

IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC.,
AT SRINIVASPURA

Dated this **28th** day of **June 2021**

Present : H.R. Devaraju, B.A.LL.B.,
Prl.Civil Judge and J.M.F.C.,
Srinivaspura.

O.S.No.207/2018

PLAINTIFF/S:

Sri. Nagappa S/o Gorleppa,
Aged about 59 years,

R/o Sunnakal Village,
Nelavanki Hobli,
Srinivaspura Taluk,
Kolar District.

(By Sri. K.S.P., Advocate)

-V/s-

DEFENDANT/S:

Sri. Syed Ahamed S/o Late S.A. Vahab,
Aged about 60 years,
R/o Saint Frezer School,
Rashyad Nagar, Near Arabbi College,
Nagavara Main Road,
3rd Cross, Bengaluru – 560045.

(by Sri. R.N.S., Advocate)

I.A.NO.1

Applicant/Plaintiff :

Sri. Nagappa S/o Gorleppa.

-V/s-

Opponents/Defendants :

Sri. Syed Ahamed S/o Late S.A. Vahab.

ORDERS ON I.A.NO.1

This is an application filed by the plaintiff/applicant under Order 39 Rule 1 and 2 R/w Sec. 151 of C.P.C seeking for an order of temporary injunction against the defendant and his agents, servants or anybody on his behalf etc., restraining them from alienating the suit schedule property to the 3rd person or create charge over the suit schedule property by way of gift, sale, mortgage or in any other mode to anybody till the pending disposal of the present suit.

SCHEDULE

0-08 gunta of wet land out of 1-26 acres, in Sy.No.34, situated at Sunnakal Village, Nelavanki Holbi, Srinivaspura Taluk, bounded on East by: Land of Sukkur Sabi, West by: Land of Nagappa, North by: Land of Wakf Board and South by: Land of Shameem.

2. Case of the plaintiff in brief is as under:

The plaintiff in his affidavit accompanying to this I.A has stated that defendant is an absolute owner in possession of the suit schedule property. He has acquired the said property by way of inheritance. The father of the defendant had acquired the suit schedule property by way

of partition very long time. In view of partition katha of the suit schedule property had been mutated into the name of the father of the defendant. Still revenue documents are standing in the name of the father of the defendant herein.

3. The plaintiff further states that the defendant for his family necessities and benefits has agreed to sell the suit schedule property to the plaintiff for a sum of Rs.1,40,000/- and executed an agreement of sale dated 23.07.2016 and he has received Rs.10,000/- as an advance amount. Further the defendant has agreed to receive balance sale consideration amount of Rs.1,30,000/- at the time of registration of sale deed. Further he has stated that the defendant has agreed to execute the regular registered sale deed, after the katha got mutated into his name from his father name.

4. The plaintiff further submits that he is always ready and willing to perform his part of contract and he is ready to pay remaining balance of sale consideration amount to the defendant without any delay. He has approached the defendant in numerous time, but, the defendant is not ready to perform his part of contract as

per the terms of the agreement of sale. Hence, the plaintiff has approached his counsel and got issued notice dated 06.08.2018 to the defendant. But, said notice return to the plaintiff as not served. The defendant intentionally has not respond to the plaintiff to perform his part of contract and he is trying to alienate the suit schedule property to the 3rd person to deprive the rights of the plaintiff over the suit schedule property. Hence, the plaintiff has filed present suit for specific performance of agreement of sale dated 23.07.2016 along with interim application.

5. The plaintiff further submits that prima facie case and balance of convenience lies in his favour. If court has not granted temporary injunction order against the defendant, it would cause much hardship to him. Therefore, prays for the allow the application.

6. Per contra the defendant has filed memo and prays for consider the contents of the written statement as objection to I.A.No.1 filed by the plaintiff. The defendant has denied the entire allegation of facts made by the plaintiff in his plaint that he has entered into an agreement of sale with the defendant. Further he has contended that

the suit schedule property is the ancestral property of the defendant, even today katha of the suit schedule property stands in the name of his father namely Sri. S.A. Vahab S/o S. Ubedulla. The defendant has no absolute rights, title or interest over the suit schedule property, his children and wife are having equal right over the suit schedule property. Further he has contended that he has never executed any agreement of sale in favour of the plaintiff and he has not been received any advance amount from the plaintiff. The plaintiff has created the documents to grab the valuable property belong to the defendant's family.

7. The defendant further contended that the plaintiff is doing money lending business, this defendant has approached the plaintiff to avail hand loan of Rs.10,000/-. At the time of obtaining loan, the plaintiff has obtained blank stamp paper containing signature of the defendant only for the purpose of security. Subsequently, the defendant has repaid the entire hand loan amount to the plaintiff. But, he has not returned the stamp paper to the defendant, taking undue advantage of the same he has

filed this suit on the basis of created sale agreement. Hence, prays for dismiss the application.

8. The defendant further has contended that the plaintiff is not entitled for any relief as claimed by him. *Prima facie* case is not made out by the plaintiff and if temporary injunction is granted irreparable injury and hardship causes to the defendant and his family. Therefore, prays for dismiss the application filed by the plaintiff with exemplary cost.

9. Heard both sides and perused the documents placed on record.

10. The following points arise for the consideration of this Court;

- 1. Whether the plaintiff/applicant has made out *prima-facie* case?**
- 2. Whether the balance of convenience lies in favour of the plaintiff?**
- 3. Whether the plaintiff will be put to great hardship and irreparable loss if temporary injunction is not granted, as prayed?**
- 4. What Order?**

11. 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 the final order**
for the following;

REASONS

12. Point No.1: It is the case of the plaintiff that, the defendant is the absolute owner in possession of the suit schedule property. He has acquired the suit schedule property on the basis of pavathi varasu. Initially, the suit schedule property had allotted to the father of the plaintiff through partition. After the demise of his father, the defendant is in possession of the suit schedule property as absolute owner. The defendant has offered to sell the suit schedule property to the plaintiff and the plaintiff has accepted the offer after the negotiation. The defendant has agreed to sell the suit schedule property to the plaintiff for valuable sale consideration amount of Rs.1,40,000/- and executed an agreement of sale dated 23.07.2016 in favour of the plaintiff and defendant has received a sum of Rs.10,000/- as earnest amount and agreed to receive the

balance sale consideration amount of Rs.1,30,000/- at the time of registration of the sale deed. The defendant has agreed to obtain the documents in his favour before execution of sale deed. The plaintiff is always ready and willing to perform his part of contract. But, defendant fails to perform his part of contract, but, he is trying to alienate the suit schedule property to the 3rd person. He personally contact the defendant and requested him to execute the registered sale deed. But, the defendant fails to perform his part of contract. Hence, the plaintiff has approached his counsel and got issued legal notice on 06.08.2018 and said notice is returned to the plaintiff with shara as “insufficient address”. Hence, plaintiff has filed present suit along with this application.

13. Counsel for the plaintiff has argued that the plaintiff is having interest over the suit schedule property, the defendant is trying to alienate the suit schedule property to the 3rd person to deprive the rights of the plaintiff, if defendant alienated the suit schedule property to the 3rd person, it creates multiplicity of proceedings and if this application is not allowed much hardship and

irreparable loss causes to the plaintiff. Hence, prays for allow the application as prayed.

14. For support of his contention the plaintiff has furnished unregistered agreement of sale dated 23.07.2016. On perusal of the said documents it recited that the defendant has agreed to sell the suit schedule property to the plaintiff for valuable sale consideration amount of Rs.1,40,000/- and he has received a sum of Rs.10,000/- as earnest amount. Further he has furnished registered sale deeds, legal notice and RTC extract of the suit schedule property.

15. On perusal of the above documents katha of the suit schedule property stands in the name of the father of the defendant herein. It is well settled that agreement of sale with respect to immovable property does not itself created any interest or charge over the immovable property. In the instant case, it is the case of the plaintiff that the defendant has entered into an agreement of sale for valuable sale consideration amount of Rs.1,40,000/-. On the other hand the defendant has denied his ownership

over the suit schedule property and alleged agreement of sale with respect to the suit schedule property.

16. Once again I repeat that mere agreement of sale does not created any interest over the immovable property. It is relevant to note here decision reported in **(2012)1 SCC 656** (between **Suraj Lamp and Industries Pvt.Ltd.,(2) through director V/s State of Haryana and another**) wherein Hon'ble Supreme Court of India at Para No.19 has held that;

“Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited granted under Section 53-A of the TP Act). According the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of

sale does not create any interest or charge on its subject-matter.

17. As per ratio laid down in the above said decision mere agreement of sale does not created any interest over the immovable property. In the instant case plaintiff has furnished unregistered sale agreement before this court as per the above mentioned decision said agreement has not created any rights or interest to the plaintiff over the suit schedule property.

18. Once again I repeat that plaintiff at this stage fails to establish rights of the defendant over the schedule property and he has not produced any documents before this court to prove prima facie ownership of the defendant over the suit schedule property. Further as per the above mentioned decision mere sale agreement has not created any interest over the immovable property. Moreover the katha of the suit schedule property still stands in the name of father of the defendant herein. Hence, there are no chances to alienate the suit schedule property. Accordingly, I hold Point No.1 in the **Negative**.

19. Point Nos. 2 and 3: These points are interlinked with each other to avoid repetition of facts they are taken together for common discussion.

20. As already discussed *supra* at this stage plaintiff fails to prove prima facie case. When the plaintiff fails to prove the prima-facie case for grant of Temporary Injunction, considering the question of balance of convenience and irreparable injury to the plaintiff does not arise at all. It is relevant to note here decision reported in **ILR 1989 KAR 1701** (between **Gowrishankara Swamigalu .v. Siddaganga Math**) wherein our Hon'ble High Court of Karnataka has held that

“The existence of prima facie case in the matter of granting injunction is really harbinger or the all clear sign to go ahead in investigating of other aspect of the question of governing the grant or refusal of injunction if there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the court, further question of balance of inconvenience and irreparable loss need not be considered.”

21. That apart, in this case the defendant has clearly contended that he has not executed any agreement of sale in favour of plaintiff. As already discussed *supra* at this stage the documents produced by the plaintiff does not support for his contention. Therefore, I am of the opinion that if the order of temporary injunction is not granted it will not cause irreparable loss, injury to the plaintiff. Therefore, I answer point Nos. 2 and 3 in the **Negative**.

22. Point No.4: In view of my above discussions, I proceed to pass the following;

ORDER

*I.A. No.1 filed by the plaintiff under Order 39
Rule 1 and 2 R/w Section 151 of C.P.C is hereby
dismissed with cost.*

(Dictated to the Stenographer directly on the computer, typed by him, corrected and then pronounced by me in open court, this the **28th** day of **June 2021**)

(H.R. Devaraju)
Prl.Civil Judge and J.M.F.C.,
Srinivasapur.