

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C.,
H.D.KOTE**

Present: NATARAJ YADAV .S, M.B.A., LL.B.,
Senior Civil Judge & J.M.F.C.,
H.D.Kote

Dated, this the 25th day of March, 2022

O.S.No. 67/2020

Plaintiff/s : Sameena Bai
Aged about 50 years,
W/o Tanveer Sait,
R/at No. 532,9th Cross, M.G.Road,
Udayagiri, Mysuru-570 019

Represented by PA Holder
Deviprasad
S/o Late. M.V.Venkata Raju,

(By Sh. M.S.Shyamasundar., Advocate)

-V/s-

Defendant/s : 1. M.N.Nagaraju
S/o Late. M.R.Nrasimharaju,
Aged about 60 years,

2. Jyothi Nagaraju
S/o M.N.Nagaraju,
Aged about 55 years,

3. Arjun
S/o M.N.Nagaraju,
Aged about 34 years,

4. N.Abhishek
S/o M.N.Nagraju,
Aged about 30 years,

All are R/at No.276, 3rd B Cross,
2nd Block, III Stage,
Basaveshwara Nagar,
Bangaluru-560 079

(By Sh. A.P.Nagendra Guptha.,Advocate)

PARTIES TO I.A.II

Applicant/ plaintiff : Sameena Bai

V/S

Opponents/defendants : M.N.Nagaraju & Others.

ORDER ON I.A.II

Vide this order, I shall dispose off an application under Order XXXIX Rule 1 and 2 CPC filed on behalf of the plaintiff against defendants.

The brief facts for the effectual disposal of the instant application are as follows:-

1.Plaintiff has filed the present suit for specific performance of an agreement dated 17.11.2018 in favour of the plaintiff and against defendants to execute the necessary sale documents with respect to the suit property.

2. Vide this instant application, the plaintiff/ applicant has prayed that an order of temporary injunction in favour of the plaintiff against defendants may passed thereby restraining defendants and their

representatives from selling or disposing of the suit property till the final disposal of the suit.

3. In order to substantiate his case, the counsel for plaintiff/ applicant has relied on various documents viz. agreement to sell executed in favour of the plaintiff on behalf of defendants. Plaintiff has also relied on an receipt revealing that sum of Rs. 2,00,000/- was paid by the plaintiff and received by defendants vide cheque as part of the sale consideration.

4. No reply to the instant application was filed on behalf of defendants, despite appeared before the court through an advocate.

5. I have heard the counsel for applicant/ plaintiff and perused the material available on record.

6. It is a settled law that a party is entitled to an order of injunction only if he is able to satisfy the court that a strong prima facie case has been made out in his favour, the balance of convenience also lies in his favour and that refusal of injunction will cause an irreparable injury to him.

Prima facie case means that there is a likelihood of infraction of a legal right of the plaintiff by the defendant. It means that the case of the plaintiff raises a triable issue which meets investigation, consideration and adjudication.

The plaintiff is also to establish that balance of convenience lies in his favour. Balance of convenience connotes comparative mischief likely to be cause to either party in case of grant or refusal of relief of injunction.

The plaintiff is also to satisfy the court that non-interference by the court would result in an irreparable injury and that there is no other remedy available to him except one i.e. the grant of injunction in his favour. Irreparable injury means an injury which is a material one and one that

cannot be adequately compensated by way of damages. Further, it is a settled law that grant of temporary injunction is an equitable relief wherein the plaintiff has to satisfy the court that he has acted bonafidely.

7. Plaintiff has filed the present suit for specific performance of an agreement dated 17.11.2018 in favour of the plaintiff and against defendants with respect to the suit property. Plaintiff has relied on agreement to sell executed in favour of the plaintiff on behalf of defendants. Plaintiff has also relied on an receipt revealing that sum of Rs. 2,00,000/- was paid by the plaintiff and received by defendants in cheque as part of the sale consideration. That I am satisfied that a prima facie case is made out in favour of plaintiff and against the defendants. Moreover, balance convenience also lies in favour of plaintiff. Also an irreparable injury will be cause to the plaintiff if the suit property is sold, transferred or dispossessed by of defendants during the pendency of the suit. Moreover, in view of the fact that no reply to the aforesaid application has been filed on behalf of defendants, the submissions made on behalf of the applicant remain unchallenged and un-controverted. Accordingly, the application under Order XXXIX Rule 1 and 2 CPC filed on behalf of plaintiff deserves to be allowed. Consequently, I proceed to pass the following is allowed.

ORDER

IA.No.II filed by the applicant/plaintiff under Order 39 Rule 1 and 2 read with section 151 of Civil Procedure Code is hereby allowed.

Consequently, defendants are hereby restrained from alienating or creating any encumbrance over the suit schedule property till the disposal of the suit.

It is further important to mention here that the opinion express above shall not lay its impact upon the merits of the main case.

No order as to cost in view of the relationship between the parties.

For P/E put up on 20.04.2022.

(Dictated to the Stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the 25th day of March 2022.)

(NATARAJ YADAV .S)
Senior Civil Judge & J.M.F.C
H.D.Kote