

IN THE COURT OF THE CIVIL JUDGE & J.M.F.C. HUNSUR.

PRESENT: Sri.Girish Chatni, B.A., LL.B (Spl).
Civil Judge & J.M.F.C,
Hunsur.

Dated this the 1st day of March, 2018

Ex. No.97/2016

DECREE HOLDER : Shivannegowda

: Vs.:

JUDGMENT DEBTORS : Doddaswamygowda & others

I.A. No.I

APPLICANT : Shivannegowda
(By Sri.M.E.P, Advocate)

: Vs. :

OPPONENTS : Doddaswamygowda & others
(Sri.J.R., Advocate)

**ORDERS ON IA.NO.I FILED U/O XXXIX RULE 1 AND 2 R/W
SEC.151 OF C.P.C.**

This application is filed by the Dhr. under Order XXXIX Rules 1 and 2 r/w Sec.151 of C.P.C., seeking for the relief of ad-interim temporary injunction against J.Drs., restraining them, their agents, servants, representatives from alienating the petition schedule property in any manner till the disposal of the execution petition. The petition is filed in respect of dry land bearing Sy.No.174/5 measuring 0-12 guntas out of total extent 1-04 acres,

situated at Bannikuppe Village, Kasaba Hobli, Mysore District.
(herein after referred to as petition property)

2. That it is averred in the affidavit annexed to the application sworn in to by the D.Hr., that he has filed the present execution petition against the J.Drs., to get execute the registered sale deed of petition schedule property on the basis of decree passed in O.S.No.442/2015 on dated 11.03.2016 by receiving remaining sale consideration amount of Rs.10,000/- and for delivery of the possession of the petition schedule property to him. Such being the case, the D.Hr. has learnt that since the J.Drs., being the khata holders are trying to alienate the petition schedule property in favour of third party. Hence, without any alternative has filed this petition and has submitted that he has made out a *prima facie* case, balance of convenience lies in his favor and irreparable loss will cause to him, if T.I is not granted as sought by him. Hence, prayed to allow the I.A.

3. In spite of sufficient opportunity the J.Drs. have not filed their objections to the I.A.I.

4. Heard the advocates appearing for the D.Hr., and perused the materials on record.

5. On going through the pleadings, I.A.No.1 the points which arose for my consideration are as under:

1. Whether the D.Hr., has made out a prima-facie case?

2. Whether the balance of convenience lies in favor of the D.Hr.,?

3. Whether the D.Hr., will be put to great hardship and injury in case if TI is not granted?

4. What order?

6. My findings on the above points are 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 :-** Law relating to grant or refusal to grant temporary injunction has been culled out by the Hon'ble Supreme Court of India in ***AIR 1999 SUPREME COURT 3105 (Colgate Palmolive (India) Ltd., v. Hindustan Lever Ltd.,)*** it is held as under:

"Civil P.C. (5 of 1908), O. 39,R.1:

Certain specific considerations to be noted in the matter of grant of interlocutory injunction, the basic being non-expression of opinion as to the merits of the matter by the Court, since the issue of grant of injunction usually, is at the earliest possible stage so far as the time frame is concerned. The other considerations which ought to weigh with the court hearing the application or petition for the grant of injunctions are as below:- (i) Extent of damages being an adequate remedy; (ii) Protect the plaintiff's interest for violation of

his rights though, however, having regard to the injury that may be suffered by the defendants by reason therefor; (iii) The Court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others; (iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case-the relief being kept flexible; (v) The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties case; (vi) Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant; (vii) Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise."

8. Keeping in mind the well settled legal principles regarding granting or refusal for granting Temporary Injunction enunciated in the above-cited decision, let me advert to consider the case of the parties. It is the contention of the D.Hr., that on the basis of the judgment and decree passed in O.S. No.442/2015 on dated 11.03.2016, the D.Hr., has maintained the present Execution petition for execution of registered sale deed in his favour.

9. On perusal of the averments made in the I.A., the D.Hr., has contended that the J.Drs., being the khata holders are trying to alienate the petition schedule property to third party. Per contra, the J.Drs., have not filed their objections to the I.A. As contended by the D.Hr., if the act of J.Drs., are continued there are every chance of multiplicity of proceedings and the D.Hr., will

be put to irreparable loss, if the petition schedule property is alienated to some other persons. More over, the J.Drs., have not preferred any appeal against the judgment and decreed passed in O.S.No.442/2015 and have not produced any order of stay in executing the decree. Therefore, to avoid multiplicity of proceedings it is just and necessary to allow the I.A. filed by the D.Hr. In view of the discussions made above, the D.Hr., has made out prima-facie case to grant ad-interim temporary injunction in his favor. Accordingly, I answer this point in the **Affirmative**.

10. **Point Nos.2 and 3:** These points are taken up together for discussion for the sake of convenience.

The person who approaches the court for equitable remedy of temporary injunction, besides making out strong prima-facie and must necessarily show that balance of convenience lies in favor and shall also satisfy that irreparable loss and hardship would be caused to them, which can not be compensated in terms of money. Therefore, it is incumbent upon the D.Hr., to show that the balance of convenience lies in his favor.

11. In considering the question of balance of convenience the court has to consider to whom more hardship or inconvenience would be caused. If temporary injunction is granted and if ultimately the petition is dismissed, the J.Drs., would not be put to loss and hardship. As discussed supra D.Hr., has very well established prima-facie case. If an order of temporary injunction is not granted, the J.Drs., will be successful in alienating the suit property. In such an event the D.Hr., would be left nowhere. Therefore, balance of convenience and

comparative hardship is more on the D.Hr., than the J.Drs.,. Accordingly, I answer points 2 and 3 in Decree holder's favor, in the **Affirmative**.

12. **POINT No. 4**: In view of my findings to points 1 to 3, I am of the considered opinion that, D.Hr., has made out prima facie case and also made out a fit case for trial. Besides this the D.Hr.,has also established that balance of convenience lies in his favor and irreparable injury would be caused to him, if an order of temporary injunction is denied. Therefore, the D.Hr., is certainly entitled for the relief of temporary injunction. Accordingly, I proceed to pass the following;

ORDER

I.A. No.I filed by the D.Hr., under Order XXXIX Rule 1 & 2 r/w Sec.151 of C.P.C., is hereby allowed.

Consequently, J.Drs.,, their agents, servants, representatives are hereby restrained from alienating the petition schedule property in any manner by way of ad-interim temporary injunction for a period of three months, from the date of this order.

Parties are hereby directed to co-operate for the speedy disposal of the petition.

No order as to the costs.

(Directly dictated to the stenographer on computer, typed by her corrected by me, then pronounced in the Open Court this the 1st day of March 2018)

(Girish Chatni)
Civil Judge & JMFC.,
Hunsur.

Order pronounced in the open
court (vide separate order)

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No order as to the costs.

Civil Judge & JMFC.,
Hunsur.

Call on for objections to
the main petition by 24.02.2018.

Civil Judge & JMFC.,
Hunsur.