

KAMS300047362022



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

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

Dated, this the 22nd day of November 2023

O.S.NO.245/2022

Plaintiff : 1. Sri. K. Guruprasad,
S/o K Anantha Bhat,
Aged about 47 years,
R/at 1513, Anantha, 26th Main,
26th A Cross, HSR Layout 2nd sector,
Bangaluru South,
Bangaluru-560102.

(By Sri. KTV., Advocate)

V/s

Defendants: 1. Sri. T. Rangaraju
S/o Thirumale Swamy,
Aged about 53 years,
2. Smt. Kavitha
W/o T. Rangaraju,
Aged about 45 years,
3. Sri. T Ananda
S/o Thirumale Swamy,
Aged about 48 years,
4. Sri. Thirumale Swamy
S/o Late. Lakshman Shetty,
Aged about 80 years.

All the defendants are R/at
Karimuddanahalli Village,
Belakere Hobli, Hunsur Taluk,
Mysuru District.

(D1 to 4 by Sri.BSY., Advocate)

I.A. No. I and VII

Applicant : K. Guruprasad

V/s

Opponents : T Rangaraju and others

Provision of IAs filed	:	IA I & VII U/O 39 Rule 1 and 2 of CPC
Relief sought		Temporary injunction
Date of filing IA No.1	:	07.12.2022
Date of filing IA No.VII	:	17.07.2023
Number of IAs		IA No.I & VII
Date of objection filed by the defendant	:	17.08.2023
Date on which the orders passed on the applications	:	22.11.2023

ORDERS ON I A NO. I AND VII

These two applications are filed by the plaintiff under similar provision of Order 39 Rule 1 and 2 of CPC; one is seeking temporary injunction against the defendants to restrain them, their men or any other persons claiming under them from alienating the suit schedule property to any third persons in any manner; another one is to restrain the defendants from interfering with the peaceful

possession and enjoyment of suit schedule property by the plaintiff pending disposal of the suit.

2. After appearance of the defendants, defendants have filed their objections to both the applications. For the purpose of brevity, the facts stated in the affidavit annexed to the applications and objections will be stated at appropriate stage of the orders.

3. Heard both sides arguments and perused the materials placed and available on record.

4. On the basis of the rival contentions the following points would arise for my consideration

1. Whether the plaintiff has made out a prima-facia case in his favour to allow the applications?
2. Whether balance of convenience lies in favour of the plaintiff ?
3. Whether irreparable loss and injury will be caused to the plaintiff in case of non-granting temporary injunction as sought for?

4. What order?

5. My findings to the above points are as under

Point No.1: In the Affirmative

Point No.2: In the Affirmative

Point No.3: In the Affirmative

Point No.4: As per final order for the following;

REASONS

6. **Point No.1:-** This is the suit for Specific performance of contract, wherein plaintiffs filed I.A.I seeking restraint order against defendants from alienating the suit schedule property and I.A.VII to restrain the defendants from interfering with the peaceful possession and enjoyment of the suit schedule property by the plaintiff.

7. Materials on record reveal that the plaintiff has come up with the above suit seeking the relief of Specific Performance of Contract against the defendants and also the present IA No. I and VII with respect to suit schedule property. The plaintiff, applications along with the affidavits of the plaintiff consist that the 1st defendant for the welfare of his family requested the plaintiff through his father to purchase the suit schedule property for sale

consideration of Rs.14,50,000/- and received Rs. 13,50,000/- and along with his family members, the defendant No. 2 to 4, executed an agreement of sale on 24.4.2015 in favour of the plaintiff receiving advance of 13,50,000/- out of total sale consideration amount by way of cash and the same was registered before the sub- registrar office at Hunsur, further agreed to register the same after obtaining the entire revenue documents, survey sketch and completion of durasti work of the suit schedule property at the earliest within 3 months from the date of agreement. Further, the 1st defendant who is the absolute owner of the suit schedule property permitted the plaintiff to take over the developmental work to improve and leveling the suit land suitable for agricultural activity under the trust and belief that the sale deed will be completed after conducting the durasti work by the defendants. Accordingly, the plaintiff had invested huge amount towards fencing, levelling by putting permanent pipelines from bore well situated in his own adjacent land and filled the land nearly 2000 loads of soil to improve the fertility and planted coconut and other types of fruit trees in the suit schedule property and improved it as garden land. Even though plaintiff continuously requesting the 1st defendant to complete registration process after getting durasti work and intimate the plaintiff well within time to execute the sale deed, the 1st defendant postponing the execution of sale deed on

one or the other pretext and not completed the durasti work till today but was requesting some more time as the documents pertaining to suit schedule property are unavailable from the concerned authority and need time to procure them.

8. It is further submitted that the plaintiff is requested the defendants from the date of sale agreement till today to complete durasti work and to complete the registration process of the suit schedule property by receiving the balance amount of Rs.1,00,000/- and to perform the contract but the defendants have not cared to the words of his request and trying to continue his illegal act with malafide intention and hence, he gave complaint to jurisdictional police against the defendants, but they are influential, hence, the police refused to take the complaint. Now the plaintiff learnt that the defendants are trying to alienate the suit schedule property to one Nagaraju. Hence, it is necessary to stop the illegal act of the defendants. Therefore, the suit and the IA No.I to restrain the defendants from alienating the suit schedule property pending disposal of the suit.

9. Under IA No.VII it is further stated that after getting information of suit summons, the defendant came near the suit schedule property on 11.07.2023, tried to interfere with the

peaceful possession and enjoyment of the plaintiff over the suit schedule property along with illegal elements, tried to destroy the plants and pipelines. Somehow he manage them with the help of neighbour farmers and also gave complaint to the jurisdictional police, but they refused to register his complaint and issued NCR for the same. Hence, it is necessary to issue an order of ad-interim injunction restraining the defendants from interfering with his peaceful possession over the suit schedule property. That he has got prima-facie case as he has already spent huge amount towards development and improvement of the suit schedule property and balance of convenience is heavily tilts in his favour and if his applications are not allowed he will be put to great hardship and irreparable injury will be caused to him rather than the defendants as they are stranger to the suit property.

10. On the other hand, the defendants have contended in their objection that the plaintiff has suppressed the material facts, these defendants have issued a legal notice dated 28.03.2022 calling upon the plaintiff for violation of terms and conditions of the sale agreement and also to terminate the contract and forfeit the advance paid by the plaintiff. In spite of service of notice the plaintiff has not complied the demand made under the notice. But the plaintiff is not ready and willing to perform his part of contract.

The plaintiff failed to keep up the promise and not performed his part of contract as per the conditions laid down in the sale agreement dated 24.04.2015, the advance paid by the plaintiff to the defendants stand forfeited. The plaintiff is not taken the possession of the schedule property at the time of agreement. The question of interference by the defendants does not arise. The applications will not survive and same are not maintainable. The Durasth and pakka phode of the schedule property is not yet completed. The said land is not demarcated and no sketch is prepared so far therefore, possession of said land cannot be identified correctly. These defendants are in physical possession of the schedule property. On these grounds the defendants prayed to dismiss the applications of the plaintiff.

11. In the above said background of the applications and objections I have gone through the materials made available by the parties. Admittedly the suit filed by the plaintiff is one for specific performance of contract dated 24.4.2015 under registered sale agreement. In support of the applications plaintiff has furnished the original sale agreement dated 24.04.2015 which is registered before the Sub-Registrar, Hunsur on 25.4.2015, EC, pertaining to the suit property bearing Sy.No. 19/P7 measuring 4 acres of Kuttavadi Village, legal notice dated 28.3.2023 issued by

defendants to the plaintiff, reply issued by the plaintiff to the said notice of defendants, postal receipt and acknowledgment, few photographs of the alleged suit property, police acknowledgment for having lodged a complaint against the defendant No.3 before the jurisdictional police and also the copies of unregistered agreement dated 25.04.2015, survey sketch and Certificate of Saguvali chit in Form No.7 issued in the name of defendant No.1. I have gone through the pleadings, applications and the objection filed by the parties as well as documents furnished by the plaintiff. At this juncture whether the plaintiff has narrated all the true facts before the court or not cannot be ascertained at this preliminary stage. The different stands taken by of the defendants create a doubt in the mind of the court with respect to their alleged defense. It is also appearing that the stands taken by the plaintiff and defendants require a full fledged trial. As it is the settled principle of law that once the suit is filed seeking specific performance of contract, it is required to keep the suit schedule property intact so that it can be made available to the winning party as it is. Further, that the defendants have voluntarily entered into the sale agreement with respect to the suit property as per the legal notice issued by them by receiving major portion about 93% of the sale consideration amount from the plaintiff as admitted by they themselves, then it will not cause any harm or

injury to the defendants if the application is allowed and they are put under a restraint from alienating the suit property pending conclusion of trial as sought in IA No.1.

12. So far as the relief claimed under IA No.7 to restrain the defendants from interfering with the possession of the plaintiff is concerned, there is no doubt, that the defendants have executed a registered sale agreement dated 24.4.2015 agreeing to sell the suit schedule property in favour of the plaintiff for total sale consideration of Rs.14,50,000/- and received an advance amount of Rs.13,50,000/- by way of cash. This sale agreement and alleged transaction is clearly admitted by the defendants in their legal notice dated 28.3.2022. It is the defense of the defendants that they agreed to execute the sale deed in favor of the plaintiff within 3 months from the date of agreement. But the plaintiff is not ready and has not come forward to perform his part of contract as per the terms and conditions of the sale agreement. That the defendants are ever ready and willing to execute the registered sale deed in respect of the suit schedule property within the stipulated period. But the plaintiff though aware of the pressing financial difficulties of the defendants he intentionally not coming forward to get the sale deed by completing the formalities. Therefore, the defendants have issued the legal notice dated

28.3.2022 calling upon the plaintiff for violation of terms and conditions of the sale agreement and terminate the contract, forfeited the advance paid by the plaintiff. But looking to the pleadings of the parties it is very much clear that transaction was taken place with respect to suit schedule property for sale consideration of amount of Rs.14,50,0000/- and out of that plaintiff has already paid above 90% of the sale consideration amount to the defendants. Under such circumstances it can not be concluded that plaintiff is not ready and willing to pay the balance sale consideration amount which is only in a sum of Rs.1,00,000/- and to get registered the sale deed from the hand of the defendants. On the other hand it is the grievance of the plaintiff that defendants agreed to hand over the entire revenue documents viz., EC, Khata, Survey sketch, Mutation, RTC etc., to the plaintiff after completion of Durasthi work from the concerned department within 3 months. Further the 1st defendant though he is the absolute owner of the property himself insisted the plaintiff to take signatures of his family members as consent witnesses to the deed and permitted the plaintiff to take over development work in the suit schedule property for improvement since he had received more than 90% consideration amount. More than that 1st defendant permitted the plaintiff to take developmental work. Believing the assurance of the defendant No.1 the plaintiff has carried out the

work of leveling the land to make it suitable for agricultural activities believing that the sale deed would be completed after conducting the durasti work by the defendants. But the defendants on one or other reasons started to postpone the execution of sale deed in favour of the plaintiff due to non availability of certain documents and not conducted durasati work of the suit schedule property. The documents produced by the plaintiff as well as the notice issued by the defendants in the light of their defense, it goes to show that it is the defendants who have to do the durasti work of the suit property and to obtain the necessary documents in order to execute the registered sale deed as per the sale agreement. The EC produced by the plaintiff clearly discloses the transaction and description of the property which is very much tallying with the schedule property given in the plaint. The plaintiff also furnished photographs of the property stating that he has taken over many developmental work in the suit property in the anticipation execution of sale deed by the defendants in his favour as per the terms and conditions of the registered sale agreement. Per contra, to counter blast the contentions raised by the plaintiff in I A No.7 and the photographs furnished by him pertaining to suit property, the defendants have not produced even a single document. Apart from the above materials the plaintiff also relied

upon a citation reported in (2016) 4 ALLMR 988: (2015) 87RCR(Civil) 943 in the case between:-

Deepak Bhagwan Vyas Vs Prakash Bachcharaj Jailwal.....

*In this case, the trial court rejected the application of the plaintiff for the grant of temporary **injunction** restraining the defendants from disturbing the peaceful **possession** of the plaintiff over the suit property in a suit filed for **Specific Performance of Contract**. The said order of trial court was set aside by the lower appellate Court in the appeal preferred by the plaintiff. Same was challenged before the Hon'ble Bombay High Court (Nagpur Bench). The Hon'ble High Court held that, the court has to find out whether prima facie the plaintiff has proved his possession over the suit property. The lower appellate court has relied upon the agreement for extension of time executed between the parties on 31.3.2011, 28.2.2012 and 28.2.2013 wherein a clause is contained to the effect that the plaintiff shall be at liberty take electric meter, water meter in his name in the suit property. The finding of fact recorded by the lower appellate is based on the evidence available on record.*

Shri Akshay Naik, the learned counsel for the respondent has relied upon the proviso to section 49 of the Registration Act which makes the unregistered contract in a suit for specific performance of contract admissible in evidence and submits that it can be used as evidence of any collateral transaction not required to be effected by registered instrument.

The only fact which is required to be noted is that, the agreement dated 14.2.2011 on which the specific performance is sought does not contain the clause of possession, which is admitted by both the learned counsels appearing for the parties.

The agreements relied upon by the plaintiff for the purpose of possession were executed on 31.3.2011, for the purposes of possession were executed on 31.3.2011, 28.2.2012 and 28.2.2013. The courts have found prima facie the possession of the plaintiff over the suit property, which does not call for any interference.

The lower appellate court has not imposed any condition for grant of injunction. The total consideration agreed between the parties was of Rs.6,11,000/- out of which an amount of Rs. 2,11,000/- is alleged to have been paid toward part consideration by the plaintiff to the defendants. The balance of Rs.4,00,000/- remained to be paid. The plaintiff will have to, therefore, be put with a condition to deposit the amount of Rs.4,00,000/- in the trial court within a stipulated period, which the trial court shall keep in fixed deposit during the pendency of the suit in any nationalized bank.

In the result, the writ petition is partly allowed, confirming the order passed by the lower appellate court granting injunction by allowing an application exh. 10 subject to the condition of depositing the balance sale consideration by the plaintiff before the trial court.

13. In the applications of present case, the plaintiff has sought temporary injunction restraining the defendants from alienating the suit property and also to restrain them from interfering with the possession of the suit land by the plaintiff. No doubt, under registered agreement of sale possession of the property is shown to be not delivered to the plaintiff. But in the further agreement executed by the same defendants on

25.04.2015 clearly discloses that the possession of the land is handed over to the plaintiff under unregistered sale agreement since the durasth work of the property is pending. As per the decision relied supra by the plaintiff, there is no bar to rely on the unregistered agreement for collateral purpose and injunction can be granted basing upon the above materials which fortify the prima facie possession of the property by the plaintiff. It is settled law that very intention of granting temporary injunction is to maintain the state of things as it is. This well settled legal proposition can be borne out from the ratio laid down by the Hon'ble High Court of Karnataka in a decision reported in 1991(1) KLJ 577 (**Smt. Rathnamma V/S B.A. Srinivasa Guptha and others**). Wherein it is held that

“ © CPC 1908 order 39 rule 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 the 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 – were party seeking temporary injunction has satisfied the court that there is question of law or facts 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 occur

from withholding injunction will be greater than that which is likely to arise from granting it, party is entitled to relief”

And also in ILR 2004 Karnataka 4076 in Fakir Sab V/S Syedu Sab and others it is held that

“ (B) CPC 1908 order 39 Rule 1 and 2 Object of – while considering an application for grant of temporary injunction, the right and need of respective parties 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 it would be available to the plaintiff if he ultimately succeeds in the suit.”

14. In the instant case if the defendants are not restrained from creating any charge by alienating the suit schedule property, and not restrained from interfering with the possession admittedly handed over to the plaintiff under the alleged agreement, it may lead to multiplicity of proceeding and causes hardship to the plaintiff. On the contrary, if the defendants are restrained from the same, no hardship or prejudice will be caused to them. Looking to the background facts and circumstances of the case, I am of the considered opinion that plaintiff has made out prima facie case and

balance of convenience tilts more in his favour. Till ascertaining the true state of affairs during trial, the defendants are to be restrained temporarily from alienating and interfering with the possession of the suit schedule property by the plaintiff. With this conclusion I answer point No.1 to 3 in the affirmative.

15. **Point No.4:** In view of the findings arrived on the point No. 1 to 3, I proceed to pass the following:

O R D E R

IA No.I and VII filed by the plaintiff U/O 39 Rule 1 and 2 of CPC are hereby allowed.

The defendants, their men or anybody claiming under them are hereby restrained from alienating and interfering with the possession and enjoyment of the suit schedule property by the plaintiff in any manner till further orders.

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 22nd of November 2023)

(Zaibunnisa)
Addl. Senior Civil Judge & JMFC
Hunsur

