

**THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE AND J.M.F.C., HUNSUR.**

Present: **Smt. Shirin Javeed Ansari, B.A., L.L.B.,(Hon's) LL.M**
Prl. Senior Civil Judge & J.M.F.C.,
Hunsur.

Dated, this the 9th day of September 2022

O.S.NO.50/2021

Plaintiff : Sri. H.S.Mahashesh Bhat

V/s

Defendants : Sri. Basavegowda & others

PARTIES IN I.A. No. I

Applicant : Sri. H.S.Mahashesh Bhat

V/s

Opponents : Sri. Basavegowda & others

PARTIES IN I.A. No. II

Applicant : Sri. Manikata

V/s

Opponents : Sri. H.S.Mahashesh Bhat

ORDERS ON IA NO.I & II

This is an application filed by the applicant/plaintiff
U/O 39 Rule 1 and 2 R/W/Sec. 151 of CPC seeking to

restraining the defendants, their agents, representatives or any one claiming under them from alienating the suit schedule property in favour of any third parties, pending disposal of the suit in the interest of justice and equity.

2. The present application is supported by the affidavit of the plaintiff wherein, it is stated that the defendant No. 1 is the absolute owner of the suit schedule property bearing Sy. No. 16/127 measuring 6 Acres, situated at Uyyigondanahalli Village, Bilikere Hobli, Hunsur Taluk, Mysuru District. It is the self-acquired property of defendant No.1. The defendant No. 1 for his legal necessities and to discharge his existing loans and for family necessity offered to sell the schedule property to the plaintiff for valuable consideration of Rs.27,50,000/ (Rupees Twenty Seven Lakhs Fifty Thousand only) and the plaintiff has accepted the same and accordingly an agreement to sell came to be executed the defendants No. 1 and 2 in favour of the plaintiff on 28.04.2014 which came to be registered as Document No. HUN-1-00677/2014-15, Book-1, in CD No.HUND135 in the Office of the Sub-Registrar. Hunsur.

3. It is further averred by the plaintiff that, the agreement to sell inter alia provides the total sale consideration, advance paid and time within which the transaction has to be completed. Out of the total sale consideration amount of Rs.27,50,000/- (Rupees Twenty Seven Lakhs Fifty Thousand Only) the plaintiff has paid Rs. 10,00,000/- (Rupees Ten Lakhs only) in advance out of which an amount of Rs. 5,00,000/- (Rupees Five Lakhs Only) has been paid through cheque bearing No.000001 dated 18.05.2006 drawn on HDFC Bank at Whitefield Branch, Bengaluru and Rs.5,00,000/-(Rupees Five Lakhs Only) by way cash to the defendants No. 1 and 2. The remaining amount of Rs. 17,50,000/-(Rupees Seventeen Lakhs Fifty Thousand Only) was to be paid at the time of registration of the Sale Deed within 4 months.

4. It is further averred by the plaintiff that, the defendant No.1 and 2 undertook to get all necessary revenue records in order to get registered the sale deed in favour of the plaintiff. Thereafter 4 months time was fixed for performance of the mutual obligations arising under the said agreement. Since the defendants No.1 to 2 utterly failed to fulfill the obligations

made in the agreement and even before the expiry of four months, the defendants No. 1 to 2 being aware that they would fail in their obligations with no option except to renew the agreement, wished to do so and accordingly, the parties mutually agreed to do the same. Accordingly the plaintiff and defendants No. 1 and 2 have canceled the previous Sale Agreement dated 28.04.2014 under a registered cancellation of Agreement dated 04.08.2014. Thereafter the defendants No.1 and 2 along with defendants No.3 and 4 with the defendant No. 1 being the father and natural guardian of defendant No. 4 acting on his behalf, for discharging existing legal financial obligations and for welfare of the minor son and for education requirements, executed a fresh registered Agreement to Sale in favour of the applicant/ plaintiff under a registered Agreement of Sale dated 04.08.2014, registered as Document No. HUN-1-04299/2014-15, Book-1, stored in CD No. HUND143, in the Office of the Sub-Registrar, Hunsur 04.08.2014. The plaintiff has paid a sum of Rs.1,55,375/- (Rupees One Lakh Fifty Five Thousand Three hundred and Seventy Five Only) as stamp duty in respect of the Agreement of Sale dated 04.08.2014 under which possession of the schedule

property was handed over to the applicant. The defendants No. 1 to 4 agreed to execute the sale deed after furnishing all the necessary documents for the registration of the property. As such at the time as desired by the applicant. The total sale consideration was fixed at Rs.27,50,000/- (Rupees Twenty Seven Lakhs Fifty Thousand Only). The applicant paid a sum of Rs.21,00,000/- (Rs. Twenty one Lakhs only) as advance forming part of the entire sale consideration by way of a sum of Rs.5,00,000/- (Rs. Five Lakhs only) paid by means of cheque No.312701, dated 04.08.2014 drawn on Kaveri Grameena Bank, Hospital Kaval Branch and Rs.16,00,000/- (Rs. Sixteen Lakhs only) by way of Cash to the defendants. The defendants have received the same. The remaining amount of Rs.6,50,000/- was agreed to paid at the time of registration of the sale deed.

5. It is further averred by the plaintiff that, in spite of this, defendants No. 1 to 4 starting postponing and dodging the execution of the Sale Deed on one or the other reasons. All the requests, reminders made by the applicant to execute the Sale Deed in respect of the Schedule Property in his favor fell deaf to

the ears of the defendants No. 1 to 4 and the applicant failed to understand the dilatory tactics being adopted by the defendants No.1 to 4. The plaintiff obtained the encumbrance certificate in respect of the suit Schedule Property office of the Sub-Registrar, Hunsur on 23.10.2018 and upon perusal of the same it is found that the defendant No. 1 and 2 by mortgaging the Schedule Property has obtained the Loan from the defendant No. 5 and the mortgage deed dated 09.06.2018 has been registered in the Office of the Sub- Registrar, Hunsur on 12.06.2018 vide document No HUN-1-043141/2018-19, Book-1, stored in CD No HUND225. The entry in the said Encumbrance Certificate clearly shows and establishes the intention of the defendants No.1 to 4 in dodging the matter of registration of the sale deed with an intention to harass the plaintiff. Hence, the plaintiff issued a Legal Notice on 31.10.2018 calling upon the defendants to execute the sale deed within 15 days from the date of receiving the notice by accepting the remaining consideration amount of Rs.6,50,000/- (Rs. Six Lakhs Fifty thousand only). The defendants have acknowledged the receipt of the said notice without any demur. The defendants have not replied for the legal notice. Hence, the

applicant/ plaintiff being helpless has filed the present suit for the relief of specific performance of contract and submits that there is a prima facie case and balance of convenience in his favour as the plaintiff has paid the considerable amount of Rs. 21,00,000/- to the defendants under an agreement of sale dated 04.08.2014 and if the application is not allowed the applicant/plaintiff will put to irreparable loss and injustice which cannot be compensated in terms of money. Hence, prayed to allow the present application in the interest of justice and equity.

6. The defendant No. 4 has filed IA No. II under Order 39 Rule 4 CPC seeking to set aside the temporary injunction against the defendants dated 29/03/2021.

7. On the grounds that the application filed by the plaintiff is neither maintainable in the eyes of law nor on the basis of facts. The plaintiff has suppressed the material facts before the court and obtained ex-parte interim order of Temporary injunction against the defendants. The suit schedule property is the ancestral property under registered agreement

dated 04.08.2014. The defendant No. 4 has received only Rs.5,00,000/- through HDFC Bank at Whitefield branch, Bangalore and Rs. 5,00,000/- through Cauvery Grameena Bank dated 04/08/2014 in all the defendant No. 4 has received only Rs. 10,00,000/- from the plaintiff. Except these amount the defendant No. 4 has not received any amount from the plaintiff. The period agreement is already over on 27/04/2017. Hence, the suit of the plaintiff is barred by limitation. The plaintiff created the cock and bull story. The defendant No. 4 is in actual physical possession and enjoyment of the suit schedule property and has also developed the same. The plaintiff has issued 2 cheques of HDFC Bank and another cheque through Cauvery Grameena Bank of Rs. 5,00,000/- each. Except this amount, the plaintiff has not paid anything to the defendant No. 4. The plaintiff has issued a legal notice not within time for the suit document executed on 04/08/2014. Within 3 years of date of document, they have not issued any legal notice to the defendants. Hence , the suit is not maintainable. Hence, on all these grounds the applicant/defendant No. 4 prayed to allow present application and reject the IA No. I in the interest of justice and equity.

8. The applicant/ plaintiff has filed the objections to IA No. II denying the entire averments in the application and reiterating the contents of the application affidavit filed in lieu of IA No. 1. The plaintiff submits that there is prima facie case and balance of convenience in his favour. Hence, prayed to allow the IA No. I and reject the IA No. II.

9. On the basis of the pleadings and rival contentions the following points arise for my consideration.

1. Whether the applicant/plaintiff proves that there is a prima facie-case in his favour?

2. Whether the applicant/plaintiff proves that there is a balance of convenience in his favour?

3. Whether the applicant to IA No. II has made out grounds to allow the application?

4. Whether the applicant/plaintiff proves that he will be put to irreparable loss and injustice if the application is not allowed?

5. What order?

10. Heard the argument of learned counsel for the plaintiff Sri. KSNG advocate and Learned counsel for the defendants Sri.YG advocate. Perused the material on record.

11. My finding to the above points are as under

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : In the Negative

Point No.4 : In the Affirmative

Point No.5 : As per final order for the following;

REASONS

12. **POINT NO.1 TO 4:** Since these points are interlinked with each other, they are taken up together for consideration in order to avoid repetition, as hereunder.

13. On careful and meticulous perusal of the materials available on records it is found that the plaintiff has filed the suit seeking the relief of specific performance of contract under agreement dated 04.08.2014 to receive an advance sale consideration amount of Rs. 21,00,000/- as an earnest money. After receipt of said amount, the defendants have failed to execute the register sale deed in favour of the plaintiff as per the terms of the agreement. According to the applicant/ plaintiff to IA No. I their existence prima facie case and balance of convenience in his favour since he has paid an earnest amount of Rs. 21,00,000/-. According to the plaintiff he has paid Rs. 10,00,000/- amount i.e., by way of cheque of Rs. 5,00,000/- of HDFC Bank and Rs. 5,00,000/- by way of cheque of Cauvery Grameena Bank. The defendant has paid Rs. 16,00,000/- of amount by way of cash. Therefore, having been parted such a heavy amount, the applicant/ plaintiff submits that if the defendant succeeded in alienating the suit schedule property the very purpose of filing the suit will be defeated. Hence, submits that now the defendant is trying to alienate the suit schedule property that he has entering into so many transactions in respect of the suit schedule property. Therefore,

the applicant to IA No. I prayed to allow the present application. During the course of arguments learned counsel for the plaintiff submits that there are series transactions executed by the plaintiff in favour of the third person. The defendant No. 1 has also executed a release deed in favour of the defendant No. 4 and they have already obtained loan from various banks. Even in the objections the applicant to IA No. I has submitted that he obtained encumbrance certificate pertaining to the suit schedule property came to know that the defendants have obtained the loan on the suit schedule property. Hence, applicant to IA No. I submits that there are every chances of defendants to alienating the suit schedule property. Hence, prayed to allow the same.

14. On the other hand, the defendant No. 4 the applicant to IA No. II has submitted that has not disputed the agreement of sale dated 04.08.2014. But contended that he is received only Rs. 10,00,000/- vide two cheques of HDFC Bank of Whitefield Branch, Bengaluru and Cauvery Grameena Bank. According to the defendants the time which was fixed for execution of the sale deed is already lapsed. Therefore, there is

no prima facie case and balance of convenience in favour of the applicant. Hence, prayed to reject the present IA No. I and allow the IA No. II.

15. On careful and meticulous perusal of the materials available on record it is found that, the suit one for the relief of specific performance of contract . The defendants have not disputed the execution of agreement of sale in favour of the plaintiff. The earnest money is only disputed wherein the defendants have admit the receipt of Rs.10,00,000/- from the plaintiff vide two cheques of HDFC Bank and Cauvery Grameena Bank. Whether the time fixed for the execution of the sale deed has been lapsed or not and whether he is entitle for the decree of specific performance or not is a question of trial. But at this stage, the suit schedule property is required to be preserved intact.

16. Now let us proceed to consider whether the balance of convenience tilts in favour of the plaintiff or tilts in favour of the defendants. The IA No. I plaintiff has contended that the defendants are trying to alienate the suit schedule property to some other persons with an intention they have raised loans

over the suit schedule property. It is tried that very intention of grant of temporary injunction is to maintain these things has it is in the instant case also the plaintiff is claiming over right of the suit schedule property in the basis of the agreement of sale dated 04.08.2014. His rights are required to be protected by the court of trial. If the defendants alienate the suit schedule property, as already observed that it will create multiplicity of the proceedings and cause inconvenience to the parties for further litigation. At this juncture it is useful to refer the ratio laid down by the Hon'ble High Court of Karnataka reported in 1999 (1) KLJ 577 **(Smt. Rathnamma V/s. B.A.Srinivasa Gupta and others)** wherein it is held that.

“(C) CPC 1908, O.39 R.1-Temporary injunction-Grant of-Primary purpose of temporary injunction which is only preventive relief, is to preserve property in dispute till legal rights of parties are settled- It is issued to keep things in status quo pending litigation so that suit is not rendered infructuous by unilateral act of party-Where party seeking temporary injunction has satisfied Court that there is question of law or fact to be tried in suit, that court's

interference is necessary to save him from irreparable injury and that comparative mischief which is likely to issue from withholding injunction will be greater than that which is likely to arise from granting it, party is entitled to relief.”

In 1975 (1) KLJ page 142 (**Karnataka High Court State of Karnataka v. S. Venkataraj**) which reads thus.

“The object of an interim injunction is to keep things in status quo, so that if at the hearing the plaintiff obtains a judgment in his favour, the defendants will have been prevented in the meantime from dealing with the property in such a way as to make that judgment ineffectual, A temporary injunction maintaining the status QUO may properly issue whenever the question of law or fact to be ultimately determined in a suit is grave and difficult and injury to the moving party will be immediate certain and great if denied while the loss or inconvenience to the opposing party will be comparatively small and insignificant if granted.”

In ILR 2004 Karnataka page 4076 (**Fakirasab V/s. Syedusab and others**) wherein it is held that

“(B) CPC 1908-O-39 R.1 & 2-OBJECT OF –While considering an application for grant of temporary injunction, the right and need of respective parties should be considered and the schedule property should also be protected and preserved so that if ultimately, the plaintiff who is the initiator of the suit, succeeds in the suit, he would not be put to irreparable and uncompensatable loss. The object is to keep the property in status quo so that if would be available to the plaintiff if he ultimately succeeds in the suit.”

“(C) CPC 1908, O.39 R.1-Temporary injunction-Grant of-Primary purpose of temporary injunction which is only preventive relief, is to preserve property in dispute till legal rights of parties are settled- It is issued to keep things in status quo pending litigation so that suit is not rendered infructuous by unilateral act of party-Where party seeking temporary injunction has satisfied Court that there is

question of law or fact to be tried in suit, that court's interference is necessary to save him from irreparable injury and that comparative mischief which is likely to issue from withholding injunction will be greater than that which is likely to arise from granting it, party is entitled to relief."

Further in ILR 2007 Karnataka page 1214 **(Smt. T.K.Gowramma V/s. C.K.Raviprasanna)** wherein it is held as under:

"CPC, 1908-O.39 R.1 & 2-TEMPORARY INJUNCTION UNDER-GRANT OF-HELD, The relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before which that uncertainty could be resolved-The object of interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial."

17. In the light of principles enunciated in the above cited cases, in the instant case also question of law and fact is to be ultimately determined and the injury to the moving party will be immediate, certain and great, if denied. While the loss or inconvenience to the defendants will be comparatively small and insignificant if injunction is granted, as merely they will be deprived of their right of alienation. Defendants are required to be enjoined to avoid multiplicity of proceedings and to avoid future complications. Hence, considering all these aspects of the case and totality of circumstances, I am of the considered opinion that, plaintiff has made out case for granting temporary injunction in its favour as it has established prima-facie case, balance of convenience also tilts in its favour, irreparable loss and hardship will be cause to it if injunction is not granted. Hence, I answer the point No.1 and 2 and 4 in Affirmative and point No. 3 in the negative.

18. **POINT NO.5:** In view of the reason assigned above in finding arrive at on point No.1 to 3 I proceed to pass the following;

ORDER

IA No. I filed by the applicant/plaintiff U/O XXXIX Rule 1 and 2 CPC is hereby allowed.

The defendants their men, servant, agent or anybody claiming under them are hereby restrained from alienating the suit schedule properties in any manner till disposal of the suit.

IA No. II filed by the defendant No. 4 U/O 39 Rule 4 of CPC is hereby rejected.

No orders as to cost.

(Dictated to the stenographer directly on computer, typed by her, revised, corrected and then pronounced by me in the open Court on this day, the 9th of September, 2022.)

(SHIRIN JAVEED ANSARI)
Prl. Senior Civil Judge & JMFC
Hunsur