

ORDERS ON I. A. NO. I

1. This is an I. A. No. I under Order 39 Rule 1 and 2 by the plaintiff seeking to allow the instant application and grant ad-interim exparte temporary injunction restraining the defendants from

alienating/encumbering the suit schedule properties.

2. The plaintiff has sworn to the affidavit annexed to this application that the instant suit is filed seeking for the relief of specific performance of agreement/contract dated 06.07.2015, by completing the formalities of phodi and conversion and come and execute the registered sale deed by accepting the balance sale consideration of Rs. 4,41,70,000/- and by handing over possession of suit schedule properties and to grant costs of the suit and to grant such other relief or reliefs as this court deems fit to grant

in the facts and circumstances of the case in the interest of justice and equity. That the defendants have unilaterally cancelled the agreement of sale dated 06.07.2015, wherein they received huge advance sale consideration of Rs. 30,00,000/- where as the total consideration agreed was Rs.4,91,70,000/-. That the receipt of sale consideration is not disputed. But the defendants have taken stand that there is a National Highway Authority of India. But the said notification is for widening of National Highway, where as the schedule property measures larger extent of 4.18.8, the remaining properties will be free to be a part of sale deed. There was no impediment for that. But the defendants have dodged without doing phodi, without even applying for phodi and conversion thereby putting him in huge problems. That the averments made in the plaint may be read in conjunction with instant affidavit to avoid repetition of facts. There is a threat of the defendants inducting third party rights in the suit schedule property. If the same is done, by alienating or encumbering the suit schedule property, he will be put to great hardship and injury. That the defendants

may be restrained from creating any encumbrances or charges in respect of the suit schedule properties. That the balance of convenience lies in his favour and irreparable injury will be caused to him if the injunction is not granted and notice is issued, then the defendants will become alert and they may further create complications in the matter. To protect the properties and to prevent injury to the suit properties, the protection by way of interim injunction is necessary. Hence the instant application for temporary injunction.

3. The defendant Nos. 1 to 3 have filed their objections denying all the contentions of the applicant and have contended that the plaintiff filed the suit against the defendant is not maintainable in the eye of law, the suit itself is infructious, because the contract between the plaintiff and defendants is not in subsistence. That the said defendants have already cancelled the agreement and returned the entire agreement amount of Rs. 30,00,000/-. After the cancellation of the agreement between the parties, the very sale

agreement dated 06.07.2015, was returned and handed over by the plaintiff in favour of the defendants. That the original sale agreement dated 06.07.2015 is in the custody of the defendants, the said plaintiff has not come with clean hand and has come with photo-state copy, if at all if plaintiff is having a original agreement he has to furnish the same and contest the matter otherwise this court may be pleased to dismiss the suit with cost and take necessary action against the plaintiff. That the defendants are absolute owner of the suit schedule properties, the 1st defendant is the power of attorney holder of the 3rd defendant, they have entered into deed of sale agreement in favour of the plaintiff on 06.07.2015 and also they have received advance amount of Rs. 30,00,000/-. but as per the agreement contents plaintiff has not full filled the terms and conditions and not shown his ready and willingness to get the original sale deed executed during that period the Ministry of National Highway and Road Transport Department as issued a paper publication for acquiring the land, after the notification defendant's have

issued a cause notice to the plaintiff regarding cancellation of the sale agreement dated 06.07.2015. After the receipt of the notice plaintiff got issued a reply notice dated 07.04.2016, after the via-media both the plaintiff and defendants have cancelled the agreement of sale dated 06.07.2015, than returned the original sale agreement. As per the final settlement defendants are paid the amount of Rs. 30,00,000/-. After the payment made by the defendants plaintiff was handed over the entire original sale agreement and cancelled the same. After obtaining the cancelled original sale agreement the defendants have not at all decided to any thing regarding selling away the property without completing the acquisition process made by the National Highway and Road Transport department. That when the contract between the plaintiff and defendants is closed the relationship of vendor and vendee is not in subsistence. That the averrments made in the plaintiff is not sustainable under law. Further denied all the averrments made in plaint para No. 10, 11 and contended that

when the contract between the plaintiff and defendants is not in existence, the question of executing the registered sale deed and enforcing the agreement of sale through judicial process is not permissible under law. The defendants are dragged to the court unnecessarily. That the cause of action stated by the plaintiff is not correct, the said cause of action stated by the plaintiff for his own convenience for filing this false suit and with an intent to get wrongful gain and hence has prayed for dismissal of the application.

4. The following points arise for my consideration.

1. Whether the applicant has made out a prima facie case for the grant of temporary injunction?

2. Whether the applicant sustains irreparable injury in

the event of non
passing of an order of
temporary injunction?

3. Whether the
balance of convenience
lies in favour of grant
of temporary
injunction?

4. What order?

5. I have heard the arguments.

6. My findings for the above points are as
follows for the following reasons.

Point No. 1 : In the Negative.

Point No. 2 : In the Negative.

Point No. 3 : In the Negative.

Point No. 4 : As per final order.

REASONS

7. **Point Nos. 1 to 3** : These points are
inter connected to each other and hence

I take up these issues together for discussion.

8. The plaintiff has filed this suit for specific performance of contract against the defendants and has contended that the plaintiff has entered into an agreement to sell in the suit schedule property on 06.07.2015 for the total sale consideration of Rs. Rs.4,91,70,000/-. That after the agreement to sell when the plaintiff approached the defendants for executing the sale deed the defendants have dodged the matter by giving one or the other reason. Such as they have applied for phodi and conversion etc., That the defendants are trying to alienate or encumbering the suit schedule property in favour of the third party. Hence by this act having invested such huge amount the plaintiff will be put to irreparable loss and injury which cannot be compensated in terms of money and balance of convenience lies in favour. Hence prays to order for temporary injunction restraining defendants from alienating or encumbering the suit schedule property in favour of third party.

9. The defendants contended that the application is not maintainable in law and infructuous and the agreement is already cancelled and defendants have already returned the advance amount of Rs. 30 lakhs received from plaintiff. It is further contended that after cancellation of the said agreement to sell the original agreement to sell dated 06.07.2015 was returned and handed over by the plaintiff to the defendants which is now in their custody. That the plaintiff has filed the suit on the basis of xerox copy of agreement to sell and has not come to the court with clean hands and has further admitted that the agreement to sale deed dated 06.07.2015 was entered into between the plaintiff and the defendants and defendants had received advance amount of Rs. 30 lakhs and during that period the Ministry of National Highway of Road Transport has issued paper publication for acquiring the land and after the notification defendants have issued notice to the plaintiff regarding cancellation of the sale agreement dated 06.07.2015 and

after the receipt of the notice plaintiff got issued reply dated 07.04.2016 and after the via-media both the plaintiff and defendants have settled the matter and got agreement to sell dated 06.07.2015 cancelled and plaintiff has returned the original sale agreement to sell to the defendants as per the final settlement. The defendants have repaid the advance amount of Rs.30,00,000/- to the plaintiff and plaintiff in turn the plaintiff has handed over the original agreement to sell cancelling the same to the defendants. That when the contract between the plaintiff and defendants is closed this suit is not maintainable and consequently the interim relief claimed is also not maintainable.

10. The plaintiff in support of his contention has produced colour xerox copy of agreement to sell dated 06.07.2015 as original agreement to sell and got the case registered and has sought for keeping the same in safe custody. Further the plaintiff has produced copy of the receipt of sale consideration amount, copy of power of

attorney dated 07.08.2015, copy of the advocates notice to the plaintiff cancellation of agreement dated 24.03.2016, copy of the reply by the plaintiff dated 07.04.2016 and copy of RTC extracts.

11. The defendants in support of their contention have produced original agreement to sell dated 06.07.2015 and has sought for keeping the same in safe custody.

12. It is pertinent to note here that during the course of arguments the defendants contended that they are in possession of the original agreement to sell dated 06.07.2015 and plaintiff has filed the suit on the basis of colour xerox copy of the agreement to sell stating that it is original and has sought for keeping the same in safe custody. Further to prove the same the defendants have produced the original agreement to sell dated 06.07.2015. At this stage it appears that the plaintiff has filed the suit on the basis of colour xerox copy of the agreement to sell as the

original agreement to sell which is in possession of the defendants. The plaintiff has not come to the court with clean hands and he has not produced the original agreement to sell and when he is not in possession of the original agreement to sell he has not made out prima facie case. The defendants have produced the original agreement to sell and thereby have made out prima facie case of their defence.

13. The plaintiff has filed the suit stating that he is producing the original agreement to sell and suppressed the real fact and after the original agreement to sell is produced he has come up with another contention stating that he has been cheated by the defendants. All these things require trial and cannot be determined at this stage. As such the plaintiff has not made out prima facie case for going into trial at this stage is not entitled for the equity relief of an order of temporary injunction in his favour to restrain the defendants from alienating the suit schedule property. Since the plaintiff has not filed the original agreement to sell

it cannot be held that he will be put to irreparable loss if an interim order of temporary is not granted in his favour and since the defendants have produced the original agreement to sell if the contentions of the defendants is proved then restraining them from not to alienate the suit schedule properties will cause grater hardship to the defendants rather than the plaintiff and balance of convenience tilts in favour of the defendants rather than the plaintiff.

14. It is pertinent to note here that the discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff : (i) existence of a prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of the plaintiff's rights is compared with or weighed against the need for protection of the defendant's rights or likely infringement of the defendant's rights, the balance of convenience tilting in favour of plaintiff; and (iii) clear possibility of irreparable injury being caused to plaintiff if the temporary

injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands.

15. Thus, on consideration of the matter, I find that plaintiff has failed to establish prima facie case. The balance of convenience does not lie in favour of plaintiff and plaintiff has also failed to prove that he would be put to irreparable loss and injury, if an order of temporary injunction is not granted. In the circumstances, the documents produced by the defendants prima facie support their defence and the plaintiff has at this stage has not made out prima facie case to issue order of temporary injunction against the defendants pending disposal of the suit.

16. Hence I am of the opinion that there is no prima facie case as against the defendants.

17. In the absence of prima facie case, the applicant cannot sustain irreparable injury in the event of non passing of the order.

18. In the absence of prima facie case and the irreparable injury the balance of convenience cannot tilt in favour of the applicant.

19. Hence I answer the above point accordingly.

20. **Point No. 2**: For the reasons discussed herein above I proceed to pass the following orders.

ORDER

1. I.A.No. I filed by the applicant/plaintiff under Order 39 Rule 1 and 2 is hereby dismissed. No order as to cost.

2. Call on for issues by 26.03.2018.

Channapattana. (J. P. ARCHANA)
02.03.2018. Senior Civil Judge & JMFC.,
Channapattana.