

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
SEDAM

PRESENT:

Sri SAGAR GURUGOUDA PATIL
B.A., LL.B(Spl.)
Senior Civil Judge & JMFC, Sedam

Dated: 17-09-2024.

OS No.46/2024

Plaintiff/s :
Sri.Kavva Gudam Mohanreddy
(Smt/Sri S.K.D, Advocate)

VS

Defendant/s :
Anilkumar S/o Shamulu
(Deft.R.S.B.,Advocate)

RANK IN IA 1

Kavva Gudam Mohanreddy : Applicant/s/Pift

VS

Anil Kumar : Opponent/s/Deft.

i.	Provision under which the application is filed	U/O 39 Rule 1 & 2 of CPC
ii	Relief sought for	Suit for Specific Performance of contract
iii	The date on which the application is filed	08-04-2024
iv	Number of application	One
v	The date on which the objections are filed by different opponents	13-09-2024
vi	The date on which the orders were passed on the said application	17-09-2024

ORDERS ON IA 1
Under Order 39 Rule 1 & 2 of CPC

The plaintiff/applicant has filed this application under Order 39 Rule 1 & 2 of CPC and sought to restrain the defendant by way of temporary injunction from alienating the suit property till disposal of the suit.

2) The plaintiff has sworn to an affidavit in support of IA and stated that the defendant being the Karta of the family for the legal necessity entered into sale transaction with plaintiff with the consent of his wife Ishwaramma. The suit property measuring 2 acres 01 gunta for a total sale consideration amount of Rs.85,00,000/-. The defendant received Rs.3,00,000/- and Rs.22,00,000/- through cheque dated 21.12.2023 from the plaintiff and executed agreement of sale dated 21.12.2023 and also executed a receipt for

having received the amount. It was agreed that if the measurement of the land is less than 2 acres 01 gunta then the plaintiff has to deduct the amount based on the measurements as there was confusion about the area of the road. Accordingly the plaintiff agreed to pay balance sale consideration amount at the time of execution of registered sale deed after the survey and preparation of 11-E sketch. The total sale consideration amount was fixed for a land measuring 2 acres 01 gunta and if after 11-E sketch the measurement is less then the plaintiff has to pay balance sale consideration amount by deducting calculating on the basis of each guntas.

3) It is submitted that the plaintiff requested the defendant to file application for survey of the land but the plaintiff did not ready to get survey the land. He postponed the survey on one or the other reasons. Therefore, the plaintiff got issued legal notice to the defendant and the defendant gave reply stating that only and measuring 10 guntas in Sy.No.56/20 and 30 guntas in Sy.No.56/14 was agreed to be sold to the plaintiff for Rs.61,00,000/- under the agreement dated 2.12.2023. Thereafter the defendant executed suit agreement of sale dated 21.12.2023. The plaintiff is ever ready and willing to perform his part of the contract. The defendant is trying to alienate the suit properties to others. Hence, prays to allow the IA.

4) After service of suit summons, the defendant appeared through his counsel and filed written statement and denied entire plaint averments and contended that he is not absolute owner of the suit properties and his wife and children are also co-sharers of the suit properties. The defendant did not enter into sale transaction with the plaintiff but as he was facing financial difficulties he approached the plaintiff for hand loan of Rs.3,00,000/-. The defendant behind the back and without the knowledge of the defendant got executed suit agreement of sale. This defendant is ready to return the amount to the plaintiff. Hence, prays to dismiss the suit.

5) On the basis of the above facts the following points arise for my consideration:

- 1) Whether the plaintiff has made out prima facie case?
 - 2) Whether the balance of convenience lies in favour of the plaintiff?
 - 3) What order?
- 6) Perused the records. Heard arguments.
- 7) My answer to the above points are as under:
- 1) IN THE AFFIRMATIVE
 - 2) IN THE AFFIRMATIVE
 - 3) AS PER THE FINAL ORDER
- for the following:

REASONS

8) **POINT No.1 & 2:** Since both these points are interconnected the same are taken together for common discussion.

9) In order to establish his case the plaintiff has produced RTC extracts and the same shows that the suit properties are standing in the name of defendant. The copy of the registered partition deed dated 8.2.2021 shows that the defendant acquired the suit properties through family partition. The same prima facie shows that the defendant is owner of the suit properties. The plaintiff has produced unregistered agreement of sale dated 21.12.2023 and the same shows that the defendant agreed to sell the suit property to the plaintiff for a total consideration amount of Rs.85,00,000/- and received Rs.3,00,000/- in cash and Rs.22,00,000/- through cheque and executed agreement of sale. The recitals of the agreement shows that the plaintiff agreed to pay balance sale consideration amount of Rs.60,00,000/- after completion of survey works within 90 days from the date of agreement. The receipt dated 21.12.2023 shows that the defendant executed the receipt for having received Rs.3,00,000/- in cash and Rs.22,00,000/- through cheque.

10) The office copy of the legal notice dated 18.3.2024 shows that the plaintiff got issued legal notice to

the defendant calling upon him to execute the sale deed within 15 days. The reply notice dated 27.3.2024 shows that the defendant gave reply to the notice dated 18.3.2024 issued by the plaintiff. In para 2 of the said notice the defendant stated that he sold land measuring 10 guntas in Sy.No.56/20 and 30 guntas in Sy.No.56/14 for Rs.61,00,000/- and received Rs.25,00,000/- i.e., Rs.3,00,000/- in cash and Rs.22,00,000/- through cheque and the plaintiff agreed to pay the balance amount at the time of execution of the sale deed. He has denied that he never executed agreement of sale in respect of land measuring 1 acre 1 gunta in Sy.No.56/21. The above allegations of the defendant shows that the defendant has admitted the sale transaction with the plaintiff and he has only disputed the measurements of the suit properties and the total sale consideration amount. At this stage to establish his case the plaintiff has placed on record the suit agreement of sale and the receipt, wherein sale consideration amount is fixed at Rs.85,00,000/- and extent of land is shown as 2 acres 1 gunta. But the defendant in his reply notice has claimed that the total sale consideration amount is Rs.61,00,000/- and the total extent of the land is 40 guntas and not 2 acres 01 gunta. The above rival contention has to be decided during the trial. At this stage it cannot be said that the version of the plaintiff or the defendant is correct. Only after the trial it can be

concluded that the version of the plaintiff or the defendant is correct. Therefore, in my opinion at this stage the plaintiff has made out prima facie case.

11) The plaintiff has stated that now the defendant is trying to sell the suit properties. Therefore, if he succeeds in his attempt and alienates the suit properties to third parties it will complicate the matter and lead to multiplicity of suits and also cause irreparable loss & untold hardship to the plaintiff. On the other hand if the defendant is restrained from alienating the suit properties for some period i.e. till disposal of the suit no prejudice would be caused to the defendant. Hence I answer Points 1 & 2 in the affirmative.

12) **POINT No.3**: For the foregoing reasons, the following:

ORDER

The application filed by the plaintiff i.e., IA No.1 under Order 39 Rule 1 & 2 of CPC is hereby allowed.

The defendant is hereby restrained by way of temporary injunction from alienating suit schedule properties till disposal of the suit.

(Dictated to the Stenographer Grade-III directly on computer, the same revised, corrected and pronounced in the open court on this the 17th day of September 2024.)

(SAGAR GURUGOUDA PATIL)
Senior Civil Judge & JMFC, Sedam.

