

KAMD410002252014



Presented on : 21-01-2014

Registered on : 23-01-2014

**IN THE COURT OF PRL. CIVIL JUDGE AND JMFC,
MALAVALLI**

Present

Sri. Sachinkumar Shivapuji. BA,L LLB.,
Prl.Civil Judge and JMFC.,
Malavalli

Dated this the 01st day of October, 2024

Original Suit No.37/2014

Plaintiffs: Sri. Raghuvegowda and others

(By Sri.RP., Advocate.)

V/s

Defendants: Sri. Lingadasegowda and others

(D1 & 4 By Sri.HPR., Advocate.)

(D2 & 3 placed exparte)

I.A. No.VII

Applicants : Sri. Raghuvegowda and others

V/s

Opponents : Sri. Lingadasegowda and others

**Order on I.A.No.VII U/O.39 Rule 1 and 2 R/w Sec.
151 of CPC**

The plaintiff No.1 has filed I.A.No.VII O.39 Rule 1 and 2 R/w Sec. 151 of CPC. prays to pass ad-interim order of temporary injunction restraining the defendant No.1 to putup illegal construction in the suit item no.1 and 2 properties till disposal of suit.

2. For the perusal of I.A. No.VII in support of affidavit which reveals plaintiffs have filed this against defendants for relief of partition and separate possession and also sale deeds executed by the defendant No.2 and 3 in favour of defendant No.1 are null and void. Further, plaintiffs stated that, the plaintiffs having equal share on the suit properties the defendant No.2 and 3 executed sale deeds in respect of suit item no.1 and 2 property in favour of defendant No.1. on the basis of the sale deed the defendant no.1 illegally started

construction and raising sheet house in the suit item no.1 and 2 property. In this regard plaintiff rush to the Halaguru police instead of taking action they have issued endorsement. Therefore, it is just and necessary restrained the defendant No.1 putup construction. Therefore, plaintiffs prays to allow the application.

3. In spite of services of copy of the application. The defendant no.1 filed objection stating that, application filed by the plaintiffs is not maintainable either under law on or facts. Further, defendant No.1 stated he is the bonafide purchase of suit item no.1 and 2 property. The plaintiffs having knowledge with regard to the sale deed but they colluding with other defendants and filed this false suit and harass the defendant No.1. Further the defendant No.1 already constructed the

basement and completed the construction at lintel work by investing huge amount for the construction. If the construction is stopped it will cause loss to the defendant No.1. Further the plaintiff come with the present application with malafide intention. Therefore, prays to dismiss the application.

4. Heard the argument by both plaintiffs and defendant No.1 counsels and considering the pleadings of the parties the points arise for consideration.

POINTS

- 1. Whether plaintiffs have made out Prima-Facie case in their favour?*
- 2. Whether the balance of convenience lies in favour of plaintiffs?*
- 3. What is order?*

5. My findings on the above points are as under;

Point No. 1 : In the Negative,

Point No. 2 : In the Negative,

Point No. 3 : As per order as follow,

-: REASONS :-

6. **Points No.1 and 2**: Since these points are inter linked with each other, they are taken together for common discussion to avoid repetition of facts and evidence.

7. This is suit for partition and separate possession filed by the plaintiffs against the defendants. Further the plaintiff claiming the execution of sale deed dated 23.08.2013 and 02.02.2013 executed by the defendant No.2 and 3 in favour of defendant No.1 in respect of suit item no.1 and 2 property are not binding upon the plaintiffs. Further the plaintiff come with the present application sought

relief restraining defendant No.1 putup illegal construction over the suit item no.1 and 2 property. Per contra the defendant No.1 stated he has already completed his construction and also further construction is in progress. If the construction is restrained it will cause loss to the defendant no.1 because he invested huge amount for the construction. Further stated he is in possession of the suit item no.1 and 2 property. Further the plaintiffs and defendants furnished documents as well as photos in order to substantiate the claim but at this stage this court cannot touch upon the merits of the present case but the said documents only looked for the purpose of discussing present application. Further on the perusal of the photos copies produced by the parties which reveals that the defendant No.1

is already complete the construction of sheet house and also he residing along with family members in that sheet house by collecting agricultural equipment as well as animals. Therefore, the said photos clearly reveals the construction has been completed in the item no.1 and 2 by the defendant no.1. if the application is considered the purpose of the order will futail. Moreover the plaintiff having liberty the to substantiate their claim by adducing oral and documentary evidence which will reflects on the merits. Taking into consideration this court is of the opinion that the plaintiffs have not made out prime facie case and balance of convenience lies in their favour. Hence taking into the consideration Point No.1 and 2 answered in Negative.

8. Point No.3:- For the reason discussed supra, I proceed to follow;

:- ORDER :-

*I.A.No.VII U/O 39 Rule 1 and 2 R/w
Sec. 151 of CPC. Filed by the plaintiffs
is hereby rejected.*

(Dictated to the Stenographer, directly on computer, revised and corrected by me then pronounced in the open Court, this the **01st day of October, 2024**)

*Sri. Sachinkumar Shivapuji.
Prl.Civil Judge and JMFC.,
Malavalli.*