

KAMS700037402022



**IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC
AT T.N.PURA, MYSORE**

O.S./123/2022

:: PRESENT ::

SRI MAHAVIR M.KARENNAVAR, B.COM, LL.B., (SPL.)
SENIOR CIVIL JUDGE & JMFC, T.NARASIPURA

Dated this the 19th day of January 2023

PLAINTIFF : Smt. Jyothi,
W/o M.Ramesh,
R/by her GPA holder
Sri.M.Ramesh.

-Vs-

DEFENDANTS : Smt. Lakshmamma,
W/o Late Puttarajegowda
And Others

I.A.No.II

APPLICANT : Smt. Jyothi,
W/o M.Ramesh,
Aged about 46 years,
R/at: Near M.M.Road,
Bannur Hobli,
T.Narasipura Taluk.

R/by her GPA Holder
Sri. M.Ramesh,
S/o Late Marigowda,
Aged about 51 years,
R/at: Near M.M.Road,
Bannur Hobli,
T.Narasipura Taluk.

(By **Sri. N.K.K., Adv.**)

-Vs-

OPPONENTS : 1. Smt. Lakshmamma,
W/o Late Puttarajegowda,
Aged about 58 years.

2. Sri. Ananda,
S/o Late Puttarajegowda,
Aged about 43 years.

3. Sri. Vinodh Kumar,
S/o Late Puttarajegowda,
Aged about 41 years.

4. Sri. Vijay Kumar
S/o Late Puttarajegowda,
Aged about 45 years.

All are R/at:
Chamanahalli village,
Bannur Hobli,
T.Narasipura Taluk,
Mysuru District.

(Exparte)

ORDER ON IA No.II

The GPA holder of plaintiff has filed IA No.II under
Order 39 Rule 1 and 2 seeking the relief of injunction

restraining the defendants, their agent, servants, followers, labourers, power of attorney holder, family members or any other persons from alienating the suit schedule property in favour of any other person in any manner till disposal of the suit.

2. The application is accompanied with the affidavit. It is stated that, suit schedule property is the absolute property of husband of defendant No.1 and father of defendants. The husband of defendant No.1 i.e., Puttarajegowda for his legal necessity, he intended to sell the suit property to the plaintiff as such they entered into a registered agreement of sale deed dated 30.09.2020. Under the said agreement consideration amount was fixed for Rs.79,000/- out of which the vendors received an amount of Rs.70,000/- in presence of witnesses. It is stated that, on the same day i.e., on 30.09.2020 additional agreement was entered for fancy price of Rs.55,12,500/-. In this regard the vendors received advance amount of Rs.15,12,500/-. The remaining amount of Rs.4,00,000/- was agreed to be paid at the time of execution of sale deed. The agreement was agreed to be performed within a period of 06 months. Within that period the vendors were prepare necessary documents such as RTC, EC, MR copy, survey sketch etc

for the purpose of registration of document. The plaintiff is always ready and willing to perform his part of contract but the husband of defendant No.1 has not come forward along with relevant documents. However, the defendants colluding with each other have filed OS No.79/2021 before the Civil Judge and JMFC, T.Narasipura seeking partition and separate possession wherein the present suit property is also included. The plaintiff issued legal notice calling upon the defendants to perform their part of contract. Defendants failed to comply with the notice as such the present suit is filed seeking the relief of specific performance of contract or in the alternative for refund of advance money along with interest at the rate of 18% p.a. It is stated that, the defendants are making attempts to alienate the suit property to the 3rd persons. It is stated that, the plaintiff has got *prima-facie* case, balance of convenience lies in his favour. If the application is not allowed and the defendants are successful in alienating properties to the 3rd party, plaintiff will be put to great loss and hardship.

3. Despite service of summons and notice on IA, the defendants remained *exparte*. Even, objection to the IA is not filed.

4. Heard the learned advocate for plaintiff on IA and perused the pleadings and the documents produced before the Court.

5. The plaintiff has produced the sale agreements, record of rights, copies of notices and other documents for perusal of this Court.

6. Upon careful perusal of materials available on record, following points that arise for my consideration:

POINTS

1. Whether the plaintiff has made out a *prima-facie* case to allow the I.A. ?

2. Whether the plaintiff has got balance of convenience in his favour ?

3. Whether the plaintiff would be put to loss and injury if the IA is not allowed ?

4. What Order?

7. After careful scrutiny of material available on the file, my findings to the above Points are as follows:

Point Nos.1 to 3 : In the “**Affirmative**”

Point No.4 : As per order

for the following :

REASONS

8. **Point No.1:-** The present suit is filed seeking the relief of specific performance of registered agreement of sale dated 30.09.2020. It is stated that, as per the agreement, the husband of defendant No.1 agreed to sell the suit property in Sy.No.167/6, measuring 0.10.08 guntas out of 0.24 guntas situated at Chamanahalli village, Bannur Hobli, T.Narasipura Taluk. Although the plaintiff is ready and willing to perform his part of contract, the husband of defendant No.1 and thereafter the defendants have not come forward to perform their part of contract. It is stated that, there is a registered agreement and a unregistered agreement.

9. As stated earlier the defendants have remained *exparte*.

10. The plaintiff has produced GPA, Registered sale agreement, record of rights, copy of sale deed, copy of notice and other documents.

11. After careful reading of the pleadings and also the contents of documents, it is clear that, there is an agreement between the parties. The agreement of sale is entered on 30.09.2020. The present suit is filed on 15.11.2022. The suit is filed within the period of

limitation. The plaintiff has stated that, he is always ready and willing to perform his part of contract. The pleadings and the documents of the plaintiff has remained unchallenged. There is nothing on record to disbelieve the statement on oath of the plaintiff.

12. The plaintiff has produced the necessary documents in support of his case such as agreements of sale, record of rights with respect to the suit schedule property. The pleadings are corroborated with the contents of documents.

13. Looking to the pleadings and other materials placed on record, it appear that, the plaintiff has got a *prima-facie* case to go for trial. Without adverting to the merits of the case, it is sufficient to believe *prima-facie* case in favour of the plaintiff. Therefore, point under consideration is answered in the **Affirmative**.

14. **Points No.2 and 3:** These points are taken up for common discussion in order to avoid repetition of facts.

15. For granting equitable remedy of temporary injunction, existence of *prima-facie* case is a must. Existence of *prima-facie* case is the harbinger to investigate in to other points. As discussed in the above

paras, the plaintiff has shown the *prima-facie* case regarding existence of contract between the parties.

16. Apart from *prima-facie* case, the plaintiff has produced the necessary documents in support of his case such as agreements of sale, record of rights with respect to the suit schedule property. The pleadings are corroborated with the contents of documents. Therefore, it appear that, plaintiff has got balance of convenience in his favour.

17. If the IA is not allowed and the defendants are permitted to sell the suit property, the plaintiff will be dragged to multiplicity of proceeding and thereby he will be put to mental and financial losses. On the other hand, if the IA is allowed, no loss or hardship is going to be caused to the defendants. Therefore, I am of the considered opinion that, comparative loss and hardship will be caused to the plaintiff himself. Therefore, the points under consideration are answered in the **Affirmative**.

18. **Point No.4:** - In view of the 'Affirmative' findings on Point Nos.1 to 3, the application deserves to be allowed. Accordingly, I proceed to pass the following:

ORDER

I.A.No.II filed by the plaintiff Under Order XXXIX Rule 1 and 2 R/w 151 of C.P.C. is allowed.

The defendants, their agent, servants, followers, labourers, power of attorney holder, family members or any other persons are restrained from alienating the suit schedule property in favour of any other person in any manner till disposal of the suit.

No order as to cost.

(Dictated to the Stenographer online and typed by her, Order corrected and signed by me, then pronounced by me in the Open Court on this the 19th day of January, 2023).

(MAHAVIR M.KARENNAVAR)
SENIOR CIVIL JUDGE & JMFC,
T.NARASIPURA.