

KARN320015802024



Presented on : 04-07-2024

Registered on : 04-07-2024

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./216/2024

Dated this the 06th day of January 2025

Plaintiff:- Smt. Rathnamma
W/o Shambhulingaiah,
Aged about 67 Years,
R/o: No.11A/2/11, 19th Main,
Near Presidency School,
Bommanahalli,
Bengaluru South,
Bengaluru-560068.

(By Sri. C.M.J., Advocate)

.Vs.

Defendants:- 1. Smt. Rajamma
W/o Late Kempaiah
Aged about 60 years,

2. Smt. Kamalamma
W/o Chikkanna
D/o late Kempaiah
Aged about 49 years,

3. Smt. Gowri @ Gowramma
W/o Narasimhamurthy
D/o late Kempaiah
Aged about 44 years,

All are R/o:
Near Water Tank,
Aryadharmaraja Workshop
Road, 18th Ward,
Kanakapura Town,
Kanakapura Taluk,
Ramanagara District.

(By Sri. A.B.S., Advocate)

PARTIES TO IA No.I

Applicant / plaintiff: Smt. Rathnamma
Vs.

Opponents / defendants : Smt. Rajamma 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 defendants, to restrain them, their agents, servants or anybody acting on their behalf from alienating the suit

schedule property to anybody in any manner till disposal of the suit.

2. The defendants have appeared through their counsel and filed written statement and memo to consider their 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.C.M.J Advocate for plaintiff and learned Sri. A.B.S Advocate for the defendants 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 defendants are the absolute owners in possession of the suit schedule property and having legal right over it. The suit schedule property is the self acquired property of the defendant No.1. The defendants have agreed to sell the suit schedule property to the plaintiff for total sale consideration amount of Rs.4,60,000/- for their family legal financial necessities. Accordingly the plaintiff has also agreed to purchase the same for the said amount. In pursuance of which, on 10-03-2022 the defendants have executed a registered agreement for sale in favour of plaintiff by receiving an advance sale consideration amount of Rs.3,80,000/- from the plaintiff. Further the defendants assured and agreed to execute the registered sale deed within one year by producing all relevant documents in respect of sold property. The plaintiff made repeated requests to the defendants to get execute the registered sale deed, but the defendants have failed to perform their part of contract. For which on 28-05-2024 the plaintiff has issued a legal notice

to the defendants calling upon them to execute the register sale deed as per agreement by receiving balance sale consideration amount. Even though the defendants didn't come forward to execute the sale deed. It is the specific contention of the plaintiff that the defendants are 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 defendants have filed written statement and memo to consider their written statement as objections to present application. In the written statement, the defendants denied the entire contents of affidavit except their ownership on the suit schedule property. It is the specific defense of the defendants that they were in need of financial assistance for their domestic problem. As such the defendants have received an amount of Rs.2,15,000/- from the plaintiff and one Smt. Bhagyalakshmi as a loan in the month of February-2014. At the time of borrowing money from the plaintiff and Smt. Bhagyalakshmi, the defendants have executed an agreement for sale dated 06-02-2014 in favour of the plaintiff and Smt. Bhagyalakshmi as a security. Subsequently the defendants have also paid the interest amount to the plaintiff and the said Smt.Bhagyalakshmi by way of cash. After completion of one

year, the defendants have also repaid the entire loan amount to the plaintiff and Smt.Bhagyalakshmi and requested them to cancel the said agreement for sale dated 06-02-2014. But the plaintiff and said Smt.Bhagyalakshmi have postponed for cancellation by assigning one or other reasons. The plaintiff and said Smt.Bhagyalakshmi have finally agreed to cancel the agreement for sale dated 06-02-2014. The sale agreement dated 06-02-2014 was cancelled on 10-03-2022. On the same day, the plaintiff has obtained some signatures of the defendants on some papers and created the suit agreement. The plaintiff and Smt. Bhagyalakshmi on the same day have canceled the previous agreement and created a new agreement. The defendants are innocents and illiterate, by taking undue advantage of their innocence the plaintiff has created the suit agreement. The defendants have never agreed to sell the suit schedule property to the plaintiff. By believing the words of the plaintiff and Smt.Bhagyalakshmi the defendants have put some signatures on some papers only in order to cancel the agreement for sale deed dated 06-02-14. But the plaintiff by taking the undue advantage of said agreement for sale has filed this false and frivolous suit. There is no sale transaction between the plaintiff and defendants in respect of suit schedule property. The defendants have never agreed to sell the suit schedule property to the plaintiff at any point of time. The defendants have executed the agreement for sale dated 06-02-2014 in favour of plaintiff and one Smt.

Bhagyalakshmi only as a security document towards the said loan but the plaintiff by taking the undue advantage of defendants innocence has got the suit agreement and on the bases of said agreement has filed this false and frivolous suit in order to get wrongful gain. The plaintiff is also well aware of these facts even though by suppressing all the facts has filed this false suit. As such the plaintiff is not entitled for any relief. On these grounds, the defendants prayed to dismiss the suit.

9. I have gone through the pleadings and documents available on records, the plaintiff in support of her contention has produced original copy of registered sale agreement dated 10.03.2022, office copy of legal notice dated 28-05-2024 issued to the defendants, Postal receipts and returned postal covers. 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 defendants alienated suit property the rule of lis-pendense will apply and it leads to multiplicity of proceedings. If the defendants are 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 defendants in support of their defence have also produced photocopy of agreement for sale dated

06-02-2014. Agreement cancellation deed dated 10-03-2022, photocopies of Aadhaar cards and agreement for sale dated 10-03-2022. The merit of the case cannot be decided at this stage as such no much appreciation is required on the documents produced by the defendants in support of their defence. 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.

Defendants, their agents, servants or anybody acting on their behalf are 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
06th day of January 2025.)*

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