

KAMS500012622021



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC
NANJANGUD**

Present : **Sri. Kamalaksha D., B.A., LL.B.,**
Senior Civil Judge & J.M.F.C.,
Nanjangud.

Dated this the 5th day of December 2024

O.S./117/2021

Plaintiff

V.Ashok Kumar
aged about 64 years,
S/o late Vasudeva Rao,
residing at D.No.466/1,
10th Main, 13th Cross,
Wilson Garden,
Bengaluru City.

-V/s-

Defendants:

1. L.Yashodha,
aged about 39 years,
W/o D.Mahesh,
2. M.Y.Akarsh,
aged about 24 years,
S/o D.Mahesh,

3. M.Y.Harsha
aged about 23 years,
S/o D.Mahesh,

All are residing at
D.No.3958, 2nd Cross,
Kukkarahalli,
Saraswathipuram,
Chamaraja Mohalla,
Mysuru.

I.A. I

Applicant : V.Ashok Kumar
.... plaintiff

(By Sri. Bala Krishna Bhat, K., Adv.)

-V/s-

Opponents : L.Yashodha and others
...defendants
(By Sri. K.T.Swamy, Adv.)

**ORDER ON I.A. I UNDER ORDER 39
RULES 1 & 2 R/W SECTION 151 OF CPC**

The suit is filed for the relief of specific performance of contract. Along with the suit, I.A.I is filed for the relief of temporary injunction to be issued against the defendants restraining them or anybody on their behalf from alienating, encumbering or otherwise creating

mortgage/charge over the application schedule property in any manner, till disposal of the case.

2. The plaintiff sworn in the affidavit that, the suit is filed for the relief of specific performance of contract under the registered agreement of sale dated 12.10.2017 stated to have been executed by the defendants. The defendants are the absolute owners in possession and enjoyment of the application schedule property i.e., kushki land bearing Sy.No.279/1 measures 1 acre 20 guntas situated at Uppinahalli Village of Nanjangud Taluk. It is further submitted that, the defendants had executed an agreement to sell dated 12.10.2017 with respect to the suit schedule property in favour of the plaintiff for a valuable consideration of Rs.15,00,000/- upon a terms *interalia* incorporated therein. The said agreement is registered before the jurisdictional Sub-Registrar. It is further submitted that, towards the discharge of the said agreed sale consideration, the defendant had collected Rs.10,00,000/- substantial amount as advance amount

from the plaintiff. The advance amount was paid through cheque bearing No.580383 drawn on Andhra Bank, Wilson Garden Branch, Bengaluru. It is further submitted that, after agreement of sale the plaintiff is ready and willing to perform his part of contract by paying remaining balance amount, but the defendants failed to perform their part of contract. Meanwhile, the defendants are making attempt to alienate the suit schedule property in favour of the other person, by that manner the defendants have contacted with some other persons to sell the suit schedule property while the agreement executed in favour of the plaintiff is pending. Knowing the same, the plaintiff met the defendants and requested to execute the registered sale deed as agreed in the agreement dated 12.10.2017, but the defendants have denied to execute the same. Hence, the plaintiff filed this application for temporary injunction.

3. Per contra, the defendants filed objections stating that all the averments mentioned in the application are totally false and the plaintiff is bound to prove the same. It

is further submitted that, the averments made in para Nos.11 to 15 of affidavit of I.A.I are false and baseless. The defendants never did anything to contrary to the agreement, but the plaintiff has clearly violated the conditions of the agreement because he is not ready to perform his part of contract that is to say the plaintiff failed to pay remaining balance amount within the stipulated period. The defendants never made attempt to dispose the property in favour of the third person as alleged by the plaintiff. The averments mentioned in the affidavit of I.A.I is only to get the courtesy of this court. The plaintiff miserably failed to prove the prima-facie case. Hence, pray to reject the application.

4. Heard the arguments. Perused pleadings and materials placed on record. The points that arise for my consideration are:

1. Whether the plaintiff proves prima-facie case to grant temporary injunction ?

2. Whether the plaintiff further proves that balance of convenience lies in his favour?
3. Whether irreparable injury will cause to the plaintiff if temporary injunction is rejected?
4. What order ?
5. The above points are answered as follows :-

Points No.1 to 3 : In the affirmative

Point No.4 : As per final order
for the following:-

REASONS

6. **Point No.1** :- As discussed above, the suit is filed for the relief of specific performance of contract on the basis of agreement of sale dated 12.10.2017. The learned counsel for the plaintiff argued that, the substantial quantum of amount was already paid as advance amount to the defendants, but the defendants never ready to execute the registered sale deed of their property as agreed in the agreement. The plaintiff also ready to pay remaining balance amount to the defendants, but the defendants have not come forward to receive the same.

7. The plaintiff furnished 7 documents. The first document is the registered agreement for sale dated 12.10.2017. The photograph and thumb impression of the buyer and seller may be seen in the document. I would not like to discuss the merits and de-merits of the recitals of the agreement at this stage to avoid prejudice to the parties. However, the above dated agreement indicates the burden upon the parties to comply their part of contract well within time fixed in the said agreement. The agreement further shows the payment of Rs.10,00,000/- as advance amount through cheque bearing No.580383 and admitted to receive the remaining Rs.5,00,000/- at the time of registration of the sale deed. The second document is the legal notice dated 21.10.2019, by this notice the plaintiff made attempt to call the defendants to perform their part of contract, but the defendants have failed to perform their part of contract for the reason best known to them. The third document is the postal receipts as to prove the service of notice to the address of the defendants. The fourth document is the reminder notice dated

11.08.2020. The 5th document is the postal receipts dated 12.08.2020. The 6th document is the reply notice, the defendants replied to the second notice issued by the plaintiff through his counsel. In the reply notice it is mentioned that, though the plaintiff mentioned in the plaint averments about his readiness and willingness, but practically the plaintiff never shown his eagerness to perform his part of contract. Therefore, the learned counsel for the defendants argued that, the plaintiff simply expressed some sentences in the plaint as well as legal notices only to get courtesy of the court, indeed the plaintiff is not ready and willing to perform his part of contract at any point of time from the date of agreement. The last document is the R.T.C. of the suit schedule property.

8. The learned counsel for the defendants relies upon the judgment of the Hon'ble Supreme Court reported in **AIR 2024 SC 683** decided between **Alagammal ad others Vs. Ganesan and another**. In that case the Hon'ble Apex

Court has held that, “*Specific performance of agreement to sell – Readiness and willingness – Time was the essence of agreement – plaintiff had failed to make full payment within fixed time-frame – Since time was not extended, no enforceable right accrued to plaintiff for getting relief under Act of 1963.*” Therefore, the learned counsel for the defendants on the strength of the above referred judgment argued that the plaintiff may failed to pay entire consideration amount within the stipulated time. Therefore, the plaintiff is not entitled to get any relief. It may be said that the defendants have not denied the payment of substantial consideration amount through cheque. Only meager amount is remains to be paid as consideration amount to the defendants, but as discussed above the defendants have not denied the payment of amount of Rs.10,00,000/- through cheque. It is also pertinent to note that the defendants did not reply to the first notice of the plaintiff, thereafter they replied to the repeated notice means the 2nd notice of the plaintiff. The failure of the defendants is outcoming truth. The denial of

the defendants to execute regular sale deed in favour of the plaintiff within the stipulated period itself shows the prima-facie case, because suppose temporary injunction is not granted it will facilitates the defendants to alienate the suit schedule property in favour of the third person or other than the plaintiff, because suppose the defendants are ready to comply the terms of agreement they would have executed the regular sale deed within stipulated time. Therefore, the plaintiff proves the prima-facie case. Hence, **point No.1** is answered **in the affirmative**.

9. **Points No.2 and 3:** These points are taken together for discussion. The learned counsel for the plaintiff argued that suppose temporary injunction is denied definitely the defendants will alienate the suit schedule property in favour of the third person or other than the plaintiff because their failure itself shows their negative attempt to comply the terms of agreement. It seems correct, because as aforesaid if the defendants really ready to perform their part of contract they would have executed the regular sale

deed of suit schedule property as agreed in the agreement. Suppose temporary injunction is denied, the defendants will dispose the suit schedule property in the midway or interregnum of trial, then the plaintiff will lose the very subject matter of the suit, then nothing will be available for trial. Even though subject matter of the property remains as it is, the plaintiff has to take further burden to implead the subsequent purchaser. Therefore, to avoid multiplicity of proceedings need of temporary injunction is required. Suppose the defendants alienate the suit schedule property in favour of others, the possible loss cannot be compensated by terms of money. Hence, **points No.2 and 3** are answered **in the affirmative**.

10. **Point No.4:-** In view of the findings on the above points, this Court proceeds to pass the following:

ORDER

I.A.I filed by the plaintiff under Order XXXIX Rules 1 and 2 r/w Section 151 CPC is allowed.

The defendants or anybody acting on their behalf are restrained from alienating the suit schedule property in any manner by way of temporary injunction till disposal of the suit.

No order as to cost.

(Dictated to the stenographer, transcribed by her on computer, revised, corrected and then pronounced by me in open Court on this the 5th day of December 2024).

(Kamalaksha D.)
Senior Civil Judge & J.M.F.C.,
Nanjangud.