

**IN THE COURT OF THE I ADDITIONAL CIVIL JUDGE &
J.M.F.C.
AT MADDUR**

PRESENT:- Sri. AMOL JAYKUMAR HIRIKUDE
B.A., LL.B.
I Addl. Civil Judge and JMFC
Maddur.

Dated this the 11th day of March 2016

O.S.272/2015

PLAINTIFF:- Smt. Jayamma W/o Late Boregowda,
Aged about 55 years, R/at Goravanahalli
village, Maddur Taluk, Mandya District

(Represented by Sri. B.N.S. Advocate)

-Vs-

DEFENDANTS :- 1. Smt. Puttalingamma W/o Late
Puttaswamy, Aged about 55 years
2. Smt. Mamatha W/o Ramesha, D/o Late
Puttaswamy, Aged about 37 years
3. Madhana G.P. S/o Late Puttaswamy,
Aged about 35 years

(D1 to 3 by Sri. M.M.P. Adv.)

I.A.No.1

APPLICANT :- Smt. Jayamma

-VS-

OPPONENTS: – Smt. Puttalingamma and Others

ORDERS ON I.A.No.1

1. This is the application filed by the plaintiff/applicant under Order 39 Rule 1 and 2 of C.P.C. R/w 151 of CPC for restraining

the defendants/opponents from alienating the suit schedule property pending disposal of the above.

2. The suit property bearing Survey No.57/2B , measuring 0.4 guntas situated at Goravanahalli village, Maddur Taluk,, morefully described in the schedule of the plaint. The present suit is filed by the plaintiff against the defendants seeking specific performance of the registered agreement of sale dated 5-10-2000 executed by the defendant No.1 and her deceased husband viz. Puttaswamy in favour of the deceased husband of plaintiff viz. Boregowda with respect to the suit property. The case of the plaintiff is that, the suit property has been agreed to sell by the defendants No.1 and her husband in favour of husband of plaintiff for a total sale consideration of Rs.2,800/- on 5-10-2000. In pursuance of the said agreement dated 5-10-2000 the defendant No.1 along with deceased Puttaswamy have also received an amount of Rs.2,800/- as the consideration amount. The Sale Deed was agreed to be executed in favour of the husband of plaintiff after obtaining necessary documents of the suit property. After the execution of agreement of sale, the said Puttaswamy died. Later on the husband of plaintiff viz. Boregowda also died. Though sufficient time taken by defendants for getting the documents ready for the execution of Sale Deed, but they are not ready to execute the Sale Deed in favour of the plaintiff. And the defendants are avoiding the execution of the Sale Deed. Further the apprehension of the plaintiff is that the defendants are making hectic efforts to create encumbrance over the suit property by mortgaging or selling the same in favour of others, so as to defeat the right of the plaintiff. Hence prayed to restrain the defendants from creating encumbrance over the suit property under I.A.No.I.
3. On the contrary, the defendants appeared through their counsel, but did not file their written statement and objections to IA No.I.

4. I have heard both side and perused the material available on record.
5. Now the following points arise for my consideration ;
 1. Whether the plaintiff has made out a prima-facie case ?
 2. Whether the balance of convenience lies more in favour of the plaintiff?
 3. Whether there is likelihood of irreparable loss or injury to the plaintiff if this application is rejected ?
 4. What order?
6. My answer to the above points are as follows ;
 - Point No 1: In the Affirmative
 - Point No2: In the Affirmative
 - Point No.3: In the Affirmative
 - Point No.4: As per final order for the following;

REASONS

7. **POINT NO.1:-** Prima-facie case means an arguable case made out by the plaintiff on the basis of the averments made in the plaint and in support of the documents produced by her.
8. I have already stated in nutshell that, what is the case of the plaintiff. Now on perusal of the alleged agreement of sale dt: 9-4-2008 so also the agreement dt: 5-10-2000 executed by the defendant No.1 along with deceased Puttaswamy in favour of the husband of plaintiff in respect of the suit property, it prima facie appears that, they have agreed to sell the suit property in favour of the husband of plaintiff for a total consideration of Rs.2,800/-. It has been alleged in the plaint and affidavit sworn to in support of IA No.I, that the defendants are intentionally postponing the execution of Sale Deed and acting contrary to the agreement dt: 5-10-2000 with an intention to cause loss to the plaintiff, and the apprehension of the plaintiff is that the defendants are making hectic efforts to create encumbrance

over the suit property by mortgaging or selling it in favour of strangers. Hence from the material available on record, at this stage it appears to me that, restraining defendants is very just and necessary to safeguard or to keep the suit property intact till the disposal of the suit, otherwise the plaintiff will suffer huge loss which cannot be compensated in terms of money or other thing. Therefore, I hold at this stage that, the plaintiff has made out a prima-facie case and consequently I answer **Point No.1 in Affirmative.**

9. **Point Nos.2 and 3 :-** To avoid repetition of facts, I would like to discuss these points together. If this application is rejected there is likelihood of causing more harm to the plaintiff comparing to the harm which will be caused to the defendants by granting it. And if the defendants are succeeded in alienating the suit property so as to defeat the right of the plaintiff, the plaintiff will suffer irreparable loss which cannot be compensated in terms of money or other thing and it will also lead to multiplicity of proceedings. Therefore, I have answered **Point Nos.2 and 3 in Affirmative.**
10. **Point No.4:-** For the reasons stated while discussing points No.1 to 3 , I proceed to pass the following;

ORDER

The IA No.1 filed Under Order 39 Rule 1 and 2 of CPC by the plaintiff is hereby allowed.

The defendants are hereby restrained from alienating the suit property in favour of anybody, till 30-04-2016 or till the disposal of this suit whichever is earlier.

No order as to costs.

(Dictated to Stenographer directly on computer, corrected by me and then pronounced it in open court on this 11th day of March 2016.)

(A.J. HIRIKUDE)

I ADDL.C.J. & J.M.F.C.MADDUR.