



**IN THE COURT OF THE II ADDL, SENIOR CIVIL
JUDGE & JMFC., HUBBALLI.**

Present: **Smt. Padmashree Ratnakar Patil.,**
B.A. LLB. (Spl.)
II Addl. Senior Civil Judge & JMFC.

O.S. No. 470/2022

Dated this the 05th day of December, 2023

PLAINTIFF : Mitulal S/o Bhavarilal
Age: 65 yrs,
Occ: Agriculture & Business,
R/o: Yesh Developers,
Opp. Desai Circle, Hubballi
(By Sri. M.R. Hegde, Adv.)

// Versus //

DEFENDANTS : Smt. Neelavva W/o Fakkirappa
Navalur
Age: 73 yrs, Occ: Agriculture,
R/o: Sutagatti,
Hubballi and others

(By Sri. S.S.Angadi, Adv.)

PARTIES TO I.A NO.I



APPLICANT : Mitulal S/o Bhavarilal
(PLAINTIFF)

V/S

OPPONENTS : Smt. Neelavva W/o Fakkirappa
(DEFENDANT) Navalur and others

ORDER ON I.A. NO I FILED U/O 39 RULE 1 AND 2

R/W SEC.151 OF CPC

The plaintiff filed this application under Order 39 Rule 1 and 2 of CPC to restrain the defendants, from alienating, creating third party interest or making charge over the suit property mentioned in the application till disposal of the suit.

2. As per the pleadings of the plaintiff, the plaintiff filed this suit for the relief of specific performance of contract against defendants by virtue of agreement of sale dt:04-01-2014. In spite of repeated requests after receiving earnest money of Rs.5,50,000/- from the plaintiff, the defendants did not come forward to execute



the sale deed in favour of the plaintiff. The defendants unclaimed the notice. Hence, plaintiff constrained to file this application. Therefore prays to allow the application.

3. On the other hand defendant No.6 filed his written statement and filed memo stating that, defendant No.1 to 5 adopted the Written Statement of defendant No.6 and also filed memo stating that, the contents of written statement be treated as objection to I.A.No.I. The defendant denied the averments of plaintiff and contended that, the suit property is the ancestral property, That the suit property has mutated in the name of the defendant No. 1 to 6 and also Ashok S/o Shiddappa Navalur, Ramesh S/o Shidappa Navalur, Nilavva W/o Shivaajilsagombal, Sobha W/o Sankarappa Navalur, Gopal S/o Shivaaji Navalur, Mahesh S/o Shivaji Navalur, and Vishwanath S/o Shivaaji Navalur



are all the joint owner of the suit property. One of the Ramesh S/o Shiddappa Navalur who is the co-sharer as well as co- owner of suit property, he is educated and well knowledgeable parson and he has managed the all revenue documents of suit property, in that time innocence defendants are making signature on the blank papers and blank bond etc. for the purpose of correction of revenue document of the suit property. The plaintiff and said Ramesh Navalur has taken misuse of the defendant's innocence, weakness and their family feelings created the bogus unregistered agreement of sale of above said blank bond. The plaintiff has created the bogus unregistered agreement of sale from the defendants dated on 04/01/2014. In that time Ashok s/o Shiddappa Navalur, Ramesh S/o Shidappa Navalur, Nilavva w/o Shiaji Isagombal, Sobha W/o Sankarappa Navalur, Gopal S/o Shivaji Navalur, Mahesh S/o Shivaji



Navalur, and Viswanath s/o Shivaji Navalur are the co-sharer as well as co-owner of suit property. Plaintiff has not taken any consent or signature of the above said co-owner of the said unregistered sale agreement. That the defendants are illiterate and they have no knowledge about the facts of the sale agreement. That the plaintiff has also made fraud on the defendants and created a bogus and false unregistered agreement of sale in the name of the plaintiff dated on 04/01/2014. Therefore, the unregistered sale agreement is created by the plaintiff is the bogus, illegal, and contrary to law, not binding upon the defendant's rights. The plaintiff is one of professional builder and plaintiff has fully know about suit property, so for plaintiff and with help of Ramesh Navalur using the weakness of the defendants created bogus and fake unregistered sale argument dated on 04/01/2014 in the name of plaintiff. The



alleged unregistered sale agreement is also illegally created by plaintiff. It is not bonding on the rights of the defendants. The defendants and also other co-shearer is joint owner of suit property, and they are actually jointly in possession and enjoyment of the suit property. The defendants only have no rights to any sale transaction and etc of the suit property. The alleged unregistered sale agreement transaction in respect of above suit property is illegal, contrary to law and not binding upon the rights/share of the defendants. Therefore prays to dismiss the application filed by the plaintiff.

4. In view of the above said pleading following points arises for consideration of this court:

1. Whether the Plaintiff proves Prima-facie case?
2. Whether the plaintiff prove balance of convenience lies in his favour and irreparable loss would be caused to him if injunction is denied?



3. What Order?

5. Hearing on both side taken as Nil.

6. My finding on the above points is as under:

Point No. 1 : In the Affirmative

Point No. 2 : In the Affirmative

Point No. 3 : As per final order
for the following

REASONS

7. **Point No.1:-** The plaintiff filed this suit for the relief of specific performance of contract against defendants by virtue of agreement of sale dt:04-01-2014. Inspite of repeated requests after receiving earnest money of Rs.5,50,000/- from the plaintiff, the defendants did not come forward to execute the sale deed in favour of the plaintiff.

8. Whereas defendant contended that, the suit property is the ancestral property, That the suit



property has mutated in the name of the defendant No. 1 to 6 and also Ashok S/o Shiddappa Navalur, Ramesh S/o Shidappa Navalur, Nilavva W/o ShivaajiIsagombal, Sobha W/o Sankarappa Navalur, Gopal S/o Shivaaji Navalur, Mahesh S/o Shivaji Navalur, and Vishwanath S/o Shivaaji Navalur are all the joint owner of the suit property. One of the Ramesh S/o Shiddappa Navalur who is the co-sharer as well as co- owner of suit property, he is educated and well knowledgeable parson and he has managed the all revenue documents of suit property, in that time innocence defendants are making signature on the blank papers and blank bond etc., for the purpose of correction of revenue document of the suit property. The plaintiff and said Ramesh Navalur has taken misuse of the defendant's innocence, weakness and their family feelings created the bogus unregistered agreement of sale of above said



blank bond. The plaintiff has created the bogus unregistered agreement of sale from the defendants dated on 04/01/2014. Therefore, defendants alone cannot execute the agreement of sale. Under such circumstances, application is allowed no hardship or loss would be caused to the defendants. It shows that till disposal of the suit property should be kept intact. If the defendants are alienate the suit schedule property it will cause multiplicity of the proceeding.

The Hon'ble High court of Karnataka in its recent order passed in MFA 101088/20 dated 24.08.2020 Between Shree Samathan Mahabaleshwar Deva Gokarna and others Vs U.F.M. Ananthraj and others.

The Hon'ble High Court laid down following principle of law that discretion of the court, while granting order to temporary injunction in favour of the plaintiff, must meet following requirement,



(i) Existence of prima facie as pleaded necessitating protection of rights of issue of Temporary injunction.

(ii) when the need for protection of plaintiffs rights is compared with or weighed against the need for protection of defendants rights, or material infringement of defendants rights, the balance of convenience in favour of the plaintiffs or defendants.

(iii) clear possibilities of irreparable injury being caused to the plaintiffs if the temporary injunction is not granted. in addition the temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiffs conduct is free from blame and he approaches the court with clean hands.



The Hon'ble High court above said decision coted this citation reported in ILR 2006 (KAR)3961 between Reebok Company Vs Gomzi Active.

para 15] A party would be entitle to relief under order 39 Rule 1 and 2 provided it satisfies the court that it has a prima-facie case, that balance of conveniences in his favour and that irreparable loss and injury would be caused to him if interim relief is not granted. The aforesaid three phrases, as emphasized time and again, are not rhetoric phrases but elastic words to meet a wide range of situation in given set of facts and circumstantial. The Burden is always on the plaintiff/applicant to satisfy the court that a prima-facie case exists in his favour.

9. Looking to the facts and circumstances of the case the plaintiff at this juncture established the



prima-facie case in his favour. For these reasons this court holds point no 1 In the Affirmative.

10. **Point No.2** :- Injunction relief is equitable relief. If the injunction is granted no hardship or loss would be caused to the defendants. Since defendant in their written statement contended that suit schedule property is joint family property. Other defendants also having share in the suit schedule property. Under such circumstances, if they create charge over the property during the pendency of the suit it will cause multiplicity of the proceedings. Therefore balance of convenience is lies in favour of plaintiff. Moreover if injunction is not granted, it will cause irreparable hardship to the plaintiff and it will cause multiplicity of the proceedings. At this juncture as guidelines laid by the Hon'ble High court, the plaintiff has satisfied all the three ingredients. For all



these reasons and discussions this court holds point No.2 in the affirmative.

11. **Point No.3:-** In the result proceed to pass the following order.

∴ ORDER ∴

The application No.1 filed U/o 39 Rule 1 and 2 of CPC by plaintiff is hereby allowed.

The defendants are restrained from alienating/creating any charge over the suit schedule properties in any manner as prayed in the application till disposal of the suit.

(Dictated to the stenographer directly on computer typed by her, the same is corrected and then pronounced by me in the open court on this the 05th day of December 2023.)

(Smt. P.R.Patil)
II Addl. Senior Civil Judge and
JMFC, Hubballi