

KAHS510006722021



Presented on : 23-04-2021
Registered on : 23-04-2021
I.A.No.2 Decided on : 11-07-2023
Duration : 2 years, 2 months, 18 days

**IN THE COURT OF
CIVIL JUDGE AND JMFC AT BELUR, HASSAN.**

Presided Over by PRASANNA KUMAR C.,_B.A.L.,LL.B.
Civil Judge and JMFC, Belur.

Dated this the 11th day of July, 2023

O.S./189/2021

Between:

Shri. B.S.Nagaraj S/o Somegowda,
Aged about 38 years,
R/at: Hanumanthanagiri, Gendehalli road,
Belur Town, Hassan District. **Plaintiff**

(Shri S.N. Chandra, Advocate for Plaintiff)

And:

- 1. Shri.Manjegowda S/o Javaregowda,**
Aged about 50 years,
- 2. Smt.Gangamma W/o Manjegowda,**
Aged about 43 years,
- 3. Shri.B.M.Jagadish S/o Manjegowda,**
Aged about 26 years,

All are R/at: Siddeshwara Beedi,
Belur Town, Hassan District.

..Defendants

(Shri.E.P.Girish, Advocate for Defendants)

PARTIES TO THE APPLICATION IA NO. II

Shri.B.S.Nagaraj

.. Plaintiff/Applicant

V/s

Shri.Manjegowda and others

..Defendants/Opponents

ORDERS ON I.A. No.II

The present application is filed along with the suit. This application is filed by the plaintiff under Order 39 Rule 1 and 2 of Civil Procedure Code seeking for ad interim order of temporary injunction to restrain the defendant No.1 from alienating the suit property having Panchayat Khatha No.147, measuring East-West 17 ½ feet and North-South 20 feet, existing with RCC roofed house consisting of ground floor and first floor, situated at Sanyasihalli village, Kasaba Hobli, Belur Taluk, by way of sale, lease, mortgage etc., till disposal of the suit.

2. In the affidavit filed in support of the application as well as in the plaint averments, the plaintiff has contended that, the Plaintiff is the purchaser and defendants are the vendors.

Defendant No.2 is the wife and Defendant No.3 is the son of Defendant No.1. The suit property is standing in the name of defendant No.1 having changed katha in his name and all the documents are standing in his name. The defendants in order to construct a house form them and also to meet such other family expenses have proposed to sell the suit property. The plaintiff having accepted the offer agreed to purchase the suit property for a sum of Rs.2,00,000/-. Accordingly on 01.09.2017 the defendants in the presence of witnesses have executed a registered agreement of sale without possession. As per the terms of agreement of sale, an amount of Rs.1,50,000/- was paid towards advance sale consideration on the date of agreement of sale itself dated 01.09.2017. It was agreed that the sale deed has to be executed by the defendants in 2 years, i.e., before 31.08.2019 by receiving balance consideration amount of Rs.50,000/-.

3. It is further contended by the plaintiff that subsequently when the plaintiff approached the defendants seeking for execution of sale deed on receipt of balance consideration of Rs.50,000/-, the defendants went on postponing the same on one or the other pretext. As such the plaintiff has got issued notice through his counsel on 21.09.2019 calling upon the defendants to execute the sale deed by receiving balance consideration amount of Rs.50,000/-. Even though the said notice was served on the defendants, they have failed to comply

with the demand made in the notice. That apart, the defendants are also trying to alienate the suit property in the name of third persons. Hence, the plaintiff has filed this suit along with the present application seeking order of temporary injunction as stated above.

4. On service of notice/summons, the defendants entered appearance through their counsel. The defendants have filed their written statement and adopted the same as objections to instant application I.A.No.2 by filing a memo. In the written statement, the defendants have specifically denied the entire plaint averments, execution of agreement of sale, receipt of advance sale consideration, time fixed for performance but admitted the service of notice on Defendant No.1 and 2. The defendants have specifically contended that the plaintiff is a money lender doing money lending business. The Defendants in order to meet their family necessities have availed loan of Rs.50,000/- from the plaintiff on interest. They were paying interest every month regularly and they have also cleared the loan of Rs.50,000/-.

5. It is further contended by the defendants that the plaintiff had demanded the defendants to execute document towards security for the loan availed by them and had taken the defendants to office of Sub-Registrar and obtained signatures and created Agreement of Sale. The said fact was not known to

the defendants. The suit property is the ancestral property of defendants. Except the suit house property the defendants have no other source of shelter. On receipt of notice issued by the plaintiff, the defendants approached and questioned the plaintiff about the same. But the plaintiff has given evasive answer. When the Defendants have availed loan from the plaintiff, the suit property was worth Rs.40 lakhs and the same is two storied building and would be sold for more value. The defendants had no intention to sell the suit property for lesser value. Hence, the defendants have sought for dismissal of the suit and consequently the instant application.

6. Basing on the application, affidavit, written statement of defendants adopted as objection statement to the application, the following points would arise for consideration of this court.

POINTS

1. Whether the plaintiff has made out prima facie case?
2. Whether the balance of convenience lies in the favour of the Plaintiff?
3. Whether the plaintiff will be put to irreparable loss and injury if the order of injunction as prayed for is not granted?
4. What order?

7. Heard arguments of both sides. On the basis of Application, affidavit, Written statement of defendants adopted as objection to the application, pleadings and also all the materials available on record, answer of this court to the above points is as under:

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

8. **Point No.1 to 3:** Since all these three points are interconnected and interlinked with each other, they are taken up together for discussion in order to avoid repetition of facts.

9. This suit is filed by the plaintiff against the defendants seeking relief of specific performance of the contract directing the defendants to execute registered sale deed in favour of plaintiff in terms of the agreement of sale dated 01.09.2017 in respect of the suit schedule property. At the outset, it is not in dispute that the defendant No.1 is the owners of the suit property. The plaintiff has contended that the defendants in order to meet their family expenses and to construct a house for them have executed the agreement of sale in favour of the plaintiff.

10. On the other hand, the defendants have contended that since they were under need of loan for Rs.50,000/-, they have approached the plaintiff. At the instigation of the plaintiff, the defendants have executed the loan agreement by receiving sum of Rs.50,000/- in the office of sub-registrar considering it as loan agreement. But the defendants contended that they were not aware as to the documents executed by them and they have executed an agreement towards security.

11. Perused the Agreement of sale dated 31.08.2017 registered on 01.09.2017. The same is in consonance with the plaint averments and claim made by the plaintiff. But the defendants having signed the said agreement have come with a plea that they are not aware of contents of the same. They have also contended that they have availed loan of Rs.50,000/- from the plaintiff and repaid the same by paying periodical interest. But the averments regarding particulars as to when the defendants have availed loan and how much interest they have paid are not forthcoming at this point of time. More importantly, the steps taken by them to get the loan agreement as alleged by them returned from the plaintiff is also not stated. Therefore, there is need for holding full fledged trial to come to the proper conclusion as to whether the claim made by the plaintiff is proper or the defence taken by defendants. Till then, it is necessary to safeguard the suit property intact.

12. Furthermore, the defendants have agreed for having signed the agreement, but they are deviating by saying that it was executed towards security of loan transaction with plaintiff. But, prima-facie, the agreement of sale is a registered document and the contents of the same cannot be disputed at this stage of the suit and as stated above, the defendants do not dispute their signatures. Therefore, the balance of convenience is lying in favour of the plaintiff. The plaintiff has made out that the suit property is in danger of being wasted or alienated by the act of the Defendants since the revenue records are standing in the name of Defendant No.1. Therefore, if this court declines to grant the order of temporary injunction as sought for, definitely, the same would cause irreparable loss, hardship and injury to the plaintiff which cannot be compensated by any means. Furthermore, if the order of temporary injunction is declined, there is every chance of defendants in disposing the suit property thereby creating third party right considering the defence taken by them in the written statement. In that event the same would leads to multiplicity of proceedings. In order to avoid the same it is just and necessary to safeguard the suit property and interest of plaintiff over the same. Hence, the plaintiff is entitled to grant of equitable relief of order of temporary injunction. Accordingly, this court answered Point No.1 to 3 in the **Affirmative**.

13. **Point No.4:** For the foregoing reasons and discussions made above, this court proceed to pass the following:

:: ORDER ::

- I.A.No.II filed by the plaintiff Under Order 39 Rule 1 and 2 of Civil Procedure Code is hereby allowed.
- An order of Temporary Injunction is granted and the Defendant Nos.1 to 3 are hereby restrained from alienating, mortgaging or encumbering the suit schedule property, till disposal of this suit.
- No order as to costs.

(Dictated to the stenographer directly on the computer, corrected by me and then pronounced in the open court, on this the 11th day of July, 2023)

**(Prasanna Kumar C.)
Civil Judge & JMFC, Belur.**

(Orders on I.A. No.II signed and pronounced vide separate order)

:: ORDER ::

- I.A.No.II filed by the plaintiff Under Order 39 Rule 1 and 2 of Civil Procedure Code is hereby allowed.
- An order of Temporary Injunction is granted and the Defendant Nos.1 to 3 are hereby restrained from alienating, mortgaging or encumbering the suit schedule property, till disposal of this suit.
- No order as to costs.

- For Issues by: **30.08.2023**

(Prasanna Kumar C.)
Civil Judge & JMFC, Belur.