

KAKB410000382024



IN THE COURT OF THE SENIOR CIVIL JUDGE
& J.M.F.C., AT : CHINCHOLI

Present : Smt.Jyoti.Shantappa.Kale
L.L.M.,
Senior Civil Judge & JMFC, Chincholi.

DATED : THIS THE 19th DAY OF JULY 2024

ORIGINAL SUIT No.10/2024

i.	Provision under which the application is filed	U/o 39 Rule 1,2 CPC
ii.	Relief sought for	Temporary Injunction Order.
iii.	The date on which the application is filed	03/02/2024
iv.	Number of the application	I.A No.I
v.	The date on which the objections are filed by different opponents	25-06-2024
vi.	The date on which the orders were passed on the said application	19/07/2024

Plaintiff/s

Saleem Abdul Rub Qurashi S/o Abdul Rub Qurashi.

V/s

Defendant/s:

Shaik Chand basha S/o Maheboob Sab.

-: I.A.No.I :-

Applicant/s:

Saleem Abdul Rub Qurashi S/o Abdul Rub Qurashi.

V/s.

Opponent/s:

Shaik Chand basha S/o Maheboob Sab.

**ORDER ON INTERIM APPLICATION No.I FILED BY
THE PLAINTIFF UNDER ORDER 39 RULE 1 AND 2 CIVIL
PROCEDURE CODE, 1908**

1. The plaintiff filed I.A.No.I U/o 39 Rule 1 and 2 of Civil Procedure Code, 1908, along with the main suit praying to restrain the Defendant from alienating, mortgaging or creating charge over the suit schedule properties till disposal of suit.

2. The application is accompanied with an affidavit sworn in by the plaintiff wherein he has stated that he has filed this suit for the relief of specific performance of contract in respect of suit

property. It is stated by the plaintiff that the defendant being the owner in possession of suit property for his family and legal necessity agreed to sell the same to the plaintiff for total consideration of amount of Rs.18,50,000/- and non suited property measuring 15 acres for total sale consideration amount of Rs.2,77,50,000/- executed registered agreement of sale dated:05-06-2023. The plaintiff paid Rs.1,00,000/ through Cheque bearing No.322998 dated: 24-05-2023 and plaintiff issued post dated cheque bearing No.323000, 323001, 323002,323003, 323004 and 323005 for total amount of Rs.2,76,50,000/-. The defendant has taken in total Rs.1,31,00,000/- and on 13-07-2023 the defendant executed registered sale-deed in respect of Sy.No.108/121/1. On 13-07-2023 the defendant executed power of attorney in favor of plaintiff for mining purpose and other rights over the suit property. The sale-deed was to be executed within four months from the date of special power of attorney. The defendant had agreed to execute the registered sale deed after preparation of 11 E sketch map. The plaintiff requested the defendant to execute the registered sale deed after preparation of 11 E sketch map, but the defendant refused to do so. It is further stated that defendant is trying to alienate the

suit property to other persons. It is further stated that suit of the plaintiff is well within time. As the defendant has denied to execute the registered sale-deed in favour of the plaintiff, the plaintiff is constrained to file this suit. Thus the plaintiff has stated that if application is not allowed irreparable loss will be caused to him as she has prima facie case and balance of convenience lies in her favour. Thus, she prayed to allow the application.

3. The defendant filed memo to adopt the contents of written statement as objections to the present application. The defendant has denied the plaint averments and contended that the plaintiff has to pay Rs.16,50,000/- in respect of Sy.No108/121/1 as the sale-deed is already executed in favour of the plaintiff. It is further contended that the power of attorney was executed for only four months and it is lapsed on 13-11-2023. As the plaintiff failed to pay the outstanding due, the defendant issued notice seeking cancellation of agreement of sale but the plaintiff has not replayed the same. It is further stated that defendant is ready to perform his part of contract if the plaintiff is ready to pay the balance consideration amount. On these grounds the defendant prayed to reject the application.

4. Heard arguments of learned counsel for the plaintiff and learned counsel for the defendant on I.A.No.I and perused the entire materials on record.

5. On the basis of materials on record the points arise for my consideration are as under,

- 1) *Whether plaintiff has made out prima-facie case?*
- 2) *Whether the factor of balance of convenience lies in favor of plaintiff?*
- 3) *Whether the plaintiff proves that irreparable loss will be caused to him if an order of temporary Injunction is not granted to the plaintiff?*
- 4) *What Order?*

6. On perusal of the materials on record and the application and its contents, My findings on aforesaid points are as under

- | | | |
|-------------------|---|---|
| Point No.1 | : | In the Affirmative |
| Point No.2 | : | In the Affirmative |
| Point No.3 | : | In the Affirmative |
| Point No.4 | : | As per final orders
for the following, |

: REASONS :

7. Reasoning on Point No.1:

i) The suit is for the relief of specific performance of contract in respect of the suit schedule properties. As an interim relief the plaintiff has filed I.A. under the provisions of Order 39 Rule 1 and 2 Civil Procedure Code, 1908. The plaintiff who has sought for the Temporary Injunction order has to prove that she has a prima-facie case, balance of convenience lies in her favor and she has to make out grounds to show that if the temporary injunction is not granted in her favour then she will suffer irreparable loss and injury. If the plaintiff satisfies these 3 ingredients then the plaintiff will be entitled to this equitable relief sought by her. The plaintiff who seeks for the interim relief has to approach the court with clean hands and there should be no suppression of any necessary materials and facts.

ii) *In a decision reported in 1958 AIR 79 SCR 514, Martin Burn Ltd vs. R.N.Banerjee - The Hon'ble Supreme Court held that a prima-facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence led in support of the same were believed. It does not involve the determination of the*

conflict of evidence or complex questions of fact and law, which call for detailed arguments. It further requires that the Plaintiff should come before the Court with clean hands. If he suppresses material facts and evidence then he is not entitled for the relief of injunction and further points of balance of convenience, irreparable injury need not be considered in such case.

iii) In another decision reported in Prakash Singh vs State of Haryana, 2002 (4) Civil L.J.71 (P.H.)[- The Court explained that Prima-facie does not mean that a Plaintiff/Applicant should have a full proof case in his favour which will succeed in all probabilities. It means that the plaintiff/applicant has a case which cannot be rejected summarily or dismissed out right. It raises consideration which can be considered on merits. The grant of temporary injunction cannot be requested by the party as a matter of right nor can be denied by the Court arbitrarily. The injunction is an equitable remedy and attracts the application of the maxim “he who seeks equity must do equity”.The Court has complete discretion to grant an injunction or to refuse it. The discretion to be exercised by the Court depends on the facts and circumstances of each case. The relief cannot be claimed as an affair of right however worthwhile the applicant’s case may be. The

power to grant an injunction must, therefore, be exercised with the utmost prudence, vigilance, and care.

(iv) In a decision reported in *Prakash Singh V/s State of Haryana 2002 (4) Civil L.J. 71 (P.H.)* } *Prima facie case does not mean that the plaintiff should have a cent percent case which will in all probability succeed in trial. Prima-facie case means that the contentions which the plaintiff is raising, require consideration in merit and are not liable to be rejected summarily.*

(v) In light of the principles enunciated in the decision stated above now let me ascertain if the plaintiff satisfies the essential ingredient to earn the order of equitable relief. It is upon the plaintiff to show he has a fair question as to the existence of his rights.

(vi) In this case the plaintiff claims that defendant had agreed to sell the suit property and non suited property for total consideration amount of Rs.2,77,50,000/- to the plaintiff and had received in total Rs.1,44,00,000/- as earnest amount from the plaintiff an executed agreement of sale dated 05-06-2023 in favour of plaintiff. It is also stated that though the plaintiff was ready to

pay the balance consideration amount to the defendant and get execute the registered sale deed, the defendant instead of executing the sale deed postponed the same. On the contrary the defendant has denied the entire case of the plaintiff and contended that the plaintiff has to pay Rs.16,50,000/- in respect of Sy.No108/121/1 as the sale-deed is already executed in favour of the plaintiff. It is further contended that the power of attorney was executed for only four months and it is lapsed on 13-11-2023. As the plaintiff failed to pay the outstanding due, the defendant issued notice seeking cancellation of agreement of sale but the plaintiff has not replayed the same.

(vii) On perusal of pleadings of both parties, it shows that the execution of agreement of sale by the defendant in favour of the plaintiff under the agreement of sale in respect of suit property and non suited property is not denied by the defendant. In support of his case the plaintiff has produced the agreement of sale dated 24-05-2023, agreement of sale dated: 05-06-2023, special power of attorney, record of rights of suit property, and bank details of defendant. On the contrary the defendant has not produced any documents at this stage. The say of the defendant that that plaintiff

has failed to perform his part is matter of trial and the same cannot be adjudicated at this stage as the same needs a full fledged Trial. Though defendant has denied the case of plaintiff but has not produced any documents at this stage. The record of rights in respect of suit land property shows the name of defendant. Determination of all these aspects needs a full fledged trail. Under such circumstances the suit schedule property are to be kept intact till disposal of the suit. Therefore, the plaintiff has made out a prima-facie case triable by this court for grant of Temporary Injunction order. Hence, I answer point No.1 in Affirmative.

8. Reasoning on Point No.2:

i) **Balance of Convenience**- :- *To see balance of convenience, it is necessary to compare case of parties, comparative mischief or inconvenience which is likely to sue from withholding the injunction will be grater than which is likely to arrive from granting it. As discussed while answering point No. 1 this court has opined that the plaintiff has made out a prima facie case. The documents produced by the plaintiff does shows that the balance of convenience lies in her favour. To rebut the documents of the plaintiff the defendant*

has not produced any such materials. When the case of both the parties is compared the plaintiff by producing the documents has shown that the name of the defendant appears in the Record of Rights of suit schedule property and his apprehension that the defendant may alienate the suit schedule property is acceptable. Hence, the balance of convenience lies in favor of the plaintiff and accordingly point No. 2 is answered in favour of the plaintiff holding that balance of convenience lies in favor of the plaintiff.

9. Reasoning on Point No. 3:

i) **Irreparable loss** : *Ordinarily injury is irreparable when without fair and reasonable address of Court, it would be denial of justice. Very often an injury is irreparable where it is continuous and repeated or where it is remediable at law only by a multiplicity of suits. Sometime the term irreparable damage refers to the difficulty of measuring the amount of damages inflicted. However, a mere difficulty in proving injury does not establish irreparable injury.*

ii) As discussed while answering point No. 1 and 2 this court has opined that the plaintiff has made out prima-facie case and the balance of convenience lies in his favour. Under such circumstances

the plaintiff apprehends that as the name of the defendant is depicted in Record of Rights of land then the defendant might alienate the suit schedule property during pending of the suit and the rights of the plaintiff will be effected. This claim of the plaintiff is acceptable. If the defendant taking advantage of his name appearing in the Record of Rights of land of the suit schedule property alienates the suit schedule property during pending of the suit then the rights of the plaintiff will be effected and it will also lead to multiplicity of proceedings. Therefore, if an order of Temporary Injunction is not granted then more irreparable loss will be caused to the plaintiff when compared to the defendant. It is necessary that the suit schedule property should be kept intact till disposal of the suit. Accordingly, this court answers point No.3 in favor of plaintiff holding that if an order of Temporary Injunction is not granted then more irreparable loss will be caused to the plaintiff as compared to the defendant.

10. Point No.4: In view of my findings on point No.1 to 3. I proceed to pass the following;

:- O R D E R :-

IA.No.I filed by the Plaintiff U/o 39 Rule 1 and 2 of CPC seeking an order of Temporary Injunction restraining the defendant from alienating, mortgaging or creating charge over the suit schedule property till disposal of suit is hereby allowed.

The defendant by way of Temporary Injunction order is hereby restrained from alienating the suit schedule property in any manner till disposal of the suit.

Posted for compliance of section 89 Civil Procedure Co4de, 1908.

(Dictated to Typist typed by him corrected by me, signed and pronounced by me in the open court on **19th day of July 2024**)

(Jyothi Shantappa Kale)
**Senior Civil Judge & JMFC.,
Chincholi.**