

Applicant : M/s. Omkar Developers and Builders
(Plaintiff) Represented by its Proprietor,
Nagaraj S/o Vishwanath Shavi,
V/s

Opponents : Umesh S/o Gurusiddappa Uppin
(Defendants) and another.

ORDER ON I.A. I

The Learned Counsel for the Plaintiff has filed I.A. No.I under Order XXXIX Rule 1 and 2 R/w Sec. 151 of the CPC accompanied with an Affidavit of Plaintiff praying for an Order of Temporary Injunction restraining the Defendants from alienating the suit schedule property till pending disposal of the suit.

2. The Learned Counsel for the Defendants has filed Memo to treat the Written Statement contents as objections to I. A. No. I and has prayed to dismiss the Application.

3. Heard both sides. Perused I.A., Affidavit, Plaint, Written Statement and the materials available on record.

4. Now the Point arises for the determination of this court are as under :

- 1. Whether the Plaintiff has made out *prima facie* case ?**
- 2. Whether the balance of convenience lies in favour of the Plaintiff?**
- 3. Whether the Plaintiff will be put to great hardship if temporary injunction is not granted?**
- 4. What order?**

5. My answer to the above points respectively are as follows:-

Point No.1: In the Affirmative,

Point No.2: In the Affirmative,

Point No.3: In the Affirmative,

Point No.4: As per final order , for the

Following

REASONS

6. **Point No. 1 to 3 :** All these points are taken together for common discussion as they are inter-linked with each other and to avoid the repetition of facts.

7. The instant Application is filed by the Learned Counsel for the Plaintiff with a prayer to to restrain the defendants from alienating the suit property pending disposal of the Suit.

8. This Application is supported by an Affidavit of the Plaintiff stating that he is the proprietor of M/s Omkar Developers and Builders and he also prayed to treat the Plaint averments as part and parcel of the affidavit.

9. Further, he stated that in respect of registered Sale Agreement, he has paid Rs. 10,00,000/- to the defendants as an earnest money on 23-07-2016 and he also paid Rs. 5,00,000/- subsequently and in total he paid Rs. 15,00,000/- to the defendants and he was ever ready to pay the remaining sale consideration of Rs. 80,00,000/- to the defendants and ready to get execute the Sale deed in his favour. But, the defendants through their Advocate intimated him that the registered Sale agreement dt :

23-07-2016 is revoked by them unilaterally and forfeited the earnest money already paid. He learnt that the defendants are trying to alienate the suit property in favour of third person and he made out prima facie case and balance of convenience lies in his favour and if the TI is not granted he will be put to injustice, loss and inconvenience. On these grounds, he has prayed to allow the I.A.

10. On the other hand, the defendants have filed a Memo to treat the Written Statement as objections to I.A. No. I. They partly admitted the Plaint averments and partly denied the Plaint averments. They admitted that a registered Sale agreement dt : 23-07-2016 has been agreed on certain terms and conditions and inspite of which the defendants complied with the terms and conditions, the Plaintiff has failed to perform his part of the terms and conditions and therefore, O.S. No. 409/2018 was filed before the V Addl. Civil Judge, (Jr. Dn)., Huballi,

wherein the present plaintiff is defendant No.2 in the said Suit. Further, they contended that the suit of the Plaintiff is barred by Law of limitation and the agreement stipulates a period of one year from the date of agreement of sale, which is the subject matter of the suit at O.S. No. 409/2018 pending adjudication before the V Addl. Civil Judge Court, Hubballi. Further, the defendants have denied the other Plaintiff averments. Hence, these and among other grounds, the defendants have prayed to dismiss the Application.

11. In order to support the contention of the Plaintiff, the Plaintiff has produced the xerox copies of Sale agreement dt : 23-07-2016, Encumbrance Certificate, RTC in respect of Bl. No. 115-A Plot No. 1, Certified copy of Interim order dt : 28-11-2019 passed by the Hon'ble High Court of Karnataka in WP No. 108582/2019(GM-CPC), Original sketch, xerox copies of Reply notices, Legal notices and Postal acknowledgments.

12. This is a suit filed by the Plaintiff against the defendants for the relief of Specific Performance of contract in respect of the suit property and also to declare that the unilateral act of defendants to revoke and rescind the registered sale agreement dt : 23-07-2016 to forfeit Rs. 10,00,000/- by the Plaintiff to the defendants under the above said sale agreement is illegal, ab-initio, null and void and to direct the defendants to execute the sale deed in respect of the suit property in favour of the terms of registered sale agreement dt : 22-07-2016 by receiving remaining sale consideration amount from the Plaintiff.

13. Party to the litigation who seeks an injunction must satisfy the Court that there is a serious question to be tried at the hearing of the suit and every probability tilts in his favour for the relief sought for i.e. prima facie is in his favour.

14. What the Court has to determine is whether there is a bonafide contention between the

parties, whether there is fair and substantial question to be decided as to what the rights of the parties are.

15. The prima-facie ought to be considered in relation to the available relevant materials on record to examine the probability of plaintiffs ultimate success in the suit. In considering the balance of convenience, the court is to consider the comparative mischief or inconvenience of both the parties. The grant of injunction being an equitable relief, the plaintiff must come with clean hands. The plaintiffs/applicants have to satisfy the Court that its interference is necessary to protect them from that species of injury which the Court calls irreparable before their legal right can be established on trial.

16. On reading of Plaint and Written Statement, prima facie it shows that there is a Sale agreement between plaintiff and defendants in respect of the suit property for a sale consideration of Rs. 95,00,000/- and the Plaintiff has paid Rs. 10,00,000/-

to the defendants as an earnest money at the time of execution of sale agreement. The encumbrance Certificate also support the said fact at this stage.

17. Further the WP No. 108582/19 (GM-CPC) which was filed by one Nagaraj S/o Vishwanath Shavi against Umesh Uppin and others wherein, the Hon'ble High Court has directed the parties to the suit shall not create any third party interest in respect of the suit property till next date of hearing. Further, at this juncture, it is the apprehension of the Plaintiff that if the defendants alienates the suit property, then he will be put to great hardship. However, the defendants have contended in their Written Statement that the Plaintiff has failed to perform his part of the terms and conditions as agreed in the Registered Sale Agreement. But, to prove the rival contentions taken by the Plaintiff and defendants in their Complaint, Written Statement as well as I.A.s, the same will needs full fledged trial. But, when there is a registered sale

agreement before the court, then certainly if TI is not granted, then the Plaintiff will be put to great hardship. Further, if the defendants alienate the said property to the third party, then definitely the Plaintiff will be put to great hardship. Therefore, at this juncture, the Plaintiff has made out prima facie case to grant TI . Accordingly, I answer these Points in '**Affirmative**' respectively.

18. **Point No. 4** : In view of the discussions as stated supra and my answer to the Point No. 1 to 3 in the "**Affirmative**" respectively, I proceed to pass the following :

ORDER

I.A. No. I filed by the Learned Counsel for the Plaintiff under Order XXXIX Rule 1 and 2 R/w Sec. 151 of the CPC is hereby allowed.

**The Defendant No.1 and 2 are
hereby restrained by an Order of
Temporary Injunction from alienating the
suit property till the disposal of the suit.**

No order as to cost.

(Dictated to the stenographer, typed and print out taken by her,
script corrected, signed and then pronounced by me in the open
Court on this day **10th day of December,2021**)

(Smt. Kumari Sujatha)
II Addl. Senior Civil Judge,
& J.M.F.C. Hubballi.