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**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE & J.M.F.C.,
AT:MAGADI**

Present:

**Sri. Hanumanth Satwik., LL.M.,
Addl. Senior Civil Judge & JMFC. Magadi.**

Dated : this the 25th day of February, 2022
O.S.No.158/2020

Plaintiff : Sri. Nagaraju,
S/o. Chikkarangaiah,
Aged about 51 years,
R/at: Lakshmidevi Badavane,
Kudur Town & Hobli,
Magadi Taluk,
Ramanagara District.

Presently R/at:
Mallapanahalli Village,
Kudur Hobli, Magadi Taluk,
Ramanagara District.

(By **Sri. C.B.H.**, Advocate)

-V/s-

Defendant : Smt. Jayamma,
W/o. Late. Venkatappa,
Aged about 69 years,
R/at: Marasandra Village,
Kudur Hobli, Magadi Taluk,
Ramanagara District.

(By Sri. **K.L.S.** Advocate)

ORDER ON IA No.I

The present suit is for specific performance of contract.

2. The present application has been filed by the plaintiff U/o. XXXIX

rule 1 and 2 R/w. Sec.151 of CPC praying to temporarily restrain the defendant or anybody claiming through him from alienating the suit schedule property. It is the case of the plaintiff that the defendant is the owner of the suit schedule property. He and the defendant entered into agreement of sale dated: 06.10.2016 with respect to suit schedule property. The sale consideration was fixed at Rs.6,60,000/-. He paid the defendant an advance sale consideration of Rs.5,50,000/-. He is ready and willing to perform his part of the contract. He approach the defendant with balance sale consideration requesting for execution of sale deed. The defendant did not come forward to execute sale deed with respect to suit schedule property in his favour. Subsequently, he issued legal notice to the defendant on 21.03.2020. The defendant did not reply to the notice. The defendant is attempting to alienate the suit schedule property. In this regard, the plaintiff prays as above.

3. The defendant filed memo and adopted his written statement as objections to the application. The defendant in the written statement denied the plaint averments. The defendant contended that his son Venkateshappa borrowed Rs.4 lakhs from the plaintiff. One Ranganna and M. R. Vishwanatha are the witnesses to the said loan transaction. For the security for the said loan, the plaintiff and the said two witnesses took him to the office of Sub-Registrar and obtained his thumb impression on the

agreement to sell. There is no privity of contract between plaintiff and himself. His son Venkateshappa colluded with the plaintiff got agreement of sale from his hands. There was no need for him to sell the suit schedule property. The agreement of sale was obtained by the plaintiff at the instance of his son Venkateshappa. The present suit is not maintainable. The agreement of sale was obtained as a security for the loan. The loan borrowed by his son has been repaid. The present suit is barred by Law of Limitation. In this regard, the defendant prays to reject the application.

4. Heard arguments of counsel.

5. Considering the contentions of the counsel, following points arise for my consideration.

1. Whether the plaintiff has made out prima-facie case for grant of temporary injunction?
2. Whether balance of convenience is in favour of plaintiff?
3. Whether the plaintiff will suffer irreparable injury if temporary injunction is not granted?
4. What order?

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

- | | |
|--------------|--|
| Point No.1 : | In the affirmative |
| Point No.2 : | In the affirmative |
| Point No.3 : | In the affirmative |
| Point No.4 : | As per final order
For the following; |

REASONS

7. **Point No.1:-** It is the case of the plaintiff he entered into agreement of sale with the defendant on 06.10.2016. The total sale consideration was fixed at Rs.6,60,000/-. The defendant received Rs.5,50,000/- from him as advance sale consideration. He requested the defendant to execute registered sale deed in his favour. The defendant did not come forward to execute registered sale deed. He issued legal notice to the defendant seeking execution of sale deed. The defendant did not reply to the notice. He is ready and willing to perform his part of the contract. In this regard, I have perused the alleged registered agreement of sale dated: 06.10.2016. The said agreement prima-facie shows that the defendant entered into agreement of sale with the plaintiff with respect to suit schedule property. Further, from the contention of the defendant in his written statement it is prima-facie clear that the defendant executed agreement of sale dated: 06.10.2016 in favour of plaintiff. In view of the registered agreement of sale and the admission in the written statement about execution of agreement of sale by the defendant in favour of the plaintiff, I am of the view that prima-facie the defendant executed agreement of sale dated: 06.10.2016 9 in favour of the plaintiff.

8. The defendant contended that his son Venkateshappa borrowed money from the plaintiff. The agreement of sale was executed by him as a security for the loan. The present suit is barred by Law of Limitation. Be it

stated, for the above said reasons it is prima-facie clear that the defendant executed agreement of sale in favour of the plaintiff. This being the case, the contentions raised by the defendant are the subject matter of trial which cannot be decided at this stage of the case.

9. The present suit is one for specific performance of contract. In the case at hand the question to be determined is whether the defendant executed agreement of sale in favour of the plaintiff as a security for the loan, if so, whether the plaintiff is entitled for specific performance of contract. Be it noted, for the above said reasons it is prima-facie clear that the defendant executed agreement of sale in favour of the plaintiff. In this view of the matter and having regard to the questions that are required to be answered in the present suit and considering agreement of sale dated: 06.10.2016, I am of the view that there is a prima-facie case for trial. In this circumstances considering the application, pleadings and the documents produced, I hold that the plaintiff has made out prima-facie case. Accordingly, point no.1 is answered in the affirmative.

10. **Point No.2:** - In the case on hand from the pleadings and the documents produced, it is prima-facie clear that there is a prima-facie case for trial. In these circumstances, if temporary injunction is not granted and if the defendant alienates the suit schedule property as alleged, the plaintiff will suffer inconvenience, as the plaintiff will be put into multiplicity of

litigations. Such being the case, if temporary injunction is not granted the inconvenience which will be suffered by the plaintiff is more than the inconvenience which may be caused to the defendant. Further, during the pendency of the suit, if the defendant alienates the suit schedule property as alleged by plaintiff, the very purpose of the suit will be frustrated. Since the defendant has an opportunity to contest the matter and get the matter decided on merits, I am of the view that balance of convenience with respect to suit schedule property is in favour of plaintiff. Resultantly, point no.2 is answered in the affirmative.

11. **Point No.3:-** In the case on hand from the pleadings and the documents produced, it is prima-facie clear that there is a prima-facie case for trial with respect to suit schedule property. In these circumstances if temporary injunction is not granted and if the defendant alienates the suit schedule property as alleged, plaintiff will suffer irreparable injury and such injury cannot be compensated in terms of money, as plaintiff will be put into multiplicity of litigations. Further, during the pendency of the suit if the defendant alienates the suit schedule property as alleged by plaintiff, the very purpose of the suit will be frustrated. In these circumstances, plaintiff showed that he will suffer irreparable injury, if temporary injunction is not granted with respect to suit schedule property. Resultantly, point no.3 is answered in the affirmative.

12. **Point No.4 :** - In view of reasons on point No.1 to 3 and in the interest

of justice and equity, I proceed to pass the following;

ORDER

**IA No.I U/o.XXXIX Rule 1 & 2 r/w Sec.151 of
CPC filed by plaintiff is hereby allowed.**

**Defendant, his agents, servants or anybody
claiming through him are hereby temporarily
restrained from alienating the suit schedule property
till the disposal of the suit.**

Parties to bear their own cost.

(Dictated to the Typist directly on the computer, typed by her corrected by
me and then pronounced in the open court on this the **25th day of
February, 2022.**)

**(Hanumanth Satwik)
Addl. Senior Civil Judge & JMFC.,
Magadi.**