

**IN THE COURT OF ADDL. SENIOR CIVIL JUDGE AND JMFC-I AT  
RAICHUR.**

**Present** : **Smt.Parveen A Bankapur,**  
B.Com.LL.B.(Spl),  
Addl. Senior Civil Judge & JMFC-I, Raichur.

**ORIGINAL SUIT NO.34/2020**

**Dated this the 1<sup>st</sup> day of June, 2022**

Plaintiffs : Mohammed Umar Farukh,  
S/o Khaja Moinuddin,  
**(By Sri. Nazir Ahmed, Advocate)**

V/s

Defendants : Farooq S/o Md. Maqdoom Ali & 2 Ors.,  
**(By Sri C.K.R., Advocate)**

**PARTIES TO I.A.NO.I**

Applicant/s : Mohammed Umar Farukh,  
Plaintiffs S/o Khaja Moinuddin,

V/s

Respondent/s : Farooq S/o Md. Maqdoom Ali & 2 Ors.,  
Defendants

**ORDER ON IA.NO.I**

The plaintiff has filed IA No.I under Order 39 Rule 1&2 R/w  
Section 151 of CPC., seeking issue of Temporary Injunction Order

against the defendants and his agents, servants, successors, in the interest in person claiming under them, attorneys from alienating or creating charge or encumbrances etc., in the suit schedule property till disposal of the suit.

2. The above application is supported by the affidavit of plaintiff. It is stated that plaintiff has filed suit for specific performance of contract of agreement of sale against the defendant in respect of suit schedule property. It is further stated that, defendant is the absolute and exclusive owner in possession of undivided half share of land in agriculture bearing Sy.No.1436/2, which totally measuring 4 acres 18 guntas, the defendant has got half definite share to an extent of 2 acres 14 guntas. It is further stated that the suit property was jointly purchased by the defendant along with Abdul Salaam S/o Usman Ali. It is further stated that as per the sale deed from it's previous owner and the name of defendant and Abdul Salaam was jointly mutated in the RoR in respect of suit property for the last 30 years. It is further stated that both are enjoying the undivided half share equally and in possession as owner thereof. It is further stated that defendant is absolute and exclusive owner of 4 acres 18 guntas along with Abdul Salaam has got southern portion of the suit land, he is in physical possession and enjoyment of the same. It is further stated that the defendant is right to sell the suit land to the plaintiff for his legal necessities and to discharge of his debts. Accordingly, agreement of sale bearing Document No.3628/2019-20 dated 09.07.2019 for consideration of Rs.7,00,000/-. It is further stated that plaintiff has paid an earnest money of Rs.6,50,000/- to

the defendant through two cheques dated 09.07.2019, which drawn on Allahabad Bank, Raichur. It is further stated that, defendant has received the same consideration amount through cheque in the presence of witnesses before the Sr. Sub-Registrar, Raichur. It is further stated that execution of agreement of sale, the plaintiff requested orally to execute the registered sale deed, but the defendant has not do so. Finally, the plaintiff has issued legal notice calling upon him to receive the balance consideration and execute the registered sale deeds in favour of plaintiff. It is further stated that in spite of receiving the notice, the defendant has not response properly. It is further stated that in order to avoid registration of the sale deed in favour of plaintiff, the defendant is making hectic efforts to alienate and create charge in respect of suit property to third persons. Therefore, it is just and necessary to restrain the defendant by issuing Temporary Injunction to alienate, creating charge and encumbrances etc., over the suit property. On all these grounds the plaintiff prayed for allowing the application.

3. On the other hand, the defendant has filed his written statement by filing a separate memo that the same written statement treated as objections to the above application.

In the written statement, the defendant contended that the suit of the plaintiff is false, vexatious and plaintiff has intentionally suppressing the material facts. It is denied that the defendant has received a sum of Rs.6,50,000/- as part of sale consideration. It is also denied issue of cheques dated 09.05.2009, it is further denied that the plaintiff paid a sum of Rs.1,50,000/- in cash to the

defendant. It is contended that the deceased defendant was in need of money of Rs.2,53,000/- for meeting certain urgent commitments. The plaintiff offered to lend the said money and set a condition to sign the document as a security for repayment of loan, the plaintiff has paid Rs.2,53,000/- to the defendant as a loan through cheque No.529584 dated 09.07.2019 in security for the same, he secured the signature of the defendant in the alleged agreement of sale, though there was no such agreement of sale. Therefore, the present suit in the form of specific performance of contract by the plaintiff for part of the land specific in suit schedule property is not maintainable. On all these grounds LRs., of the defendants prayed for dismissal of the application.

4. Heard both counsels.

5. Upon hearing arguments and on perusal of materials placed on record, the following points that would arise for my consideration;

1. Whether the plaintiff has established prima-facie case?
2. Whether balance of convenience lies in favour of plaintiff?
3. Whether irreparable loss or hardship will be caused to the plaintiff, if injunction is not granted?
4. What order?

6. My findings to the above points are as under.

Point No.1 - In the Affirmative.

Point No.2 - In the Affirmative.

Point No.3 - In the Affirmative.

Point No.4 - As per order, for the following;

### **REASONS**

7. **POINTS NO.1 to 3:-** Since these points are inter-lined with each other, they are taken-up together for consideration in order to avoid repetition as here under;

8. Undisputedly, the plaintiff has filed the suit for specific performance of contract with respect of suit property bearing Sy.No.1436/2, which totally measuring 4 acres 18 gutnas, out of total measurement, the suit property is one acre out of half definite share to the extent of 2 acres 14 guntas situated within limits of Raichur. It is averred in the paint that the defendant approached the plaintiff to sell to an extent of 1 acre towards southern side out of which to an extent of half share to an extent of 2 acres 14 gutnas for valid consideration of Rs.7,00,000/-. The plaintiff also agreed to purchase the suit property of 1 acre and accordingly, defendant has executed registered agreement of sale bearing Document No.3628/2019-20 dated 09.07.2019 by paying earnest amount of Rs.6,50,000/- to the defendant through two cheques bearing No.529584 and 529585 dated 09.07.2019 for Rs.2,50,000/- each drawn at Allahabad Bank, Raichur and plaintiff also paid sum of Rs.1,50,000/- cash to the

defendant, in total, the plaintiff has paid Rs.6,50,000/- to the defendant in the presence of witnesses before Sr.Sub-Registrar, Raichur. In this regard, the plaintiff has produced original registered agreement of sale. On perusal of said document out of his half share, the defendant has agreed to sold 1 acre towards southern side dry land. In the said document, the above said cheques numbers also mentioned and also mentioned Rs.1,50,000/- cash amount was paid to the defendant.

9. On the other hand, counsel for defendant vehemently argued that, the defendant has furnished two bank statements, in the said bank statements, it is only mentioned on 03.07.2019 Rs.2,53,000/- was deposited in the account of defendant by the plaintiff. Therefore, the plaintiff has not paid any earnest amount to the defendant. It is further argued that the second payment i.e., cash of Rs.1,50,000/- in another cheque was not received by the defendant. Further, the learned counsel for the defendant argued that the defendant has lend the said amount which deposited as per the bank statement by way of loan from the plaintiff for his legal urgent commitments as a loan amount, the defendant has executed alleged agreement of sale in way of security only. Further, the learned counsel for the defendant argued that there is no specific description of suit property. Further, the learned counsel for the defendant submits that the boundaries of the suit property was not mentioned either in the plaint nor in the agreement of sale. Therefore, no specific description of the suit property, the suit of the plaintiff is not maintainable. Further, the learned counsel for the defendant argued

that there is no any partition or separate podi with respect to entire land measuring 4 acres 18 guntas between defendant and Abdul Salaam. Therefore, the learned counsel for the defendant vehemently argued on the above submission that the suit of the plaintiff is not maintainable in any manner, hence, injunction cannot be granted.

10. It is trite that, the very intention of granting of Temporary Injunction is to maintain the state of things as it is, as held by **Hon'ble High Court in ILR 2004 KAR 4076**. In the instant case also, the plaintiff has stated that the defendant is the owner of half share in total measuring 4 acres 18 guntas, the defendant having definite 2 acres 14 guntas land out of total land, he has sold 1 acre to the plaintiff in his half share. The entire 4 acres 18 guntas standing in the name of defendant and one Abdul Salaam jointly and the defendant had definite half share. The plaintiff has further apprehended that by taking undue advantage and to avoid execution of registered sale deed in favour of plaintiff, he may alienate the suit property in favour of third persons. In my considered view, irrespective of contentions by the parties, it is just and necessary and in the interest of justice to maintain the state of things in respect of suit property as it stands on the date of filing of the suit. Hence, it is necessary to restrain the defendants from alienating the suit property till disposal of the suit, just to maintain status-quo, otherwise it will results into multiplicity of proceedings. To avoid all these things, Temporary Injunction is required to be granted.

11. The learned counsel for the plaintiff has argued that, it is

settled principles of law that **MULLA UNDER THE MOHAMMEDAN LAW; on LAW OF SUCCESSION & INHERITANCE Chapter-A** as under:-

*“A co-owner under the Mohammedan Law has a right to sell his undivided share in the estate to which he has succeeded as an heir. An alienee of a specific item stands in the shoes of the co-owner and obtains a personal right which he is equally entitled to enforce against the shares of his alienor to the extent of claiming a general partition of all the properties so that the equity may be worked out by allotting to the shares of his vendors the property which has been alienated by him if such a course does not work injustice to the right of the other co-owners.”*

12. Further, the learned counsel for the plaintiff has relied upon **ILR 2004 KAR p4076** as referred above and also relied on **2020 SAR (CIVIL) 225 SC (SAKETA VAKSANA LLP & ANR., Vs. KAUKUTLA SARALA & ORS.,)** wherein, it is held that Temporary Injunction, Agreement of sell - Specific performance -Suit for Specific performance based on unregistered agreement of sell pending -Delivery of possession in pursuance of the agreement and part payment both seriously disputed -Temporary injunction of the agreement and part payment both seriously vendee- Rightly vacated by High court- Temporary injunction restraining the owner from



alienating or creating third party rights in the suit property till the disposal of the suit sufficient to protect interests of vendee with respect to ownership of the suit land- No interference warranted.

13. On the other hand, learned counsel for defendant relied **AIR ONLINE 2021 SC 1068**, Transfer of Property Act, Sale Deed- Without payment of consideration the effect of sale deed is void. A sale of immovable property has to be for a price. The price may be payable in future. It may be partly paid and the remaining part can be made payable in future. The payment of price is an essential part of sale covered under Section 54 of Transfer of Property Act. If a sale deed in respect of an immovable property is executed without payment of price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eyes of law. It is of no legal effect. Therefore, such a sale will be void, it will not effect the transfer of immovable property.

14. Further, the learned counsel for the defendant has relied upon **(2010) 15 SCC 601 (PAVAN KUMAR DUTT & ANR., VS. SHAKUNTALA DEVI & ORS., )**, wherein, it is held that Specific Performance of Contract-Uncertainty /Vagueness in description of property in agreement- Unforceability – Trial Court, first appellate court and High court holding that suit could not be decreed for want of certainty as to description of suit property- Sustainability of- Held, a portion out of the total larger ---was agreed to be sold, but without specification of area agreed to be sold --- it is clear from agreement in question that no boundaries of suit property which was sold were

specified therein- There is no clear identity of --- agreed to be sold – courts are not expected to pass a decree which ----- not capable of enforcement in Courts of law- Specific Relief Act.

15. In the instant case, the plaintiff has filed suit for Specific Performance of Contract with respect of suit property to an extent of 1 acre out of half definite half share of the defendant in total measuring 4 acres 18 guntas. The main contention of the defendant is that the plaintiff has not paid any earnest advance amount to the defendant. But they have contended that defendant has received Rs.2,53,000/- from the plaintiff, but they have contended that the said amount received by the defendant from the plaintiff in the form of loan amount and executed alleged agreement of sale in favour of plaintiff for the security purpose of said loan amount. Those all facts are determine in full pledged trial. Therefore, at this stage it is just and necessary and in the interest of justice and in order to avoid multiplicity of proceedings, Temporary Injunction is required to be granted. Hence, considering all these aspects, I answered points No.1 to 3 in Affirmative.

16. **POINT NO.4 :-** In view of the reasons assigned above, above, I proceed to pass the following;

### **ORDER**

IA.No.I filed by the plaintiff under Order 39 Rule 1 & 2 R/w Section 151 of CPC., is hereby allowed.

Defendant is hereby restrained from alienating the suit property mentioned in IA No.I, till disposal of the suit.

No order as to costs.

(Dictated to the Stenographer, typed by him on computer, corrected by me and then pronounced in the open Court on this the 1<sup>st</sup> day of June, 2022).

**(Smt.Parveen A Bankapur)**

Addl. Senior Civil Judge and JMFC-I,  
Raichur.

**Order pronounced in the open Court vide separate order**

**ORDER**

IA.No.I filed by the plaintiff under Order 39 Rule 1 & 2 R/w Section 151 of CPC., is hereby allowed.

Defendant is hereby restrained from alienating the suit property mentioned in IA No.I, till disposal of the suit.

No order as to costs.

Addl. Senior Civil Judge and JMFC-I,  
Raichur.