



**IN THE COURT OF ADDL SENIOR CIVIL JUDGE AND JMFC,
HAVERI**

:: PRESENT ::

SRI BALMUKUND R.MUTALIKDESAI

B.A., L.L.B(Spl).,

ADDL SENIOR CIVIL JUDGE AND JMFC,Haveri

Dated this the 16th day of December-2023

ORIGINAL SUIT NO.185/2016

PLAINTIFF/S:

Basavaraj S/o Mahadevappa Malagi,
Age: 42 Years, Occ:Agriculture,
R/o:Devagiri-Yellapur,
Now at Basaveshwar Nagar, B-Block,
Haveri, Tq: & Dist:Haveri.

V/s

DEFENDANT/S:

Smt. Suma W/o Rajashekhar Kudarihal,
Age:40 years, Occ:House maker,
R/o:Devagiri-Yellapur.

PARTIES IN LA NO. XIV

APPLICANTS:
(Plaintiff)

Basavaraj S/o Mahadevappa Malagi,
R/o:Devagiri-Yellapur,
Tq: & Dist:Haveri.

(By Sri. S.F.W., Advocate)

V/s

OPPONENTS:
(Defendants)

Smt. Suma W/o Rajashekhar Kudarihal,
R/o:Devagiri-Yellapur,
Tq: & Dist:Haveri.

(Defendant by Sri.V.K.K.,



ORDERS ON IA No.XIV

The plaintiff filed present suit for specific performance and now he has filed application restraining defendant from alienating Sy. No.74/10 measuring 1 Acre 22 Guntas situated at Devagiri-Yallapur Village.

2. The counsel for defendant filed his objections stating that, the name of defendant is not appearing in the RTC of suit property so, question of alienating does not arise. Moreover, many litigation are pending between the parties. Hence the present application is not maintainable and prayed to dismiss the application.

3. Heard on IA No.14.

4. During arguments counsel for plaintiff relied on following citations.

1. 2020 (3) KCCR 1713
2. AIR 2017 (Calcutta) 63

5. On the other hand counsel for defendant produced Xerox copy of judgment passed by Hon'ble High Court of Karnataka Dharwad Bench in RFA No.4101/2013 C/W RFA Cr.OB.No.100013/2014 dtd:28.01.2021.



6. Now points that would arise for my consideration are:

POINTS

Point No.1: Whether the plaintiff proves that he has a prima facie case?

Point No.2: Whether the plaintiff proves that balance of convenience lies in his favour?

Point No.3: Whether the plaintiff proves that if the application is not allowed he will be put to irreparable loss?

Point No.4: :What Order?

7. On perusal of materials placed on record and in the light of arguments advanced, my findings on the above points are as under:

Point No.1 to 3 : In the **Negative**

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

REASONS

8. **Point No.1** : The plaintiff filed present suit for the relief of specific performance on 22.09.2016 based on agreement of sale dtd:31.10.2014 executed by defendant in his favour in respect of Sy.No.74/10 measuring 1acre 22 guntas situated at Devagiri-Yellapur Village.



9. In his plaint, plaintiff averred that, defendant is her own sister and as she was in financial crisis she executed agreement of sale in respect of suit property on 31.10.2014 and sale consideration amount was fixed at Rs.75,00,000/- and on the date of agreement defendant received Rs.35,00,000/- as earnest money from the plaintiff and agreed to execute the sale deed after conclusion of litigation pending before the court.

10. On the other hand, defendant filed her written statement and denied the execution of agreement of sale and contended that, plaintiff by inducing her took signatures on blank stamp papers and by misusing said stamp papers created sale agreement. So, on all these grounds defendant filed her written statement.

11. In the present application plaintiff in his interim application stated that, defendant is trying to alienate the suit property and now it is necessary to pass interim order restraining defendant from alienating the suit property.

12. The suit came to be filed in the year 2016 and the present application is filed on 18.11.2023. But, along with the



application the plaintiff has not produced copy of RTC of suit property pertaining to present year to show on whose name the suit property is standing now.

13. Moreover, the plaintiff in his plaint only he admitted that OS NO.87/2011 was pending and as per the agreement defendant agreed to execute the sale deed after conclusion of litigation before the court. But counsel for plaintiff not produced any documents to show that the litigation mentioned in the plaint and in the agreement have been concluded. On, the other hand counsel for defendant produced Xerox copy of judgment passed by Hon'ble High Court of Karnataka in RFA No.4101/2013 dtd:28.01.2021.

14. The plaintiff to get the interim relief he has to prove the prima facie case. It means the plaintiff has to prove that, there is a dispute which requires adjudication and it is also required for the plaintiff to prove that his suit is maintainable one. But in this case the counsel for plaintiff not produced RTC of present year showing the name of person in the RTC of suit property. Moreover, the counsel for plaintiff also not produced



documents to show that litigation mentioned in the plaint have been concluded. Hence for all these reasons I am of the view that plaintiff has failed to prove the prima facie case. Hence I answer **point No.1 in the Negative.**

15. Point No2 and 3: As both the points are interlinked I will take up both the points together for common discussion.

16. The plaintiff failed to prove prima facie case. Hence question of balance of convenience and irreparable loss does not arise. My this view is supported judgment of our own High Court reported in **ILR 1989 Karnataka 1701** between **“GOWRISHANKAR SWAMIGALU V/s SIDDAGANGA MATH”** wherein it is held that:

“CIVIL PROCEDURE CODE, 1908 (Central Act No. 5 of 1908) — Order 39 Rules 1 & 2 — Grant of ad-interim injunction — Principles applicable — Existence of prima facie case is harbinger to investigate other aspects — If no prima facie case, balance of convenience, irreparable loss etc. need no consideration — Existence of prima facie case does not permit



leap-frogging by plaintiff to injunction directly without evaluation of other considerations unmindful of other consequences — Even if unbeatable prima facie case exists injunction not to be granted, if consequences of grant, detrimental in nature”.

In the light of ratio laid down in above cited case I answer **Point No.2 and 3 in the Negative .**

17. Point No.4: For the discussions made in above points, I proceed to pass the following:

ORDER

IA No. XIV filed by the plaintiff

U/order 39 Rule 1 and 2 R/w Sec. 151 of

CPC is hereby **dismissed**.

No order as to costs.

(Dictated to the stenographer, transcribed and typed by her, and then corrected, signed and pronounced by me in the Open Court, on this **16th day of December 2023.**)

(Sri.B.R.MutalikDesai)

Addl. Senior Civil Judge and JMFC,
Haveri.