

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC

AT: JEWARGI

PRESENT: Sri. Sandeep A. Naik B.A., LL.B.,(Spl.)
Senior Civil Judge & J.M.F.C.,
Jewargi.

Dated This 25th Day of November-2024

ORIGINAL SUIT NO.73/2024

PLAINTIFF : Sri. Sunil Kumar
S/o Ninganna Pujari,
Age: 30 years, Occ: Private Service,
R/o Alstom colony Shahabad,
Tq: Shahabad.

.....(By. Sri.B.B.B, Advocate)

V/s.

DEFENDANT: Sri. Padmanna
S/o Devindrappa Pujari,
Age: 55 years, Occ: Tailor,
R/o Tippu Sultan cross, Behind
Bazar Shahabad, Tq: Shahabad,
Dist: Kalaburagi.

.....(By. Sri. R.A.M., Advocate)

PARTIES TO I.A. NO.I

APPLICANT/ : Sri. Sunil Kumar
PLAINTIFF

V/S

OPPONENT/ : Sri. Padmanna
DEFENDANT

i.	Provision under which the application is filed	U/o 39 Rule 1 and 2 of CPC
ii.	Relief sought for	Temporary Injunction
iii.	The date on which the application is filed	29-04-2024
iv.	Number of the application	IA No.1
v.	The date of which the objections are filed by different opponents	15-10-2024
vi.	The date on which the orders were passed on the said application	25-11-2024

ORDER ON I.A No.I FILED U/O 39 RULE 1 & 2 OF C.P.C.

1. The plaintiff has filed I.A No.I under Order 39 Rule 1 & 2 of C.P.C., to grant an ex-parte temporary injunction against defendant restraining him from alienating, mortgaging or creating any type of charge over suit property till disposal of the suit.

As per the plaint averments and affidavit annexed to the I.A.No.1 the case of plaintiff/applicant in brief is as under:

2. According to the plaintiff, defendant is the absolute owner and in lawful possession of the suit property. Due to his family legal necessity he approached plaintiff and offered to sale suit property bearing Sy.No.106/1 measuring 2 acres out of 8 acres 7 guntas situated at Maradagi SA village for consideration amount of Rs.8,50,000/-. The plaintiff accepted the offer and paid earnest amount of Rs.8,00,000/- in cash and acknowledging the same defendant executed agreement of sale dated 17-01-2022 and agreed to execute registered sale deed by receiving balance consideration amount of Rs.50,000/- on or before within one year from the date of agreement by furnishing relevant documents. Thereafter, plaintiff approached defendant on several times and requested him to execute registered sale deed by receiving balance amount of Rs.50,000/- but defendant prolonged the matter one or the other pretext. Ultimately, defendant refused to execute sale deed and denied the execution of agreement of sale therefore plaintiff issued legal notice on 11-08-2023 demanding him to execute sale deed but in spite of service of legal notice defendant neither replied nor complied to the said notice.

3. The plaintiff always ready and willing to perform his part of contract and ready to pay balance consideration amount but defendant is not ready to execute registered sale deed and now planned to alienate suit property in favour of others only in order to create multiplicity of proceedings. Therefore, plaintiff

constrained to file this suit for specific performance of contract. This is all stated to be the cause of action for the plaintiff to file this suit.

4. Along with the suit, plaintiff has filed I.A.No.1 under Order 39 rule 1 and 2 of CPC seeking temporary injunction to restrain defendant from alienating or creating any type of charge over suit property.

5. The plaintiff sworn to the affidavit and prayed to consider the plaint averments as part and parcel of the affidavit. The plaintiff further averred that defendant is in hurry to alienate the suit property with an intention to have wrongful gain. The plaintiff has made out prima-facie case, balance of convenience lies in his favour and if temporary injunction order is not granted he will be put to irreparable loss and injury which cannot be compensated in terms of money. Therefore, plaintiff prayed to allow I.A.No.1.

6. In pursuance of suit summons, defendant appeared and resisted the claim of plaintiff by filing written statement. The defendant has filed memo to consider written statement as objection to I.A.No.1. The defendant denied the entire plaint averments in toto and called upon plaintiff to prove the same with strict proof. The defendant contended that he was in need of money to meet out his family and legal necessities therefore requested plaintiff to advance hand loan of Rs.4,00,000/-. The plaintiff considered the request and advanced hand loan of Rs.4,00,000/- to him without interest but asked to provide surety

and also requested to mortgage the property. The defendant agreed to execute mortgage deed but shocked to see that on the date of registration he came to know that plaintiff has prepared agreement of sale by mentioning alleged consideration amount when being asked about the same plaintiff convinced him that said amount is mentioned about market value and it is nominal one and after repayment of hand loan amount of Rs.4,00,000/- the said document will be redeemed therefore defendant kept quiet and signed the document.

7. Now the plaintiff by taking undue advantage of said document has filed this present suit. The plaintiff has to prove about payment of alleged consideration of Rs.8,00,000/- with strict proof further has to prove his financial capacity regarding alleged huge amount. Further defendant clarified that said agreement for sale shown is nominal one and defendant never intended to alienate suit land at any point of time therefore question of providing necessary survey papers and seeking relief of specific performance of contract doesn't arise. He further contended that he had no intention to alienate suit property as such question of executing sale deed doesn't arise. After lapse of one year of the document defendant approached plaintiff and requested him to receive loan amount Rs.4,00,000/- and to redeem document but plaintiff postponed the same on one or the other pretext. The defendant is ever ready to pay said loan amount of Rs.4,00,000/- and to get cancel the said document but plaintiff is trying to knock off the valuable property for meager amount. There is no cause of action and alleged cause of action is imaginary and invented one

for the purpose of filing this suit. The court fee paid is insufficient. The defendant denied other plaint averments and prayed to dismiss the suit and IA No.1. On all these grounds defendant prayed to reject the I.A.No.1.

8. On considering I.A No.I, affidavit and objections cum written statement, the points that would arise for my consideration are as under:

POINTS

1. Whether the plaintiff /applicant has made out prima facie case for grant of temporary injunction?
2. Whether the balance of convenience lies in favour of plaintiff/applicant?
3. Whether the irreparable loss and injury would be caused to the plaintiff /applicant if the temporary injunction is refused?
4. What order?

9. Learned Counsel for plaintiff produced agreement of sale dated 17-01-2022 and argued that plaintiff has made out prima facie case and balance of convenience lies in favour of plaintiff. If temporary injunction is not granted, plaintiff would be put to heavy and untold hardship. Therefore, temporary injunction may be granted to the plaintiff.

10. On the other hand, defendant did not produce any documents but vehemently argued that plaintiff has not made out

prima facie case and balance of convenience doesn't lie in favour of plaintiff. The plaintiff got created agreement of sale. Therefore he prayed to reject the application.

11. My answer to the above 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 order for the following:**

REASONS

12. **Point No.1:** It is well established and settled position of law that the following propositions are to be established in order to invoke the jurisdiction of the court to grant an interlocutory order of injunction U/O 39 Rule 1 and 2 of C.P.C. (1) plaintiff has to establish a prima facie case, (2) the balance of convenience is in favour of the party seeking the relief and (3) that the party seeking the relief will suffer irreparable injury if injunction is refused. The ingredients are to be established by the party who seeks injunction in his favour. The grant of injunction being a discretionary relief, the party should come to court with clean hands and place all the materials before the court so that, the court will be satisfied about the prima facie case in favour of the party seeking the order. At the same time the court cannot conduct a mini trial nor can court express its opinion regarding merits of the case while dealing with the applications of this nature. Only function of the court at this

interlocutory stage is to see does the applicant has made out a prima-facie case and balance of convenience is in whose favour and in case of refusal of granting temporary injunction loss of hardship would be caused to which side. It is useful to refer decision of **Kashinath Sansthan v. Srimad Sudhindra Thirtha Swamy**, reported in **AIR 2010 SC 296** the court prescribed the criteria for temporary injunction as follows:

"In order to grant an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well-settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction is granted.

13. It is also necessary to mention here that "Prima facie case" not to be confused with "prima facie title" which has to be established on evidence at the trial. Prima facie case is a substantial question raises bona fide which needs investigation and a decision on merits.

14. Now keeping in mind aforesaid aspects let us consider the present application in hand. I have considered documents produced by the plaintiff. On perusal of the documents produced by plaintiff it reveals that at this stage it is not in dispute that

defendant is the owner of suit property and it is also not in dispute that suit property is standing in the name of defendant. The plaintiff produced agreement of sale dated 17-01-2022, which discloses that defendant executed it in favour of plaintiff. However, defendant denied the very execution of agreement of sale and specifically contended that plaintiff got executed agreement of sale purporting it to be as a mortgage deed as security towards hand loan amount of Rs.4,00,000/-. At this interlocutory stage plaintiff has produced agreement of sale which is a registered document and has got presumptive evidentiary value in the eyes of law. Thus at this stage it can be said that plaintiff has produced sufficient documents to show that he has made an arguable case. It is the apprehension of plaintiff that defendant is trying to alienate suit schedule property. The aspects nature of document, execution of agreement of sale deed, payment of consideration amount, readiness and willingness and do the agreement of sale was created or not are all aspects which are required to be adjudicated in the present suit and it requires a full fledged trial.

15. At this stage, it is necessary to observe here that the court cannot conduct a mini trial at the time of adjudicating the applications of this nature at this stage this court cannot express its opinion regarding merits of the case. While dealing with the applications of this nature the only function of the court is to see do the applicant has made out a prima-facie case and balance of convenience is in whose favour and in case of refusal to grant temporary injunction the loss or hardship would be caused to which side. The plaintiff has produced Agreement of sale and it is

not in dispute that suit property is standing in the name of defendant as such apprehension of plaintiff that defendant may alienate the suit schedule property infavour of others cannot be ruled out. Thus it can be opined that plaintiff has made out an arguable case and therefore whenever there is an arguable case is made out then it can be said that plaintiff has made out a prima-facie case. In this sense, I answer **Point No.1 in the Affirmative.**

16. **Point No.2 and 3** :- Both these points are taken up together for common discussion to avoid repetition of facts. The court has to see that does the applicant will sustain such injuries which cannot possibly and adequately remedied by way of damage and said damage would be inadequate in case of success of applicant. Considering the question of balance of convenience is concerned court has to see the mischief or inconvenience of either parties or otherwise it is necessary or proper to maintain status-quo till the adjudication of dispute is finally decided. The ingredients have to be established by the party who seeks injunction in his favour. The grant of injunction being the discretionary relief the party who claims such relief should come to the court with clean hands and place all the materials before the court so that court will satisfy about the case in favour of the party seeking the order.

17. It is to be noted here that plaintiff has sought for temporary injunction against defendant from alienating the suit schedule property. Admittedly, it is not in dispute that record of rights of the suit schedule property stands in the name of

defendant. Therefore, possibilities of alienating suit schedule property by defendant in favour of others cannot be ruled out. In this sense, I hold that the balance of convenience lies in favour of plaintiff and not in favour of defendant. Now as regard to the hardship is concerned. If in case temporary injunction is not granted and defendant alienates suit property it would lead to multiplicity of proceedings and plaintiff will be put to hardship. On the other hand, if temporary injunction order is granted no hardship will be caused to the defendant, since in case if plaintiff fails to succeed in the suit then ultimately defendant can deal with the suit property as per his whims and fancies. The plaintiff is under apprehension that defendant is trying to alienate the suit schedule property in favour of others. Therefore, I am of the view that if I.A No.1 is not allowed, plaintiff would be put to heavy and irreparable loss on the other hand defendant will not be put to any hardship. Hence, I answered **Point No.2 and 3 in the Affirmative.**

18. Point No.4 :- In view of my findings on Points No.1 to 3, the plaintiff is entitled to the relief of temporary injunction which he has sought for. Hence, I proceed to pass the following:

ORDER

I.A.No.I filed by the plaintiff under Order 39 Rule 1 & 2 C.P.C. is hereby allowed.

The defendant is hereby restrained by an order of temporary injunction from alienating, mortgaging or creating any charge over the suit schedule property, pending disposal of the suit.

Cost of this application will follow the result of this suit.

Issues framed.

For list of witnesses and documents
by 10-12-2024.

(Dictated to the Stenographer directly on Laptop, typed by him, corrected and then pronounced by me in the Open Court on this 25th Day of November-2024).

(Sandeep. A. Naik)
Senior Civil Judge,
Jewargi.