

IN THE COURT OF THE SENIOR CIVIL JUDGE AT
HOLENARASIPUR

PRESENT : Sri RANGEGOWDA.C.
B.A.L., LL.B.
Senior Civil Judge and J.M.F.C.,
HOLENARASIPUR

Dated this the 4th day of March 2017

O.S.NO.1/16

Plaintiff/s : H.K. Renukaradhya
-V/s-

Defendant/s : K.V.Shambhulinga & Another

:: IA.No.I::

Applicant/s : H.K. Renukaradhya
-V/s-

Respondent/s : K.V.Shambhulinga & Another

:: ORDERS ON IA.No.I::

This is an application filed by the plaintiff, U/o 39, R.1 & 2 C.P.C, seeking Temporary Injunction, against the defendants restraining them from alienating the suit properties by sale, mortgage, rent in respect of the suit properties.

2. It is the case of the plaintiff that the plaintiff is the owner of the suit properties. He has executed a GPA in favour of 1st defendant and one K.V.Manunath jointly in respect of the suit properties. The said K.V.Manjunath died on 28.08.2015. Thereafter the 1st defendant by misusing the GPA has sold the Item No.2 of the suit property and 1 acre in item No.1 of the suit property to 2nd defendant and also

sold 36 guntas in the item No.1 of the suit schedule property to secretary Bharath Universal society i.e., to defendant No.1 himself. Therefore, plaintiff has filed this suit seeking declaration of his title over the suit property and also for cancellation of sale deed dated 04.10.2015 and 26.10.2015. Plaintiff has also sought for permanent injunction against the defendants. The plaintiff has filed I.A.No.I seeking Temporary injunction against the defendants restraining them from alienating suit properties. In the affidavit filed in support of the application the plaintiff has reiterated the plaint averments.

3. The defendants filed their separate written statements. The 1st defendant has denied the material averment of the plaint as false. Defendant No.1 specifically contended that in the year 1996 suit properties are purchased in the name of the plaintiff out of the funds collected along with the funds of defendant No.1 and Sri.Basavarajaiah. The defendant No.1 specifically contended that the suit properties are not the self-acquired properties of the plaintiff. With the object of constructing building for the college the plaintiff has executed the General power attorney in favour of the 1st defendant and K.V.Manjunath. There after the defendants have constructed well-equipped buildings for Girls hostel and for the college. The defendant No.1 specifically contended that the Bharath Universal society is in possession of the suit properties and running school, college and Girls Hostel. The 1st defendant has admitted that based on the power of attorney he has sold the item No.2 of the suit property and 1 acre in item No.1 of the suit property to 2nd defendant

and also sold 36 guntas in the item No.1 of the suit schedule property to secretary Bharath Universal society i.e., to defendant No.1 himself. The defendant No.1 further contended that the plaintiff has filed a false suit in order to harass the defendants and hence prays for rejection of the application.

4. The defendant No.2 in his written statement has contended that suit is not maintainable. He further contended that sale deed is registered in respect of the suit property in the name of the plaintiff as the plaintiff was the close relative of the 1st defendant and plaintiff was also one of the member of the executive committee. The entire sale consideration was arranged by the 1st defendant. Thereafter, for the improvement of the Bharath Universal society the plaintiff has executed general power of attorney in favour of 1st defendant and K.V.Manjunath. After the death of Manjunath, since plaintiff was causing trouble and obstruction for the functioning for the society, the 1st defendant has legally sold the Item No.2 of the suit property and 1 acre in item No.1 of the suit property to 2nd defendant and also sold 36 guntas in the item No.1 of the suit schedule property to secretary Bharath Universal society i.e., to defendant No.1 himself. Though sale deed is registered in the name of 2nd defendant he is ready to execute any document for the benefit of the education society, as per the decision of execution committee of the society. With the above contention defendant No.2 prays for dismissal of the suit.

5. Heard both counsels. Perused the materials on record and written arguments submitted by counsel for the defendants.

6. The following points arise for my consideration:-

1. Whether the plaintiff has made out prima facie case in his favour for the grant of Temporary Injunction as sought for?

2. Whether the plaintiff has made out sufficient grounds to show that balance of convenience lies in his favour?

3. Whether the plaintiff has made out sufficient grounds to show that the irreparable loss and injury will be caused to him, if the Temporary Injunction is not granted?

4. What order?

7. My findings to the above points are as follows:

Point No.1 : In affirmative

Point No.2 : In affirmative

Point No.3 : In affirmative

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

REASONS

8. **Point No.1:-** It is the specific case of the plaintiff that he is the owner of the suit properties as he has purchased the same though registered sale deeds. He contended that he has executed a joint general power of attorney in favour of 1st defendant and K.V.Manjunath in respect of the suit properties. After the death of K.V.Manjunath the 1st defendant by misusing the general power of

attorney has sold major portion of the suit property in favour of the 2nd defendant and some portion of the property in the name of secretary Bharath Universal society i.e., defendant No.1 himself. The plaintiff has specifically contended that the defendants are making efforts to alienate the suit properties. Hence, he has filed I.A.No.1 and seeking temporary injunction against the defendants restraining them from alienating the suit property till disposal of the suit.

9. On the other hand it is the specific case of the defendants that though sale deeds are registered in the name of the plaintiff, the entire sale consideration is paid by the 1st defendant and one Sri. Basavarajaiah on behalf of the Bharath Universal society. Therefore, the plaintiff has executed a general power of attorney in favour of 1st defendant and one K.V.Manjunath in respect of the suit properties for the benefit of Bharath Universal society. Hence, based on power of attorney the 1st defendant has executed sale deeds in favour of 2nd defendant and Secretary Bharath Universal society represented by the 1st defendant in respect of the suit properties. The defendants have contended that suit properties are not the self-acquired properties of the plaintiff. Therefore, defendants pray for rejection of the application.

10. The dispute in respect of suit properties as to whether plaintiff is the owner of the suit properties or the sale deeds executed by defendant No.1 in favour of 2nd defendant and the secretary

Bharath Universal society i.e., defendant No.1 himself, are liable to be cancelled, have to be decided only after trial.

11. However, on perusal of the pleadings of both parties and documents produced by both parties it could be gathered that suit properties are in possession of defendants. At this stage, on perusal of the pleadings and documents, nothing is forthcoming from the records, which renders the suit of the plaintiff as false, frivolous and vexatious. The learned counsel for the defendants also not brought to the notice of the court anything to show that the suit of the plaintiff is barred by any law or false and vexatious. The dispute between the parties is to be decided only after trial. At this stage, the plaintiff has made out a triable case. Therefore, this court has come to the conclusion that the plaintiff has made out prima facie case for granting of Temporary Injunction, at this stage. Hence, point No.1 is answered in the affirmative.

12. **Point No.2 and 3:-** Since these points are inter-related, therefore they are taken together for consideration.

13. On perusal of the documents produced by the plaintiff and upon considering the application and objection of both parties, it is clear at this stage that, suit properties are in the possession of defendants. If the defendants are allowed to alienate the suit property to third parties or allowed to create charge over the suit properties, then the very purpose of filing this suit by the plaintiff will be frustrated and it also leads to multiplicity of proceedings.

Therefore, if the defendants are allowed to sell the suit properties, then it is the plaintiff who will be put to irreparable loss and injury. If the Temporary Injunction is not granted, the comparative inconvenience will also be caused to the plaintiff. On the other hand, if the Temporary Injunction is granted, no hardship or prejudice will be caused to the defendants. Therefore, this court has come to the conclusion that, in order to preserve the suit properties till the rights of the parties are decided on merits, it is just and necessary to restrain the defendants from alienating the suit properties. At this juncture counsel for the defendants has filed a memo stating that defendants will not alienate, sell and rent the suit property except for use and the benefit of educational institution as per the directions of the education department. In view of the above discussion and also considering the memo filed by counsel for the defendants, this court has come to the conclusion that it is a fit case, wherein discretion U/o 39, R.1 and 2 C.P.C is to be exercised in favour of the plaintiff. Therefore, point No.2 and 3 are answered in the affirmative.

14. **Point No.4:-** For the foregoing reasons and findings on point No.1 to 3, I proceed to pass the following:

ORDER

IA.No.I, filed by the plaintiff, U/o 39, R.1 & 2 C.P.C, is hereby allowed.

By an order of temporary injunction, defendants or their representatives, are hereby restrained from alienating, selling, renting or creating any type of charge over the suit property till disposal of the suit.

No order as to cost.

(Partly dictated to the stenographer, Partly typed directly on computer on dictation, transcribed by her, revised by me and after corrections, pronounced in the Open Court on this the 4th day of March 2017.)

(RANGEGOWDA.C)
Senior Civil Judge, H.N Pur.