

KARN020006682021



I.A.No.	I and II
I A filed by	Plaintiffs
Date of filing of I.A	09-08-2021
Date of filing of Objection	10-10-2022
Date of Order	25-11-2023

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

Dated:- This the 25th day of November, 2023

Present:-

SMT.SARASWATHI.K.N.,
B.A.L., L.LM.,
Prl. Senior Civil Judge & CJM.,
Ramanagara.

O.S.No.263/2021

Plaintiffs :- Smt. Manjula and Others.,

V/s

Defendant :- Sri. Shrikanth

I.A.No.1 and 2

Applicants :- Smt. Manjula and Others.,

-(Plaintiffs)

-V/s-



Opponents : Sri. Shrikanth
- (Defendant)

* * *

ORDER ON I.A.No.1 AND 2

The Plaintiffs have filed I.A.No.1 under Order XXXIX Rule 1 and 2 r/w Sec.151 of CPC., to restrain the Defendant, his agents, servants, legal representatives or anybody claiming through or under him from interfering with their peaceful possession and enjoyment of the application schedule property pending disposal of the suit.

2. The Plaintiffs have also filed I.A.No.2 under Order XXXIX Rule 1 and 2 r/w Sec.151 of CPC., to restrain the Defendant, his agents, servants, legal representatives or anybody claiming through or under him from creating any third party interest over the application schedule property pending disposal of the suit.



3. In the affidavits sworn in support of both these applications, the contents of the which are verbatim the same. Hence to avoid repetition, the same are taken together for discussion in common.

4. In the affidavits sworn in support of both the applications, the Plaintiff No.3 has sworn that, he is the son of late Devaraju, the Plaintiff No.1 is his mother and Plaintiff No.2 is his sister. That, during his lifetime, their father late Devaraju had acquired the property in old Sy.No.143/2, new Sy.No.143/5, measuring 0.01 $\frac{1}{4}$ guntas for a valuable consideration through the registered sale deed dated:- 15.02.2007.

5. That, their father had obtained permission from the Village Panchayath on 01.09.2007 in their mother's and constructed a RCC roofed ground and first floor building with all civic amenities in the suit schedule property. That



their father died on 26.11.2009 leaving behind him and his mother and sister as his Class-I legal heirs and he died intestate. Therefore, they are the absolute owners in possession and enjoyment of the application schedule property without any interruption or hindrance. That, the Defendant is a resident of the same village known to their father. Their father had taken hand loan from the Defendant and as against the same, he had executed a registered G.P.A. to the Defendant as security towards loan amount during his lifetime and also handed over original records. However, by taking undue advantage of the death of their father, the Defendant registered the sale deed in his favour on the strength of the said registered GPA in order to grab the schedule property.

6. That, during the 2nd week of April, 2021, they approached the concerned authorities for transferring the documents in their names, they came to know that the suit



schedule property was allegedly executed the sale deed by the Defendant to himself through a registered sale deed dated:- 18.02.2020. That, during the life time of their father and after his death, even today they are in possession and enjoyment of the suit schedule property and they are residing in the house constructed therein.

7. The Defendant, knowingly fully well that their father died long ago, fraudulently executed the sale deed by taking advantage of the GPA purported to be executed by their father. They did not acquire any right, title and interest over the application schedule property on the strength of the fraudulent GPA. Hence on the basis of the sale deed dated:- 18.02.2020, the Defendant, making hectic efforts to alienate the same to third parties in order to create third party rights over the application schedule property. Hence, they have prima-facie case and balance of convenience and



comparative hardship are in their favour. Accordingly, it is prayed to allow the applications.

8. Per contra, the counsel for the Defendant has filed his written statement and memo adopting the same, as his objections to the present applications.

9. In the written statement, the defence of the Defendant is denial of the entire case of the Plaintiff. According to the Defendant on 22.01.2009, he got registered the G.P.A. from the father of the Plaintiff No.2 and 3 Thimmaiah by paying the sale consideration, for which, the Plaintiff No.1 had also affixed her signature. Thereafter, since the father of the Plaintiffs No.2 and 3 Thimmaiah suffered from serious illness, once again the Plaintiff No.1 demanded for further money and for the same reason, they obtained money and the Plaintiff and her husband Thimmaiah



purchased the stamp paper in the name of the Plaintiff No.1 and got executed a GPA on 17.08.2009.

10. That, on 26.11.2009, the said Thimmaiah expired. As per the terms of GPA dated:- 17.08.2009, he has developed the suit schedule property by spending Rs.40,00,000/- from out of his pension benefits and also by availing loans, he is in possession and enjoyment of the suit schedule property, along with his aged parents.

11. That, the Plaintiff No.1 has executed the GPA on 17.08.2009 and on the basis of the same, he got registered the sale deed in his name on 24.02.2020. Thereafter, he also borrowed hand loan for the purpose of development of the suit schedule property. Thereafter to repay the same, he entered into sale agreement without possession on 30.01.2021. The Plaintiffs, who got information of the same, have filed this false suit against him, so as to harass him.



12. That the suit is not properly valued and the court fee paid is insufficient and not proper. The suit is barred by limitation and there is no cause of action. Hence, he has prayed to dismissal of the suit.

13. I have heard the arguments of the learned counsels for the Plaintiffs and the Defendant on the present applications and perused the materials on record.

14. The following points arise for my consideration:-

(1) Whether the Plaintiffs have made out prima-facie case in respect of I.A.No.I & II in her favor for the grant of TI?

(2) Whether the balance of convenience and comparative hardship is made out by the Plaintiffs?

(3) Whether the Plaintiffs would suffer irreparable loss and injury, if temporary injunction is not granted in their favour?

(4) What order?



15. My answers to the above points are as under:-

Point No.1 to 3: In the Affirmative

Point No.4 : As per the final order
for the following:-

REASONS

16. Point No.1:- There is no dispute among the parties with regard to the acquaintance among them and also with regard to the execution of the GPA dated:- 22.01.2009, by the father of the Plaintiffs No.1 and 2 in favour of the Defendant in respect of the suit schedule property and that the said GPA is registered one.

17. However, according to the Plaintiffs No.1 to 3, though late Devaraju got constructed a RCC roofed house in the plaint schedule property by obtaining permission from the concerned panchayath, the Defendant, by taking undue advantage of the GPA got created the sale deed in his favour on the strength of the alleged GPA.



18. In this regard, it is pertinent to note that, already on behalf of the Plaintiffs, the Plaintiff No.3 has led his evidence, by examining him as P.W.1. He has also produced the documentary evidence as per Ex.P1 to P12. At this stage, this court cannot go to the merits of the case. However, one thing is clear from the entire pleading of the parties that the sale deed got executed by the Defendant by himself on the strength of the GPA dated:- 24.02.2020, while the father of the Plaintiffs No.2 and 3 Devaraju executed by him on the strength of the GPA dated:- 22.01.2009 or 17.08.2009. It is necessary to note that as on the date of the execution of the said sale deed by the Defendant in his favor, the question of the existence of the GPA is to be considered by the court.

19. However, it is pertinent to note that, though the Defendant, in his written statement has pleaded that the sale deed dated:- 24.02.2020 was got executed by him on



the strength of the GPA dated:- 17.08.2019, to which it is not only Devaraju, who is a party, but also the Plaintiff No.1, the recitals of the sale deed dated:- 18.02.2020 refers to the sale agreement dated:- 22.01.2009 and the GPA dated:- 17.08.2009.

20. In such circumstance, though the counsel for the Defendant argued before this court that, there is no clarity in respect of the property, in respect of which, the Plaintiff is seeking the order of T.I., by going through the documents relied upon by the Plaintiff and also by considering the recitals of the GPA dated:-22.01.2009 and the sale deed dated:-24.02.2020, at this juncture, the Plaintiffs has made out prima-facie case. **Therefore, this Point is answered in the “Affirmative”.**

21. Point No.2 and 3:- As the the documents relied upon by the Plaintiffs establish that, there is triable case in



their favour, in the event of not considering the prayer of the Plaintiffs, then the very purpose of seeking the relief against the Defendant, by the Plaintiffs would be frustrated. Therefore, at this stage, this court is of the opinion that balance of convenience and comparative hardship are made out in favor of the Plaintiffs. **Accordingly, this point is answered in the “Affirmative”.**

22. Point No.4:- In view of my answers to Points No.1 to 3, I proceed to pass the following:-

ORDER

I.A.No.1 and 2 filed by the Plaintiffs under Order XXXIX Rule 1 and 2 r/w. Sec.151 of the CPC., are hereby allowed.

Consequently the Defendant, his agents, servants or legal representatives or anybody claiming through or under him is restrained from interfering the Plaintiffs peaceful possession and enjoyment of the



application schedule property and from creating any third party interest over the same pending disposal of the suit.

In the circumstances, no order as to costs.

(Dictated to the Stenographer, transcribed by her, the transcript thereof is corrected, signed and then pronounced by me in the open Court on this the 25th day of November, 2023).

(Saraswathi.K.N),
Prl.Senior Civil Judge & CJM,
Ramanagara.