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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.I

Applicant / plaintiff : Sri. Krishnegowda
Vs.

Opponents / defendants : Sri. Rajanna and Others

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

**ORDERS ON I.A.NO.I 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.2, to restrain him from alienating the suit schedule property to anybody 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 his 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 Affirmative
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. It is the specific contention of the plaintiff that by taking the undue advantage of sale deed and khata the defendant No.2 is trying to alienate the suit schedule property to others as such without having any other go, the plaintiff has come up with present suit against the defendants 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. It is pertinent to note that there is no relief against the

defendant No.4 under this application as such her defence is not necessary to consider the present 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. The documents produced by the plaintiff shows prima-facie case in favour of the plaintiff at this stage to grant temporary injunction in favour of the plaintiff. The genuineness of the documents cannot be seen at this stage, that can be seen at the time of trial. If defendant No.2 alienated suit property the rule of lis-pendense will apply and it leads to multiplicity of proceedings. If the defendant No.2 is restrained from alienating the suit property till disposal of suit no injustice would be caused to defendants, otherwise it causes irreparable loss and injury to the plaintiff. The defendant No.2 has not even opposed to the present application. The defence taken by the defendant No.4 can't be considered at this stage as the same is not required to decide the present application. The merit of the case cannot be decided at this stage as such no much appreciation is required on the defence taken by the defendant No.4. Considering the nature of the suit and materials available on record I am of the opinion that plaintiff has made out

prima-facie case and balance of convenience is also lies in favour of the plaintiff. Therefore, if order of injunction is not granted, irreparable loss and injury would be caused to the plaintiff rather than the defendants. For these reasons I answer point No.1 to 3 in Affirmative.

10. Point No.4 : For the above said reasons I proceed to pass the following order;

O R D E R

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

Defendant No.2 is hereby restrained by way of temporary injunction from alienating the suit schedule property to anybody in any manner till the disposal of the present suit.

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.