

**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 18<sup>th</sup> day of February, 2022

**O.S.No. 45/2021**

Plaintiff/s : Palaniswamy  
S/o Late. Rathanagiri,  
Aged about 70 years,  
R/at Ward No.10, 3<sup>rd</sup> Floor,  
Ganigara Beedi, Saraguru,  
Saraguru Hobli,  
H.D.Kote Taluk, Mysuru District.  
(By Sh. Kumar.R., Advocate)

-V/s-

Defendant/s : Venkatesh  
S/o Late. Swamy.K.K,  
Aged about 50 years,  
R/at Togateveerabeedi,  
10<sup>th</sup> ward, 2<sup>nd</sup> Road,  
Chowdeshwari Temple Road,  
Saraguru Bus Stand South,  
Saraguru Town.  
(By Sh. G.N.Narayangowda., Advocate)

**PARTIES TO I.A.I**

Applicant/ Plaintiff : Palaniswamy

V/S

Opponents/Defendant : Venkatesh

**ORDER ON I.A.I**

By the present order, I shall dispose off application under Order 39 Rules 1  
& 2 CPC.

2. By this application, the plaintiff/applicant seeks relief of temporary injunction from this court against the defendant.

3. The contention of Ld. counsel for the applicant/plaintiff was that the plaintiff filed the present suit seeking declaration, cancellation of sale deed dated 26/11/2020 and injunction restraining the defendant, his agent, assignee, etc. from transferring, selling, alienating or creating any third party right and interest in respect of the suit property. It was averred that prima facie case is made out in favour of the plaintiff. It was submitted that the present suit involves valuable rights of the plaintiff and thus present application should be allowed, for preservation of the suit property till the suit is pending, in favour of the plaintiff and against the defendant or else he would suffer irreparable loss and injury which cannot be compensated in money and on the contrary defendant will suffer no prejudice if the present application is allowed. It was contended that if the present application is not allowed then the present suit will become infructuous. It was urged that the defendant is hell bent on creating third party interest in the suit property. It was averred that balance of convenience is also in favour of the plaintiff. It was submitted that the defendant had got the sale deed executed by fraud, undue influence etc. with the aim of grabbing the suit property and dispossessing the plaintiff and his family members from the suit premises.

4. On the contrary, the counsel for the non applicant/defendant vehemently opposed the application filed under Order 39 Rules 1 & 2 CPC by the applicant/plaintiff and submitted that the present application is nothing but an abuse of the process of the court and is devoid of any merits and thus, liable to be dismissed forthwith. It was contended that prima facie case is made out in favour of the defendant since plaintiff is not in possession of

the suit property. It was averred that since plaintiff is neither in the possession of the suit property nor has been able to establish his rights/interest in the suit property, then if the application is allowed in favour of the plaintiff then defendant would suffer irreparable loss.

5. I have heard Ld. Counsel for the parties and perused the record.

6. The grant of temporary injunction by the civil courts is discretionary relief which discretion is exercised by the court on sound judicial equitable principle. The established three principles on which grant or refusal of this relief hinges are: the applicant has to show a prima facie case in his favour and the balance of convenience besides showing that he would suffer irreparable loss if temporary injunction is not granted.

7. In the present case, the plaintiff has sought declaration that the sale deed dated 26.11.2020 executed by him in favour of the defendant, is illegal because it was obtained by misrepresentation, undue influence, emotional blackmail and fraud.

8. The plaintiff himself is the executor of the sale deed being original owner of the property in question. He admittedly is living in the said property and the defendant is his own son in law. Though, the defendant has disputed the claim of the plaintiff that the sale deed in question was executed by the plaintiff on account of undue influence or misrepresentation etc. but a prima facie case can be said to be made out in favor of the plaintiff. In this case, as the matter requires investigation by way of respective evidence of the parties, arrive at the conclusion as to whether the sale deed in question was executed by the plaintiff voluntarily or under undue influence or pressure of any kind or any sort of misrepresentation.

9. However, if any third party interest is created by the defendant by way of transfer of the property in question in which both the parties are stated to be living now, then the plaintiff would certainly suffer irreparable loss. Therefore, the principles of balance of convenience and irreparable loss are also cannot be said to be against the plaintiff.

10. In view of the above, the application under Order 39 Rule 1 & 2 read with Section 151 CPC deserves to be allowed and defendant is restrained from selling, alienating or creating any third party interest in respect of suit property, during the pendency of the suit.

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

12. In view of the above, I proceed to pass the following;

### **ORDER**

**I.A.No.I filed by applicant/plaintiff U/o 39 rule 1 &2 R/w Section 151 CPC is hereby allowed.**

**Consequently the defendant is restrained from transferring, selling, alienating, parting with possession or in any manner creating any third party interest in respect of the suit property till the disposal of the main 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 Issues put up on 03.03.2022.**

(Dictated to the Stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the 18<sup>th</sup> day of February, 2022.)

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