

**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE,
RAMANAGARA**

Mis.Pet.No.3/2013

Dated 24th day of August 2013

Present:

**Smt.S.Nagashree, B.A., LL.M.,
Addl. Senior Civil Judge,
Ramanagara.**

BETWEEN:

1. Smt.A.s.Lakshamma
W/o late C.Paramashivaiah
aged about 63 years
2. Madhusudhan @ Madhu
S/o late C.Paramashivaiah
aged about 43 years
3. P.Malathi
D/o late C.Paramashivaiah
aged about 40 years
R/o No.74/A, Sir.M.V.Layout,
Ullal Main Road, Near Ashrama Circle,
Bangalore – 56.
4. P.Mohan Kumar
S/o late C.Paramashivaiah
aged about 36 years

petitioners 1, 2 and 4 are
agriculturists,
R/o Bilagumba Village,
Kasaba Hobli,
Ramanagara Taluk.

Petitioners

(Rep. by Sri.K.G.S., Adv.)

AND:

1. C.Chikegowda @ Thammaiah
S/o late C.Chikkegowda
aged about 79 years

2. B.C.Raju
S/o C.Chikkegowda @ Thammaiah
aged about 44 years
both are r/o
Bilagumba Village,
Kasaba Hobli,
Ramanagara Taluk and Dist.

Respondents

(Rep. by Sri.M.L.V., Adv.)

ORDERS

This is a mis petition filed by the petitioners to restore O.S.676/2006 by setting aside the exparte judgment and also to set aside the orders passed in execution 98/2009 and permit the petitioners to contest the suit on merits.

2. When the respondents were served with notice and when they filed objections to the main petition and the case was posted for enquiry, the learned counsel for the petitioner has filed an application to advance this case and has sought for an order under the interim application filed by him as under Order XXXIX Rules 1 and 2 CPC with a prayer to pass an order of temporary injunction against the respondents from alienating the suit schedule properties till the disposal of this mis-petition.

3. In the annexed affidavit it is stated that the petitioners had borrowed a sum of Rs.8lakhs from the respondents and an agreement was executed for a sum of Rs.12,75,000/- on 21.06.2004. The petitioners were unable to pay the interest every month and it was understood that the interest should be paid in lump sum after 2 years. The total amount to be paid by the petitioners is Rs.12,00,000/- after expiry of 24 months. In spite of such understanding the respondent deliberately issued legal notice and filed a suit for specific performance which was not contested as the counsel for the petitioners did not represent the case. Even in the execution filed by the respondents, the petitioners have not handed over possession and still the possession is with the petitioners. However, the respondents are taking advantage and thereby causing inconvenience to the petitioners and are attempting to alienate the suit schedule property. Hence, it is prayed to allow the application as prayed for.

4. To this application the respondent filed objections that the application is not maintainable and the averments in the affidavit are all false. It is denied that there was an understanding between the petitioners and the respondents and that there was money transaction. The case of the respondents is that they have filed a suit for specific performance because an agreement of sale was executed by the petitioners in O.S.676/2006 which was decreed. In that suit the petitioners as defendants did not file the written statement and thereby the

suit was decreed in favour of the respondents. Thereafter sale deed was executed and they obtained registered sale deed in execution 98/09. In that execution case also the petitioners had appeared but did not file any objections. Only to drag on the proceedings this petition is filed seeking restoration of suit when already possession of the property is handed over to the respondents. Only to obtain the interim order and to harass the respondent, this application is filed and hence it is prayed to dismiss the same.

5. Heard the arguments of the learned counsels Sri.K.G.S., for the petitioners and Sri.M.L.V., for the respondents.

The points that arise for consideration are:

1. Whether there are any materials to grant an interim order of temporary injunction as prayed in the application?

2. What order?

6. My findings to the above points is in the negative for the following

REASONS

7. Point No.1: On perusal of the petition averments and the objections filed by the respondents it goes to show that the suit filed by the respondents as plaintiffs in O.S.676/2006 for specific performance of contract has been decreed in the year 2008. The copies of the documents produced i.e., judgment copy

goes to show that the defendants 1 to 4 i.e., petitioners herein were represented by their counsel but because no written statement was filed, the case was posted for evidence and a decree has been passed on 17-12-2008. Thereafter the execution petition has been filed and the respondents have obtained an order wherein draft sale deed is approved and delivery warrant is also issued and the Commissioner has been appointed to register the sale deed which is on 21-09-2012. That execution petition is filed in the year 2009 and the order sheet goes to show that the petitioners as JDRs have been served and have also appeared through their counsels but have not filed any objections. The records and the documents annexed to the petition goes to show that no prima facie materials are made out to grant an order of temporary injunction because first of all the petitioners should show the delay caused to file this Mis. petition was due to the reasons as shown in his petition under Section 5 of the Limitation Act, and thereafter on enquiry the court will have to decide as to whether this is a fit case to restore the original suit bearing No.676/2006. Only after the court comes to the conclusion that there are grounds to restore the suit, the Mis. petition can be allowed. But at this stage I do not find any bonafide reasons under I.A.1 to grant an order of temporary injunction because it is an equitable relief which can be granted to a party who comes to the court with clean hands. The order sheet and the judgment and also the execution case papers at this stage if perused go to show that the petitioners have slept over their rights and have not taken due diligence in

prosecuting the case though an opportunity was given to them. No doubt, the advocate for the petitioners has referred to number of rulings and decisions of the Hon'ble Supreme Court which are all relating to the provisions of Order IX Rule 13 CPC and for condonation of delay and to set aside the decree passed in the original suit. But these decisions can be considered and the principles laid down by the Hon'ble Supreme Court can be applied to this case while considering the case on merits and while allowing the mis-petition if at all the grounds urged by the petitioners is made out. But at this stage granting an order of temporary injunction is not available to the petitioners in this mis-petition that too when they have not come to the court with clean hands because inspite of having knowledge of the execution petition and not filing any objections before the execution of the sale deed, it would prima facie show that they were not diligent, but slept over their rights.

At this stage I refer to a decision of the Hon'ble Supreme Court in a case of **Mandali Ranganna and others vs. T. Ramachandra (2008) 11 SCC 1** and it was held as follows:

“Wherein an additional principle was sought to be enunciated relating to grant of injunction by way of an equitable relief. The Hon'ble Supreme Court held that in addition to the three basic principles, a Court while granting injunction must also take into consideration the conduct of the parties. It was observed that a person who had kept quiet for a long time and allowed others to deal with the property exclusively would not be entitled to an

order of injunction. The Court should not interfere only because the property is a very valuable one. Grant or refusal of injunction has serious consequences depending upon the nature thereof and in dealing with such matters the Court must make all endeavors to protect the interest of the parties”.

So, if the above principles of the Hon'ble Apex court is applied to the case on hand the application filed U/o 39 Rules 1 & 2 has to be dismissed. In the result the equitable relief of temporary injunction cannot be granted to the petitioners at this stage and hence I hold that the application filed under Order XXXIX Rules 1 and 2 CPC is liable to be dismissed and therefore I answer point No.1 in the negative and I pass the following:

ORDER

The application filed by the petitioners under Order XXXIX Rules 1 and 2 CPC is hereby dismissed.

The parties have to bear their own costs.

(Dictated to the Stenographer, transcribed and computerised by her, revised, corrected and then pronounced by me in the open court on 24th day of August 2013)

(S.Nagashree)
Addl. Senior Civil Judge,
Ramanagara.

24-08-2013
Plf. By Sri.K.G.S., Adv.
Res by Sri.M.L.V., Adv.
For orders

Orders passed in the open court and the following order is passed:

ORDER

The application filed by the petitioners under Order XXXIX Rules 1 and 2 CPC is hereby dismissed.

The parties have to bear their own costs.

**Addl. Senior Civil Judge,
Ramanagara.**