

KAMS300011032024



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

Present: **Zaibunnisa, B.Com., L.L.B.,**  
Prl. Senior Civil Judge & J.M.F.C.,  
Hunsur.

Dated, this the 28<sup>th</sup> day of October 2024

**O.S.NO.162/2024**

Plaintiffs : Sri. T.P. Nagaraju and another  
V/s

Defendants: Samyuktha properties and others

**I.A. No. I**

Applicant : Sri. T.P. Nagaraju and another  
V/s

Opponents : Samyuktha properties and others

Provision of IA filed	:	IA I U/O 39 Rule 1 and 2 of CPC
Relief sought		Temporary injunction
Date of filing IA	:	26.06.2024
Number of IA	:	IA No.I
Date of objection filed by the defendant	:	29.08.2024
Date on which the order passed on the application	:	28.10.2024

**ORDERS ON IA No.I**

Plaintiffs have filed this application U/o 39 Rule 1 and 2 of CPC to restrain the defendants their agents, servants or persons claiming under them, from alienating the suit schedule properties in favour of anybody in any manner pending disposal of the suit.

2. The application is supported by the affidavit of the plaintiff No.1 that plaintiffs are the absolute owners in physical possession and enjoyment of agricultural landed property bearing Sy.No.104/2 and Sy.No. 104/3 measuring 2 acres each, in total measuring to an extent of 4 acres, situated at Mukanahalli village, Kasaba Hobli, Hunsur Taluk, Mysuru District.

It is further submitted that defendant No.1 is the partnership firm and defendant No.2 and 3 are representing the said firm as managing partners. That the defendants approached the plaintiffs for the development of the property by way of converting the agricultural land to the non agricultural purpose and for the formation of the sites in the schedule property. The plaintiffs agreed the terms and conditions and have entered into the registered Joint Development Agreement (In short., JDA) dated 02.05.2016. As per the JDA, if the defendants have developed the schedule property by forming a residential layout, the defendants are entitled for 46% of the developed sital area. However to develop the schedule property as well as to convey the developed sital area after development, the plaintiffs have executed a registered general power of attorney dated 02.05.2016.

It is further submitted that at the time of entering into the joint development agreement the defendants have assured the payment of Rs.30,00,000/- towards the security deposits. Out of

the said security deposit the defendants have agreed to pay a sum of Rs.21,00,000/- at the time of entering into the joint development agreement. The remaining Rs.9,00,000/- was agreed to be paid after the property was alienated/converted from the agricultural purpose to non agricultural purpose. Accordingly at the time of registration of the said JDA the defendants have issued cheques as follows;

a)Rs.1,00,000/- has been paid by way of cheque bearing No.000060, dated : 10.02.2016,

b)Rs.5,50,000/- has been paid by way of RTGS, dated:28.04.2016,

c)Rs.2,00,000/- has been paid through cheque bearing No.000082,

d)Rs.2,50,000/-has been paid by way of cheque bearing No.000083,

e)Rs.5,00,000/-has been paid by way of cheque bearing No.000084,

f)Rs.5,00,000/-has been paid by way of cheque bearing No.000084 dated 02.05.2016 drawn on HDFC bank Chamarajanagar branch, Chamarajanagar.

The cheques bearing No.000084 and 000085 were instructed to not to present by saying there is no sufficient amount in the account. However the time was lapsed for presentation of the cheque and subsequently the defendants have agreed to issue fresh cheque. But the defendants have failed to issue fresh cheque for the said amount. In spite of plaintiffs were keep on demanding the defendants to pay the cheque amount of Rs.10,00,000/- at that time defendants have requested plaintiffs stating that the said cheque amount will be paid within a short period and also requested not to proceed with the cheques for the recovery.

Considering defendants request plaintiffs have neither proceeded for recovery of money nor initiated any criminal complaint. Out of the agreed amount of Rs.30,00,000/-, the defendants have paid only a sum of Rs.11,00,000/- to plaintiffs. In spite of giving sufficient opportunity to the defendants, the defendants have failed to pay the amount to plaintiffs which clearly establishes that the defendants have utterly failed to act as per the terms and conditions of the Joint Development Agreement dated 02.05.2016. The plaintiffs repeatedly approached and requested the defendants to pay the balance amount of Rs.9,00,000/- and also the cheque amount of Rs.10,00,000/- which they were bound to pay. But the very act of the defendants in failure to pay the amount indicates the malafide and fraudulent intention to cheat the plaintiffs. In fact, the defendants are not having sufficient funds to pay the security deposit as well as to develop the schedule property.

As per the JDA dated 02.05.2016 the defendants have agreed to complete the project within 24 months from the date of entering into the JDA and hand over the share of plaintiffs with fully developed properties. That till date the defendants have not at all developed the land as assured by them even after the laps of 8 years from the date of joint development agreement. The defendants have not given any kind of information pertaining to the work done for the purpose of development in the plaintiff schedule property, though it is their duty to inform about the developments made in the schedule property. As such the contract which is entered into between plaintiffs and defendants is void as there is no performance of the contract since from the date of commencement of the JDA and since defendants have not paid the agreed amount and not performed the contract well within the stipulated time period as agreed in the JDA. In spite of repeated

requested and demands made by plaintiffs orally, the defendants have not taken any steps to perform their part of contract. The defendants go on assigning one or the other reasons and postponed to perform their part of contract.

The plaintiffs have got issued a legal notice dated 02.06.2022 to the defendants by terminating the JDA dated 02.05.2016 and also by restraining the defendants from entering into the plaint schedule property. The said legal notice was duly served upon te defendant No.2 and 3 on 08.06.2022. Inspite of receipt of notice the defendants neither replied to the notice nor complied the notice. Hence, the suit and the present application.

3. On service of the summons and notice on IA 1, only defendants appeared through their counsel and filed their objection.

The defendants have submit that the defendant No.1 Samyukta properties is a partnership firm registered under Sec.58(1) of the Indian Partnership Act 1932 and the defendant No.2 and 3 are the managing partners. An understanding was arrived between these plaintiffs and defendants and the same was reduced into writing by executing JDA (Joint Development Agreement) on 02.05.2016. As per the JDA, after developed the schedule property by forming a residential layout, the defendants are entitle for 46% of the developed sital area and 54% to the plaintiffs. However, to develop the schedule property as well as to convey the developed sital area after development, the plaintiffs have also executed a registered general power of attorney dated 02.05.2016.

The plaintiffs have no locus standi to seek such a prayer under this application as sec.53(a)of transfer of property act is

incorporated in Joint Development Agreement. At clause 17 of the JDA the plaintiffs have given assent not to disturb and not to give any hindrance to these defendants till completion of work as per Sec.53(a) of Transfer of property Act. Sec.53(a) aims to prevent injustice caused to the transferee. Hence, the relief sought under the application is not maintainable.

That as per JDA, the plaintiffs have received the agreed security deposit of Rs.21,00,000/- and acknowledged the same in the JDA at page No.4. But now they have created, concocted story regarding the last 2 cheques. In fact, the plaintiffs have encashed the cheques mentioned at Sl.No. (a) to (d) and in order to bear the marriage expenses of plaintiff No.3 and their house, they were in need of urgent cash, they requested the defendants to pay the cheques' amount at Sl.No.(e) to (f) in cash which is in a sum of Rs.10,00,000/- on different occasions whenever the plaintiffs in need of. Now the plaintiffs by suppressing the truth came up with a false suit to escape from their liability. In respect of balance amount of Rs.9,00,000/- is concerned, the conversion order was issued by the DC, Mysore district in the year 2022 and at that time the plaintiffs were arrested and behind the bars for the offence of murder as dowry harassment case registered in Cr.No.154/2022 at Hunsur P.S. The plaintiffs never approached and requested the defendants for balance amount and defendants have already paid Rs.21,00,000/- and always ready to pay the remaining amount of Rs.9,00,000/-.

It is further submitted that the covenant of the JDA at para 20 reads that "The second party agrees to complete the residential layout in the schedule property within 24 months. This period of 24 months shall be reckoned from the date of issuance of the conversion order and the approval order issued by the competent authority for the commencement of the work. Both parties hereby

agree to extent the aforesaid period upon mutual consent of the other party if due to unavoidable reasons the other party is unable to complete the work of settlement within the said 24 months". The conversion order issued by the DC, Mysore, on 07.09.2022 and provisional approval procedure was issued by the Hunsur Planning Authority on 05.03.2024. This clearly discloses that as per JDA the time period for completion of the project begins to count by 05.03.2024. All these events are communicated to the plaintiffs by the concerned authorities since, these orders were made on the applications of plaintiffs and they are aware of all the deeds of the defendants. In view of above reasons and other additional grounds the defendants prayed to dismiss the application.

In the background of the above said facts and circumstances, I have heard the plaintiffs in detail and perused the written arguments submit for the defendants and also the documents relied on by both the parties.

4. On perusal of the materials placed on record the following points do arise for my consideration:-

1. Whether the plaintiffs have established the prima-facia case in their favour?
2. Whether the balance of convenience lies in favour of the plaintiffs?
3. Whether irreparable loss or hardship will be caused to the plaintiffs if the injunction is not granted?
4. What order?

5. My finding to the above points are as under,
- Point No.1 : In the Negative
  - Point No.2 : In the Negative
  - Point No.3 : In the Negative
  - Point No.4 : As per final order for the following,

### **REASONS**

6. **Point No.1 to 3:** Since these points are interlinked with each other, they are taken up together for consideration in order to avoid repetition of facts and material circumstances.

Since I have already stated respective contentions of the parties in detail, without reproducing them again, I would try to find out whether there is any substance in the grievance vented by the plaintiffs. At this initial stage itself, I would like to reiterate the guiding principles to be followed under the given circumstances that, the grant or refusal of order of temporary injunction is based on the establishment of prima-facie arguable case by the plaintiffs to proceed in the matter. In discharging a prima-case, the settled law appears to be that the merits of the case should not be examined closely, deeper examination of the controversies is impermissible, stand of the parties are not to be proved in such a manner so as to give a final decision. The plaintiffs need not establish title, but it is enough if they can show that they have a fair question to raise as to the existence of the right which they alleged and

ultimately it is the principles of equity by which the court should be guided.

7. Be that as it may, it is needless to state at this stage that the court cannot hold a mini trial to decide the application. However, the defence raised by the defendants and the documents relied on by both the parties at hand, discloses the reasons for delay of the completion of task that under taken by the parties vide registered JDA dated 02.05.2016. It is very much ostensible and also prima facie appears from the contents of JDA that the period of alleged 24 months shall start from the date of issuance of the conversion order issued on 07.09.2022 and approval order dated 05.03.2024 that issued by the competent authorities for the commencement of work. So far as the non payment of agreed amount of Rs.21,00,000/- and 9,00,000/- is concerned, the defendants have given the details of the payment which is also admitted by the plaintiffs except the last two cheques mentioned at Sl.No.(e) and (f) of para No.6 of the plaint. The explanation offered by the defendants with respect to payment of said last 02 cheques and remaining balance amount of Rs.9,00,000/- to be paid by the defendants, need full fledged trial. Moreover, the defendants themselves agreed and admitted that they are ready to pay balance payment of Rs.9,00,000/- but it is the plaintiffs who never approached or requested the defendants in this respect and filed the suit without any cause of action.

8. There is no doubt that the grant of interim injunction is rests with the discretion of the trial court, however it is also incumbent upon the court that it should exercise the said discretionary power judiciously and with utmost caution. Here, in the case on hand, the above referred records clearly discloses that

the claim of the parties in the subject matter is yet to be decided in the due course.

9. Thus, at this stage, it is crystal clear that there are no prima facie grounds to grant the temporary injunction as sought by the plaintiffs. When there is no prima facie case, absolutely there is nothing to consider the factors which may cause irreparable loss, injury to the plaintiffs and balance of convenience if any, in their favour at this juncture. Under the above stated facts and circumstances I answer the point Nos.1 to 3 in the Negative.

10. **Point No.4**: In view of the reasons above I proceed to pass the following;

**ORDER**

I.A No. I filed by the plaintiffs under Order 39 Rule 1 and 2 of CPC is hereby rejected.

In the given circumstances I passed no order as to costs.

(Dictated to the stenographer, directly on the computer, typed by her, corrected and then pronounced by me in the open Court on this day, the 28<sup>th</sup> October 2024).

(Zaibunnisa)

Prl. Senior Civil Judge & JMFC

Hunsur

