

KAHV300000042023



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
J.M.F.C AT HANGAL**

Present: Smt.Anitha, B.A. (Law) L.L.B.,
Senior Civil Judge & JMFC.,
Hangal.

Dated this the 08th day of November 2023.

OS No.1/2023

Plaintiff: Basappa, S/o Samkappa Hadimani
@ Narayani, Aged 53 years, Agriculturist,
R/o Nitaginakoppa village,
Hangal Taluk, Haveri District.

-Vs-

Defendants: 1. Srimantha, S/o Appayya Gadekar,
Aged 64 years, Agriculturist,
R/o Shantinagara Galli, Kanaburagi,
Mahalakshmi Co-Operative Society
Mahadi Male Mane, Belagavi,
Belagavi Taluk and Belagavi District.

2. Smt.Prema, W/o Srimantha Gadekara,
Aged 39 years, housewife,
R/o Shantinagara Galli, Kanaburagi,
Mahalakshmi Co-Operative Society
Mahadi male Mane, Belagavi,
Belagavi Taluk and Belagavi District.

1. Provision under which the : Under Section 151 of CPC
application is filed

- | | | |
|---|---|--|
| 2. Relief sought for | : | Continuing the order of
exparte temporary
injunction |
| 3. The date on which the :
application is filed | : | 21.07.2023 |
| 4. Number of the application : | : | IA.No.3 |
| 5. The date on which the :
objection is filed by
opponents | : | 03.08.2023 |
| 6. The date on which the :
orders were passed on
the said application | : | 08.11.2023 |

ORDERS PASSED ON I.A.NO.3

The learned counsel for the plaintiff filed IA.No.3 under Section 151 of CPC seeking for continuing the order of exparte temporary injunction which was discontinued on 07.07.2023.

2. The application is supported with memorandum of facts of counsel for the plaintiff stating that, on IA.No.1 this Court has passed exparte order of temporary injunction on 05.01.2023. Thereafter, on 07.07.2023 due to oversight no memo was filed to continue the exparte order of temporary injunction. Hence, it is very much necessary to extend the order of temporary injunction and filed the application for continue the order of injunction. Hence, prayed to allow the application.

3. Thereafter, the counsel for the defendants filed objection contending that, the application is not maintainable under law or on facts. The application is not supported with affidavit of the plaintiff and no proper grounds have been urged by the plaintiff to continue the order of injunction. Hence, prayed to dismiss the application with costs.

4. Thereafter, heard arguments addressed by learned counsels for the plaintiff and defendants and perused the entire case papers. After hearing the arguments and on perusal of the case papers, the point that arise for consideration are as hereunder:

POINTS

1. Whether the plaintiff has made out sufficient grounds to extend the temporary injunction order which was discontinued on 07.07.2023?
 2. What order?
- 5 The findings of the above points are as hereunder:

Point No.1: In the Affirmative

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

REASONS

6. **Point No.1:** The plaintiff has filed the suit against the defendants seeking the relief of specific performance of sale agreement dated 19.01.2020 and in the alternative the plaintiff also sought for refund of earnest money of Rs.12,10,000/- paid to the 1st defendant and also sought for

declaration that, the gift deed executed by the 1st defendant in favour of 2nd defendant is a created document and not binding upon the plaintiff. At the time of filing the suit, the plaintiff has maintained IA.No.1 under Order 39 Rule 1 and 2 R/w Section 151 of CPC., wherein the plaintiff sought for the temporary injunction order restraining the defendants from alienating the suit schedule properties. At the time of filing the suit itself the plaintiff insisted for passing exparte order of temporary injunction. Since the plaintiff has made out an arguable case this Court passed an exparte order of temporary injunction restraining the defendants from alienating the suit schedule properties till the next date of hearing and the said order was passed on 05.01.2023. Thereafter, on 27.01.2023, 27.02.2023, 18.03.2023, 01.04.2023, 29.05.2023, 23.06.2023 the plaintiff has filed memo to extend the interim order, accordingly till 07.07.2023 the order of injunction was extended. On 07.07.2023 the plaintiff has not filed any memo for extension of interim order hence, it was not extended.

7. Furthermore, the defendants have appeared through their counsel and filed written-statement. On 23.07.2023 this application came to be filed to continue the order of injunction. It is pertinent to note that, the suit is for the relief of specific performance of sale agreement and prima-facie goes to shows that, during the subsistence of the

sale agreement, the 1st defendant has executed a gift deed in favour of the 2nd defendant. If the exparte order of temporary injunction is discontinued definitely the plaintiff is going to suffer irreparable hardship. In order to avoid it, it is just and necessary to continue the interim order. On the other-hand no hardship is going to be caused to the defendants, if the order of temporary injunction is extended. Hence, the plaintiff has made out sufficient grounds to allow the application. Accordingly, Point No.1 is answered in the affirmative.

8. **Point No.2**: In view of the reasons discussed above this court proceeds to pass the following:

ORDER

IA No.3 filed by the plaintiff under Section 151 of CPC is hereby allowed with costs of Rs.300/-.

Accordingly, the order of exparte temporary injunction passed by this Court dated 05.01.2023 is hereby extended till next date of hearing.

(Dictated to the Stenographer, transcribed and computerized by him on the computer, transcript corrected and pronounced by me in the open court on this the 08th day of November 2023.)

Sd/-
(ANITHA)
Senior Civil Judge and JMFC,
Hangal.