

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 22nd day of February 2024.

OS No.1/2023

Plaintiff: Basappa, S/o Sankappa 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, 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, Belagavi District.

1. Provision under which the : Under Order 39 Rule 1 and 2 R/w application is filed Section 151 of CPC
2. Relief sought for : Temporary injunction restraining defendants from alienating the suit schedule property
3. The date on which the : 04.01.2023 application is filed
4. Number of the application : IA.No.1
5. The date on which the : 18.03.2023 objection is filed by opponents
6. The date on which the : 22.02.2024 orders were passed on the said application

ORDERS PASSED ON IA NO.1

The plaintiff filed IA No.1 under Order 39 Rule 1 and 2 R/w Section 151 of CPC seeking for the relief of temporary injunction restraining the defendants from alienating the suit schedule property in favour of anybody till disposal of the suit.

2. The application is supported with the affidavit of the plaintiff stating that, he has filed the suit against the 1st defendant seeking the relief of specific performance of sale agreement. The 1st defendant is the absolute owner of RS No.71/2 of Nitaginakoppa village totally measuring 3 acres 27 guntas. Originally it belongs to one Goolappa S/o Bheerameshappa Mulimani and in the year 2018-19 the said

Goolappa S/o Bheerameshappa Mulimani sold the suit schedule property in favour of the 1st defendant to meet his family necessity through registered sale deed dated 21.02.2019. Accordingly, MR.No.H7/2018-2019 has been certified on 11.04.2019 and the name of the 1st defendant got mutated. It is further alleged that, in the year 2019 for the purpose of eduction of children of both the defendants and for the treatment of the 1st defendant, he has expressed his intention to sell the suit schedule property. The plaintiff agreed to purchase the suit schedule property for a total consideration of Rs.12,10,000/- and the sale agreement dated 19.01.2020 has been executed in the presence of witnesses. On the date of the agreement the plaintiff paid totally Rs.12,00,000/- to the 1st defendant. At that time the 1st defendant agreed to delete the encumbrance in the suit schedule property and agreed to execute the sale deed by 31.12.2022. In spite of it the 1st defendant not executed the sale deed in favour of the plaintiff. In the meantime the plaintiff came to know that, in order to deprive the right of the plaintiff over the suit schedule property the 1st defendant got executed a nominal gift deed in favour of the 2nd defendant which is not at all tenable under law. On 18.11.2022 the plaintiff got issued legal notice through his counsel and same has been served upon the 1st defendant. In spite of the same

the 1st defendant has not come forward to execute the sale deed in favour of the 1st defendant. Now the plaintiff came to know that, the defendants are making attempt to alienate the suit schedule property. If they succeed in their attempt the plaintiff will be put to great hardship. The plaintiff has made out prima-facie case and balance of convenience lies in favour of the plaintiff. If an order of temporary injunction is not granted the plaintiff will be put to irreparable loss which cannot be compensated in terms of money. Hence, prayed to allow the application.

3. The defendants filed written-statement and also filed memo to treat the written-statement as objection to IA.No.1. In the written-statement the defendants categorically denied the case of the plaintiff. It is the specific case of the defendants that, the plaintiff is the sister's husband of the 2nd defendant. It is also contended that, the suit is hit by Section 17(1)(A) of Indian Registration Act. It is further contended that, the 1st defendant is businessman and he has got 2 acres 20 guntas of property at Edabail village of Khanapura Taluk and since the family members of the 2nd defendant are residing at Havanagi village the 1st defendant thought it fit to purchase the suit schedule property. The 1st defendant is having own house and he is getting rent from his building at Rs.8,000/- per month. There is no financial necessity for the 1st defendant

to sell the suit schedule property. It is further contended that, since, 5 to 6 years he is suffering from ill-health and as such he has availed the help of plaintiff for cultivating the suit schedule property. During that time the plaintiff asked the 1st defendant to avail agricultural loan for developing the suit schedule property at Union Bank, Bamannahalli Branch and as such the plaintiff obtained several signatures of the 1st defendant on blank papers. The 1st defendant not knowing about the intention of the plaintiff. By availing the said signatures the plaintiff created alleged sale agreement. The 1st defendant has not at all executed any sale agreement in favour of the plaintiff. Since, the 1st defendant is suffering from ill health he has executed gift deed in favour of his wife who is the 2nd defendant. Hence, prayed to dismiss the application.

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

POINTS

1. Whether the plaintiff has made out a prima-facie case?
2. Whether the balance of convenience lies in favour of the plaintiff?

3. Whether irreparable loss and hardship will be caused to the plaintiff if an order of injunction is not granted?
4. What order?
5. The findings of the above points are as hereunder:
Point No.1: In the Negative
Point No.2: In the Negative
Point No.3: In the Negative
Point No.4: As per the final order
for the following:

REASONS

6. **Point No.1 to 3:** Since, these points are inter connected with each other and needs common discussion on the same set of facts and to avoid repetition of facts, these points are taken up together for discussion.

7. 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 has also sought for refund of earnest money of Rs.12,10,000/- to the plaintiff with interest at the rate of 30% per annum. The plaintiff also sought for declaration that, the gift deed executed by the 1st defendant in favour of the 2nd defendant dated 18.11.2022 is not binding upon the plaintiff. The suit schedule property is situated in RS No.71/2 at Nitaginakoppa village totally measuring 3 acres 27 guntas. It an admitted fact that,

originally the suit schedule property belongs to one Goolappa S/o Bheerameshappa Mulimani of Nitaginakoppa village and it is also an admitted fact that, on 11.04.2019 the 1st defendant purchased the suit schedule property from said Goolappa S/o Bheerameshappa Mulimani through a registered sale deed.

8. It is an admitted fact that, on the basis of the aforesaid sale deed the 1st defendant became the absolute owner of the suit schedule property and the mutation has been entered in MR.No.H7/2018-2019 dated 11.04.2019. As per the plaintiff in the year 2019 the 1st defendant in order to meet educational expenses of his children and in order to meet his treatment expenses expressed his intention to sell the suit schedule property and as such the plaintiff agreed to purchase the suit schedule property for a total consideration of Rs.12,10,000/- and the sale agreement was entered between them on 19.01.2020 and the plaintiff paid totally Rs.12,00,000/- in favour of the 1st defendant. The 1st defendant agreed to execute the sale deed in favour of the plaintiff by deleting the encumbrance appearing in the RTC of the suit schedule property. In spite of it the 1st defendant failed to execute the sale deed and the plaintiff came to know that, on 18.11.2022 the 1st defendant executed gift deed in favour of the 2nd defendant.

9. On the other-hand the defendants contended that, there was no sale agreement entered between the plaintiff and the 1st defendant. It is an admitted fact that, the defendant No.1 is the husband of 2nd defendant. As such the plaintiff is close relative of the defendants. As per the defendants since family members of the 2nd defendant are residing at Nitaginakoppa village the 1st defendant purchased the suit schedule property. The 1st defendant is an agriculturist and businessman and he has got duplex house in his village from which he is getting monthly rent. The 1st defendant further alleged that, since it was difficult for him to manage the suit schedule property he has taken the help of the plaintiff. In the year 2019 the plaintiff stated the 1st defendant that, he is required to obtain loan for the purpose of improvement of the suit schedule property at Union Bank, Bamannahalli Branch. As such the plaintiff obtained several signatures of the 1st defendant on blank papers and got created the sale agreement.

10. In the written-statement the defendants have taken the contention that the suit is not maintainable since it is hit under Section 17(1)(A) of Indian Registration Act. In the plaint at para No.4 the plaintiff specifically stated that, prior to execution of sale agreement he is in possession of the suit schedule property. The plaintiff has produced the original sale agreement dated 19.01.2020. The RTC of the suit schedule

property is also produced and it is standing in the name of 1st defendant. It is very interesting to note that, the sale agreement is for a total consideration of Rs.12,10,000/-. The sale agreement produced before the Court contains 4 pages. Anywhere in the 4 pages of the sale agreement it is mentioned that, the single rupee of stamp duty is paid. The sale agreement alleged to have been executed by the 1st defendant in favour of the plaintiff is not at all stamped. The plaintiff should have paid the sufficient stamp duty but the sale agreement produced by the plaintiff is not at all stamped. It is the settled principles of law that, if an insufficiently stamped document is produced before the Court the person who produces it is not entitled for the relief of injunction which is equitable relief. In this case also the sale agreement is insufficiently stamped document. Hence, this Court comes to the conclusion that, the plaintiff has failed to make out a prima-facie case and the balance of convenience does not lie in favour of the plaintiff and no hardship and injury is going to be caused to the plaintiff which cannot be compensated in terms of money if an order of temporary injunction is not granted. Therefore, this Court comes to the conclusion that the plaintiff is not entitled for the equitable relief of temporary injunction. Further nowhere in the plaint or in the affidavit filed in support of the application the plaintiff stated that, he is close

relative of the defendants. This fact has been suppressed by the plaintiff. In view of the discussions made above point No.1 to 3 are answered in the negative.

11. **Point No.4:** In view of the reasons discussed above, this court proceeds to pass the following:

ORDER

IA No.1 filed by the plaintiff under Order 39 Rule 1 and 2 R/w Section 151 of CPC is hereby rejected with costs of Rs.500/-.

Accordingly, the exparte temporary injunction granted by this court dated 05.01.2023 is hereby stands vacated.

(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 22nd day of February, 2024)

Sd/-

(ANITHA)

Senior Civil Judge and JMFC,
Hangal.