

KAKL510028902024



**IN THE COURT OF II ADDITIONAL CIVIL JUDGE &
JMFC., KGF**

Dated this the 19th day of July, 2024

PRESENT

**Sri. Manju.M, B.Sc., L.L.B.,
II Addl. Civil Judge & JMFC.,
KGF.**

O.S.No.236/2024

PLAINTIFFS:

Sri.Fayaz Ahmed
S/o Late Abdul Jaleel and Others.

-V/s-

DEFENDANTS:

Sri.R.Khader Pasha,
S/o Late Abdul Raheem and Another.

CAUSE TITLE ON IA No.I TO III

APPLICANTS:

1. Sri.Fayaz Ahmed,
S/o Late Abdul Jaleel,
Aged about 64 years.
2. Sri.Illiyaz,
S/o Late Abdul Jaleel,
Aged about 62 years.

3. Sri.Nayaz,
S/o Late Abdul Jaleel,
Aged about 60 years.

No.1 to 3 are R/at Old Post Office Road,
Andersonpet, KGF Taluk, KGF.

(By Sri.K.M.V., Advocate)

-V/S-

OPPONENTS:

1. Sri.R.Khader Pasha,
S/o Late Abdul Raheem,
Aged about 58 years,
R/at Old No.200, New No.1220,
Bharathpuram,
Andersonpet, KGF Taluk, KGF.
2. Smt.Imtiyaz Begaum
W/o Late Ajeej,
D/o Late Abdul Jaleel,
Aged about 59 years,
R/at Old Post Office Road,
Andersonpet, KGF Taluk, KGF.

(D1 by Sri.A.M.R., Advocate)

i	Provision under which the application is filed	Under Order 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	21-06-2024
iv	Number of the application	IA.No.I to III
v	The date on which the objections are filed by different opponents	28-06-2024
vi	The date on which the orders were passed on the said application	19-07-2024

ORDERS ON I.A.NO.I TO III

These applications filed by the plaintiffs under Order 39 Rule 1 and 2 R/W Sec.151 of CPC praying for an order to restraining the defendant no.1, his family members, servants, agents and others representing him from dispossess the plaintiff from the suit schedule property and also interfere with possession of the plaintiffs over the suit schedule property and prays to stay the operation of execution proceedings in Ex.No.27/2023 till disposal of the suit.

2. These applications are supported by an affidavit of the Plaintiff no.1. In the said affidavits the Applicant has contended that, he and other plaintiffs have filed a suit against the defendants for the relief of specific performance of contract and other reliefs. Further, it is submitted that, the suit schedule property originally belongs to Smt.Mehrunnisa W/o S.Abdul Jaleel, who purchase the suit property under a document dated 06-02-1995 from Ghousiya Sulthana. Further, it is submitted that, the plaintiff mother during her life time approached the defendant no.1 for need of money, for that the defendant

no.1 demanded to execute a security document accordingly the plaintiff mother executed a document dated 18-05-1995 in favour of defendant no.1 but, no revenue documents are acted in the name of plaintiff mother or her vendors at the time of document dated 18-05-1995 and the possession of the suit property was not delivered to the defendant no.1 in pursuance of the document dated 18-05-1995. Further, it is submitted that, after the execution of document between plaintiffs mother and defendant no.1 the rental agreement was also came into force on 01-06-1995 and the plaintiffs are in possession of the suit property prior to the said document. Further, it is submitted that, on the date of execution of registered document, dated 18-05-1995, the defendant no.1 had executed re conveyance deed of sale agreement in favour of plaintiff mother Mehrunnisa with respect to suit schedule property and defendant no.1 agreed to execute registered sale deed after receiving balance sale consideration from the plaintiff mother within a period of 15 months from the date of execution of documents by the defendant no.1 in favour of plaintiff. Further, it is

submitted that, after the demise of plaintiff mother Mehrunnisa, the plaintiff no.1 to 3 and the defendant no.2 have succeeded the estate of their mother. Further, it is submitted that, the document dated 18-05-1995 is a enforceable document with respect to suit property executed by the defendant no.1 in favour of plaintiff mother Mehrunnisa and the plaintiffs are entitled to enforce suit for specific performance of contract against the defendant no.1 as per the sale agreement cum re-conveyance deed dated 18-05-1995. Further, it is submitted that, the defendant no.2 is entitled for right along with plaintiffs and the defendant no.2 who have ill will against the plaintiff related to family property and other court proceedings are pending between the parties. Further, it is submitted that, the defendant no.1 has initiated a execution proceeding in Ex.No.27/2023 and same is pending for consideration. Further, it is submitted that, the plaintiffs always and ready and willing to perform their part of contract as per the sale agreement cum re-conveyance deed dated 18-05-1995 and they demanded the defendant no.1 for several times to perform the

contract but, the defendant no.1 is not ready to perform his part of contract. Further, it is submitted that, the defendant no.1 is tried to dispossess the plaintiffs from the suit schedule property in execution proceedings. Hence, prays to allow the applications.

3. Further, the Applicant raises the usual plea of prima facie case and balance of convenience and irreparable loss and injury. Further, the Applicant has also contends that, if these applications are allowed no prejudice would be caused to the Defendants. By contending so, the Applicant has prayed for allowing these applications.

4. These applications are opposed by the defendant no.1 by filing common objection to the IAs and denied the allegation of fact made by the plaintiffs except filing of suit in HRC.No.9/1996, OS.No.90/2000, OS.No.199/2013, RA.No.212/2022, Ex.No.27/2023. Further, is is specifically contended that, the Lrs of the parties have no step into shoes of original party. They have no right to take inconsistent in the subsequent proceedings. Further, it is contended that, plaintiffs and defendant no.2 are the children of deceased Smt. Mehrunnisa. Originally the suit

schedule property belonged to Smt. Mehrunnisa and the same was her absolute property. The defendant no.1 has purchased the said property from Smt. Mehrunnisa under registered sale deed dated 18-08-1995. On the same day, physical possession of the suit property was delivered to the defendant no.1. Again on 01-06-1995, Smt. Mehrunnisa has taken the schedule property on rental basis at the monthly rent of Rs.2,000/- from the 1st defendant and she was a chronic defaulter in the matter of payment of rent. Without any alternative, the defendant no.1 herein has filed a HRC petition against Smt. Mehrunnisa in HRC.No.9/1996 before the Civil court at KGF and Smt. Mehrunnisa had denied the jural relationship as landlord and tenant and the said petition came to be dismissed on the ground of jurisdiction. Further, it is contended that, by taking undue advantage of said dismissal order in the HRC petition, Smt. Mehrunnisa has filed suit for declaration and permanent injunction against the defendant no.1 in OS.No.90/2000 before the Senior Civil Judge, KGF which came to be decreed in favour of Smt. Mehrunnisa. The defendant no.1 herein has filed

appeal in RA.No.59/2007 and the said appeal came to be allowed and held that, the defendant no.1 is the absolute owner and liberty is given to him to file suit for possession. Further, it is contended that, as per the judgment and decree passed in RA.No.59/2007, the defendant no.1 has filed suit for possession in OS.No.199/2013 and during the pendency of the said suit, Smt. Mehrunnisa died and the present plaintiffs and defendant no.2 were brought on record and they contested the suit. Further, it is contended that, the plaintiffs herein have led evidence in that suit and the said suit came to be decreed in favour of the defendant no.1 on 15-10-2022. Further, it is contended that, the plaintiffs herein have filed an appeal against the judgment and decree passed in OS.No.199/2013 in RA.No.212/2022 and same came to be dismissed on 01-04-2023. Consequently, the defendant no.1 has filed execution petition for delivery of possession of suit property in Ex.No.27/2023 and delivery warrant has been issued against the plaintiff and same is pending. Further, it is contended that, the suit filed by the plaintiff is barred by limitation and the alleged sale agreement dated 18-05-

1995 is false, created and forged one. Further, it is contended that, in order to avoid execution of delivery warrant by suppressing the true facts, the plaintiff no.1 has filed another suit before I Addl. Civil Judge in OS.No.193/2024 and in the said suit, they failed to obtain exparte injunction and immediately the plaintiffs have filed this suit in order to avoid the delivery of possession in Ex.No.27/2023. Hence, prays to dismiss the applications.

5. Heard arguments of both side.

6. Following points arise for my consideration.

1. Whether the Plaintiffs have made out a prima facie case for grant of temporary injunction?
2. Whether the Plaintiffs will be put to irreparable loss and hardship, if the injunction is not granted?
3. Whether the balance of convenience lies in favour of the Plaintiffs?
4. What order?

7. My findings on the above points are as follows:-

- Point No.1 : In the Negative
- Point No.2 : In the Negative
- Point No.3 : In the Negative
- Point No.4 : As per final order, for the following:-

REASONS

8. POINT NO.1 TO 3: Since these three points are interlinked to each other, they are taken up together for common discussion in order to avoid repetition of facts and circumstances.

9. It is well settled that weakness of the defendants are of no use to the plaintiffs. The plaintiffs have to establish prima facie case, balance of convenience and irreparable loss to succeed in an application seeking temporary injunction order. Besides, it is well settled that if there is a probability of plaintiffs succeeding in the ultimate analysis, then, one can conclude that there is prima facie case. With this perception, now, I proceed to discuss the materials on record.

10. It must be noted that, I need not repeat the entire contention of the parties herealso, since I have already narrated the same at the inception of this order. The record shows that the plaintiffs have filed this suit for the relief of specific performance of contract and other reliefs against the defendants over the suit schedule property.

11. In order to substantiate the plaintiffs contention, the plaintiffs have produced the original sale agreement dated 18-05-1995 alleged to have been executed by defendant no.1 in favour of plaintiffs mother Mehrunnisa in respect of suit property, certified copy of sale deed dated 11-03-1995 executed by Jameela Bee in favour of Ghousiya Sulthana, certified copy of sale deed dated 28-12-1994 executed by Ghousiya Sulthana in favour of Mehrunnisa in respect of suit property, certified copies of electricity bills, certified copy of sale deed dated 18-05-1995 executed by Mehrunnisa in favour of defendant no.1 herein, certified copy of rental agreement dated 01-06-1995 executed by Mehrunnisa in favour of defendant no.1, certified copy of judgment and decree passed in RA.No.59/2007, certified copy of judgment and decree in OS.No.90/2000, certified copy of judgment and decree in OS.No.199/2013.

12. In order to substantiate the contention of the defendant no.1, the defendant no.1 has produced the Photo copy of sale deed, dated 18-05-1995, photocopy of rental agreement dated 01-06-1995, photocopy of

judgment and decree in OS.No.90/2000, photocopy of judgment and decree in RA.No.59/2007, photocopy of judgment and decree in OS.No.199/2013, photocopy of judgment and decree in RA.No.212/2022, photocopy of order sheet in Ex.No.27/2023, photocopy of plaint, order sheet in OS.No.193/2024.

13. Heard arguments of both the counsels. The counsel for defendant has relied upon the decisions reported in 2010(3) KCCR 2207, AIR 2010 SC 296, ILR 1992 KAR 3772, ILR 1988(1) P and H 486, (1959) AIR (AP) 310. I have taken the ratio laid down in the said decisions and applied to the case on hand wherever it is necessary.

14. Having heard the arguments of both the counsels and also perusal of the documents on record, it is relevant to note that, the defendant no.1 herein has purchased the suit property under the registered sale deed dated 18-05-1995 from Smt. Mehrunnisa (Mother of plaintiffs). Further, 01-06-1995, aforesaid Mehrunnisa has taken the schedule property on rent from the defendant no.1 and as per the contention of the defendant no.1, the defendant no.1 has filed a HRC petition against Smt.Mehrunnisa in

HRC.No.9/1996 and the same was dismissed. Further, the records shows that, Smt. Mehrunnisa has filed a suit against the defendant no.1 in OS.No.90/2000 and same was decreed in favour of Smt. Mehrunnisa. The defendant no.1 has challenged the judgment and decree in OS.No.90/2000 in RA.No.59/2007 and same was allowed and as per the judgment and decree in RA.No.59/2007, the defendant no.1 is the absolute owner and liberty is given to defendant no.1 to file suit for partition. Further, the defendant no.1 herein has filed a suit against Smt.Mehrunnisa in OS.No.199/2013 and after demise of Smt.Mehrunnisa, the present plaintiffs and defendant no.2 herein were brought on record and they contested the suit and same was decreed in favour of defendant no.1 on 15-10-2022. Further, the plaintiffs herein have preferred an appeal in RA.No.212/2022 and same was dismissed. On the basis of judgment and decree passed in OS.No.190/2013, the defendant no.1 herein has filed a execution petition in Ex.No.27/2023 and the delivery warrant has been issued against the plaintiffs herein and thereafter, the plaintiffs have filed this suit. Further, the

plaintiffs have contended that, the defendant no.1 herein has executed a sale agreement cum reconveyance deed dated 18-05-1995 in favour of Smt. Mehrunnisa in respect of suit schedule property. Till filing of the suit, the aforesaid stated sale agreement dated 18-05-1995 did not seen the light of the world. In order to appreciate the contention of the plaintiffs, a full fledged trial is required.

15. At this stage the plaintiffs have not made out a prima facie case and balance of convenience also not lies in favour of the plaintiffs. Considering all these facts, this court is of the opinion that, the plaintiffs have failed to prove that the above said three mandatory component are in their favour at this stage.

16. The contention of the plaintiffs in the affidavit annexed to the I.A.No.I to III cannot be consider at this stage. It is well settled law that while deciding application under Order 39 rule 1 and 2 of CPC the court has look into three aspects. (1) Discover, whether the Plaintiffs case is frivolous or vexatious or they have established prima facie case?, (2) In whose favour the balance of convenience lies and (3) If the equitable relief of injunction is not granted

who will suffer? It is true that the terms prima facie case and prima facie title are entirely different. To avail relief of temporary injunction the Plaintiffs have to prove their prima facie possession only. The prima facie case really means that there is a case, which required trial, and the case is not the one based on erroneous and vexatious ground. The Plaintiffs are yet to prove their case to the satisfaction of the court. Hence, at very inception the court is of opinion that, the Plaintiffs have not made out a prima facie case in their favour at this stage.

17. The plaintiffs if they have avail preventive relief of temporary injunction, they have to establish existence of prima facie case and also they have established that the intervention of court is necessary safe guard in respect of suit property. The plaintiffs shall also establish that, they have got concluded right over the suit schedule property and the intervention of the court is also very much essential. The plaintiffs also proves that balance of convenience lies in their favour and if an order of temporary injunction is not granted they will be put to loss and hardship. However, in this case at this stage it

appears that the plaintiffs have not established their prima facie in their favour and the plaintiffs have failed to establish alleged apprehension. Accordingly, I proceed to answer **point No.1 to 3 in the Negative.**

POINT NO.4:

18. In view of my findings on point No.1 to 3, I proceed to pass the following:

ORDER

I.A.No.I to III filed by the plaintiffs under Order 39 Rule 1 and 2 R/w sec. 151 of CPC are hereby dismissed.

Under the circumstances parties shall bear their own cost.

(Dictated to the Stenographer directly on computer, typed by him, corrected and signed by me and then pronounced in the open Court, on this **19th day of July, 2024**)

Sd/-
(SRI. MANJU.M)
II Addl. Civil Judge & JMFC,
KGF.