

KAMD210014022022



**IN THE COURT OF ADDL.CIVIL JUDGE & J.M.F.C.,
KRISHNRAJAPETE**

Present: SMT.ARPITHA.K.V.,
B.A. LL.B., LL.M.
ADDL.CIVIL JUDGE & J.M.F.C.,
KRISHNARAJAPETE.

DATED THIS 13th DAY OF AUGUST-2025

O. S. No.439/2022

Plaintiff : Umar Baig
D/o Late Ameer Beg Saheb
Aged about 70 years,
R/o House No.2123,
Basavanagudi Beedi,
K.R.Pete Town, K.R.Pete Taluk,
Mandya District.

V/S

Defendants : 1. Sayira Begam
W/o Late Rehaman Beg
Aged about 60 years,
R/o House NO.158,
Mysuru-Bannuru Road,
Harohalli Varuna Hobli,
Mysuru.

2. Mohammed Jakriya
D/o Iliyaj Ahammed
Aged about 35 years,
R/o Kempegowda Circle,
Belluru Town,
Nagamangala Taluk,
Mandya District.

I.A. NO. VI

APPLICANT :- Umar Baig

V/S

OPPONENT:- Sayira Begam and others

ORDERS ON I.A NO.VI

The plaintiff has filed the present application under Order XXXIX Rule 1 and 2 of C.P.C praying the Court to grant an order of Temporary Injunction restraining the defendant no.2 from alienating, transferring and creating encumbrance upon item no.6 of the suit schedule property till disposal of the suit.

2. The applicant in the affidavit states that the plaintiff and the husband of defendant no.1 are brothers and that the suit properties was purchased by the husband of defendant no.1 on 10.07.1978 and on 27.07.1981, accordingly got mutated his name as per MR No.8/1978-79 and MR No.84/1980-81. The husband of the defendant no.1 in order to repay his loan amount, he got executed an

agreement of sale dated 16.06.1998 for sale consideration of Rs.1,40,000/- and accordingly the husband of the defendant no.1 received Rs.1,40,000/- from him and accordingly agreed to execute the sale deed in his favour by obtaining relevant documents.

3. He further states that the defendant would have let the possession of the said property to the plaintiff along with the original documents. Since then the plaintiff is put in peaceful possession and enjoyment of the said property.

4. The husband of defendant no.1 died issueless leaving behind the defendant no.1 as his legal heir on 20.12.2019. After the death of the husband of defendant no.1, the plaintiff has approached the defendant no.1 several time for the purpose of getting executed the sale deed, but the defendant no.1 kept evading the request of the plaintiff. Accordingly on 11.05.2022, the plaintiff got issued legal notice to the defendant no.1, but the same was returned for want of correct address. Since the defendant no.1 is not responding to the request of the plaintiff, got instituted suit for specific performance of contract.

5. Though the defendant no.1 is well aware about the said transaction having taken place between the plaintiff and her husband, has got her name mutated with respect to

the suit schedule property which included the property sold to the plaintiff and is trying to alienate the suit properties to defendant no.2 and other third parties. The defendant no.2 is further trying to alienate the said property to third parties and accordingly prays to grant an order of injunction restraining the defendant no.2 alienating the said properties.

6. On the other hand the defendant has filed the objection to the present application contending that the present application is not maintainable under the law and is liable to be dismissed.

7. The defendant no.2 contends that the father of the plaintiff had 7 children. The husband of defendant no.1 named deceased Rehaman Beg had instituted OS No.3/2012 against the plaintiff and the defendants and accordingly the mother of the defendant no.2 was the defendant no.3 in the said previous suit. The said suit was decreed on 03.02.2018, because of the said judgment, there was ill-will between the plaintiff and the defendant no.1.

8. The husband of the defendant no.1 was reported to be dead on 20.12.2019 and accordingly OS No.3/2012 was instituted. Since the defendant no.1 is issueless, the plaintiff used to coerce the defendant no.1 to execute conveyance deed in his favour since the defendant no.1 evaded the request and withstood the coercion, the plaintiff

has come up with the present suit.

9. It is further contended by the defendant no.2 that the plaintiff did not issue any notice to the husband of the defendant during his life time. But it was only after the death of the husband of defendant, the plaintiff with a malafide intention has got instituted the present suit.

10. The defendant no.2 further contends that after purchasing the said property from the defendant no.1, the defendant no.2 got mutated his name as per MRH 92/2021-22. Accordingly the name of the defendant no.2 has been running in the revenue records. The defendant no.2 was impleaded during the pendency of the suit which shows the malafide intention of the plaintiff and accordingly prays to dismiss the application.

11. Heard and perused the materials placed on record. Following points consideration of this court.

1. Whether the plaintiff has made out Primafacie case?
2. Whether the plaintiff proves that the Balance of Convenience lies in his favour?
3. Whether the plaintiff proves that he will suffer from irreparable loss or injury if the said application is not allowed?
4. What order?

12. The aforesaid points are answered as hereunder:

Points No.1 to 3: In the Affirmative

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

REASONS

13.**Points No.1 to 3:** The present suit has been instituted by the plaintiff for the relief of specific performance of contract. The plaintiff claims that the suit schedule properties originally belonged to the husband of the defendant no.1. Subsequently, the husband of the defendant no.1 named deceased Rehaman Baig had executed an agreement of sale in favour of the plaintiff for sale consideration of Rs.1,40,000/- and accordingly had received the complete amount, but had failed to execute the sale deed in favour of the plaintiff.

14. The defendant no.1 upon death of her husband got her name mutated in all the revenue records pertaining to her husband including the suit schedule property. Though the plaintiff requested the defendant no.1 to execute the sale deed, the defendant no.1 has failed to do so and accordingly the defendant no.1 sold the said properties to defendant no.2.

15. The defendant no.2 after the said transaction has got his name mutated in the respective revenue records of the

purchased properties. The apprehension of the plaintiff is that the defendant no.1 is yet to execute the sale deed in favour of the plaintiff, but having failed to do so has got sold the properties to the defendant no.2. Since the properties are standing in the name of defendant no.2, it is necessary that the defendant no.2 is restrained from alienating the property. On the other hand the defendant has denied to the same and contends to the present suit and the application is not maintainable as the properties have been obtained from defendant no.1 and the plaintiff does not hold any title and accordingly prays to dismiss the application.

16. The plaintiff in support of his claim has produced sale deeds, RTCs, sale deed dated 16.06.1988, legal notice, postal receipt, postal acknowledgment, RTCs, notice, certified copies of the sale deed dated 25.11.2021.

17. On the other hand, the defendant has not produced any documents in support of his contention. On perusal of the documents it is seen that the suit schedule properties are standing in the name of defendant no.2 who has obtained the said properties upon sale deed.

18. Considering the nature of the suit, the plaintiff claims that the defendant no.2 taking advantage of his name being mutated in the said documents pertaining to suit schedule property, might alienate the property. Since the suit is pending for adjudication, perusing the documents it can be

said that the plaintiff has made out prima facie case in his favour.

19. Though the suit is one for specific performance of contract, it is to be observed here that if the defendant no.2 is not restrained from alienating the suit properties, the same might lead to multiplicity of proceedings, causing inconvenience to both parties and the proceedings. Therefore, it is necessary that in order to avoid irreparable loss or injury to the parties to the suit, it is necessary that the defendant no.2 is restrained from alienating, transferring, creating encumbrance upon the suit schedule properties till disposal of the suit. Therefore, it can be said that the balance of convenience is in favour of the plaintiff and that no irreparable loss or injury will be caused to both parties to the suit. Hence this court proceeds to answer Points No.1 to 3 in the Affirmative.

20. **Point No.4:** From the aforesaid discussion this court proceeds to pass the following;

ORDER

IA No.VI filed by the plaintiff is hereby allowed.

The defendant no.2 is hereby restrained from alienating, transferring or creating encumbrance upon the suit

schedule properties till disposal of the
suit.

(Dictated to the Typist directly on computer, typed by him, corrected by me and
then pronounced in the open Court on 13.08.2025)

(Smt. Arpitha K.V.,)
Addl. Civil Judge and JMFC,
K.R.Pete.