

KAMS400013592022



**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC**  
**AT K.R.NAGAR**

**PRESENT:**     **Sri. Aravindra.B.C., B.A., L.L.B.,**  
**Senior Civil Judge & JMFC**  
**K.R. Nagar.**

Dated this the 12<sup>th</sup> day of June, 2024

**O.S./64/2022**

**Sri. Devarajanayaka,**  
S/o Late Muddanayaka,  
Aged about 60 years,  
R/at: Hampapura village,  
Hosa Agrahara Hobli,  
K.R.Nagar Taluk,  
Mysuru District.

**.....Plaintiff**

(By Sri. B.K.N., Advocate)

**-Versus-**

- 1. Smt. Siddamma,**  
W/o Late Hucchappa,  
Aged about 65 years.
- 2. Sri. Anandakumar H.,**  
S/o Late Hucchappa,  
Aged about 45 years
- 3. Smt. Kavitha,**  
W/o Anandakumar H.,  
Aged about 38 years.

All are R/at:  
 Hampapura village,  
 Hosa Agrahara Hobli,  
 K.R.Nagar Taluk,  
 Mysuru District.

**.....Defendants**

(By Sri. P.L.K., Adv.)

**Parties to I.A.No.V**

**Applicant** : Sri. Devarajanayaka

**..... Plaintiff**

-V/s-

**Opponents** : Smt. Siddamma and Others

**..... Defendants**

Provision under which the application is filed	Under Order 39 Rule 1 & 2 of CPC.
Relief Sought For	Seeking the relief of grant order of Temporary Injunction.
The date on which the application is filed	03.01.2024
Number of the application	IA No.V
The date on which the objection is filed by the different opponents	12.02.2024
The date on which the orders was passed on the said application	12.06.2024

**ORDER ON IA.No.V**

This is an application filed by the plaintiff/  
 applicant under Order 39 Rules 1 and 2 of Code of Civil

Procedure seeking the relief of ad-interim temporary injunction restraining the defendants, their labours or their relatives are alienating the suit schedule property till disposal of the suit.

2. In the affidavit which is enclosed to I.A. No.V it is stated that, the 2<sup>nd</sup> defendant is the son of 1<sup>st</sup> defendant and 3<sup>rd</sup> defendant is the wife of 2<sup>nd</sup> defendant. The defendants in order to meet their legal necessity have intended to sell the suit schedule property, as such they entered into agreement of sale dated 20.09.2021. As per the agreement, the defendants agreed to sell the suit property for Rs.10,80,000/- out of which the defendants have received an amount of Rs.8,00,000/-. The defendants agreed to receive balance amount of Rs.2,80,000/- at the time of execution of sale deed.

3. Further, the plaintiff approached defendants requesting to execute the registered sale deed, the defendants postponed the execution of sale deed for one

or the other reasons. The plaintiff is always ready and willing to perform his part of contract, but the defendants are postponing the same. If the defendants succeed in their act of selling the property, the plaintiff will be put to loss and hardship. It is alleged that, the defendants are trying to sell the property to the 3<sup>rd</sup> parties. Therefore, it is prayed to allow the application and issue an order of injunction.

4. On the other hand, the defendants have appeared before the Court through their counsel and filed objection to the I.A. No.V. In the objection statement, the defendant denying the entire reasons stated for allowing the application filed by the plaintiff. The defendant No.2 and 3 submitted that, they are in possession and enjoyment of the suit schedule property. The entire property is standing in the name of 2<sup>nd</sup> defendant. The plaintiff is residing at Hampapura village and the 2<sup>nd</sup> defendant is working as Guest Lecturer at Mysuru. Hence, he was not in a position to cultivate the land. As

such the plaintiff has approached the defendant No.2 to give the land on lease/mortgage basis. Hence, the plaintiff is a money lender. In order to avoid registration and stamp charges, the plaintiff has taken one sale agreement and another unregistered mortgage deed and he has paid a sum of Rs.8,00,000/- to the 2<sup>nd</sup> defendant on 20.09.2021 and taken the schedule property on mortgage. The plaintiff agreed to return all the documents after repayment of the said amount of Rs.8,00,000/-. But, now the plaintiff has misused the same in order to make wrongful gain and in order to knock of the suit property. Hence, the question of executing sale deed does not arise at all.

5. Further the defendants submitted that, the sisters of 2<sup>nd</sup> defendant have also filed suit against these defendants in OS No.359/2022 before this court for partition and separate possession in respect of entire extent of land bearing Sy.No.342. In the said suit, the sisters of defendant No.2 have also taken interim order.

Hence, the said suit is still pending and hence the property is under litigation. As such these defendants prayed to reject the application.

6. Heard the learned counsel appearing for the parties and perused the material on record.

7. Now the following points arise for consideration of this Court:

- 1. Whether the plaintiff has made out prima-facie case for grant of temporary injunction as sought for?**
- 2. Whether the balance of convenience lies in favour of the plaintiff ?**
- 3. Whether the plaintiff will be put to irreparable loss and injury if I.A. No.1 is not allowed ?**
- 4. To what order?**

8. The findings of this Court on the above said point 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**

9. **Point No.1:** The learned counsel for the plaintiff vehemently argued before the Court, the defendants in order to meet their legal necessity have intended to sell the suit schedule property for Rs.10,80,000/-. As such they have entered into agreement of sale dated 20.09.2021. As per the agreement, the defendants have received an amount of Rs.8,00,000/- and agreed to receive balance amount of Rs.2,80,000/- at the time of execution of sale deed. Despite service of notice, demands and requests made by the plaintiff, the defendants have not execute the sale deed. The plaintiff is always ready and willing to perform his part of contract. Such being the case, the defendants are trying to alienate the said property to the third persons. Hence, the plaintiff prayed to restraining the defendants from alienating the suit schedule property to the third persons till the disposal of the suit.

10. Per contra, the learned counsel for the defendants argued that, the plaintiff is residing at Hampapura village and the 2<sup>nd</sup> defendant is working as Guest Lecturer at Mysuru. Hence, he was not in a position to cultivate the land. As such the plaintiff has approached the defendant No.2 to give the land on lease/mortgage basis. Hence, the plaintiff is a money lender. In order to avoid registration and stamp charges, the plaintiff has taken one sale agreement and another unregistered mortgage deed and he has paid a sum of Rs.8,00,000/- to the 2<sup>nd</sup> defendant on 20.09.2021 and taken the schedule property on mortgage. The plaintiff agreed to return all the documents after repayment of the said amount of Rs.8,00,000/-. But, now the plaintiff has misused the same in order to make wrongful gain and in order to knock of the suit property. Hence, the question of executing sale deed does not arise at all. Further he argued that the plaintiff suit is not maintainable. Accordingly, prays for reject the application.

11. Perused the pleadings of the plaintiff it reveals that he has filed present suit for the relief of specific performance of contract. On the other hand, the defendants have denied the case of the plaintiff.

12. Keeping in view the rival contentions raised by the parties, now, this Court proceed to discuss that what is meaning of the word prima-facie case. It is well settled that the plaintiff has to make out a prima-facie case to get the relief of injunction. In other words, the Court must be satisfied that there is a bonafide dispute raised by the plaintiff and there is a strong case for trial which needs investing also and decision on merits and on the facts before the Court there is a probability of the plaintiff being entitled to the relief claimed by the plaintiff. This view of this Court receives support from the law declared by the **Hon'ble Apex Court in the decision reported in AIR 1993 SC 276 between Dhalpath Kumar Vs. Prahalad Singh**. Keeping in view this meaning of the word 'prima-facie case' once again this Court perused

the entire case of the plaintiff. It must be noted that this Court have already stated about the contention raised by the plaintiff in the preceding paragraph of this order itself. In the view of this Court when the plaintiff allege that is in possession and enjoyment over the suit schedule property, and when the defendants denies the contention of the plaintiff, then it becomes clear that dispute has to be investigated by this Court. Keeping in view this fact, ow this Court proceed to discuss the documents produced by the plaintiff.

13. In the light of the arguments canvased by the learned counsel for the parties. The plaintiff has produced the sale agreement 20.09.2021, RTC, legal notice, unserved RPAD and reply notice. This court carefully pursued the documents made available before the Court, it appears that, there is agreement between both the parties. The suit land is also appearing in the name of defendant No.2. There is no other ground to disbelieve the version of plaintiff. Hence, the plaintiff has

produced the necessary documents in support of his case, such as agreement of sale with respect to the suit schedule property. The pleadings are corroborated with the contents of documents. On the other hand, the defendants have not produced any documents to prove their contention. According to him the plaintiff has approached him to give the land on lease basis. The plaintiff has paid of Rs 8,00,000/- to the defendant No 2 on 20.09.2021 and to avoid the payment of stamp duty, the have entered in to agreement and he repaid the entire amount to the plaintiff. But the plaintiff did not return the documents. Now at this stage cannot to be say whether the defendant No 2 has to be executed the suit document or lease deed. It requires full pledged trial. Admittedly, there was monitory transaction between the plaintiff and defendant No.2. The defendant No.2 says that he was paid amount of Rs.8,00,000/- to the plaintiff after competition period of mortgage but, no prima-facie documents produced by the defendant No.2.

14. The documents produced by the plaintiff shows prima-facie in his favour. It is well settled that prima faice case means that the Court should be satisfied that there is a serious question to be tried at the hearing and there is a probability of plaintiff obtaining the relief at the conclusion of question raised bona-fide which needs investigation and a decision on merits. In the present case on hand, the plaintiff has made out prima-facie case by producing the documents. **With these observations this Court answered in the point No.1 is in the Affirmative.**

15. **Point No.2 & 3** :- These two points are taken together for discretion, since they require common discussion.

16. The learned counsel for the plaintiff argues before the court that, the defendants are trying to alienate the schedule property. Therefore, if injunction is not granted, the plaintiff will be suffer to great loss. At

this juncture, this court looking into the meaning of balance of convenience, it means that, comparative mischief or inconvenience which is likely to issue from withholding the injunction will be greater than that what is likely to arise from granting it. Keeping in these principles, this court also a careful reading of the object of Order 39 it becomes clear that, the court has to strike a delicate balance between two conflicting interest. In the present case on hand the plaintiff seeking interim relief of temporary injunction against the defendants from alienating the suit schedule property till disposal of the suit. Admittedly the Katha of the suit property stands in the name of defendant No.2. If the defendants dispose the property during pendecny of the suit, the interest of the plaintiff will be defeated and to avoid the multiplicity of proceedings and in the interest of justice and equity the temporary injunction is granted against the defendants. In the present case this court come to the conclusion that, the balance of convenience lies in favour

of the plaintiff and if the injunction is not granted the plaintiff will be put to inconvenience and irreparable loss and injury. **With these observations this court answered the Point No.2 and 3 in the Affirmative.**

17. **Point No.4** : For the above discussion on point No.1 to 3, this court proceed to pass the following:

**ORDER**

I.A.No.V filed by the plaintiff under Order 39 Rules 1 and 2 of CPC is hereby allowed.

The defendants, their labours and their relatives are temporarily restrained from alienating the schedule property till disposal of the suit.

No order as to cost.

*[Dictated to the Stenographer directly on computer, typed by her, corrected and then pronounced by me in the Open Court on this the **12<sup>th</sup> day of June, 2024]***

**(ARAVINDRA B.C.)  
SENIOR CIVIL JUDGE & JMFC,  
K.R.NAGAR.**