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KAKL200003592011



**IN THE COURT OF THE I ADDL., CIVIL JUDGE &
JUDICIAL MAGISTRATE FIRST CLASS AT
BANGARPET.**

:PRESENT:

SMT. SUKEETA S. HADLI,

B.B.A.,LL.B.,(Hons)

I Addl., Civil Judge & J.M.F.C., Bangarpet.

O.S. NO.266/2011

DATED THIS 13TH DAY OF JANUARY 2025

PLAINTIFF/S: Arun Balamani & others.,

(Rep by Sri.**M.U.J.**, Advocate)

-V/S-

DEFENDANT/S: V.Ramanjenaya and another.,

(D1 to 3 Rep by Sri.**L.N.S.**,
Advocate)

PARTIES TO I.A.NO.18

Applicant/
Plaintiff

: **Arun Balamani & others.,**

-V/S-

Opponent/
Defendant

: **V.Ramanjenaya and another.,**

:2:

i.	Provision under which the application is filed	U/o 39 Rule 1 & 2 r/w Sec. 151 of CPC
ii.	Relief sought for	Temporary Injunction
iii.	The date on which the application is filed	28.02.2023
iv.	Number of the application	I.A. No.18
v.	The date on which the objection is filed by different opponent	26.11.2024
vi.	The date on which the orders were passed on the said application	13.01.2025

ORDER ON IA.NO.18

The plaintiffs have filed I.A.No.18 under Order XXXIX Rules 1 and 2 of C.P.C to pass an order of temporary injunction restraining the defendants, their heirs, henchmen, attorneys etc., or any body claiming under them, from changing or altering the nature of the suit schedule property, in any manner, pending disposal of the suit.

2. In an affidavit accompanying the application and in the plaint it is stated that, the plaintiffs have stated that they have filed the suit for specific performance of contract and other relief's on the strength of agreement of sale dated.07.04.2011 in respect of the suit schedule property. It is stated that the defendants were placed ex-parte in the above case initially. When the above case was posted judgment, during that time the defendants have come on record and they are contesting the case. Now the above case is posted for cross of DW1. The defendants are trying to change the nature of the suit schedule property by putting up illegal structures over the suit schedule property. The defendants have dumped stones and carrying out illegal construction activities over the schedule property, thereby trying to deprive the rights of plaintiff. The defendants are trying to create third party rights over the schedule property with an intention to defeat the right of plaintiff over the schedule property as agreement holder. If the defendants succeed in their illegal acts, the plaintiffs will be put to great hardship,

loss and injury. Accordingly, plaintiffs pray to allow the I.A.

3. The defendants have appeared through their counsel and have filed the common objections. The counsel for the defendants has prayed to treat the contents of written statement as objections to I.A. No.18.

4. The defendants have contended that the suit schedule property is joint family property and they are carrying out agricultural operations jointly. As such the question of alienating the suit schedule property does not arise. The suit schedule property is “P” number the question of changing or altering the nature does not arise. Therefore, they have prayed to reject the application in hand.

5. I have heard both sides and perused the materials on record.

6. The points for consideration are as under:

:5:

1. Whether the plaintiffs have got a *prima-facie* case ?
2. Whether the balance of convenience lies in favour of the plaintiffs ?
3. Whether the plaintiffs suffers irreparable loss and injury if the T.I. is refused?
4. What Order?

7. The answers to the above points are:-

Points No.1 to 3	:	In the affirmative.
Point No.4	:	As per final order.

: R E A S O N S :

8. POINTS NO.1 TO 3:- They are taken together for common discussion to avoid repetition of facts and documents.

9. The plaintiff has filed the suit for specific performance of contract. The plaintiffs have filed this application seeking an order of this Court to restrain the defendants from changing or altering the nature of the suit schedule property in any manner during the

pendency of the suit. The present application came to be filed when the case was posted for arguments on merits.

10. The plaintiffs have filed the suit for specific performance to enforce the agreement of sale deed dtd.07.04.2007 pertaining to the suit schedule property. The defendants have filed the written statement and contended that the actual agreement of sale was executed between the plaintiffs and defendants on 12.11.2010 for total consideration of Rs.4,50,000/-. On executing the said agreement the defendants have received an advance sale consideration of Rs.1,50,000/- by way of cash in the presences of the witnesses. It is contended that the plaintiffs agreed to pay the remaining balance consideration of Rs.3,00,000/- at the time of execution of sale deed within the period of 6months from the date of agreement of sale i.e., on or before 11.05.2011. The defendants submits that they have received part sale consideration of Rs.1,00,000/- on 25.11.2010 and the same was entered on the agreement of sale deed.

However, due to non concurrence of opinion with regard to sale of the suit schedule property between the defendants and sisters led to an agreement where the defendants and plaintiffs decided to cancel the agreement of sale deed. Accordingly the advance sale consideration of Rs.2,50,000/- was refunded by the defendants to the plaintiffs. However the original saguvali chit, patta, RTC extracts and the 10 white blank papers upon which the plaintiffs had obtained the signatures of the defendants were not returned to the defendants. Misusing the said white blank papers the plaintiffs have created a false document styled as agreement of sale. It is on the strength of the false document the present suit came to be filed. Therefore, it is stated that the plaintiffs are not entitled to the relief as sought for.

11. The defendants objected the application in hand. The counsel for the defendants contended that the application filed by the plaintiffs is not maintainable and

they have no locus standi to seek temporary injunction against the defendants.

12. The plaintiffs have sought an order of temporary injunction. The plaintiffs have required to make out *prima-facie* case and balance of convenience to grant equitable order of temporary injunction. The agreement of sale deed dtd.07.04.2011 does not confer any right on the plaintiffs. Moreover, the agreement of the sale between the plaintiffs and defendants is admittedly an unregistered document. As is admitted by the plaintiffs that, the defendants are the absolute owner of the suit schedule property have got ever right to enjoy their property without any interference.

13. The defendants have disputed the very agreement of sale deed based upon which the present suit came to be filed. This dispute of the defendants directly challenging the validity of the agreement of sale raises a serious question about the *prima-facie* case of the plaintiff. Given this contested nature it would be in

appropriate for this Court to grant an equitable relief of temporary injunction based upon a document whose legal standing is itself in question. The plaintiffs in order to show that the defendants are carrying out construction in the suit schedule property have not produced any photographs to better understand the contention of the plaintiffs. Though it is not absolute requirement in all the cases to produce the corroborative material but in this case the absence of photograph or any other document weakens the contention of the plaintiffs and also their claim of immediate and irreparable harm necessitating an order of temporary injunction. Therefore at this stage it appears that the plaintiffs have not made out *prima-facie* case in allowing the application. The Court has to be diligent enough while granting an order of temporary injunction where serious disputed questions of title of the property is involved. In such situations at this stage it appears that the proper course is to allow the full fledged trial so as to determine the rights of the parties, rather than granting interim relief that to prejudge the out come

:10:

of the main suit. Further more any construction put up/to be put up on the suit schedule property would be subject to final out come of the suit. All the rival contentions including the construction are kept open. Therefore, I am of the opinion that the plaintiffs have not made out any grounds to allow the application.

Accordingly, the Points No.1 to 3 are answered in the negative.

14. POINT NO.4:- In the light of above discussion, I proceed to pass following.

ORDER

I.A.No.18 filed by the plaintiffs under Order XXXIX Rule 1 and 2 R/W 151 of C.P.C. for the relief of temporary injunction is hereby rejected.

There is no order as to costs.

(Dictated to the **Stenographer** directly on computer, typed by her, corrected by me and then pronounced in the open Court on this **13th day of January 2025**)

Sd/-
(Sukeeta S. Hadli)
I Addl., Civil Judge & J.M.F.C.,
Bangarpet.