

KAKL300008642022



IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC.,
AT MALUR

: **PRESENT** :

Smt. **Lathadevi, G.A.**, B.A.L., LL.B., LL.M.,
Senior Civil Judge & JMFC., Malur.

Dated this 28th day of February 2024.

OS.No.613/2022

Plaintiff/s

: **Sibgathulla Khan,**
S/o Gouse Khan,
Aged about 61 years,
R/a. # 5, 1st main, 7th cross,
New Gurappanapalya,
Near Jal Bhavana,
Bangalore south,
Bangalore.

(Reptd., by Sri.T.B.K, – Advocate)

-Vs-

Defendant/s

: **1. Ali Khan,**
S/o late Karim Khan,
Aged about 61 years.

2. Ameer Khan,
S/o Ali Khan,

Aged about 29 years.

3. Mudasir Khan,
S/o Ali Khan Khan,
Aged about 25 years.

4. Thasin Taj,
W/o Ali Khan,
Aged about 51 years.

All are residing at;
Chavvenahalli village,
Kasaba hobli,
Malur taluk, Kolar district.

(Reptd., by Sri.**H.L.N.**, – Adv.,)

* * *

ORDERS ON I.A.I FILED BY THE PLAINTIFF
U/o 39 Rule 1 and 2 r/w Sec.151 of CPC., dated 17.09.2022

The plaintiff's advocate has filed the above interim application, along with supporting affidavit seeking to pass an ad-interim order of temporary injunction, restraining the defendants, their agents, servants or any other persons acting on their behalf **from alienating the suit schedule property**, till disposal of the above suit.

2. In the supporting affidavit, the plaintiff has deposed that, the suit is filed for the relief of specific

performance of contract based on agreement of sale, dated 16.04.2021 with respect to suit schedule property.

3. That the defendants had offered to sell the suit schedule property for a total sale consideration of Rs.9,60,000/-, out of it, Rs.4,00,000/- has been paid and balance sale consideration is Rs.5,60,000/-, the defendants had agreed to obtain 11-E sketch and other revenue documents, in order to execute absolute sale deed within a period of 5 months, but have failed to obtain 11-E sketch and failed to execute absolute sale deed in favour of plaintiff.

4. That the defendants are trying to alienate the suit schedule property in favour of others and contends that, if the suit schedule property is alienated, it leads to multiplicity of proceedings, causes irreparable loss and injury to the plaintiff. Hence contends that, the plaintiff has made out prima-facie case, balance of convenience lies in favour of plaintiff, if the IA., is not allowed, the plaintiff will be put to great loss and injury. Hence, **prays to allow the above IA.**

5. The defendants have filed the written statement and have adopted the written statement as objections to

the above IA. The defendants have denied the entire case of plaintiff and contend that, originally the suit schedule property was acquired by defendant No.1 by virtue of pavathivarasu katha. That the defendants No.1 to 4 had approached the plaintiff seeking for hand loan of Rs.3,10,000/- with interest @ 3%, but the plaintiff had demanded for security and had insisted for execution of agreement of sale with respect to suit schedule property, hence it was executed.

6. That the defendant No.1 had executed registered gift deed in favour of his wife- Thasin Taj, dated 20.03.2021. Hence contends that, there is no agreement of sale executed by defendant No.4 with respect to suit schedule property and contends that, agreement of sale is executed as a security for the loan transaction and that it was not entered into with an intention to sell the suit schedule property.

7. In view of the above contentions, the plaintiff has come up with the above false IA, further contends that, the plaintiff has not made out a prima-facie, balance of convenience in his favour. Further contends, if the above IA, is allowed, the

defendants would be put to hardship and injury. Hence, **prays to reject the above IA.**

8. Heard and perused the materials available on record.

9. In view of the above rival pleadings, the following points that would arise for my considerations are;

1. Whether plaintiff has made out a prima-facie case?
2. Whether plaintiff proves that, the balance of convenience lies in his favour?
3. Whether plaintiff proves that, if the temporary injunction is not granted as prayed in IA No.I, he will be caused irreparable loss and injury?
4. What order?

10. My findings to the above points are as follows;

Point No.1 to 3 : In the **Affirmative**

Point No.4 : As per final order
for the following;

REASONS

11. **Points.1 to 3:** are interconnected to each other, hence, they have taken up together for consideration, in order to avoid repetition of facts.

12. This is a suit filed by the plaintiff for the relief of specific relief of contract with respect to suit schedule property. The plaintiff has filed the above I.A., seeking to restrain the defendants from alienating the suit schedule property, till disposal of the suit.

13. The plaintiff has produced registered agreement of sale, dated 16.04.2021 with respect to suit schedule property, the said agreement of sale has been executed by defendants No.1, 2 & 3 in favour of plaintiff.

14. Though, it is the case of the defendants that, the defendants No.1 to 4 had approached the plaintiff for loan and have executed agreement of sale as a security towards loan borrowed by the defendants from the plaintiff, but there re no documents produced to that effect, nor any documents produced to reveal interest having been paid by the defendants to plaintiff. No such recital is also found in the agreement of sale. It is true that, the defendant No.1 has executed gift deed in favour of defendant No.4, if she having not executed agreement of sale in favour of plaintiff, the said gift deed is dated 20.03.2021, which is prior to date of agreement of sale, dated 16.04.2021. It is true that, gift has been executed by

defendants No.1 to 3, but plaintiff has also produced another document claiming that, it is a consent deed executed by the defendant No.4 in favour of plaintiff having consented for agreement of sale as claimed by the plaintiff, which also requires trial, the said consent is dated 25.11.2020, which has to be put to trial.

15. The plaintiff has produced registered agreement of sale, wherein, sale consideration is part to support that account extract is produced, which reveals amount has been paid to Ameer Khan, who is defendant No.2, but defendants contend loan having been obtained which requires trial, if the defendants alienate the suit schedule property to 3rd parties, it leads to multiplicity of proceedings. Hence, the plaintiff has made out prima-facie case, balance of convenience in his favour. In view of the discussions made above, I answer points No.1 to 3 in the **affirmative**.

16. **Point No.4:** In view of the above discussions and findings to points No.1 to 3, I proceed to pass the following;

ORDER

IA No.I filed by the plaintiff U/o 39 Rule

1 & 2 of CPC., is hereby **allowed**.

The defendants, their agents, servants,
or any other persons acting on their behalf
are hereby temporarily injuncted, not to
alienate the suit schedule property, till
disposal of present suit.

(Dictated to the **Stenographer Grade-III**, transcribed and typed by
him, corrected, signed by me and then pronounced in the Open Court
this the **28th day of February, 2024**)

(LATHADEVI G.A.,)
Senior Civil Judge & JMFC.,
Malur