

**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL  
JUDGE, HUBBALLI**

Present:

**Sri. Yamanappa Karehanumanthappa,**  
Prl. Senior Civil Judge, Hubballi.

**O.S. No.513/2024**

**Dated this the 5<sup>th</sup> day of December - 2024**

**Plaintiffs** : Smt. Rekha W/o. Ishwar Bellad and  
others.

**.Vs.**

**Defendants** : APMC Main Market, APMC Yard and  
others.

**PARTIES TO IA No.II**

**Applicants** : Smt. Rekha W/o. Ishwar Bellad and  
others.

**.Vs.**

**Opponents** : APMC Main Market, APMC Yard and  
others.

**PARTIES TO IA No.III**

**Applicant** : Manjula G. Rayanal.

**.Vs.**

**Opponents** : Smt. Rekha W/o. Ishwar Bellad and  
others.

**ORDER ON IA No.II AND III**

This suit is filed by the plaintiffs for the relief of  
declaration and partition and separate possession. I.A. No.I

is filed by the plaintiffs U/o.39 Rule 1 and 2 of C.P.C. seeking temporary injunction against defendant No.2 restraining her from alienating the suit property pending disposal of the suit. I.A. No.III is filed by defendant No.2 to vacate the temporary injunction order dated 20.11.2024 and stated that the interim order is not diligent and plaintiffs have played fraud on the court. Without there being any fault or mistake by this defendant No.2, she was restrained by way of injunction. If the sub-joined application is not allowed she will be put to irreparable loss. Hence, prayed to allow I.A. No.III.

2. In support of the application, plaintiff No.1 has sworn affidavit by reiterating contents of the plaint. It is sworn that the defendant No.2 without the knowledge and notice and also without the consent and without any resolution in the firm got created various documents colluding with the defendant No.1 authority and all the business of the firm was closed during the lock down due to Covid-19. Misusing the situation got executed the registered conditional sale deed on 11.11.2021, which is illegal and not binding on the plaintiffs nor on their rights over the suit property. By virtue of said conditional sale deed the defendant No.2 is claiming the suit property and even if the conditional sale deed is perused it discloses that the defendant No.2 is the partner and purchaser. Taking undue advantage of the said sale deed the defendant No.2 is trying

to alienate the suit property to one Rajalaxmi Sales represented by Santosh M. Purohit illegally. The defendant No.2 is not the owner of the said property and she has no rights over the suit property. If the defendant No.2 succeeded in her activities, the plaintiffs will be put to great loss and hardship. They have got prima facie case and balance of convenience in their favour. Hence, prayed to allow the I.A.

3. On issuance of suit summons defendant No.2 to has appeared and filed written statement denying the contents of the plaint. She has filed objection to I.A. No.II denying the contents of the affidavit. She has contended that the plaintiffs have sought prayer for declaration, but they have not paid proper court fee. Hence, the suit cannot be entertained. The plaintiffs have not assigned sufficient reasons in affidavit supporting the application. In the written statement the defendant No.2 has admitted about lease-cum-agreement of sale in favour of Ishwarappa. As he could not repay the installments to defendant No.1, the defendant No.2 came as partner of B. Ishwarappa Firm. The defendant No.2 has made payment to defendant No.1 for construction of godown and additional amount. The husband of defendant No.2 has paid ₹2,50,000/- to Ishwarappa and ₹1 lakh to plaintiff No.1 through bank. The Ishwarappa voluntarily retired on 28.02.2011 and new partnership deed was executed between defendant No.2 and Basanagouda Hanamantagouda Fakkiragoudar on 01.03.2011. Hence, the

plaintiffs have no right over the suit property. If the temporary injunction is granted, she will be put to great loss and injury. Hence, prayed to reject the application.

4. I have heard both side. Perused the plaint, written statement, I.A. and materials on record. The following points arise for my consideration:

1. Whether the plaintiffs have made out prima facie case?
2. Whether the balance of convenience is in favour of the plaintiffs?
3. Whether the plaintiffs would suffer irreparable injury, if their prayer for temporary injunction is dis-allowed?
4. Whether the defendant No.2 has made out grounds to vacate the temporary injunction order?
5. What order?

5. My answer to the above points are as under.

**Points No.1 to 3 : In the Affirmative.**

**Point No.4 : In the Negative.**

**Point No.5 : As per final order,  
for the following:**

### **REASONS**

6. **Points No.1 to 3**: All these points are connected to each other, hence they are taken for common consideration.

7. At the outset the plaintiffs have filed this suit for declaration and partition and separate possession of the suit

property. The plaintiffs have stated that defendant No.2 without the knowledge and notice and also without the consent and without any resolution in the firm got created various documents colluding with the defendant No.1 authority and all the business of the firm was closed during the lock down due to Covid-19. Misusing the situation got executed the registered conditional sale deed on 11.11.2021. The defendant No.2 has contended that due to non-payment of installments by Ishwarappa the defendant No.2 came as partner to B. Ishwarappa Firm and the defendant No.2 and her husband paid amount to Ishwarappa and plaintiff No.1 through bank and defendant No.1 has executed conditional sale deed in favour of defendant No.2. I have perused the documents. I have also perused the lease-cum-sale agreement executed by defendant No.1 in favour of Ishwarappa. Whether documents produced by the defendants are genuine or not can be proved at the time of trial. Therefore, at this stage looking to the documents placed by the respective parties plaintiffs have made out prima facie case, balance of convenience leans in their favour of if temporary injunction is granted no harm or prejudice will be caused to the defendants. The defendant No.2 has not made out any grounds to vacate the temporary injunction order dated 20.11.2024. So, considering the materials on record I answer points No.1 to 3 in **Affirmative** and point No.4 in **Negative**.

8. **Point No.4:** In view of my answer to points No.1 to 3 as stated above, I proceed to pass the following;

**ORDER**

The I.A. No.II filed by the plaintiffs U/o.39 Rule 1 and 2 r/w. Section 151 of CPC is allowed.

Defendant No.2 is restrained from alienating or transferring the suit property in any form by granting temporary injunction till disposal of the suit.

I.A. No.III filed by defendant No.2 U/o.39 Rule 4 of C.P.C. is hereby rejected.

The costs shall follow the event.

(Dictated to the Stenographer directly on computer, script corrected directly on computer and then pronounced by me in the Open Court on this the **5<sup>th</sup> day of December - 2024**)

**(Yamanappa Karehanumanthappa)  
Pri. Senior Civil Judge, Hubballi.**