

KAMS500033292022



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

Present : **Smt. B. Anupama Lakshmi**, B.A., LL.B.,
Senior Civil Judge & JMFC,
Nanjangud.

Dated this the 16th day of June 2023

O.S./246/2022

Plaintiff : B.R.Dayananda

-V/s-

Defendant : Nataraju

I.A. IV

Applicant : B.R.Dayananda
.... plaintiff

-V/s-

Opponent : Nataraju
... defendant

ORDER ON I.A.IV

The plaintiff has filed I.A.IV under Order 39 Rules 1 and 2 of C.P.C. when the case was posted for plaintiff's evidence, seeking temporary injunction restraining the

defendant/opponent from alienating the suit schedule property, till disposal of the suit.

2. The defendant filed statement of objections.

3. Heard. Perused the pleadings and materials placed on record.

4. The points that arise for consideration are as follows:-

1. Whether the plaintiff has made out a prima facie case ?
2. Whether the balance of convenience lies in favour of plaintiff?
3. Whether the plaintiff will be put to irreparable injury if the temporary injunction is not granted ?
4. What order ?

5. My findings on the above points are as follows :

Point Nos.1 to 3 : In the negative

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

REASONS

6. **Point Nos.1 to 3:-** These points are interconnected with the one another. Hence, they are taken up together for discussion in order to avoid repetition.

7. The plaintiff has instituted the suit for specific performance of unregistered agreement dated 18.12.2020. According to the plaintiff, the defendant has promised to sell the suit schedule property for a consideration of Rs.9,00,000/-. The defendant has received in total advance consideration of Rs.5,00,000/-. But the defendant has executed a registered agreement of sale in favour of opponent promising to sell the suit schedule property for Rs.2,70,000/- by receiving an advance amount of Rs.2,00,000/-. Therefore, to avoid multiplicity of proceedings the opponent is necessary for proper adjudication of the suit.

8. The defendant has denied case of the plaintiff except admitting that suit schedule property is his self-acquired property.

9. The present suit is based on the sale agreement dated 18.12.2020 which is an unregistered and insufficiently stamped document. As per law relief cannot be granted on the basis of an insufficiently stamped document. Apart from that, in case any alienation is done during the pendency of the suit then it will attract lis-pendens. Therefore, this court is of the view that, as per the documents there is no prima-facie case in favour of the plaintiff and balance of convenience does not lie in favour of the plaintiff and he will not suffer hardship if temporary injunction is not granted. Hence, Point Nos.1 to 3 are answered in the negative.

10. **Point No.4:-** In view of the findings on the point Nos.1 to 3, this Court proceeds to pass the following:

ORDER

I.A.IV filed by the plaintiff under Order 39
Rules 1 and 2 of CPC is dismissed.

*(Dictated to the Stenographer directly on computer, revised, corrected
and then pronounced by me in open Court on this the 16th day of June
2023).*

(B.Anupama Lakshmi)
Senior Civil Judge & J.M.F.C.,
Nanjangud.

**Order pronounced in the open court
(vide separate order)**

ORDER

I.A.IV filed by the plaintiff
under Order 39 Rules 1 and 2 of
CPC is dismissed.

Senior Civil Judge, Nanjangud.