

**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE AND
CJM AT RAMANAGARAM**

Dated : This the 15th day of June 2020

Present

Sri. N.S.Kulkarni.,
B.Com., LL.B Spl.,
Prl. Senior Civil Judge & CJM.,
Ramanagara.

O.S 75/2019

Plaintiff :- Sri. C.Manjunath

(By Sri. V.C., Advocate)

V/s

Defendant : Smt. H.Hanumakka

(By Sri. H.V.M., Advocate)

* * * * *

ORDERS ON I.A FILED BY THE PLAINTIFF
U/O 39 RULE 1 and 2 R/W SECTION 151 OF CPC

The plaintiff has moved I.A dated 08.03.2019 U/o 39 Rule 1 and 2 of CPC to grant an ad-interim order of temporary injunction restraining the defendant, his agent or anybody from in any way alienating the suit schedule property in favour of third parties, till the disposal of the suit.

2. In the affidavit anent to the application, he deposed that, the defendant is the owner of the suit

schedule property and have agreed to sell the suit schedule property for the sale consideration of Rs.32,00,000/- and the defendant has executed the un-registered sale agreement in favour of plaintiff on 03.04.2016 and the defendant has received a sum of Rs.10,00,000/- as advance sale consideration by way of cheque bearing No.537500 dated 04.04.2016 on Panjab National Bank, Bidadi Branch. Now, the plaintiff is ready to perform his part of contract to pay the balance amount. But, the defendant has intentionally dragged the matter for one or other reasons all these days and now the defendant is trying to alienate the suit property to third parties. Wherefore, it is prayed to allow the application or otherwise the plaintiff will be put to great loss and hardship.

3. The defendant has filed the memo stated that, to adopt the written statement as objection to the above said I.A U/o 39 Rule 1 and 2 of CPC. She has stated in the written statement that, the suit filed by the plaintiff in respect of the alleged suit schedule property is not at all maintainable either in law or on facts of the above case. The plaintiff herein is making false and baseless allegations in the plaint against her with ulterior motive with an intention to knock away the valuable properties of her high handedly and

illegal and also with an intention to harass her. The plaintiff herein has filed the above suit based on the alleged false document with malafide intention. The entire plaint averments is false and baseless.

4. Further, she submits that, her husband M.Dasappa had purchased the suit schedule property in her name on 18.06.1993 and built a residential house in the said land. The plaintiff's father Chikkakenchaiah being a local person developed friendship with her husband since 2010. The plaintiff's father used to obtain hand loan from her husband as and when he needed. The plaintiff's father requested the defendant's husband to lend on hand loan of Rs.10,00,000/-. Accordingly, the defendant's husband lent an hand loan of Rs.10,00,000/- to the plaintiff's father during June 2015. When her husband demanded to repay the said loan, the plaintiff's father Chikkakenchaiah issued cheque bearing No.537500 dated 04.04.2016 of Punjab National Bank of Bidadi Branch. The said cheque was drawn in favour of her upon the request of her husband. The defendant has not offered to sell the suit schedule property to the plaintiff or any body and not received any advance amount and not executed any agreement in favour of plaintiff. The

present market value of the suit schedule property is more than Rs.80,00,000/-. The defendant cannot execute the sale agreement in favour of plaintiff for merely Rs.32,00,000/-. The averments made in para-7 of the plaint with regard to the alleged cause of action, the plaintiff seeking partial performance of contract on alleged sale agreement, which is not maintainable and hence there is no cause of action at all for the plaintiff's suit and hence, the suit is liable to be dismissed. Hence, it is prayed to dismiss the application.

5. The following point emerge for consideration:-

- 1. Whether the prima-facie case and balance of convenience lies in favour of the plaintiff ?*
- 2. Whether the plaintiff will be put to irreparable loss and injury in the event, if an order of temporary injunction is denied?*
- 3. What Order?.*

6. Perused the written argument filed by the defendant counsel and heard the argument of plaintiff counsel. I have scrutinized the application in the background of necessary materials. Now, my answer on the points is as under for the reasons herein after assigned:-

Point No.1:- In the Affirmative

Point No.2:- In the Affirmative

Point No.3:- As per final order
for the following:-

REASONS

7. **Points 1 and 2:-** As these two points are interconnected, I wish to treat them collectively and that would avoid repeated discussion.
8. The defendant in para-6 of the written statement has denied that, he is intentionally dragging the matter and trying to alienate the suit property to third parties behind the back of the plaintiff during the subsistence of agreement of sale dated 03.04.2016, which intention of the defendant is illegal. But, the plaintiff is ever ready to perform his part of the contract at any moment with balance sale consideration and defendant did not come forward is false.
9. In para-7, the contention of the defendant is entirely different. Totally denying that, she has not offer to sell the suit property and plaintiff got fabricated the agreement to create rights. Hence, he denied the signature and the agreement and

the plaintiff has no right. She has also stated that, the plaintiff father requested the defendant's husband for loan of Rs.10,00,000/- and received by him. When the defendant's husband demanded the repayment of loan, the plaintiff's father issued cheque drawn in favour of defendant. Further, in para-8 of the written statement, he has stated that, the value of the suit schedule property is more than Rs.80,00,000/- and cannot execute the sale agreement for Rs.32,00,000/- clearly goes to show that, the defendant denied the transaction, signature, agreement and further put forward the defense of hand loan and not agreement to sell, which points are to be proved at the Trial by leading Evidence and Documents by the defendant.

10. Under these, circumstances, there is agreement of sale and signature. Therefore, if the application is allowed, no hardship will be caused to both the sides. On the other hand, it is the contention of the defendant that, he has not agreed for Rs.32,00,000/- as the value of the suit property more than Rs.80,00,000/-. Hence, this

question is also to be tried at the Trial through documents and evidence. Hence, if the application is allowed, no hardship will be caused to the defendant as he has already received Rs.10,00,000/- and he has to prove the transaction as hand loan. But, the document is agreement of sale. Hence, I answer the Points No.1 and 2 is in the "Affirmative".

11. **Point No.3:-** As per final order :-

ORDER

I.A filed by the plaintiff U/o 39 Rule 1 and 2 r/w Section 151 of CPC is hereby allowed.

The defendant or anybody on his behalf is hereby restrained by way of temporary injunction from alienating the suit schedule property to third parties, pending disposal of the suit.

No order as to costs.

(Dictated to the Stenographer directly on computer, corrected by me and then pronounced in the open Court on this the 15th day of June 2020)

**Prl., Senior Civil Judge & CJM,
Ramanagara.**