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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.17

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.17
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 I.A. NO.17

The plaintiffs have filed I.A.No.17 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 alienating, encumbering mortgaging or disposing of the schedule properties, in any manner to any third parties 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 are carrying out illegal construction activities over the schedule property with an intention to deprive the rights of plaintiffs. The defendants are trying to create third party rights also over the schedule property thereby trying 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.17.

4. The defendants have contended that the suit schedule property is joint family property and they are carrying out the agricultural operations jointly. Hence 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 dismiss 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 : Partly 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 filed this application seeking an order of temporary injunction restraining the defendants from alienating, mortgaging or disposing the the suit schedule property. The plaintiffs have disputed the very existence and validity of the agreement of sale based upon which the plaintiffs have filed this suit. It is the contention of the defendants that the plaintiffs have got created the agreement of sale using the white blank papers bearing the signatures of the defendants. This Court cannot hold a mini trial in adjudicating the rights of the parties at this stage of disposing the application in hand.

13. Having considered the case of the plaintiffs and the defence of the defendants in the light of the material on record, I am of the opinion that the trial is required to adjudicate the dispute. It is clear from the perusal of the documents submitted by the parties it appears that, the

suit schedule property is in the name of Durgamma W/o Venkateshappa, who is none other than the mother of the defendants. It also appears that the Saguvali chit was issued in the name of the mother of the defendants based upon the order of Thasildhar bearing No.LND.R.4099/94-95. Based upon the said grant certificate the name of the mother of the defendants got mutated to the suit schedule property as per M.E.No.17/95-96. Consequently, the name of the mother of the defendant is appearing in the RTC extract pertaining into the suit schedule property. The patta book pertaining to the suit schedule property is also standing in the name of the mother of the defendants. It also appears that the defendants have executed an agreement of sale pertaining to the suit schedule property in favour of the plaintiffs dtd.07.04.2011. Thus, from the documents it is clear that the suit schedule property belongs to the family of the defendants. Relating to the alienation of the suit property by the defendants No.1 to 3 are concerned, it is to be noted that there may be chances of alienation of

property by them since the property belongs to their family. Therefore, the apprehension of the plaintiffs about alienation of the suit property by defendant No.1 to 3 is to be accepted. Further, if the suit property is alienated by them, it would lead to multiplicity of proceedings. Having considered the documents, the cases of the parties and an apprehension of the plaintiffs, I am of the opinion that it is necessary to prevent the defendants No.1 to 3 from alienating the suit schedule property.

14. The plaintiffs have also sought the relief of temporary injunction to prevent defendant No.1 to 3 from creating an encumbrance or charge upon the suit schedule property. It is to be noted that raising the loan over any property for its development is necessary. Otherwise, the development of the property would be effected. Therefore it is not necessary to prevent the defendants from creating the charge upon the suit schedule property. However, the defendants shall not

:11:

raise the loan or create any encumbrance upon the suit schedule property at their will and wish.

15. Therefore, I am of the opinion that the defendants No.1 to 3 are to be restrained from alienating the suit schedule property. ***Accordingly, the Points No.1 to 3 are answered in the partly in the affirmative.***

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

ORDER

I.A.No.17 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 allowed in part.

The defendants No.1 to 3 are temporarily restrained from alienating the suit schedule property.

:12:

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.