

**IN THE COURT OF CIVIL JUDGE AT: CHITTAPUR.**

Before : Sri K.S.Rotter, B.Com. LL.B (Spl),  
Civil Judge, Chittapur.

**Dated: this 16<sup>th</sup> day of March 2016**

**O S No.5/2016**

Smt. Sridevi, W/o. Shivakumar,  
Age: 28 years, Occ: Business,  
R/o. GDA Layout, Shahabazar, Kalaburagi.

(By Sri. G.A. Deshpande, Advocate)

.. Plaintiff..

// Vs //

Raju, S/o. Yallappa,  
Age: 31 years, Occ: Business,  
R/o. H.No.2-731/59, Bapu Nagar,  
STBT Cross, Sedam Road, Kalaburagi.

(By Sri. W. Yashwant, Advcoate)

... Defendant

**ORDERS ON IA-II**

The plaintiff has filed this IA U/O.39 Rules-1 and 2 of C.P.C. praying therein for restraining the defendant from alienating the suit property pending disposal of the suit.

2. The said application is supported by the affidavit of plaintiff explaining the reasons for the same.
3. On the other hand, the defendant has filed written statement and adopted the same as objections to I A No.II and prayed for dismissal of IA - II.

4. Heard the arguments on both the sides.
5. The points which arise for my consideration are as below:-
  1. *Whether the plaintiff has made out prima-facie case?*
  2. *Whether balance of convenience leans in favour of the plaintiff?*
  3. *Whether the plaintiff will be put to irreparable loss and injury if TI order is not granted?*
  4. *What order?*
6. My findings on the above points are as under:-
  1. In affirmative
  2. In affirmative
  3. In affirmative
  4. As per final order for the following :-

### **REASONS**

7. **Points No.1 to 3** : I take all these points for common considerations, because they are inter-linked each other.
8. The plaintiff has filed this suit for specific performance of contract. It is stated that, the suit property is agricultural land bearing Sy.No.62/3 measuring 2 acres of Hadanur village. The plaintiff submits that, the defendant for his family necessity declared to sell the suit property and the plaintiff consented for purchasing the same. The plaintiff offered to pay Rs.4,90,000/- The defendant accepted the same and received Rs.4,50,000/- as earnest money. The defendant has also executed an agreement of sale without possession on

22.01.2014, which has been duly registered. The plaintiff is ever ready and willing to perform his part of contract by paying balance of Rs.40,000/- However the defendant is avoiding the same on one or other pretext and trying to alienate the suit property. Hence, plaintiff prays for allowing the IA.

9. The plaintiff in support of her contentions has produced the registered agreement of sale without possession executed by the defendant in favour of the plaintiff. From perusal of this document it is observed that, the defendant has executed an agreement of sale without possession in respect of suit property on 22.01.2014 which has been duly registered at No.5499/ 2013-14. From perusal of recitals, it is observed that the plaintiff has paid Rs.4,50,000/- earnest money and total consideration has been fixed @ Rs.4,90,000/-. The plaintiff has produced the office copy of legal notice. The plaintiff submits that, defendant is postponed the execution of sale deed on one or other pretext and ultimately he denied the execution of sale deed and now he is trying to sell the suit property to the others for higher price.

10. On the other hand, the defendant has specifically denied all the contentions taken up by the plaintiff. He denies of having executed any agreement of sale without possession with an intention to sell the suit property. It is contention of the defendant that, he has taken Rs.4,50,000/- hand loan and consented for mortgaging the suit property. But the plaintiff by suppressing the material facts, got registered a sale agreement instead of mortgage deed. The defendant has executed document as a security of said loan advanced and not

with an intention to sell. It is also contended that, the defendant has repaid the entire loan amount of Rs.4,50,000/- to the plaintiff on different dates and there is no balance loan amount to the plaintiff. Hence, defendant stated that, there is no prima-facie case, nor balance of convenience leans in favour of the plaintiff. Hence he prays for rejecting the IA.

11. When the rival contentions taken up by both the parties are perused, the defendant admits of having executed a document i.e. agreement of sale without possession. However, it is contention of the defendant that, the said document was only a security for the loan advanced on the basis of mortgage. Therefore, whether the parties had real intention to sell the suit property or it was a security is to be decided at the time of trial. At this stage, from perusal of registered agreement of sale and apprehension of the plaintiff, I am of the opinion that the plaintiff has made out a prima-facie case. If the defendant is not restrained from alienating the suit property, the plaintiff will be put to greater inconvenience, irreparable loss and injury. Hence, for all these reasons, I am of the opinion that the plaintiff has made out prima facie case, the balance of convenience leans in his favour and he will be put to irreparable loss and injury if TI is not granted. Therefore I answer points No.1 to 3 in affirmative.

12. **Point No.4** : For the foregoing reasons I proceed to pass the following :-

### **ORDER**

I A - II filed by the plaintiff U/O.39 Rules-1 and 2 of CPC is hereby allowed.

The defendant is hereby restrained by way of temporary injunction from alienating the suit property in any manner pending disposal of the suit.

No order as to costs.

(Dictated to the steno on laptop, computerized by him, corrected by me and then pronounced in open court on this 16<sup>th</sup> day of March 2016).

**(K.S. Rotter),**  
**Civil Judge, Chittapur**