

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: 2<sup>nd</sup> Day of December 2023**

**OS.No.18 of 2022**

Smt.Puttamma.

*..... Plaintiff*

***Versus***

Smt.Nagamma & Anr.

*..... Defendants*

**IA.No.8**

Smt.Puttamma.

**.... 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.	8
Date of filing objection	02.11.2023
Date of order	02.12.2023

**:Order on IA-8; 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 putting any construction over the suit properties till disposal of suit.

- 2.** Defendants-1, 2 and 4 resisted the application by filing 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 defendants.***

***Point-3: To the defendants.***

***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. In order to defraud his right over the suit properties the defendants colluding together are trying to put up construction over the suit properties by digging borewell and also trying to put up fence. If they allowed to do so it will result in the multiplicity of proceedings. Hence, she prayed to allow the application.

**9.** Defendants-1, 2 and 4 objected the application by reiterating the written statement averments. They also contended that; due to scarcity of rain; they are finding difficulty in cultivating the suit properties, due to this defendant-4 intended to dig borewell and to construct pump-set house. If the developments are

made no prejudice will be caused to the plaintiff because in case if she succeeded in the suit she will be benefited by the improvements made to the suit properties. Hence, they prayed to reject 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 is claiming right over the suit properties on the basis of sale agreement. At the moment plaintiff is having only right of having one more document i.e., registered sale deed on the basis of sale agreement; if she proved her case.

Except right of having another document (sale deed); at this stage plaintiff cannot exercise any other right over the suit properties. Under these circumstances if the defendants are restrained from developing the suit properties that too making the suit properties as irrigated lands; they will be subjected to hardship, which cannot be compensated by any means. On the other hand no such prejudice will be caused to the plaintiff because if she succeeded in the suit then she will be benefited by the developments made in the suit properties. Under these circumstances comparative mischief or inconvenience likely to be caused from granting injunction will be greater than by refusing it. Thus, the balance of convenience also tilts in favour of defendants against the plaintiff. Accordingly, these points are answered.

**17. Point-4:** By virtue of above findings, Court

proceeds to pass the following;

**ORDER**

IA-8; under Order 39 Rule 1 & 2 r/w Section  
151 CPC filed by the plaintiff is rejected.

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.**