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Presented on : 13-01-2015
Registered on : 13-01-2015

IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC.,
KANAKAPURA

Present: Smt. Radha S, B.A., LL.M.,
Addl. Civil Judge & JMFC.,
Kanakapura.

O.S./17/2015

Dated this the 08th day of January 2025

Plaintiff:- Sri. Krishnegowda
S/o Late Kallegowda @
Dodda Kallegowda,
Aged about 50 Years,
R/at: Adanakuppe Village,
Kasaba Hobli,
Kanakapura Taluk,
Ramanagara District.

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

.Vs.

Defendants:- 1. Sri. Rajanna
S/o Late Kallegowda @
Kallegowda,
Aged about 55 years,
R/at: Adanakuppe Village,
Kasaba Hobli,
Kanakapura Taluk,
Ramanagara District.

2. Sri. G.M.Muddegowda
S/o Maregowda,
Aged about 50 years,
R/at: Hale Gabbadi Village,
Harohalli Hobli,
Kanakapura Taluk,
Ramanagara District
3. Rajashekar K.R
S/o Ramanna. J,
Aged about 49 years,
R/at: Door No.432/A, 3rd Cross,
7th Main Road, H.Block,
Ramakrishna Nagara,
Mysore-570023.
4. Smt. P.Kamakshi
W/o K.R. Shivakumar,
Aged about 41 years,
R/at: No.369, Lakshmi Nilaya,
M.G.Road,Ustad Ramaiah Galli,
Kanakapura Town and Taluk,
Ramanagara District.

**(By Sri.M.M, Adv., for D1
Sri.R.C. Adv., for D2 to D4)**

PARTIES TO IA No.4

Applicant / plaintiff : Sri. Krishnegowda
Vs.

Opponent / defendant : Smt. P.Kamakshi,

(RADHA.S)
Addl. Civil Judge & JMFC.,
Kanakapura.

ORDERS ON I.A.NO.4 FILED UNDER ORDER XXXIX
RULE 1 AND 2 R/W SECTION 151 OF CPC BY THE
PLAINTIFF

This is an application filed by plaintiff requesting the court to pass an order of temporary injunction against the defendant No.4, to restrain her, her agents, servants or anybody acting on her behalf from interfering into the peaceful possession and enjoyment of the plaintiff over the suit schedule property in any manner till disposal of the suit.

2. Out of all the defendants, the defendant No.4 has filed written statement and memo to consider her written statement as objections to the present application.

3. On the bases of application and written statement filed by either party, the following points would arise for my consideration.

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

4. Heard the arguments canvased by the learned Sri.K.V.M Advocate for plaintiff and learned Sri.R.C

Advocate for the defendant No.2 at length in great detail on IA No.I. Scrutinized the records of the case.

5. On perusal of the documents and having heard the arguments, my answer to the above points as under;

Points No. 1 to 3 : In the Negative

Point No. 4 : as per the final order
for following:

::REASONS::

6. Point Nos.1 to 3 : These points are taken together for discussion hence they have interlinked to each other to avoid repetition of fact. Admittedly, plaintiff has filed this suit against defendants for the relief of specific performance of contract.

7. In the affidavit accompanying to this application the plaintiff deposed that, the defendant No.1 is the absolute owner of the suit schedule property and having legal right over it. The defendant No.1 has agreed to sell the suit schedule property to the plaintiff for total sale consideration amount of Rs.63,750/- for his family legal financial necessities. Accordingly the plaintiff has also agreed to purchase the same for the said amount. In pursuance of which, on 02-03-2002 the defendant No.1 has executed an agreement for sale in favour of plaintiff by receiving entire sale consideration amount of Rs.63,750/- from the plaintiff. Further the defendant No.1 has also handed over the possession of the suit schedule property in favour of the

plaintiff. Further the defendant No.1 has also assured and agreed to execute the registered sale deed by producing all relevant documents in respect of sold property. The plaintiff made repeated requests to the defendant No.1 to get execute the registered sale deed, but the defendant No.1 has failed to perform his part of contract. There after the plaintiff learnt that the defendant No.1 in order to deprive the right of the plaintiff on the suit schedule property has created a sale deed in respect of the suit schedule property in the name of the defendant No.2. The defendant No.1 has no right to execute the alleged sale deed in favour of the defendant No.2 as he had already handed over the possession of the suit schedule property in favour of the plaintiff. For which immediately, the plaintiff has issued a legal notice to the defendants calling upon them to execute the register sale deed as per agreement. Even though the defendants didn't come forward to execute the sale deed. Further it was learnt by the plaintiff that during the pendency of the suit the defendant No.2 has sold the suit schedule property to the defendant No.3 under the registered sale deed dated 13-06-2016 and who in turn sold the same in favour of defendant No.4 under the registered sale deed dated 06-06-2020. On the basis of said sale deed, the khata pertaining to the suit schedule property is also transferred in the name of the defendant No.4. Now the defendant No.4 by taking the undue advantage of the said revenue documents is trying to interfere into the peaceful

possession and enjoyment of the plaintiff on the suit schedule property. However the plaintiff tried to resist the illegal acts of the defendant No.4 but his all efforts are went in vain. Hence without having any other go, the plaintiff has impleaded the defendant No.4 in this suit along with present application. On these grounds the plaintiff sought to allow the present application.

8. On the other hand, the defendant No.4 has filed written statement and memo to consider her written statement as objections to present application. In the written statement, the defendant No.4 has denied the entire plaint averments except issuance of reply notice by the defendants. It is the specific defence of the defendant No.4 that, she is the absolute owner in possession of the suit schedule property as she purchased the same from the defendant No.3 under the registered sale deed dated 06-06-2020. Since the day of purchase, the defendant No.4 is in possession and enjoyment of the suit schedule property. The khata pertaining to the suit schedule property is also transferred in the name of the defendant No.4. The plaintiff is the absolutely stranger to the suit schedule property and he is not having any manner of right, title, interest and possession on the suit schedule property. Even though in order to harass the defendants, the plaintiff is trying to interfere into the peaceful possession and enjoyment of the defendants. The plaintiff is not approached the court with

clean hands as such he is not entitled for any relief. On these grounds the defendant No.4 prayed to dismiss the application.

9. I have gone through the pleadings and documents available on records, the plaintiff in support of his contention has produced Photostat copy of sale agreement dated 02.03.2002, RTCs, office copy of legal notice dated 05-12-2014 issued to the defendants, Postal receipts, postal acknowledgment cards, reply notice dated 20-12-2014. I have carefully gone through the documents produced by the plaintiff in support of his case, there are no documents produced by the plaintiff to show that, as on the date of filing of the suit, he is in possession and enjoyment of the suit schedule property as contended by the plaintiff. Further it is pertinent to note that, from the plaint pleadings only it prima-facie appears that the plaintiff is in possession but no documents are produced by the plaintiff in this regard. The plaintiff has not produced any documents to establish his possession on the suit schedule property at this stage to grant temporary injunction as prayed for. From the documents produced by the plaintiff itself it is crystal clear that, the plaintiff is not in possession of the suit schedule property at this stage to believe the version of the plaintiff at this stage to consider the present application. More over the burden is upon the plaintiff to prove that he is in peaceful possession and enjoyment over

the suit schedule property as on the date of the suit. The said question can not be decided at this stage as the same is the matter of trial.

10. Though the plaintiff in the plaint has averred that he is in possession and enjoyment of the suit schedule property, but at this pre-trial stage there are no documents to believe that the plaintiff is in possession over the suit schedule property as on the date of the suit. It is pertinent to note that the defendant No.4 has specifically denied the title and possession of the plaintiff on the suit schedule property in view of the registered sale deeds dated 19-06-2008, 13-06-2016 and 06-06-2020. More over the plaintiff has not produced any documents to establish his possession on the suit schedule property from 2002 to till the date of the suit.

11. The learned counsel for the defendant has vehemently argued that the plaintiff is not at all in possession of the suit schedule property at any point of time and specifically denied the title and possession of the plaintiff on the suit schedule property. Since the plaintiff has failed to prove his possession over the suit schedule property as on the date of the filing of the suit. Therefore, this court is of the considered opinion that plaintiff has not made out prima-facie case for granting of temporary injunction at this stage

as prayed for. Accordingly, this court answers Point No.1 in the Negative.

12. Point No.2 and 3:- Both points are taken together for common discussion in order to avoid repetition of reasoning. While considering the question of granting an order of temporary injunction one way or the other, the court, apart from finding out a prima-facie case would consider the question with regard to balance of convenience of the parties as also irreparable injury which might be suffered by the parties.

13. As discussed supra, the plaintiff has utterly failed to prove his possession over the suit schedule property by producing cogent document to grant temporary injunction at this stage. In the present case trial has to be conducted to prove the case of plaintiff. Validity and genuineness of the documents cannot be seen and discussed at this stage and that can be seen at the time of deciding the case on merits. If order of temporary injunction is granted it will cause injustice, irreparable loss and injury to the defendant No.4 rather than the plaintiff. Moreover the possession of the plaintiff on the suit schedule property is also under dispute, as such at this stage the plaintiff failed to prove his possession over the suit schedule property as on the date of suit, if an order of temporary injunction is granted the defendant No.4 would be put into greater hardship and balance of convenience is also lies in favour of the

defendant No.4. Therefore, this court answers Point No.2 and 3 in the negative.

14. Point No.4 : In view of the aforesaid reasons and finding made on Point No.1 to 3, this court proceeds to pass the following;

ORDER

I.A.No.4 filed Under Order 39
Rule 1 and 2 R/w Section 151 of CPC by
the plaintiff is hereby dismissed.

Cost of this I.A. shall follow the
final result of the suit.

*(Dictated to the stenographer directly on computer, corrected by me then the Stenographer has taken print out, after taking printout corrected, signed and then order pronounced by me in open court on **08th day of January 2025.**)*

(Smt. Radha.S)
Addl. Civil Judge & JMFC.,
Kanakapura.