

**IN THE COURT OF THE RPL.CIVIL JUDGE & JMFC,
AT ALAND**

PRESENT

SRI. GURUPRASAD.C, B.A.L, LL.B.,
PRL. CIVIL JUDGE & JMFC,
ALAND

DATED THIS THE 7TH DAY OF SEPTEMBER - 2019

O.S. NO.109/2019

PLAINTIFF/S: Shivaputra Patil and Others.

-Vs.-

DEFENDANT/S: Kamalakar.

I.A.

PLAINTIFF/S/APPLICANT/S:

1. Shivaputra S/o. Annarao Patil,
Age: 60 years, Occ: Agriculture,
 2. Shrimanth S/o. Annarao Patil,
Age: 62 years, Occ: Agriculture,
 3. Chichalappa S/o. Annarao Patil,
Age: 55 years, Occ: Agriculture,
- Above all are R/o. Ningadalli village,
Tq: Aland, Dist: Kalaburagi.

(By Sri. D.S. Nadkar, Advocate)

-Vs.-

DEFENDANT/S/OPPONENT/S

Kamalakar S/o. Amrutrao Deshamukh,

Age: 70 years, Occ: Nil,

R/o. Ningadalli village,

Tq: Aland, Dist: Kalaburagi.

(By Sri. H.M. Patel, Advocate)

ORDER ON I.A FILED U/O XXXIX RULE 1 AND 2 OF CPC**BY THE PLAINTIFFS**

The plaintiffs have filed IA seeking to restrain the defendant from alienating the suit property/creating charge over the suit property till disposal of the suit.

2. The plaintiffs have filed suit for specific performance contending that the defendant has executed an agreement of sale in respect of suit property agreeing to sell the same, but he is refusing to execute the registered sale deed in their favour.

3. It is averred that plaintiffs and defendant are belonging to the same village Ningadalli. The defendant is the owner of the suit property. Defendant has sold some portion of the

land to the plaintiffs and executed registered sale deed by receiving consideration and handed over the possession to the plaintiffs.

4. It is further averred that in respect of suit property, there was an oral agreement of sale between plaintiffs and defendant. The consideration was fixed at Rs.1,98,000/-. In the presence of witness, the defendant has received entire consideration amount and handed over the possession to the plaintiffs. Thereafter, plaintiffs have requested to execute register sale deed in their favour for several times, but on one or the other pretext, defendant was seeking time. After several requests, on 25.07.2016, defendant has executed an agreement of sale in favour of the plaintiffs in Rs.200 N.J. stamp and agreed to execute the registered sale deed after preparation and correction of land related documents. Thereafter, plaintiffs requested the defendant to execute sale deed. But, the defendant is avoiding to execute the sale deed. It is learnt by the plaintiffs that the defendant is trying to alienate the suit property to other person for higher price.

5. It is further averred that the plaintiffs have approached and requested the defendant on 10.07.2019 to execute the sale deed in their favour. But, the defendant has not answered. On 17.07.2019, they have received copy of caveat petition from the counsel for the defendant. Hence, plaintiffs have come to know that the defendant is trying to alienate the suit property by breaching the terms of agreement of sale. Therefore, plaintiffs have approached this court by filing suit as well as I.A.

6. The plaintiffs further averred that they have made out prima-facie case, balance of convenience lie in their favour and irreparable loss will be caused to them if I.A. is rejected. Hence, they prayed to allow the I.A.

7. Since, the defendant has filed caveat, suit summons was issued to the defendant. In response to the summons, he has appeared through his advocate and filed written statement and he has also filed memo stating that he would adopt the contents of the written statement as objections to I.A.

8. In the written statement, the defendant has denied the entire case of the plaintiffs. He has denied the execution of agreement of sale. He has denied the intention of selling the property to the plaintiffs. He has denied the receipt of consideration from the plaintiffs. He has also denied that he has executed agreement of sale on 27.05.2006 on NJ stamp paper of Rs.200/-.

9. It is the case of the defendant that the plaintiffs have suppressed the real facts and have not come with the clean hands. The defendant being the owner of Sy.No.2/1 measuring 11 acres 30 guntas, entered into an agreement with plaintiff No.1 on 12.07.1996 to sell the land to an extent of 1 acre 26 guntas, he has entered into an agreement with the plaintiff No.2 to sell the land to an extent of 1 acre 27 guntas and with the plaintiff No.3 to sell the land to an extent of 1 acre 27 guntas in Sy.No.2/1. As per the agreement of sale, the defendant has executed registered sale deed in favour of the plaintiffs in the year 2018. After the execution of the sale deed, the defendant has become the owner in

possession of the remaining land of 6 acres 30 guntas in Sy.No.2/1.

10. It is further averred that the defendant has entered into an agreement with one Siddappa S/o. Laxman Biradar to sell the land to the extent of 2 acres 20 guntas and with Basavanappa S/o. Laxman Biradar to an extent of 2 acres 20 guntas totally 5 acres in land Sy.No.2/1. As per the agreement, defendant has executed registered sale deed in favour of Shivaleela D/o. Siddappa Laxman Biradar and Bandabai D/o. Basavanappa on 07.08.2019. It is also pleaded that defendant has entered into an agreement with one Shivasharanappa S/o. Tejappa Biradar to sell his land to an extent of 1 acre 30 guntas in Sy.No.2/1. Defendant came to know that Shivasharanappa is no more and he is ready to execute the sale deed in favour of son of Shivasharanappa i.e. Sangappa. The defendant has fairly executed the sale deed in favour of them, with whom he has entered into agreement of sell. He has no malafide intention to deprive the rights of any one.

11. It is further case of the defendant that he has not suffered any family necessity to sell the land Sy.No.2 measuring 35 guntas as contended by the plaintiffs. He has agreed to sell the land to Shivasharanappa only. With an intention to deprive the rights of son of Shivasharanappa, the plaintiffs have filed false suit.

12. It is furtherer averred that plaintiffs have not made out prima-facie case, balance of convenience lies in favour of the defendant and an irreparable loss will be caused to the defendant, if the order of injunction as sought is granted in favour of the plaintiffs and hence, defendant prayed to reject the application.

13. Heard arguments of plaintiffs and defendants. I have perused the material available on record.

14. Upon hearing arguments and perusing materials placed on record, following points that arose for my determination:

POINTS

1. Whether plaintiffs have made out a prima-facie case?

2. Whether plaintiffs will be put to irreparable loss if the application is not allowed?
 3. Whether the balance of convenience lie in favour of the plaintiffs?
 4. What Order?
15. My findings to the above Points are as follows:

POINT NO.1 : In the Affirmative,

POINT NO.2 : In the Affirmative,

POINT NO.3 : In the Affirmative,

POINT NO.4 : As per order

For the following: -

REASONS

16. **POINT NO.1:** - In order to show the existence of agreement between the plaintiffs and defendant, the plaintiffs have produced original agreement of sale dated 27.05.2016, which is executed in Rs.200 NJ stamp paper. Careful perusal of the said agreement would reveal that there was an agreement between the plaintiffs and defendant in respect of suit property at about 20 years ago and now defendant is executing this agreement. It is also specifically averred in the agreement that the possession of the suit property has been handed over to the plaintiffs. The agreement is signed by both

plaintiffs and defendant and there are the witnesses to the agreement. Though, the execution of the agreement is denied by the defendant, at this point of time, the court cannot go into into merit of the case about the due execution of the agreement.

17. It is not disputed that the defendant is the owner of the suit property, the plaintiffs have produced original agreement of sale, the averments of the agreement are corroborated with the pleadings of the plaintiffs. Therefore, plaintiffs have prima-facie shown that the defendant has entered into an agreement of sale with them in respect of suit property.

18. The counsel for the defendant has argued that there is no cause of action to the suit. The plaintiffs have not shown the denial of part performance of the defendant and the plaintiffs have also not issued any notice, calling upon the defendant to execute the registered sale deed. Thus, suit itself is not maintainable.

19. It is true that the plaintiffs have not issued any legal notice to the defendant calling upon him to execute the

registered sale deed. But, in para No.9 of the plaint, they have pleaded that on 17.07.2019 they have received a copy of caveat petition from the counsel for the defendant. Hence, they came to know that defendant is avoiding to execute the registered sale deed. As per the averment of the plaint, the copy of caveat petition filed by the defendant has constituted cause of action to file the suit and as the plaintiffs pleaded that the defendant is trying to alienate the property to some one else, it cannot be said that there is no cause of action to the suit and suit is not maintainable. On the other hand, the defendant himself in the written statement has stated that he has entered into an agreement of sale with one Shivasharanappa in respect of 1 acre 35 guntas of land in Sy.No.2/1. Thus, it also prima-facie shows that the allegation of plaintiff that the defendant is trying to alienate the suit property to another person to be true.

20. It is also contended by the counsel for the defendant that the market value of the property is about Rs.15,00,000/- per acre, but the plaintiff is claiming that he has paid Rs.1,98,000/- only. There appears suspicion about

genuineness of the agreement of sale. It is well settled law that quantum of consideration need not be adequate in respect of agreement of sale/sale of property. Since, it is pleaded that before 20 years, the defendant has agreed to sell the suit property and has received consideration of Rs.1,98,000/- before 20 years itself, the objection of inadequacy of consideration does not hold water.

21. It is noticed that the defendant himself has averred that he has sold part of the properties to different purchasers. He has also averred that he has executed sale deed in the year 2018-19. On the other hand, the defendant himself averred that he had no legal or family necessity to sell the property in favour of the plaintiffs. The defence taken by the defendant is destructive in nature. Therefore, prima-facie it cannot not be said that the defendant had no family necessities to sell the suit property.

22. It is also contended by the counsel for the defendant that the plaintiffs have not come to the court with clean hands and have suppressed that plaintiffs and defendant have entered into other agreements of sale and accordingly,

defendant has executed the sale deeds in favour of plaintiffs. Thus, suppression of material facts would dis-entitle the plaintiffs to claim temporary injunction.

23. In para No.4 of the plaint, the plaintiffs have specifically pleaded that the defendant has sold some portion of the lands in their favour by executing registered sale deeds. Though, the agreements entered into other part of the land with the defendant is not specifically pleaded, plaintiffs have pleaded that there was a previous agreement and accordingly defendant has executed the sale deeds. Thus, allegation of suppression of fact against the plaintiffs cannot be accepted and it cannot be said that plaintiffs have not come to the court with clean hands. For the reasons stated above I am of the opinion that plaintiffs has made out prima-facie case. Accordingly, Point No.1 is answered **IN THE AFFIRMATIVE**.

24. **POINTS NO.2 AND 3:** - Since these points are interconnected with each other and involve common discussion, they are taken up together for consideration in order to avoid repetition of facts.

It is prima-facie shown that defendant has entered into an agreement of sale with the plaintiffs. As per the documents produced by the defendant, he has entered into an agreement of sale with another person. Under these circumstances, if the injunction restraining the alienation by the defendant is not granted, plaintiffs will be put to great hardship and an irreparable loss will be caused to them. If the property is alienated, inconvenience will be caused to the plaintiffs. On the other hand, no hardship or prejudice will be caused to the defendant if he is restrained from alienating the suit property. Accordingly, Point Nos. 2 and 3 are answered **IN THE AFFIRMATIVE**.

25. **POINT NO.4**: - In view of my findings to Points No.1 to 3, Accordingly, I proceed to pass the following:

ORDER

I.A. filed by the plaintiffs U/o.
XXXIX Rule 1 and 2 of CPC is hereby
allowed.

Defendant is hereby restrained
from alienating the suit property to any
other person till the disposal of the suit.

No order as to cost.

(Dictated to the Stenographer, transcribed and typed by him in the computer, Order corrected and signed by me, then pronounced by me in the Open Court on this the 7th day of September - 2019)

(GURUPRASAD.C)
PRL.CIVIL JUDGE & JMFC,
ALAND

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