

**IN THE COURT OF THE SENIOR CIVIL JUDGE &
J.M.F.C., AT : CHANNAPATNA**

BEFORE

Smt.Shubha,

B.A.L.L.B.,

Senior Civil Judge & JMFC, Channapatna.

Dated this the 28th day of January 2022

O.S.15/2021

PLAINTIFF: 1 Sri.Balakrishna Reddy S/o Late
Srinivasa Reddy aged about 59
years, R/o No.35, 3rd Cross,
Road, 13th Main Road, Mattikere
Area, Bangalore City, Bangalore

(Sri.Deshilingaiah Advocate)

-VS-

DEFENDANTS: 1 Smt.Siddamma W/o Late
Krishna, aged about 70 years

2 Sri.K.M.Bojaiah S/o Late
Krishna aged about 42 years

3 Smt.Anitha D/o Late Krishna
aged about 37 years
All are R/o Kolur Villlage,
Maluru Hobli, Channapatna

Taluk, Ramanagara District
(Sri.CLS Advocate)

I.A.NO.1

PLAINTIFF Balakrishna Reddy

-VS-

DEFENDANTS Smt.Siddamma and others

ORDER ON I.A No.1

1. The above application is filed on behalf of the plaintiff U/O 39 Rule 1 and 2 r/w/s/ 151 of CPC seeking relief of temporary injunction against the defendants to restrain them, their men, agents or anybody claiming through or under them from alienating the suit schedule property during the pendency of this suit.

2. The above application is supported with the affidavit of the plaintiff wherein he has submitted that he has filed this suit against the defendants for specific performance of the contract. That the defendants have represented before him that they are the absolute owners in possession and enjoyment of agricultural property in Sy.No.118/P21 measuring 1 acre 21 guntas situated at Koluru village, Maluru

Hobli, Channapatna Taluk. That himself and defendants have settled the dispute before the Lok Adalath in O.S.79/2014 on 21.11.2015. As per the said compromise, the defendants had agreed to register the suit schedule property in his name. That the defendants had offered to sell the suit property to him to meet their family needs and necessity for total sale consideration amount of Rs.11,37,500/-. That he had accepted the said offer and agreed to purchase the suit schedule property for the said total sale consideration amount subject to the defendants to make-out their good and marketable title to the suit property.

3. The plaintiff has further submitted that pursuant to the same the defendants had agreed to sell the suit schedule property to him and accordingly they have executed an agreement of sale dated 16.11.2015 and received a sum of Rs.5,00,000/- as part of sale consideration amount. That he had paid the said amount in cash. That thereafter the defendants have

also executed one agreement for continuing the earlier Sale Agreement on 22.3.2018 and they have received Rs.50,000/- by cheque No.958722 drawn on South Indian Bank, Yeshavanthapura branch. The plaintiff has further submitted that the defendants have also received an amount of Rs.50,000/- for hospital cost of defendant No.2 on 13.12.2016 by way of cash. That the defendants have totally received a sum of Rs.6,00,000/- as a part of the sale consideration amount. That the defendants had agreed to get all the necessary documents like RTC, Mutation, Survey Sketch, Durasth and other necessary documents required for registration and to get the survey done. But unfortunately despite of above payment, the defendants have failed to get the required documents. That the plaintiff had also arranged for Panchayat, the defendants promised to furnish necessary documents and to execute the Sale deed at the earliest but they failed to execute the Sale deed at the earliest. Hence he has filed this suit. The plaintiff has submitted that the defendants are trying

to alienate the suit schedule property to others. Therefore, he has prayed for Temporary Injunction against the defendants.

4. In this case the defence of the defendants is that. the plaintiff had obtained their signatures on a compromise petition without revealing the real facts. They have further submitted that the present suit instituted by the plaintiff is not maintainable. That the plaintiff ought to have instituted a fresh suit for enforcement of the registered agreement to sell dated 23.12.2011 and accordingly prayed to dismiss the above application.

5. I have heard the arguments of learned advocates for both the parties on I.A.No.1 Now the points that arise for my consideration are;

POINTS

- 1 Whether the plaintiff has made out prima-facie case for issue of Temporary Injunction against the defendants?

- 2 Whether the Balance of Convenience lies in favour of plaintiff ?
- 3 Whether the plaintiff prove that he will be put to irreparable loss and injury if Temporary Injunction is not granted ?
- 4 What order ?

6. My findings to the above points are as follows:-

Point Nos.1 to 3: In Affirmative

AND

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

REASONS

7. **POINT NO.1:** In this case the documents furnished by the plaintiff clearly shows that these defendants having agreed to execute the sale deed in favour of plaintiff as per the sale agreement dated 16.11.2015 and also as per the another agreement of extension of time to execute the Sale Deed dated 22.3.2018 and after having received Rs.6,00,000/- from the plaintiff as part of sale consideration

amount, failed to execute the Sale deed as agreed by them in the compromise petition filed before the Lok Adalath in O.S.79/2014.

8. The contents of the compromise petition filed before the Lok Adalath by the plaintiffs and defendants in O.S.79/2014 goes to show that these defendants have agreed to execute the Sale deed as per the sale agreement. Therefore the plaintiff had got withdrawn the said suit. The defendants instead of executing the sale deed in favor of the plaintiff now questioning the very maintainability of the suit. The suit filed by the plaintiff is very well maintainable under law. The defendants cannot be permitted to alienate the suit schedule property to others defeating the interest of the plaintiff. If the defendants are permitted to alienate the suit schedule property to others, the very purpose of filing this suit will be defeated. The plaintiff by producing prima-facie documents clearly proved that the defendants had agreed to execute the Sale Deed in his favour.

Therefore, there is a prima facie case for issue of temporary injunction against the defendants. Hence, I have answered this **Point No.1 in the Affirmative.**,

9. **POINT NOS.2 AND 3:-** These points are interconnected, they are taken up together for answering.

10. In this case the plaintiff has filed this suit for specific performance of contract. In fact these defendants having received Rs.6,00,000/- from the plaintiff and also having agreed to execute the Sale deed in favour of plaintiff in O.S.79/2014 by filing the compromise petition retracted from their own terms of settlement. The plaintiff having paid the part of the sale consideration to the defendants now made to wait for getting the Sale Deed in his favour. The plaintiff is made to file this suit for getting relief. If temporary injunction as prayed in the I.A.No.1 is not granted as against the defendants, they may sell the suit schedule property to others in order to defeat the

right of plaintiff. Under such circumstances, the plaintiff will be put to irreparable loss and hardship. In this case the balance of convenience is in favour of plaintiff, it is the plaintiff who will be put to irreparable loss and hardship if temporary injunction is not granted. Therefore, I have answered these **Point Nos.2 and 3 in the Affirmative.**

11. **POINT NO.4:-** In view of my findings given on Point Nos.1 to 3 for the reasons discussed herein above paragraphs, I proceed to pass the following:

ORDER

The I.A.No.1 filed on behalf of the plaintiff U/o 39 Rule 1 and 2 r/w/s/ 151 of CPC is hereby allowed.

The defendants, their men, agents or anybody claiming through or under them are hereby temporarily

restrained from alienating the suit
schedule property during the
pendency of this suit.

(Dictated to the Judgment writer transcribed and computerized by him,
corrected and initialed by me and then pronounced by me in the open
court on this the **28th day of January 2022**).

(SHUBHA)
Senior Civil Judge & JMFC,
Channapatna.

Orders on I.A.No.1
pronounced in open court

O R D E R

The I.A.No.1 filed on behalf of the plaintiff U/o 39 Rule 1 and 2 r/w/s/ 151 of CPC is hereby allowed.

The defendants, their men, agents or anybody claiming through or under them are hereby temporarily restrained from alienating the suit schedule property during the pendency of this suit.

For issues call on 19.3.2022.

(SHUBHA)
Senior Civil Judge & JMFC,
Channapatna.