

IN THE COURT OF THE ADDL CIVIL JUDGE AND J.M.F.C
AT CHANNAPATNA

PRESENT: Smt. Namrata Rao.K.S
B.A.L, L.L.B., M.B.L
Addl., Civil Judge and J.M.F.C.
Channapatna.

Dated This 4th Day Of April, 2019

O.S.No.254/2017

PLAINTIFF:

Smt. Ningamma
W/o Late Basavaraju
Aged about 65 years
R/a: Mangadahalli Village,
Virupkashipura Hobli,
Channapatna Taluk,
Ramanagara District.

(By Sri. M.K.P., Advocate)

V/s

DEFENDANTS:

1. Sri. Marigowda
S/o Late Siddegowda
Aged about 66 years,
2. Sri. Mahadeva
S/o Marigowda
Aged about 40 years,
3. Sri. Balarama
S/o Marigowda
Aged about 38 years,
4. Sri. Shivakumar
S/o Marigowda
Aged about 35 years,

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R/a: Mangadahalli Village,
Virupkashipura Hobli,
Channapatna Taluk,
Ramanagara District.

(By Sri. N.G., Advocate for D1 to D4)

PARTIES TO I.A.No.II

APPLICANT: : Smt. Ningamma

.....Plaintiff

-V/s-

RESPONDENT : Sri. Marigowda & others

.....Defendants

ORDERS ON I.A.No.II

The application is filed u/Order XXXIX Rule 1 and 2 of C.P.C by the plaintiff. The defendant has objected the application.

2. This is a suit for specific performance. The case of the plaintiff is that the defendants are the owners of the suit schedule property. The defendants entered into a sale agreement with the plaintiff agreeing to execute a regular sale deed within stipulated time. The stipulated period was extended from time to time. In spite of the completion of the time, the defendants did not execute the sale deed. The

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plaintiff approached the defendants to execute the sale deed but in vain. Thus this suit.

3. The defendants admitting the execution of the agreement of sale contend that the agreed sale consideration was Rs. 4,50,000/-. The defendants have replied to the notice issued by the plaintiff. The description of the suit schedule property is also not correct.

4. Through the IA.No.II, the plaintiff seeks for an order of temporary injunction against the defendants from alienating suit schedule property till the disposal of the suit.

5. On perusal of the materials on record, the following points arise for my consideration:

1. *Whether the plaintiff has made out a prima-facie case in his favour?*
2. *Whether the balance of convenience lies in favour of the plaintiff?*
3. *Whether the irreparable loss or injury will be caused to the plaintiff if temporary injunction is not granted?*
4. *What order?*

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6. My findings on the above points are as under;

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,

for the following;

REASONS

7. **Point No.1:-** This is a suit for specific performance. The plaintiff asserts that the defendants approached the plaintiff with an intention to sell the suit schedule property and after the acceptance of the offer and the sale consideration, the sale agreement was entered into. The defendants received the earnest money and agreed to execute the regular sale deed within the stipulated time. But in spite of the lapse of stipulated time, the defendants did not come forward to execute the sale deed. Thus this suit is filed and now the defendants are trying to alienate the suit schedule property to another person in violation of the agreement executed to him. Thus prays for the order of temporary injunction.

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8. The defendants contend that though the sale agreement was executed the agreed sale consideration is Rs. 4,50,000 and not Rs. 2,10,000 as shown in the sale agreement.

9. I have perused the documents on record. The plaintiff admits that the defendants are the owners of the suit schedule property. Needless to say, injunction cannot be given against the owner. Even if the defendants alienate the suit schedule property, the plaintiff, if at all she is entitled to the specific performance of the contract, the alienation will not bind her by virtue of Section 52 of the T.P.Act. The purchaser pendente lite will be bound by the decision of the court over the suit schedule property. I am of the view that the plaintiff has not showed prima facie case in her favour. Hence I answer the **Point No. 1 in the Negative.**

10. Point No.2 and 3:- In view of the discussion made above with regard to point No.1, Point No.2 and 3 are taken together. The Hon'ble apex court in **Kashi Math Samsthan**

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And another V/s Shrimad Sudhindra Thitha Swamy and another reported in AIR 2010 SC 296 has held as follows

“If a party fails to prove prima facie case to go for trial , it is not open to the court to grant injunction in his favour even if he has made out a case of balance of convenience and would suffer irreparable loss and injury if no injunction is granted”

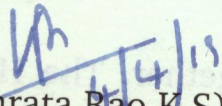
When the plaintiff has failed to show prima facie case in his favour the discussion on balance of convenience and irreparable loss and injury does not serve any purpose, hence I answer the **Points No.2 and 3 in the Negatives.**

11. Point No.4:- As per the above discussion, I to pass the following;

ORDER

I.A. No. II filed under Order XXXIX Rule 1 & 2 r/w. Sec.151 of CPC is dismissed.

(Directly typed by me, the transcript corrected by me and then pronounced in the open court on this the 4th day of April, 2019)


(Namrata Rao.K.S)
Addl., Civil Judge and J.M.F.C,
Channapatna.