

∴ ORDERS ON I.A. No.6 ∴

The present application filed by the plaintiff No.1 under order 38 rule 5 of CPC, praying this Hon'ble court to attach before judgement the properties mentioned in the accompanying affidavit.

2. Plaintiffs filed the present suit for Declaration and Injunction to restrain the defendant not to interfere and not to alienate. In supporting affidavit of plaintiff No.1 application, it is stated that after filing of the present suit the defendant had sold the suit schedule property on 04/12/2013 in favour of the Executive Officer of Taluk Panchayath Arsikere for consideration of Rs.9,11,250/-. The consideration amount of Rs.9,11,250/- with defendant. The defendant had no right to sell the suit schedule property, with collusion of the government servant and without brining notice to the villagers the defendant had sold the suit schedule property. The defendant is trying to sell and create encumbrances over the properties mentioned in the application. If defendant is permitted to sell the properties mentioned in the application, it is very difficult for the plaintiffs to recover Rs.9,11,250/-. Therefore plaintiff No.1 prayed this Hon'ble court to attach the properties mentioned bellow before judgement, the details of the lands situated at Mududi Village, Gandasi Hobli Arsikere Taluk is as follows.

1. Sy.No.195/1A4, 0.13 guntas in Mududi Village.
2. Sy.No.10/1, 4-09 guntas in Cheelanahalli Village,

3. Sy.No.62/4, 5-15 guntas in Cheelanahalli Village,
 4. Sy.No.64/1, 3-19 guntas in Halagenahalli Village,
 5. Sy.No.10/2, 3-02 guntas in Halagenahalli Village.
6. The defendant filed objection to the application filed by the plaintiff No.1. In the objection it is denied by the defendant that the defendant had sold the suit schedule property for sale consideration of Rs.9,11,250/- on individual capacity. The defendant denied that he is trying to alienate or create encumbrance over the properties mentioned in the application. The plaintiffs had not paid proper court fee, simple to harass this defendant, the plaintiff No.1 filed the present application. Hence defendant prayed this Hon'ble court to dismiss the application with cost.
7. Heard the both side arguments on I.A.No.6 and perused the material available on records.
8. The following points that arise for my consideration;

:: POINTS ::

1. Whether the plaintiffs prove that the properties mentioned in the application has to be attaching before judgement?
 2. What Order?
9. My answers to the above points as here under;

Point No :1: In the Negative.

Point No :2: As per final order for the following;

-:: REASONS ::-

10. **Point No : 1 :-** The plaintiffs stated in their plaint that the suit schedule property is belongs to the public. The defendant had no individual capacity to transfer or to create any encumbrance over the suit schedule property. On behalf of the villagers the plaintiffs had filed the present suit for declaration to declare that suit schedule property belongs to the public and direct the defendant not to interfere with the villagers peaceful possession over the suit schedule property. In the accompanying affidavit the plaintiff No.1 had stated that during the pendency of the suit the defendant had executed a sale deed in favour of the third party. At the stage it can not be held that the suit schedule property is belongs to the villagers without verifying the documents. The documents produced by the plaintiffs are not sufficient to come to conclusion that suit schedule property is belongs to the public. Admittedly the present plaintiffs filed an application to implead the subsequent purchaser to this suit as defendant. Plaintiffs at liberty to file application under order 6 Rule 17 of CPC to amend their pleadings. Therefore if the present application is allowed without verifying the documents of the suit schedule property, the defendant will be put into hardship. In view of the above said reasons the Point No.1 held in the Negative.

11. **Point No.2:-** In view of my reasons while answering to point No.1, I proceed to pass the following;

-:: ORDER ::-

***Application filed by the plaintiff No.1
under Order 38 rule 5 of CPC is hereby
dismissed. There is no order as to cost.***

(Dictated to the stenographer, directly on computer, corrected by me and then pronounced in the open court today on this 10th July 2015.)

(Yashavanth Kumar R.)
II Addl. Civil Judge & JMFC,
Arsikere.