

KAKL40-000082-2016



IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC,
MULBAGAL

Dated this the 17th day of November 2021

Present:

Sri. HAJIHUSENSAB YADAWAD B.Com, LL.B,
Prl.Civil Judge & JMFC,
Mulbagal.

O.S. No. 24/2016

Plaintiff : **Sri. Kupendra Kumar**

V/s

Defendants: **Sri. Munivenkatappa & others**

Parties to I.A.No.VIII

Applicant: **Smt. Vedavathi,**
S.P.A Holder of : **by her S.P.A Holder**
Defendant No.5 **B.R.Sujay Kumar**

(By **Sri. C.S.P** -Advocate)

V/s

Opponents: **Sri. Kupendra Kumar,**
Plaintiff:

(By **Sri. G.G.R** -Advocate)

ORDER ON I.A. No.VIII

The counsel for Defendant No.5 filed IA No.VIII U/O XXXIX Rule 1 and 2 of CPC seeking Temporary Injunction against Plaintiff to restrain him from interfering with peaceful possession of Defendant No.5 over suit item No.2 till pending disposal of suit.

2. The said application is accompanied with an affidavit of B.R.Sujay Kumar who is S.P.A. Holder of Defendant No.5, wherein he contended that the Defendant No.1 being the absolute owner of suit item No.2 has sold the same in favour of Defendant No.5 through Registered Sale Deed. Since from the date of purchase, the Defendant No.5 was and is in peaceful possession and enjoyment over suit schedule item No.2 property. But, the Plaintiff knowing the said fact, in order to deceive and cheat the Defendant No.5 has filed present false suit. The Plaintiff is not having any right or share in suit item No.2 property. The Plaintiff is making attempts to illegally interfere over suit item No.2 property. Hence, restraining the Plaintiff is necessary. Hence, he filed the present application and thereby prayed to allow the application.

3. On the contrary, the counsel for Plaintiff filed objections to the said IA No.8 and contended that the said application is not maintainable either in law or on facts. Further it has been denied that the Defendant No.5 has purchased suit item No.2 from Defendant No.1. The application do not survive for consideration, as the Plaintiff made out prima-facie case, balance of convenience in his favour and not the Defendant No.5. Therefore, on these grounds he prayed to reject the application.

4. I have heard the arguments of both sides.

5. Upon hearing arguments and on perusal of materials placed on record the following points that would arises for my consideration.

1) Whether the S.P.A Holder of Defendant No.5 has established prima facie case?

2) Whether the balance of convenience lies in favour of S.P.A Holder of Defendant No.5?

3) Whether irreparable loss or hardship will be caused to the S.P.A Holder of Defendant No.5 if injunction is not granted?

4) What order

6. My findings to the above points are as under:

Point No. 1 : **Affirmative**

Point No. 2 : **Affirmative**

Point No. 3 : **Affirmative**

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

REASONS

7. **POINT Nos. 1 to 3:** Since these points are inter linked with each other, they are taken up together for consideration in order to avoid repetition, as here under.

8. Before proceeding further discussion it is pertinent to note that the present application is filed by the S.P.A Holder of Defendant No.5 seeking Temporary Injunction against Plaintiff U/O 39 Rule 1 and 2 of CPC. However, the law provides an opportunity to the Defendant to seek such kind of injunction or relief U/O 39 Rule 1(a) of CPC wherein the present S.P.A Holder of Defendant No.5 filed present application U/O 39 Rule 1 and 2 of CPC. The remedy is available to the Defendant only Under Rule 1(a) of Order 39 of CPC. However, it is well established law that mere mentioning wrong provision would not defeat the party from getting the relief. Therefore, as the Defendant No.5 quoted wrong provision in the interest of justice and equity this Court proceeded further to pass orders on application.

9. The present case filed by the Plaintiff against Defendants with respect to Partition and to declare the Sale Deeds dated 08-07-2014 and 30-07-2015 are not binding upon him. The Plaintiff in plaint para No.5 has submitted that, the Defendant No.1 colluding with Defendant Nos.2 and 3, has sold suit item No.1 in favour of Defendant No.4 and suit item No.2 in favour of Defendant No.5. The counsel for Defendant No.5 has also produced the Xerox copy of Sale Deed executed by Defendant No.1 in favour of Defendant No.5. The recitals of said Sale Deed clearly shows that the possession of suit item No.2 has been delivered in favour of Defendant No.5 on the date of execution of Sale Deed dated 30-07-2015. Therefore, the Defendant No.5 become the purchaser of suit item No.2. However, it is the contention of Plaintiff that, he has got share over all suit schedule properties along with suit item No.2. However, there is a necessity of trial to come to any conclusion. As the Defendant No.5 is the purchaser of suit item No.2, till deciding the right of Plaintiff, the right of Defendant No.5 should be protected in the eye of law. Therefore, restraining the Plaintiff from disturbing the possession of Defendant No.5 over suit item No.2 is essential at this stage. The S.P.A Holder of

Defendant No.5 has made out prima-facie case and balance of convenience lies in his favour. If the IA is not allowed then the Defendant No.5 would suffer loss as he is the purchaser of suit item No.2. Hence, on these grounds I answer **Point Nos.1 to 3** in the **Affirmative**.

10. POINT No. 4: In view of my answer on Point Nos.1 to 3, I proceed to pass the following;

ORDER

The IA No.VIII filed by the S.P.A Holder of Defendant No.5 U/O 39 Rule 1 and 2 of CPC is hereby allowed.

The Plaintiff is hereby restrained from disturbing possession over suit item No.2.

No order as to costs.

(Dictated to the Steno on computer, typed by him, revised, corrected and then pronounced by me in open Court, on this 17th day of November, 2021)

**(HAJIHUSENSAB YADAWAD)
Prl. Civil Judge & JMFC.,
Mulbagal.**