

KAKP410017502022



**IN THE COURT OF THE ADDL CIVIL JUDGE AT
GANGAVATHI.**

PRESENT: Smt. Gouramma
B.A.L. L.L.B., L.L.M.,
Addl. Civil Judge & J.M.F.C.,
Gangavathi,

O.S.No.178/2022

Dated on this the 15th day of December 2023.

Ranking of parties in original suit

PLAINTIFF:-

Smt. Pharhan Taj W/o Mahammed Areef,
Age: 38 years, Occ: Household, R/o
Siddapur village, Karatagi, Dist: Koppal.

(By Sri.K.K., Adv.,)

// Versus //

DEFENDANTS:-

1. Pampanagouda S/o
Amareshappa Sunkad, Age: 37
years, Occ: Agri., R/o Siddapur
village, Tq: Karatagi, Dist: Koppal.

2. Smt. Poornima @ Kavitha
Sunkada W/o Pampanagouda
Sunkad, Age: 36 years, Occ:
Household, R/o Siddapur village, Tq:
Karatagi, Dist: Koppal.

(D-1 & 2 by Sri. H.B.G., Adv.,)

Ranking of parties in I.A.No.I

APPLICANT/PLAINTIFF:

Smt. Pharhan Taj W/o mahammed
Areef, Age: 38 years, Occ:
Household, R/o Siddapur village,
Karatagi, Dist: Koppal.

(By Sri.K.K., Adv.,)

// Versus //

RESPONDENTS/DEFENDANTS:

1. Pampanagouda S/o
Amareshappa Sunkad, Age: 37
years, Occ: Agri., R/o Siddapur
village, Tq: Karatagi, Dist:
Koppal.

2. Smt. Poornima @ Kavitha
Sunkada W/o Pampanagouda
Sunkad, Age: 36 years, Occ:
Household, R/o Siddapur village,
Tq: Karatagi, Dist: Koppal.

(D-1 & 2 by Sri. H.B.G., Adv.,)

Orders on I.A.No.I filed under order 39 rule 1 and 2
R/w 151 of CPC.

1. The applicant/plaintiff has filed the present application seeking to grant an order of temporary injunction restraining the respondents/defendants from alienating the suit schedule properties in any manner to anybody till the disposal of the main suit.

2. The application is supported with an affidavit duly sworn by the applicant/plaintiff. In the supporting affidavit, it is stated that, the plaintiff is the owner and in possession of suit schedule properties. Whereas defendants fraudulently with intention to gulp the suit properties have obtained sale deed dated 21/12/2016 and 21/08/2012. Those sale deeds have been created by taking innocence of the plaintiff who is Paradaseen lady. Therefore, those sale deeds are not binding on her and same are liable to be dismissed. It is further submitted by the applicant that, in order to deprive of her legal rights and by taking undue

advantage of their names in sale deeds, now both the defendants are in hurry to alienate the suit properties. Thereby submits that, if at all suit properties are alienated, the suit itself become infructitious. Further submits that, if suit properties are alienated in favour of third parties, she will be put to more loss and hardship which cannot be compensated in terms of money. On the other hand, no harm or injustice will be caused to other side. Thereby, plaintiff submits that, she has got prima-facie case and balance of convenience lies in her favour. Therefore, it is necessary to restrain the defendants from alienating the suit properties any further till the disposal of the suit. On these grounds the applicant being the plaintiff prays to allow the application.

3. In pursuance of suit summons, the defendants have appeared and filed objection to the application stating that, suit of the plaintiff itself not maintainable, as a result, the present application is

also not maintainable. Further submits that, the grounds mentioned in the supporting affidavit does not disclose any grounds to grant the relief as claimed in the application. Since, they are false, inconsistent and created one. The defendants have denied the allegation that, they have got executed the sale deeds in order to dupe the suit properties of the plaintiff. Per contra, they submits that after execution of absolute sale deeds, they are in possession and enjoyment of the suit properties. Further, they have also resisted the application stating that, if at all they are restrained from alienating the suit properties, they will put to more loss and hardship then the plaintiff and their loss cannot be compensated in terms of money. Further, the defendants also submits that, the plaintiff does not have prima-facie case and balance convenience is not in her favour. On these grounds the defendants prays to dismiss the application.

4. Heard learned counsel for plaintiff and counsel for contesting defendants.

5. Perused materials on record.

6. The following points would arise for my consideration :-

1. Whether the applicant/plaintiff has made out a prima facie case?
2. Whether the balance of convenience lies in favour of the applicant/plaintiff?
3. Whether the applicant/plaintiff would suffer irreparable loss or injury if T.I. is not granted.
4. What order?

7. My answer to the above point is as under

Point No.1 : In the affirmative.

Point No.2 : In the affirmative.

Point No.3 : In the affirmative.

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

REASONS

8. **Point No.1 to 3 :-** This suit is filed by the applicant/plaintiff seeking relief of declaration of sale deed as null and void and relief of permanent injunction.

9. In the application of these kinds, court is bound to consider three important factors primarily whether prima-facie case made out by the applicant, balance of convenience lies in whose favour and who will sustain irreparable loss in case order of injunction is granted or declined.

10. Further, as per provisions of order 39 rule 1(a) of CPC., that any property in dispute in suit is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of decree may file application seeking the relief of temporary injunction restraining such act are to make such orders until the disposal of the suit or until

further orders. Therefore, the application filed by the applicant/plaintiff is well within the purview of law.

11. Keeping all the principals of law in mind now let us discuss the facts of circumstances and application of law to the case on hand.

12. The plaintiff being applicant has filed this application seeking an ad-interim order of injunction restraining defendants from alienating the suit schedule properties in favour of anybody till the disposal of the case. The applicant being plaintiff submits that, she is the absolute owner and possessor of suit properties. That, her husband was member of chit business being run by defendant No.1. In the said chit business, her husband got executed the document styled as a "Agreement of Sale" in favour of defendant No.1 on 21/8/2012. After execution of the same the defendant No.1 has assured the plaintiff, about the payment of chit amount and cancellation of said deed. But, the defendant No.1 fraudulently by taking undue

advantage of the position of plaintiff got executed absolute sale deed in his favour instead of cancellation of documents dated 21/12/2016. Hence, the plaintiff later on came to know about execution of sale deed by her in favour of defendants. Hence, she has asked to re-convey the same, they have refused to reconvey the suit properties in favour of the plaintiff.

13. The plaintiff through the present application seeking an order to injunction against the defendants seeking to restrain them from alienating the suit properties in favour of third parties. On perusal of the documents produced by the plaintiff as well as the defendants shows that, as on today absolute sale deeds in respect of suit properties are standing in the name of defendants. Therefore, at this stage, the suit properties appears to be under the custody of defendants. Moreover the defendants have not disputed they are in possession and enjoyment of suit properties as on today. In this case, the plaintiff is

claiming the relief of cancellation of sale deeds which are standing in the name of defendants. Therefore, this court is bound to decide the entitlement of plaintiff for cancellation those sale deeds after trial. In this case, the plaintiff is claiming those sale deeds are created fraudulently. On the other hand, defendants are submitting those documents are themselves executed by the plaintiff voluntarily. These are all the matters of trial which are to be established only after full fledged trial. No doubt, on perusal of documents submitted by both the parties, the defendants are holding the suit properties as on the today. Since, the suit properties are standing in the name of defendants, the apprehension of applicant/plaintiff that, defendants by taking advantage of their name in title deeds and revenue records may alienate the suit properties are reasonable. Hence, by considering the averments of plaint coupled with supporting affidavit and also the documents submitted by plaintiffs it appears that,

there is a prima-facie case in favour of the plaintiffs. Further more, the court cannot at this stage itself cannot conduct mini trial and hold that, the sale deeds sought to be canceled are valid and genuine. Therefore, the plaintiff has made out prima-facie case to grant the order of injunction as sought by them. Hence, it would be just and proper to restrain these defendants from further alienating suit properties in favour of third parties as plaintiff is claiming her rights over the suit properties. Therefore, if defendants by taking advantage of entry of their names in revenue records, if at all further alienates or creates a charge in favour of third parties, it would cause great loss and injustice to applicant. In this case, the defendants relies upon judgment of Hon'ble High Court of Karnataka in **Emthiyaz Beg V/s Smt.Rakibha Jhan reported in 2015 (3) KCCR 2462**. But, the ratio laid down in the said judgment is not applicable to the case on hand. Since, in this case, there is no alienation of the

properties during the pendency of the suit but the transaction has already taken place before the filing of the suit and it is only on the basis of those sale deeds the plaintiff has filed the present suit. Further, another judgment relied upon in **Smt. Kamala and others V/s Sri. Jayapal and others reported in 2015(2) KCCR 1921** is also not applicable to the case on hand. Since, the nature of the suit therein and case on hand are different. In this case, the plaintiff is denying very execution of sale deeds in favour of defendants. On the other hand, the defendants claims due execution of sale deeds for valuable consideration at the hands of plaintiff. Therefore, by looking into the rival contentions of both the parties, it is clear that there is a prima-facie case for trial. In the case on hand, the plaintiff is asserting her right over suit properties as absolute properties. If, in the suit there is dispute of question of facts are involved, no doubt they are required to be determined and answered then it may

be said to prima-facie case. In the case on hand, the plaintiff is ascertaining her rights over the suit properties as they are her absolute properties. Whereas the defendants denies the same. Hence, in the opinion of the court there is prima-facie case which needs determination. Accordingly, **I answer point No.1 in the affirmative.**

14. **Point No.2:-** This court for the reasons discussed above has answered the point No.1 in the affirmative by holding that, there is a prima-facie case for trial. The point of balance of convenience is a one which is to be considered as a one to whom it would cause a more inconvenience if temporary injunction is granted rather than in whose favour there is a balance of convenience. Hence, balance of convenience is to be looked from the prospective of both the parties. In this case, the plaintiff has established prima-facie case and she has also established balance of convenience also

does lies in her favour. **Accordingly, I answer the point No.2 in the affirmative.**

15. **Point No.3:-** At this stage, court has opined that plaintiff has establish prima-facie case in her favour thereby restraining defendants not alienate suit properties further in any manner. According to the plaintiff suit properties claimed to be absolute properties. Whereas the contesting respondents denies the same. Since, the plaintiff claims absolute ownership over the suit properties, hence, if at all they are alienated further in favour of third party again by taking advantage of entry of their names in title deeds it will lead to multiplicity of proceedings and plaintiff will be put to great hardship and loss. If at all defendants are restrained from alienating the suit properties in any manner in the disposal of the suit no much hardship will be cause to them. If at all suit properties are alienated in favour of third party by defendants, the loss cannot be compensated in terms

of money to the plaintiff if at all she establishes her rights over the properties.

16. Further, if suit properties are alienated by any parties to the suit, the suit itself become infructuous and it will lead to further legal proceedings and plaintiff suit may not reach its logical end. Therefore, it is just and necessary to maintain the status-quo with regard to suit properties. In opinion of the court in order to meet ends of justice it is necessary to restrain the defendants from alienating this suit properties in favour of the third party. Therefore, the defendants are hereby restrained from alienating suit properties till the disposal of the suit which would meet the ends of justice. **Accordingly I answer point No.3 in the affirmative.**

17. **Point No.4:-** In view of the reasons assigned and discussion made above it is just and necessary to restrain all the defendants from dealing

with the suit properties in any manner to meets the ends of justice. Hence, it would be just and proper to consider the present application positively. Accordingly under present facts and circumstances. I proceed to pass the following:

ORDER

IA.No.1 filed by the applicant/plaintiff Under Order XXXIX Rule 1 and 2 of CPC is hereby allowed.

As a result, the respondents /defendants are restrained from alienating the suit schedule properties in favour of anybody in any manner till the disposal of the suit.

No order as to costs by considering the age of the suit.

(Dictated to the Stenographer directly, typed by her on computer, corrected, signed by me and then pronounced in open Court on this 15th day of December 2023)

(Smt. Gouramma.)
Addl., C.J., & JMFC, Gangavathi