until contrary is proved said sale Deed presumed to be true. Therefore, having considering the register documents relied by the defendant No.2 and considering the pleading and available on records this court feels that plaintiff had not made out any prima-facie case and other relevant factors to consider these two applications. As such, this court has no hesitation to answer Point No.1 to 3 in the “Negative”. Accordingly Point No.1 to 3 in the **Negative**.

11. **Point No.4:** For the above said reasons this court pass the following:

ORDER

I.A. I & II filed by the plaintiff under order 39 Rule 1 & 2 R/w Sec. 151 of CPC are hereby rejected.

(Directed to the stenographer, computerized by her, script corrected, signed and then pronounced by me in the open court on this the 15th day of November 2022)

(Girisha R.B.,)
Prl. Civil Judge & Prl. JMFC,
Dharwad.