

KAMS410027142021



IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR

PRESENT

Sri. Chandan S, B.Com., LL.B

Prl. Civil Judge & JMFC, Krishnarajanagara.

DATED 01ST DAY OF MARCH 2025

O.S./323/2021

Plaintiffs : M.V.Ramesha and another
-V/s-

Defendant : M.V.Mahadevappa

I.A. No.I

Applicants : M.V.Ramesha and another
-V/s-

--- Plaintiffs

Opponent : M.V.Mahadevappa

--- Defendant

ORDER ON IA NO.1 FILED U/O 39 R-1 AND 2 OF C.P.C

This application which is filed and preferred by the applicant/plaintiffs, wherein the applicant/plaintiffs through this application, they have asked and sought for the relief of the interim injunction so to restrain the defendants or anybody acting on his behalf to restrict him from alienating the suit schedule property till the disposal of the suit.

2. Further in an affidavit filed in support of the application, the applicant has stated that, the suit has been filed for the relief

of specific performance of contract. Further, the affidavit would reveal and indicate that, the defendant being the owner of the schedule property, he has expressed his intention and offered to sell the schedule property in favour of the plaintiffs for total sale consideration of Rs.3,75,000/- which was accepted and agreed by the plaintiffs. Therefore, the defendant executed an agreement of sale dated 21.06.2019 towards the plaintiffs herein and he has also collected and obtained Rs.3,50,000/- as earnest and token of advance money. Further as per the agreement, the defendant is agreed and undertaken to receive and collect the remaining sale consideration and to execute the sale deed in favour of the plaintiffs.

3. Thereafter, when the plaintiffs approached the defendant along with remaining sale consideration, the defendant instead of obeying and complying his obligations created as per the sale agreement, he did not come forward to execute the sale deed. Therefore, a legal notice has also been issued to the defendant on 16.10.2020 asking the defendant to execute the regular sale deed towards the plaintiffs. Though the notice was issued to the defendant demanding and seeking for execution of absolute and regular sale deed, the defendant without executing the sale deed as per the contractual obligation created on the basis of the agreement, he is trying to sell and alienate the schedule property with an intend to defraud and to deceive the right of the plaintiffs in respect of the interest created on account of the sale agreement. Therefore, according to the applicant/plaintiffs in order to secure, protect and to keep the property intact from

there being any alienation to the 3rd parties, they seeks to allow the application thereby restrict and restrain the defendant from causing any alienation in respect of the schedule property.

4. Upon service of summons, the defendant approached this court through his counsel and he has denied the execution of the sale agreement and other recitals, contents and pleadings of the plaint. Further, in the statement of the defendant while declining the averments of the plaint, he has further submitted before this court that, the 1st plaintiff and the defendant are brothers. The plaintiffs having animosity, retaliation as against the defendant. Therefore, they have precipitated and sprint to create the documents styled as sale agreement, wherein the signature of the defendant has been forged, created and concocted in the sale agreement. Further it has been submitted and contemplated in the written statement that, the suit schedule property being the undivided joint, composite and comprehensive property of the entire family of the defendant, since there is no division bifurcation in the family in the form of any partition in the family members of the defendant, they are having right and share in the schedule property. Therefore, the defendant alone has not conferred, vested or absolute right created upon him to execute any kind of sale deed or agreement in favour of plaintiffs. Therefore, according to the defendant the present sale agreement which is alleged to be executed by the defendant has been created concocted and forged. Hence, prays for dismissal of the application.

5. Heard the counsel appearing for plaintiffs and also the opponents/defendant herein. Upon considering the pleadings and also verifying the pleadings, materials available on records.

6. The following points arise for this court's consideration.

1) Whether the applicant/plaintiffs have made out that, they have got a prima-facie case on hand?

2) Whether the applicant further made out that, the balance of convenience lies in their favour?

3) Whether the applicant further made out that, it will cause untold hardship and irreparable damages to them, if the present application is not allowed?

4) What order?

7. This court findings on the above points for consideration 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

8. POINT NO.1 TO 3:

For the facts and circumstance of the application are concern these three points are interlinked and to avoid the repetition of facts these points are taken up together for common discussion.

9. Upon appreciating the pleadings along with the materials placed before this court, while adjudicating and deciding the application which is filed U/o 39 R-1 and 2 of C.P.C., the relevant factors to be considered by the court is regarding existence of prima-facie factors and case which involves finding of facts as to whether a case for trial is made out and also whether other factors requisite for grant of injunction exists. Further, the court has to consider the balance of convenience in respect of the parties and irreparable injuries or loss if any, that may be suffered by the plaintiff in the case of refusal to grant injunction.

10. Further, admittedly there is no evidence on record to consider the applications on the basis of the evidence. Further, the parties to the suit are yet to lead their evidence. Accordingly, in the absence of any evidence to discuss the applications, this court has to consider only the available materials which are presented before this court by the respective parties to the suit.

11. Upon verifying the pleadings contrary and also vetting out the materials available before this court. According to the plaintiffs, the defendant being the owner of the schedule property in dispute, he has entered into the agreement of sale, wherein he has executed the said agreement of sale towards the plaintiffs for the total sale consideration of Rs.3,75,000/- and thereby he has obtained and received Rs.3,50,000/- as advance earnest money and agreed to execute the regular absolute sale deed in favour of

the plaintiffs by collecting the remaining sale consideration. However, when the plaintiffs approached the defendant with the remaining sale consideration of Rs.25,000/- and asked for the defendant to execute the sale deed as undertaken by him as per the sale agreement, the defendant declined and denied without coming forward to execute the sale deed as undertaken by him on account of sale agreement.

12. Further according to the plaintiffs, the defendant embezzling and taking advantage of the entries in the revenue records, in order to deceive, defraud and to grab the property unlawfully and illegally, he is looking and also intending to sell the same to the 3rd parties. However, the said contention and approbation of the plaintiffs was specifically deprecated and denied by the defendant who filed the statement, wherein according to him, he did not execute any such sale agreements towards the plaintiffs herein and the plaintiffs have created the agreement forging and fabricating the signature of the defendant. Therefore, the another ground and stand of the defendant, he has not conferred with any independent right to execute any document pertaining to the schedule property towards anybody since the property under dispute is belongs to the entire family and no division or partition is yet effected and the schedule property is in the nature of joint composite interest of all the family members.

13. Therefore, since we are adjudicating the application, the point for adjudication is whether the applicants have made out

justifiable prima-facie grounds to protect the property from being alienated. Notably there is an agreement dated 21.06.2019, wherein as per the said document it would suggest and indicate that, the defendant herein undertaken to sell the said suit schedule property towards the plaintiffs herein. Further, where the other perpetration, incubation that are alleged by the defendant that, the said agreement of sale has been forged or created or concern, the same being involved the real conflicts and disputes, it is for the defendant who has countered and denied the agreement to prove the same and to establish the said document of sale agreement has been created, concocted. The said process is requires full fledged trial and the defendant has to lead evidence so as to inure and enlighten the court so as to ensure whether the document is fabricated during the course of full fledged trial. The same requires complete adjudication and it is absolute beyond and out of the scope of the application. Further, admittedly the revenue entries pertaining to the schedule property is presently standing in the name of the defendant, till the final adjudication of the suit, the property is to be protected and maintained intact in order to avoid multiple proceedings.

14. However at this stage this court cannot go in to the matter regarding merit of the suit and decide the case on its merit. Further since we are adjudicating in respect of the application filed U/o 39 rule 1 and 2 C.P.C., till the parties to the suit establish their pleadings of plaint, the subject mater of the suit has to be maintained intact. The plaintiffs have made out prima-

facie case, if the defendant alienates the schedule property during the pendency of the suit, then it may cause untold hardship and irreparable loss and damages. Hence the said application requires to be allowed at this juncture.

15. Hence considering all these factors, in order to avoid the multiplicity of the proceedings and to retain the property free from all encumbrances and to maintain the same intact, this court is of the opinion that, the property has to be maintained intact without any alienation. Further, restraining the defendant from causing any alienation can no way prejudice the case in favour of the plaintiffs and it will not effect adversely to the interest of the defendant in proving and establishing his pleadings of written statement. Admittedly, the schedule property is now standing in the name of the defendant. Further, it is the liability and obligation on the part of the applicant/plaintiffs to prove the execution of the sale agreement and the consideration received by the defendant during the course of trial. Hence, the plaintiffs have made out prima-facie case so as to protect their interest till the disposal of the suit and the balance of convenience lies in their favour. Hence, with the above observations, this court inclined to answer the **points No.1 to 3** are in the **affirmative**.

16. POINT NO.4:

In view of the above discussions and the reasons mentioned therein this court proceeds to pass the following:-

ORDER

Application No.1 filed under Order 39 Rule 1 and 2 of C.P.C is hereby allowed.

The defendant or anybody acting on their behalf are hereby restrained from alienating application schedule property till the disposal of suit.

No orders as to cost.

[Dictated to the Steno, transcribed by her. Corrected and then pronounced by me in the Open Court on this the 01st day of March 2025]

(Chandan.S)
Prl. Civil Judge & JMFC.,
K.R.Nagar.