

**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 28<sup>th</sup> day of November, 2017**

**O. S. No.198/2017**

**PLAINTIFF** : Sri.R.Ramesh

**: Vs.:**

**DEFENDANT** : Sri.M.P.Nagaraj

**I.A. No.I**

**APPLICANT** : Sri.R.Ramesh  
(By Sri.C.R.R, Advocate)

**: Vs. :**

**OPPONENT** : Sri.M.P.Nagaraj  
(By Sri.P.R.R., Advocate)

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

This application is filed by the plaintiff under Order XXXIX Rules 1 and 2 of C.P.C., seeking for the relief of ad-interim temporary injunction against defendant, restraining him or his attorney holder or agents or any person or persons acting on behalf of him and through him, from alienating the suit schedule properties till pending disposal of the suit.

2. That it is averred in the affidavit annexed to the application sworn in to by the plaintiff that, the defendant is his son-in-law having married to his daughter on 04-05-2003 at Bangalore and out of the said wedlock 2 children were begotten and they started to reside at Madikeri. When the things stood so, the plaintiff with an intention to give good fortune for the defendant being the son-in-law have entered into agreement of sale with one Syed Ahamed to purchase the lands bearing Sy.No.1/112 measuring 3 acres 25 guntas, Sy.No.1/110 measuring 5 acres 38 guntas and Sy.No.83 measuring to an extent of 6 acre 32 guntas situated at Aspathrekaval village for a sale consideration of Rs.48 Lakh and the same came to be reduced into writing by executing agreement for sale on dated 18.03.2013 and the plaintiff has paid a sum of Rs.10 Lakhs by way of cash and agreed to pay balance amount of Rs.38 Lakh at the time of registration of sale deed. It is further contended that he could not secure revenue documents standing in his name to purchase the agricultural land and with good intention decided to get the sale deed registered in the name of defendant and registered the sale deed in the name of defendant at this cost and defendant was only a name lender and has not contributed even a single penny towards the purchase of the suit schedule properties in his name. It is further contended that as per the demand of the defendant he got executed the sale deeds in favour of defendant paying the entire sale consideration as agreed in the agreement of sale dated 18.03.2013 and also registration expenses to the concerned authority and the defendant acquired the suit properties. It is further contended that the defendant started threatening the plaintiff that he would alienate the suit schedule properties as the same is standing in his name, though the

original sale deeds, physical possession with respect to the suit properties are with the plaintiff, other family members requested him not to venture in alienating the suit properties. It is further contended that defendant came near the suit properties on 26.05.2017 and threatened that he would alienate the suit schedule properties and asked the watchmen to vacate the suit schedule properties. Hence, without any alternative has filed this suit 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 response to the suit summons, the defendant appeared through his counsel and have filed written statement and objections to the I.A.No.1.

4. In brief contents of the statement of objections filed by the defendant is as under;

Defendant has contended that the plaintiff has sworn a false affidavit making false allegations against the defendant. The defendant is the absolute owner with possession and enjoyment of the suit schedule properties since the date of its purchase, the plaintiff who has no manner of right, title or interest over the suit schedule properties. It is further contended that the plaintiff was never in possession of the suit schedule properties and the I.A. filed by him lacks bonafideness and is liable to be dismissed in limine. I.A. has been filed to harass the defendant and to make unholy game for plaintiff. It is further contended that no prima-facie case made out by the plaintiff. The balance of convenience

lies in favour of the defendant therefore, the defendant prays to dismiss the I.A. with compensatory costs.

5. Heard the advocates appearing for the plaintiff and defendant and perused the materials on record. During the course of the arguments the advocate for the plaintiff relief upon the following decisions in support of his contentions.

1.I.L.R. 1983 Page 81

2.K.C.C.R (4) Page 3761

3.A.I.R.2014 KAR.Page 140

4.A.I.R. 2010 SC page 296

6. On going through the pleadings, I.A.No.I and written statement the points which arose for my consideration are as under:

***1. Whether the plaintiff has made out a prima-facie case?***

***2. Whether the balance of convenience lies in favor of the plaintiff?***

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

***4. What order?***

7. 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**

8. **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.”***

9. 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 plaintiff that the defendant is his son-in-law and for the fortune of his daughter has entered into agreement of sale with respect to the suit schedule properties with one Sri.Syed Ahmed for an amount of Rs.48 Lakh on dated 18.03.2013 and on the same day has paid a sum of Rs.10 Lakhs by way of cash and agreed to pay the balance consideration amount of Rs.38 Lakhs at the time of registration of sale deed. It is further contended that the plaintiff did not secure the revenue documents, as such as per the demand of the defendant got executed the sale deeds as agreed as per agreement of sale dated 18.03.2013 in the name of defendant, by investing balance consideration amount of Rs.38 Lakh and registration expenses. It is further contended that on 26.05.2017, the defendant came near the suit schedule properties threatened that he would alienate the suit schedule

properties and asked the watchmen and his wife to vacate the suit schedule properties. In support of his contentions the plaintiff has produced xerox copy of the agreement of sale, sale deeds, RTCs, petition in M.C.No.451/2013, Electricity certificate, agricultural bank membership, soil testing certificate, test report, sprinkler, drip irrigation, bio compost manure delivery challan, drip irrigation plan and photographs.

10. The plaintiff has filed the suit for the relief of bare injunction against the defendant and also for the direction to the defendant from alienating the suit schedule properties. On perusal of the written statement and objections filed by the defendant, he has specifically contended that he is the absolute owner in possession of the suit schedule properties and all the revenue documents are standing in his name and the plaintiff was never in possession and enjoyment over the suit schedule properties. In order to prove his contentions the defendant produced xerox copies of sale deeds, M.R., RTC., tax paid receipts, acknowledgment. Hence, the plaintiff has prayed that the he has made out a prima facie case and balance of convenience lies in his favour and irreparable loss will cause to him, if this application is not allowed and there will be a multiplicity of proceedings. On perusal of the documents, plaint averments, contents of the I.A.No.1, objections to I.A.No.1 and written statement filed by the defendant, at this stage, the plaintiff has made out a case for trial and there are triable issues to be decided between the parties and if the application is not allowed, there will be multiplicity of proceedings. During the course of the arguments the advocate for the plaintiff relief upon the following decisions in support of his contentions.

1.I.L.R. 1983 Page 81

2.K.C.C.R (4) Page 3761

3.A.I.R.2014 KAR.Page 140

4.A.I.R. 2010 SC page 296

I have gone through the above said decisions. In view of the discussions made above, the plaintiff has made out prima-facie case to grant ad-interim temporary injunction in his favor. Accordingly, I answer this point in the **Affirmative**.

11. **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 plaintiff to show that the balance of convenience lies in his favor.

12. 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 suit is dismissed, the defendants would not be put to loss and hardship. As discussed supra plaintiff has very well established prima facie case. If an order of temporary injunction is not granted, the defendant will be successful in alienating the suit property. In such an event the plaintiff would be left no where. Therefore, balance of convenience and comparative hardship is more on the plaintiff

than the defendant. Accordingly, I answer points 2 and 3 in plaintiff's favor, in the **Affirmative**.

13. **POINT No. 4**: In view of my findings to points 1 to 3, I am of the considered opinion that, plaintiff has made out prima facie case and also made out a fit case for trial. Besides this the plaintiff 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 plaintiff is certainly entitled for the relief of temporary injunction. Accordingly, I proceed to pass the following;

**ORDER**

I.A. No.I filed by the plaintiff under Order XXXIX Rule 1 & 2 of C.P.C., is hereby allowed.

Consequently, defendant or his attorney holder or agents or any person or persons acting on behalf of him and through him are hereby restrained from alienating the suit schedule property 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 case.

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 28<sup>th</sup> day of November, 2017)

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

Order pronounced in the open  
court (vide separate order)

**ORDER**

I.A. No.I filed by the plaintiff under  
Order XXXIX Rule 1 & 2 of C.P.C., is  
hereby allowed.

Consequently, defendant or his  
attorney holder or agents or any person  
or persons acting on behalf of him and  
through him are hereby restrained from  
alienating the suit schedule property by  
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for a period of three months, from the  
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Parties are hereby directed to co-  
operate for the speedy disposal of the  
case.

No order as to the costs.

Civil Judge & JMFC.,  
Hunsur.

Call on for examination of  
parties under order X of C.P.C by  
03.01.2018.

Civil Judge & JMFC.,  
Hunsur.