

**IN THE COURT OF THE ADDL. CIVIL JUDGE AND
J.M.F.C., K.R.PETE.**

:PRESENT:

SRI. BASAVARAJA THULASAPPA NAYAKA, BAL. LLM.

ADDL. CIVIL JUDGE AND JMFC, K.R.PETE.

DATED THIS THE 29th DAY OF MARCH - 2022

O.S.NO.701/2019

Plaintiffs : Smt. B Lalitha and others
V/s

Defendant : Sarojamma

I.A.NO.I

Applicants : 1. Smt. B. Lalitha W/o K.P.
Siddalingaprabhu, aged
about 57 years,
2. Sri. K.P Siddalingaprabhu,
S/o Late A.S. Puttanaiah,
aged about 62 years,
3. Sri. M.S. Vivek S/o K.P.
Siddalingaprabhu, Major,
All are R/at # 502, H-Clock,
6th main Ramakrishnanagara,
Mysuru town and district.

.... Plaintiffs

(By Sri. Palaksha., Adv.)

Opponents : Sarojamm W/o Subbegowda,
aged about 51 years, R/at
Madapura village, Kikkeri
hobali, K.R.Pete taluk,
Mandya District.

.... Defendant

(By Sri..H.V.M.,Adv.)

ORDER ON I.A NO.I FILED UNDER ORDER

XXXIX RULE 1 AND 2 OF CPC.

1. The plaintiffs have filed the present application U/order XXXIX Rule 1 and 2 of CPC seeking to restraining them agents, servants or any persons acting on her behalf from interfering with the plaintiffs peaceful possession and enjoyment of the suit schedule property.

2. The plaintiff in the affidavit filed along with the application stated that, the 1st plaintiff Smt. B. Lalitha is the owner of the schedule property and 2nd plaintiff is her husband and 3rd plaintiff is her son and have purchased the same from one T.S. Ramachandra

under registered sale deed dated 13.12.1982. Hence she is owner and possession of the schedule property. Hence she very much need of money for our necessity and to discharge the loan. As such, they have decided to sale the property and defendant has also agreed to purchase the same. Further contended that, them and defendant have entered into an agreement of sale dated 04.06.2018 agreeing to purchase the schedule property for a total consideration of Rs.36,25, 000/- and on the date agreement itself defendant has paid a sum of Rs.15,00,000/- though cash as advance amount and agree to pay the remaining sale balance of Rs.21,25, 000/- within 11 months from the date of agreement of sale at the time of executing the sale deed.

3. Further contended that, the defendant has requested her to execute the sale agreement for the Sub-registrar value in order to avoid registration and

stamp charges. Hence both plaintiffs and defendant have already entered into registered sale agreement dated 05.07.2018 for a sale consideration or Rs.6,00,000/- which is nominal one but actual sale agreement is for a sum of Rs.36,25,000/-. Hence two agreements were executed. But the possession was not delivered and the possession has to be delivered after executing the sale deed. Further submits that, she was with every documents and approached the defendant to pay the sale balance and get registered sale deed.

4. Further submits that, on 08.03.2019 itself she has got issued legal notice to the defendant calling upon her to come and take the sale deed by paying remaining sale balance. But, she has not taken the sale deed on the other hand she has filed false suit against me in O.S. 26/2019 on the file of Civil Judge (Sr.Dn) at K.R.Pete for specific performance of

agreement of sale for Sub-Registrar Value. Further contended that, the possession was not delivered to the defendant and they are in possession and enjoyment of the schedule property and they are cultivating the same taking yields. The defendant has no manner of right title interest what so ever over the schedule property in spite of it they are trying to interfere with our peaceful possession and enjoyment of the plaint schedule property. Hence, on 25.11.2019 the defendants along with her henchaman have tried to interfere with their peaceful possession and enjoyment of the schedule property.

5. Further contended that, they have approached jurisdictional police complaining the interference of the defendant but they have not taken any action since the defendant is powerful lady. Hence, they have directed the plaintiff to approach competent Civil Court. The defendant is a very rich and having

political influence behind her back and she will not believe in law and she is aged person having no supporters in the village and the illegal Act of defendant cannot be resisted without order of this Court. Further contended that, she has made out a prima facie case and balance of conveyance tilts heavily in her favour if order of exparte temporary injunction is not granted, the very purpose of filing of this suit will be defeated and the defendant shall definitely disposes them from the suit land and it causes great loss in that even greater hardship and injury will be caused to them and it cannot be compensated in any manner. If the application is allowed no hardship or injustice will be caused to other side. Hence, prays to allow the application.

6. After service of summons the defendant appeared before the court and filed written statement and memo to treat written statement as objection on

IA No.I. The defendants contended that, the present suit is filed with a malafied intention. The defendant admit the ownership of the plaintiffs over the suit schedule property. Further admits the purchase of the suit schedule property by the plaintiff. Further admits that, the plaintiffs were in need of money and the defendant agree to purchase the suit schedule property. The defendant denied that, on 04.06.2018 the plaintiff and defendant have entered into sale agreement in respect of suit schedule property for a sale consideration of Rs. 36,25,000/-. Further denied that, on the date of the said agreement the defendant paid a sum of Rs.15,00,000/ part of the said consideration amount and agreed to pay balance sale consideration of Rs.21,25,000/- within 11 months. The defendant denied that, she has requested the plaintiffs to execute the sale agreement before Sub-registrar for lesser value in order to avoid registration

and stamp charges. Further denied that, they have executed nominal sale agreement for Rs.6,00,000/- on 05.07.2018. the defendants denied the execution of two agreements. The defendant contended that, on 05.07.2018 the plaintiffs have executed registered sale agreement in favor of defendant for a valuable sale consideration of Rs.5,00,000/- by way of cash and agreed to receive balance sale consideration of Rs.1,00,000/-. The defendant contended that, the plaintiffs postponing the execution of sale consideration on one or other reason in spite of repeated request. Hence the defendant has filed the suit for Specific Performance against the plaintiff before the Senior Civil Judge and J.M.F.C., Court K.R.Pete bearing in O.S. NO. 26/2019. Further contended that, they are ready and willing to perform their part of contract. The defendant admit that the plaintiff has not delivered the possession of the suit

schedule property. The defendant denied that, she is trying to trespass the suit schedule property and interfere with the possession of the plaintiff over the suit schedule property. Further denied that, the plaintiffs have lodged the complaint against her. Hence prayed for dismissal of the application.

7. The following points arise for my consideration:

Point No.1: Whether the plaintiffs have got prima-facie case and balance of convenience lies in their favour?

Point No.2: Whether the plaintiffs will be put to irreparable loss and injury, if the order of T.I. is not granted?

Point No.3: What order?

8. Heard arguments.

9. After going through the records and hearing the parties, the above points are answered as follows:

Point No.1 : In the Affirmative,

Point No.2 : In the Affirmative,

Point No.3 : As per final order for the following: -

REASONS

10. Point No.1 & 2: The present suit is filed by the plaintiffs against the defendant seeking Permanent Injunction in respect of suit schedule property. The plaintiff contended that, she is owner in possession of the suit schedule property. The defendant agreed to purchase the suit schedule property for a sale consideration of Rs. 36,25,000/- on 04.06.2018 and paid a sum of Rs.15,00,000/- part of the sale consideration amount and agreed to pay the balance sale consideration amount and Rs.25,00,000/- at the time of registration of sale deed. Further contended that, the defendant requested the plaintiff to enter registered sale agreement for lesser value in order to avoid registration and stamp charges and got executed nominal registered sale agreement for sale consideration of Rs.6,00,000/-. The plaintiffs contended that, the defendant is trying to interfere with their possession over the suit schedule property.

On the other hand the defendant admitted the ownership over the suit schedule property. Further admitted that, she has entered into sale agreement with the plaintiffs to purchase the suit schedule property but, denied that she has entered into sale agreement with plaintiff in respect of suit schedule property for a sale consideration of Rs.36,25,000/-. Further denied that, registered nominal sale agreement dated 05.07.2008 was executed for Rs.6,00,000/-. The defendant denied interference to the possession of the plaintiff over the suit schedule property. The defendant admitted the plaintiff has not delivered the possession of the suit schedule property. The defendant contended that, she is ready and willing to perform her part of contract but the plaintiffs are keep postponing one or other reasons. Now the present suit is filed in order to knock of the suit schedule property.

11. It is pertinent to note that, the ownership of the suit schedule property is not disputed. Further it is not dispute that the plaintiff has entered into sale agreement with defendant in respect of suit schedule property. The dispute is pertaining to the sale consideration amount and whether the two sale agreement were executed. The plaintiffs contended that, the defendants entered two sale agreements whereas the defendant denied that they have entered into two sale agreements. The defendant claim that she is filed a suit bearing O.S. No. 26/2019 seeking specific performance. It is pertinent to note that, the defendant admit that the plaintiffs have not delivered the possession of the suit schedule property. The plaintiff produce the copy of the RTC it shows the suit schedule property stands in the name of plaintiff No.1. This prima facie shows the possession of the plaintiff over the suit schedule property. The

plaintiffs contended that, the defendant is trying to interfere with their possession over a suit schedule property. Hence, I am of the opinion that, the balance of convenience lies in favour of plaintiffs. If an order of temporary injunction is not granted the plaintiff would be put to irreparable hardship and injury.

Hence, I answer **Point No. 1 and 2 in Affirmative.**

12. Point No.3: In view of the above discussion, I proceed to pass the following:

ORDER

I.A.No. I filed by the plaintiffs
U/o XXXIX Rule 1 & 2 of CPC., is
hereby allowed.

The defendant or anybody on
her behalf is hereby restrained from
interfering with the possession of
plaintiff over the suit schedule
property in any manner till the
disposal of the suit.

No order as to cost.

(Dictated to the Stenographer directly on computer, typed by her, corrected & signed by me and then pronounced in the open Court on this day 29th day of March- 2022)

(Basavaraja Thulasappa Nayaka)

Addl. Civil Judge & JMFC.,
K.R.Pete.
