

KAMS700010072020



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

O.S./62/2020

:: PRESENT ::

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

Dated this the 18th day of October 2021

PLAINTIFFS : Sri. N.G.Ravi Kumar
and Others.

-Vs-

DEFENDANTS : Sri. S.R.Rajagopal
and Others.

I.A.No.I

APPLICANT : Sri. Suresh Kumar,
S/o Gangaiah,
Aged about 43 years,
R/at: #5136, Kalidasa
Marga, Vijayanagara,
Nelamangala Taluk,
Bengaluru Rural District.

(By **Sri. B.S., Adv.**)

-Vs-

- OPPONENTS** : 1. Sri. S.R. Rajagopal,
S/o Late S.P. Ranganathachar,
Aged about 80 years.
2. Sri. R.Ragavendra,
S/o S.R.Rajagopal,
Aged about 46 years.
3. Sri. S.R.Ramachandra,
S/o Late S.P. Ranganthachar,
Aged about 78 years.
4. Sri. S.R.Supreeth,
S/o S.R.Ramachandra,
Aged about 34 years.
5. Sri. S.R.Jagadesh,
S/o Late S.P.Ranganathachar,
Aged about 73 years.
6. Sri. S.R.Suresh,
S/o Late S.P.Ranganathachar,
Aged about 68 years.
7. Sri. Ajay Suersh,
S/o S.R.Suresh,
Aged about 35 years.

All are R/at:
#6, Girigowda Marga,
Telecoms Layout,
Saraswathipuram,
Chamaraja Mohalla,
Mysuru City.

(Exparte)

ORDER ON IA No.I

The plaintiff has filed IA No.I under Order 39 Rule 1 and 2 seeking the relief of injunction against the

defendants, their agents and servants restraining them from alienating the suit schedule property to some other person till the disposal of the suit.

2. The application is accompanied with the affidavit. It is stated that, the defendants in order to meet their legal necessity have intended to sell the suit property as such they entered into agreement of sale dated 05.04.2017 whereby the defendants agreed to sell the property for total consideration amount of Rs.7,10,000/-. The plaintiffs have paid an amount of Rs.2,00,000/- as advance money. It is stated that, the defendants agreed to execute the sale deed after obtaining the survey sketch, RTC and other relevant documents. The plaintiff approached the defendants to come and execute the sale deed as per agreement. The defendants have not performed to perform their part of contract. The plaintiff is always ready and willing to perform his part of contract. The defendants have not shown interest to perform their part of contract.

3. 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.

4. After filing of the suit and application, notices and suit summons served on the defendants. Defendants have not appeared to the court.

5. Heard the learned advocate for plaintiff. Perused the pleadings and evidence available.

6. The plaintiff has produced the agreement of sale, encumbrance certificate, record of rights, copies of notices and other documents for perusal of this Court.

7. 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?

8. 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

9. **Point No.1:-** The present suit is filed seeking the relief of specific performance of agreement of sale dated 05.04.2017. It is stated that, as per the agreement, the defendants agreed to the sell the property in Sy.No.340 measuring 5 acres 31 guntas out of 5 acres 38 guntas in which 7 guntas have been acquired for Varuna Canal situated at Tumbla Village, T.Narasipura Taluk, Mysuru District. It is pleaded that, plaintiffs are ready and willing to perform their part of contract, the defendants are not coming forward to perform their part of contract.

10. As stated earlier the defendants have remained *exparte*. There is no restrain from the defendants who have appeared in this case.

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 05.04.2017. The present suit is filed on 16.12.2020. 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 have

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 and encumbrance certificate with respect to the suit schedule properties. The agreement between the parties is registered one. 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 and encumbrance certificate with respect to the suit schedule properties. The pleadings are corroborated with the contents of documents. Therefore, it appears 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.I filed by the plaintiff Under Order XXXIX Rule 1 and 2 R/w 151 of C.P.C. is allowed.

The defendants, their agents and their servants are restrain from alienating the suit schedule property 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 18th day of October 2021).

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