

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

PRESENT

SRI. SARFARAZ HUSSAIN KITTUR, B.A., L.L.B. (HONS), L.L.M.,
Additional Civil Judge & JMFC
(Concurrent Charge of Court of Civil Judge & JMFC)
Heggadadevanakote

Dated: 4th day of November 2015.

O. S. No.175 of 2015

PLAINTIFF/s : H.V.Sunil Kumar

V/s

DEFENDANT/s: Mohammad Ameer & Others

I. A. NO.1

APPLICANT/S: H.V.Sunil Kumar ...*(Plaintiff)*

V/s

OPPONENT/S: Mohammad Ameer & others *(Defendants)*

ORDERS ON IA NO.1

I.A.No.1 dated 02.05.2015 is filed U/o 39 Rule 1 & 2 of CPC seeking an order of temporary injunction to restrain the defendants from alienating the suit schedule property in any manner pending disposal of this case.

2. It is the case of the plaintiff the he is an agreement holder in respect of the suit schedule property. That the defendants being the absolute owners of the suit schedule property executed registered sale agreement dt.25.06.2012 by receiving an advance sale consideration of Rs.2,00,000/- and agreed to execute the sale deed. That despite issuance of notice the defendants did not come forward to receive the balance amount of Rs.1,09,000/- and execute the sale deed that plaintiff was always ready and willing to pay the remaining balanced amount and get the sale deed . However the defendant failed to perform his part and he is further trying to alienate the suit schedule property to 3rd parties by surrushing the real fact. On these grounds the plaintiff filed this suit along with I.A.

3. The defendants have filed their written statement and adopted the same their objections to I.A. No.1. The defendants have denied the plaint averments and contended that the defendant No.1 had no occasion for selling the suit schedule property. That the suit schedule property was granted to defendant No.1 by the Government and there is a non alienation clause attached to the grant. That the defendant No.2 had borrowed a sum of Rs.2,00,000/- from the plaintiff and as per the agreement he is being repaying the said loan to the plaintiff. That the plaintiff is a money lender and does not hold any license. When the plaintiff asked the defendant No.2 to repay the loan amount and defendant No.2 sought a time of 3 years for the same, the plaintiff got issued a legal notice dt.16.4.2015. There after the defendants met the plaintiff and the plaintiff agreed to grant them time to repay the loan and agreed not to file a suit and therefore the defendants did not replied to the said notice. That the defendants are the absolute owner of the suit

schedule property and do not intend to alienate the same. On these ground the defendants seeks for dismissal of I.A.No.1.

4. The following points arise for consideration:
 - i. Whether the Plaintiff has made out a *prima facie* case?
 - ii. Whether the balance of convenience lies in favour of the Plaintiff?
 - iii. Whether irreparable loss and injury would be caused to the plaintiff if Temporary Injunction is not granted?
 - iv. What Order?
5. Heard both sides.
6. My answers to the above points is as follows
 - Point No.1 : **In the Affirmative**
 - Point No.2 : **In the Affirmative**
 - Point No.3 : **In the Affirmative**
 - Point No.4 : As per the final order
for the following,

REASONS

7. Point No.1 to 3: Since these points are interlinked, they are taken up together for common discussion so as to avoid the repetition of facts.

8. Perused the I.A, affidavit filed in support of the I.A., objections filed by the defendants, pleadings and the documents produced. This is a suit for Specific performance.

9. The plaintiff avers that the defendants had executed registered sale agreement in his favour on 26.05.2012 by receiving an advance sale consideration of Rs.2,00,000/- whereas the defendants contended that defendant No.2 had only taken a loan of Rs.2,00,000/- from the plaintiff. The plaintiff produced the sale agreement dated 25.06.2012, notice along with postal receipts and acknowledgement and also the RTC in respect of the suit schedule property. On perusal of the documents the said sale agreement dated 25.6.2012 is a registered instrument RTC produced by the plaintiff shows the name of the defendant No.1 in Column No.9. On the basis of these documents it is clear that there are issues that are required to be adjudicated and the plaintiff made out a prima facie case.

10. Though the defendants submit that they do not intend to alienate the suit schedule property, they have not come forward to give any such under taking. The defendants have denied the execution of the sale agreement which is a registered instrument. In these circumstances I am of the considered opinion that the apprehension of the plaintiff has merits. The property should be protected for the proper and effective adjudication of this case. No inconvenience will be cause to the defendants if this I.A. is allowed. Hence for the foregoing reasons, points No.1 to 3 are answered in the affirmative.

11. Point No.4: It is necessary to add that the observations made herein above shall not come in the way of, affect or cause prejudice to the rights of the parties to prove their case by leading evidence during the trial. In view of my answers to the above points and the reasons assigned therein, the following:

ORDER

The IA No.1 dated 02.05.2015 filed by the Plaintiff under Order XXXIX Rule 1 and 2 is hereby **allowed**

Defendants are hereby restrained from alienating the suit schedule property pending disposal of this suit by way of temporary injunction.

*(Dictated to the Stenographer directly on the computer, corrected, signed and then pronounced by me in open court on **4th day of November 2015**)*

(SARFARAZ HUSSAIN KITTUR)
Additional Civil Judge & JMFC
(Concurrent Charge of Court of
Civil Judge & JMFC)
Heggadadevanakote.