

ORDER REGARDING GRANTING OF AD-INTERIUM EX-PARTE
ORDER OF TEMPORARY INJUNCTION

The applicant/DHR filed IA No.II under Order 39, Rule 1 and 2 read with section 151 of Civil Procedure Code for restraining the JDRs from alienating or creating any charge over the of the suit property decreed in suit no. 26/2010 till the pending disposal of the suit.

The applicant/DHR filed IA No.I under Order 39, Rule 3 read with section 151 of Civil Procedure Code for dispensing the issuance of notice on IA No.I to JDRs before passing ad-interim ex-parte temporary injunction at this stage.

The applications are supported with the affidavits of applicant/DHR duly sworn and stated that suit schedule property is the absolute property of the JDRs. They have executed an agreement to sell dt:14.05.2007 in favour of the DHR agree in to sell for a consideration of a Rs. 21,00,000/-. the JDRs have failed to execute the sale deed in terms of the agreement to sell and as such a suit no. 26/2010 was file dfor the relief of specific performance of contract before the Senior Civil Judge. Hunsur. The sai suit came to be decreed directing the JDRs to execute the sale deed by receiving balance sale consideration amount. The JDRs have failed to execute the sale deed as per the judgment passed in the afore said suit and as such execution no 3/2021 was filed before this court and balance sale consideration amount was deposited. However, the said executingz petition was withdrawn by the DHR to file fresh execution as soon as the suit property is durashi. The JDRs by taking benefit of the same have executed a reliqueshment deed in favour of JDR no. 3. On the basis of said fabricated document the JDR no. 3 is trying to alinat the suit property in favour of third person to defraud the valuble rights of the DHR and sought for grant of ex-parte temporary injunction.

Perused the petition averments as well as sworn affidavits of the DHR and JDRs filed in support of IA No.I and II and also the documents produced by the DHR.

The documents produced by the DHR prima facie shows that he has obtained a decree in suit no.26/2010 against the JDRs directing them to execute the sale deed in respect of suit property in his favour. The present petition is filed for the execution of the sale deed as per the judgment and decree passed in suit no. 26/2010. The grievance of the DHR at this stage is that the JDRs have created documents styled a relinquishment deed in favour of JDR no.3 and on the basis of the said fabricated document the JDR no.3 is trying to alienate the suit property and in that event they will be put to hardship and it will affect his valuable rights over the suit property and it may multiply the litigation. The main objective of granting temporary injunction is to preserve the suit property intact till the conclusion of trial. In the facts and circumstances of the case, if the interim relief as prayed in IA No.II is not granted, in my opinion it will frustrate the very purpose of filing of the suit and also it will multiply the litigation. Hence, I am of the opinion that at this stage, DHR made out grounds for grant of ex-parte injunction. Therefore, I proceed to pass the following:

ORDER

IA No.I filed by the applicant/DHR under Order 39, Rule 3 read with section 151 of Civil Procedure Code for dispensing the issuance of notice on IA No.II to JDRs at this stage is allowed.

Issue ex-parte order of ad-interim temporary injunction against the JDRs as prayed in IA No. II.

Consequently, JDRs are hereby restrained from alienating or creating encumbrance over the suit schedule property.

This order will in force till filing of objection to IA No.II by the JDRs.

Issue order of ex-parte temporary injunction passed on if the DHR has complied the mandatory provision of Order 39, Rule 3 (a) of Civil Procedure Code.

Issue cause notice and notice of IA No.II to JDRs if sufficient process fee and copies are furnished.

Returnable by: 01.06.2023

(Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the open court on this the day of 21st day of April 2023)

Senior Civil Judge & JMFC
H.D. Kote