



**IN THE COURT OF THE CIVIL JUDGE & JMFC.,
AT NAGAMANGALA.**

Dated on this 29th day of November, 2022.

PRESENT

Sri. Girigowda B. B.A.L. LL.B.,
Civil Judge & JMFC.,
Nagamangala.

O S No.193/2021

Plaintiff : Sri Gurumurthy.

V/s

Defendants : Sri Gouse Peer and another.

IA No-I

**Applicant/
Plaintiff** : Sri Gurumurthy.

V/s

**Opponents/
Defendants** : Sri Gouse Peer and another.

* * *

ORDERS ON IA No.I

This is an application filed by the plaintiff under Order 39 Rule 1 and 2 R/w Sec.151 of C.P.C. seeking an order of ad-interim temporary injunction restraining the defendants from alienating the suit schedule property in any manner in favour of anybody, pending disposal of the above suit.

2. In the affidavit annexed to the application plaintiff has submitted that Mohiddin Sab S/o Late Adam Sab is the original owner of the suit schedule property, it was a granted land of Mohiddin, he agreed to sell the said land to plaintiff to clear of the loan borrowed to perform the marriage of his daughter and to bear the medical expenses of his wife. The sale transaction was entered on 01.08.2011 and it was agreed to purchase for Rs.56,000/- in the presence of witnesses and Rs.45,000/- was received as advance sale consideration amount and agreed to receive balance sale consideration amount at the time of execution of sale deed and executed agreement of sale. The defendant no.1 husband had agreed to execute the sale deed after carrying out durasth work in respect of suit schedule property. That on 07.04.2018, the defendant No.2 father Mohiddin Sab died. The plaintiff during the life time of Mohiddin Sab on and often visited him and requested to complete durasth proceedings and to execute sale deed. But, no sale deed was executed during his lifetime.

3. After death of Mohiddin Sab the plaintiff approached the defendants and offered to pay the remaining sale consideration amount and requested to execute regular registered sale deed as agreed between the parties. But, the defendants refused to execute the sale deed, hence on 12.01.2021 issued notice to calling upon them to perform their part of contract. In spite of service of notice the defendants did not come forward to perform their part of contract, on the contrary they sent untenable reply. Now, the defendants are trying to alienate the suit schedule property and create third party rights. The suit schedule property is an adjacent land to

plaintiff, hence he had agreed to purchase the same. In the event the defendants sold suit schedule property to some other persons, the plaintiff will be put to irreparable hardship. Therefore, prays to grant an injunction order against the defendants.

4. Pursuant to suit summons, the defendants appeared through their counsel, but not chosen to file their written statement. The defendant no.2 filed his objection to IA No.1 and contended that the application filed by the plaintiff is not maintainable either in law or on facts. The plaintiff has suppressed the material facts before the court, there are no sufficient reasons assigned in the accompanying affidavit to the application for granting temporary injunction. As a matter of fact, the father of this defendant has never executed the alleged agreement for sale in respect of the suit schedule property during his lifetime. The plaintiff has not at all established prima facie of the suit and balance of convenience also not in his favour. If the application is allowed great hardship will be caused to the defendants, which is not compensated in terms of money.

5. It is further contended that the plaintiff was a party to the proceedings before Tahsildar, Nagamangala in RRT CR:327/2018-19 in which the defendants are also parties. In fact, the brother of this defendant by name Mohammed Kaleel was also party, but the plaintiff suppressing material facts and filed this without impleading the aforesaid Mohammed Kaleel as party to this suit. During the life time of the father of the defendants, the plaintiff has never approached the father of the defendants or even subsequent to death of their father the plaintiff has

never approached about the alleged agreement of sale as stated in the plaint and it shows that the alleged sale agreement is created document. Even assuming that the sale agreement is genuine, there is no readiness and willingness of the plaintiff on the face of the record itself. The suit of the plaintiff is not within the reasonable time and as such, he has not entitled for interim relief. There is no proper and reasonable explanation given by the plaintiff, under what circumstances he was prevented to issue notice to the father of the defendants within a reasonable time on alleged agreement to sell dated 01.08.2011 in respect of the suit schedule property and that aspect alone raise cloud around the case of the plaintiff. Hence, prays to dismiss the application.

6. Having heard and perused the materials placed on record, the following points would arise for my consideration:

Point No.1 : Whether the plaintiff has made out a prima facie case?

Point No.2 : Whether the balance of convenience is in favour of plaintiff?

Point No.3 : Whether the plaintiff would suffer irreparable injury if the prayer for temporary injunction is disallowed?

Point No.4 : What order?

7. My findings on the above points are 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 orders
for the following:

REASONS

8. **Points No.1 to 3** : Since these points are interlinked with each other, they are taken up together for common discussion to avoid repetition of facts.

9. The plaintiff has filed this suit for specific performance of contract and also filed IA No.I U/o 39 Rule 1 and 2 of CPC seeking ad-interim injunction against the defendants from alienating suit schedule properties or from creating third party rights pending disposal of suit. In support of plaintiff case he has filed original agreement of sale, RTC of the suit schedule property, legal notice, reply notice issued by defendants.

10. The defendants counsel argued that in the cause title of the plaint only two persons have been made as parties to the suit, but RTC dated 02.12.2020 disclose that there are 4 persons who obtained inheritance khatha after death of Mohiddin Sab. Despite the same the plaintiff has not bothered to made them as parties to the proceedings though RTC stands jointly in the name of legal heirs of Mohiddin Sab. As per RTC of the plaintiff suit schedule property is a darakasth land, hence it is not possible to alienate. He further argued that agreement of sale was prepared on a stamp paper worth Rs.102/-, without collecting stamp duty on the said document no interim order could be granted to the party, who is relying on unstamped document. Hence, before issuing injunction, court must insist for payment of stamp duty and penalty. He further argued that RRT proceedings pending between plaintiff and defendants was disposed off on

25.11.2020, the plaintiff has made 3 persons as party to the proceedings, but he suppressed those facts and approached this court without making necessary parties. Hence, plaintiff has approached the court with unclean hands and therefore he is not entitled for any equitable relief of injunction. The defendant counsel in support of his arguments has relied upon following decisions.

1. AIR 2002 Delhi 151.
2. 2017(3) ICC 139 (Cal).
3. 2010(5) KCCR 3221.
4. (2005) 28 AIC 952(SC).
5. ILR 2003 Kar 879.

In the first decision the Hon'ble High Court of Delhi held that discretionary relief of interim injunction cannot be granted if there is any deliberate attempt on part of either party to suppress material facts. Here in this case except the facts that the plaintiff has not brought all the legal heirs of deceased Mohiddin Sab in the suit, there are no material to say at this stage that the plaintiff has suppressed the material facts. Necessary parties can also be brought on record in future course of proceedings. At this stage itself we cannot decide who are all necessary parties to the proceedings, there is a provision to rectify said mistakes in future also.

11. The counsel for defendants also relied upon the decision reported in KV Jayaram Vs Navaneethamma case and argued that unless proper stamp duty and penalty on the agreement of sale is collected, no injunction could be granted in favour of the plaintiff. Here in this case, admittedly the suit property was originally belongs to Mohiddin Sab, who is the

father of defendant no.1 and 2. The defendants in their reply notice although denied the execution of sale agreement, but they have not filed any written statement so for denying the contents made in the plaint averments. The Hon'ble High Court of Karnataka in the case of KV Jayarama Vs Navaneethamma held that 'If document is not duly stamped unless collection of stamp duty and penalty, no injunction could be granted'. With due respect to the decision relied by the plaintiff counsel, said decision is not applicable to case on hand for the reasons that in that suit under the agreement of sale suit property possession was given to parties, under such circumstances when suit was filed and an application was made to defend possession, the Hon'ble High Court has laid down the principle. As per **Sec.49 of the Registration Act**, 'An unregistered agreement of sale affecting immovable property and required to be registered under the act may be received as evidence of a contract in a suit for specific performance'. That means, even though the possession is delivered under the agreement which is not registered, non-registration does not come in the way of instituting a suit for specific performance. Only if temporary injunction is sought to protect possession in view of delivery of possession under the agreement, the question of registration arises. In this case, the plaintiff wants to restrain the defendants from alienating the suit property till disposal of the suit. Therefore non-registration of the agreement does not come in the way of grant of injunction in favour of the plaintiff if there is any threat of alienation of the property. At this stage this court as to see whether the plaintiff has got prima-facie case i.e., a case to go for trial. The Hon'ble High Court in the decision

reported in **2007(4) AIR Kar R 504** in para 10 held that;

“10. It is a well settled proposition of law that grant of an injunction is a matter judicial discretion and the party seeking such relief will have to establish Prima-facie case, balance of convenience in his favour, and he would be suffer an irreparable injury if his prayer for temporary injunction is disallowed. This is a sine qua non. Even if a case is made out to bring the case within the ambit of a triable case, the relief of injunction has to be granted.

The Hon’ble Apex court in the decision reported in **AIR 1993 SC 276**, held that

“Prima-facie case is not to be confused with Prima-facie title which has to be established on evidence at the trial.

12. At this stage there is nothing to say that the plaintiff has approached this court with unclean hands. The plaintiff has made out a prima facie case in his favour, if the defendants are prevented from further alienating of the suit schedule properties or from creating third party rights in any manner no hardship would cause to them, hence balance of convenience is also lies in favour of plaintiff. Therefore, answered Point No.1 to 3 in the **Affirmative.**

Point No.4 :

13. In view of answer to the above point this court proceed to pass the following;

ORDER

The IA No.I filed by the plaintiff under Order XXXIX Rule 1 and 2 r/w Sec.151 of CPC is hereby allowed.

The defendants, their agents, servants or anybody claiming on their behalf are hereby temporarily restrained from alienating the suit schedule properties or creating third party rights in any manner pending adjudication of suit.

No order as to costs.

[Dictated to the stenographer directly on computer, typed by her, corrected and then pronounced by me in the open court on this day of **29th November, 2022**]

(Girigowda B.)
Civil Judge and JMFC.,
Nagamangala.

