

KAMS600001762022



O.S./18/2022

**IN THE COURT OF THE SENIOR CIVIL JUDGE AT
PERIYAPATNA.**

Present
Sri.A.SAMIULLA
B.Sc., LL.B.,
Senior Civil Judge,
Periyapatna.

Dated: 2nd Day of December 2023

OS.No.18 of 2022

Smt.Putamma.

..... Plaintiff

Versus

Smt.Nagamma & Anr.

..... Defendants

IA.No.7

Smt.Putamma.

.... Applicant/Plaintiff

Versus

Smt.Nagamma & Ors.

.... Opponents/Defendants

| | |
|-----------------------------------|---|
| Provision under which IA is filed | u/Order 39 Rules 1 & 2 r/w Section 151 of CPC |
| Relief sought for | Temporary Injunction |
| Date of filing of application | 25.10.23 |
| Application No. | 7 |
| Date of filing objection | 02.11.23 |
| Date of order | 02.12.2023 |

:Order on IA-7; u/O 39 R 1 & 2 r/w Sec.151 of CPC:

Plaintiff moved this application seeking to issue temporary injunction to restrain the defendants from alienating the suit properties in any manner till disposal of suit.

2. Defendants-1, 2 and 4 filed memo under taking that they will not alienate the suit properties pending disposal of suit. Defendants-3 and 5 have not filed any objection statement.

3. Heard arguments.

4. Following points arise for consideration:

- 1. Whether plaintiff proves that she has got a prima facie case?*

2. In whose favour the balance of convenience lies?
3. To whom the irreparable loss will be caused?
4. What order?

5. Findings to the above points are as under;

Point-1: Affirmative.

Point-2: In favour of plaintiff.

Point-3: To the plaintiff.

Point-4: As per below for the following;

REASONS

6. **Point-1:** At the outset; suit is filed for specific performance of contract by asserting that; defendants being the owners in possession of lands bearing Sy.No.73/3 (20Gs) and Sy.No.73/4 (16Gs), which they got under partition deed dated 25.07.18 have agreed to sell the same for a consideration of Rs.14 lakhs and by receiving advance sale consideration of Rs.12 lakhs they have executed registered sale agreement dated 26.04.19 in her favour agreeing to execute the sale deed within two years but they failed to do so. Plaintiff with ready balance sale consideration demanded the defendants

to perform their part of contract but to no use. Hence, suit is filed.

7. Defendants resisted the suit by filing written statement denying plaint averments. They contended that; plaintiff and her son Mahadeva are money lenders; they (defendants) availed loan of Rs.5 lakhs from them in part by part for interest at the rate of 5% per month. For the security of said amount they took four signed blank cheques and subsequently they obtained suit agreement for the security of loan amount. They (defendants) never intended to sell the suit properties. Hence, they prayed to dismiss the suit.

8. After exchange of pleadings; settlement of issues; matter was set down for trial. At this stage the plaintiff filed the application at hand for the relief stated *supra* by stating that after filing of suit she came to know

that defendants-1 and 2 in collusion with defendants-3 and 4 have entered into a registered partition deed; thereafter, the defendants-2 & 3 illegally sold a portion of suit properties in favour of defendant-5. Now, defendants-3 to 5 are impleaded in the suit. They are further trying to alienate suit properties to defraud the plaintiff. Hence, she prayed to allow the application.

9. Defendants-1, 2 and 4 filed memo undertaking that they will not alienate suit properties pending disposal of suit. Defendants-3 and 5 have not filed any objections to the application.

10. Settled position of law is that; to seek discretionary relief of temporary injunction plaintiff must satisfy the Court with respect to the existence of a *prima facie* case, irreparable injury likely to be suffered by her and the balance of convenience lies in her favour.

11. Let us see whether plaintiff has established a *prima facie* case or not. Careful scrutiny of rival pleadings put forth by the parties to lis and the contents of documents produced by them, one can see that; there is no dispute whatsoever with respect to the ownership of defendants-1 & 2 over the suit properties. It is also not in dispute that the defendants have executed the suit sale agreement in favour of plaintiff in respect of suit properties. The only bone of contention is that; plaintiff averred that the defendants-1 & 2 agreeing to sell the suit properties have executed the suit document; whereas, defendants-1 & 2 contended that; they never intended to sell the suit properties but the suit document was executed for the security of loan amount they have taken from the plaintiff, who is a money lender.

12. Facts asserted and facts denied *supra* manifest that; at the moment plaintiff has made out a *prima facie* case by demonstrating that the defendants-1 & 2 have executed suit document in her favour and there are triable issues involved in the suit.

13. Fact in issue i.e., whether suit document is executed agreeing to sell the suit properties as pleaded by the plaintiff or it was executed towards security of loan amount as contended by the defendants is to be adjudicated only after a well dressed trial. Said fact in issue cannot be decided at the threshold. Hence, point-1 is answered partly in affirmative.

14. Points-2 & 3: These points are taken together for common discussion to avoid repetition of facts.

15. Temporary injunction is a preventive relief and

its purpose is to preserve status quo in respect of the subject matter of the suit.

16. In the instant case; plaintiff sought preventive relief to restrain the defendants from alienating suit properties. Findings on above point show that at the moment plaintiff demonstrated the existence of a *prima facie* case in her favour. Under these circumstances if the defendants are not restrained from alienating suit properties the plaintiff will be subjected to hardship because it will result in the multiplicity of proceedings and same would adversely affect the right of the party seeking injunction on ultimately succeeding in the suit. In that event plaintiff will be subjected to irreparable injury which cannot be compensated by any means, as such Court interference is necessary to protect plaintiff from injury, which is irreparable. Under these

circumstances comparative mischief or inconvenience likely to be caused from withholding injunction will be greater than by granting it. Thus, the balance of convenience also tilts in favour of plaintiff against the defendants. Accordingly, these points are answered.

17. It is argued that; if order is granted then the defendants will not be in a position to raise loans to cultivate the suit lands. On the other hand plaintiff argued that; if the defendants allowed to avail loans on suit lands then they will raise huge loans to defraud the plaintiff.

18. The contention raised by the plaintiff is not tenable because what ever the agricultural loans raised by the defendants for the cultivation of suit lands will bind only on them and said loan is no way a hurdle for the plaintiff to claim her right if any. It is

needless to say that the loans to be raised are binding only on the defendants and not on plaintiff's right if any.

19. Point-4: By virtue of above findings, Court proceeds to pass the following;

ORDER

IA-7; under Order 39 Rule 1 & 2 r/w Section 151 CPC filed by the plaintiff is allowed.

Defendants-1 to 5 are temporarily restrained from alienating the suit properties i.e., land bearing Sy.No.73/3 (20Gs) & Sy.No.73/4 (16Gs) situated at Baslapura village, Ravandur Hobli, Periyapatna Taluk in any manner pending disposal of suit.

It is made clear that this order will not restrain the defendants from availing agricultural loans on the suit lands.

No order as to costs.

(Dictated to the Stenographer directly on computer, typed by her, corrected and initialed by me & then pronounced in the open Court on 02.12.23).

sd/-

(A.Samiulla)
Senior Civil Judge,
Periyapatna.