

KAMS410009732024



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 FEBRUARY 2025

O.S./261/2024

Plaintiffs : Smt. Shivaramegowda

-V/s-

Defendants : Sri. Sannaswamichari and another

I.A. No.I

Applicant : Shivaramegowda

--- Plaintiff

-V/s-

Opponents : Lokeshachari

---2nd Defendant

ORDER ON IA NO.1 FILED U/O 39 R-1 AND 2 R/W SEC. 151
OF C.P.C

This application has been instilled and inducted invoking the provision of 39 R-1 and 2 of C.P.C. to pass an order of injunction thereby to restrain the 2nd defendant or the person claiming under him from causing any alienation pertaining to the schedule property in any manner till the disposal of the suit.

2. Further in an affidavit filed in support of the application, the applicant has stated that, the defendant No.1 and 2 being the

owners of the schedule property bearing Sy.No. 47/1 measuring 0.30 guntas of land out of 2 acres 2 guntas of land has been agreed to be sold towards the plaintiff herein. Wherein the defendants agreed and also consented to sell the property of 30 guntas towards the plaintiff herein for the total sale consideration of Rs.30,000/- for their legal necessity. Thereafter, the defendants executed and also preferred the sale agreement towards the plaintiff on 11.11.2002 and on the date of the execution of the sale agreement, they have collected the entire sale consideration of Rs.30,000/- in the presence of the witnesses. Further, agreed to execute the absolute and regular sale deed obtaining necessary documents, but they failed to do so or to adhere strict sense of the sale agreement terms. Further the defendants are under the obligations created on account of the agreement of sale executed towards the plaintiff. But, the defendants violating and disobeying and also tarnishing their own undertakings, they failed to execute the absolute and regular sale deed in spite of notice being issued through the recognized agent of the plaintiff herein seeking for enforcement and also execution of the sale deed as per the agreement.

3. However, the contrabanding and contravening the said pleadings and also the submission of the plaintiff in the said pleadings of the plaint, the defendants agitating and also immune the said views, the written statement came to be filed, wherein in the statement of objections, the title of the defendants over the property has been admitted. However, the

remaining paragraphs pertaining to the other accusation and perpetration have been clearly inhabited and inculcating in their statements. Further according to the defendants, as per their pleadings, they have taken different contentions which further divulges and postulates that, the plaintiff herein offered and also lent loan of Rs.20,000/- towards the defendants and he has obtained the signatures of the defendant No.1 on a blank paper as a mode of security and to protect the said debt. Wherein the defendants where also agreed to pay the interest on the said sum of Rs.20,000/-. On the said loan transactions, the defendants paid the interest as also the principle amount which is borrowed. When the said documents when it was sought to be returned, it was answered and replied that, the said document was lost and it will be returned soon after and immediately once it is secured. Accordingly, the right and title of the defendants over 2 acres 2 guntas of land in Sy.No. 47/1 is sufficiently proved by the plaintiff, since it has not been declined or immune by the defendants who have filed their statements. Hence, prays for dismissal of the application by imposing cost.

4. Heard the counsel appearing for plaintiff and also the opponents/defendants herein. Upon considering the pleadings and also verifying the pleadings, materials available on records.

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

1) Whether the applicant/plaintiff has made out that, he has got a prima-facie case on hand?

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

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

4) What order?

6. 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

7. 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.

8. 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.

9. 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.

10. Upon verifying the pleadings contrary and also vetting out the materials available before this court. Further, the right of the defendants and the execution of the gift deed towards the 2nd defendant dated 29.11.2023 is more-fully and apparently accepted and admitted which has been not disputed by the defendants in their statements of the objections it has been specifically asserted and attributed to be true and correct. Further there is no constraints, disputes or perpetration over the said execution of the gift deed towards the 2nd defendant. However, the rivalry and retaliatory, contradiction pertaining to the pleadings where it is the plaintiff in his plaint, has specifically stipulated and devised to submit that, the said defendants being the owners entered into an agreement of sale,

wherein they agreed to perform and to execute the sale deed pertaining to 30 guntas of land out of 2 acres 2 guntas in Sy.No. 47/1 and they have received Rs.20,000/- in the presence of the witnesses who were present.

11. Further to secure, protect and to safeguard the said transaction, the defendants entered into an agreement of sale towards the plaintiff herein. Where the defendants agreed to sell the schedule property by collecting and procuring the relevant documents pertaining to the schedule property. However, the said version was contra-banding and also declining the said pleadings of the plaintiff, which has been craved and contemplated in the statement that, according to the defendants the said Rs.20,000/- has been collected and borrowed towards the family legal necessity in the form of loan and not for executing the sale agreement. The defendants never intended and also they have any intensity so as to sell the schedule property towards the plaintiff herein. But, it is only in the strict sense of loan which has been borrowed by the plaintiff, where the said document was issued and obtained by the plaintiff on a blank paper so as to secure, protect and also safeguard the loan amount which has been offered and tendered towards the defendants. Hence, it is the pleadings encompassed and disclosed in the statement that, even after the payment of loan along with interest, the document which was issued towards the plaintiff as a mode security towards the debt, the document was not returned and it was said to be lost and it will be returned once it is found.

12. However at this stage this court cannot go into 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 plaintiff has made out prima-facie case, if the defendant No.2 alienate 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.

13. Hence the 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 properties have to be maintained intact without any alienation. Further, restraining the defendant No.2 from causing any alienation can no way prejudice the case in favour of the plaintiff and it will not effect adversely to the interest of the defendants in proving and establishing their pleadings of written statement. Admittedly, the schedule property is now standing the name of the defendants. Further, it is the liability and obligation on the part of the applicant/plaintiff to prove the issue of execution of the sale agreement and also establish the said agreement was enforced and executed with a motive to sell the schedule property towards the plaintiff for the total sale consideration of Rs.30,000/-. Hence, the plaintiff has

made out prima-facie case so as to protect his interest till the disposal of the suit and the balance of convenience lies in his favour. Hence, with the above observations, this court inclined to answer the **points No.1 to 3** are in the **affirmative**.

14. 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 R/w Sec. 151 of C.P.C is hereby allowed.

The defendant No.2 or anybody acting on his 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 January 2025]

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