



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

Present:

**Sri. Sandeep S. Reddy, B.A., LL.B.,
Addl. Senior Civil Judge & JMFC., Magadi**

DATED: THIS THE 22nd DAY OF MARCH, 2024

O.S.No.252/2023

Plaintiff : M/s Bengaluru Divinity LLP,
A Limited Liability Partnership,
Having its registered Office
At No.8-3-833, Plot No.37 & 38,
Phase-I, Kamalapuri Colony,
Hyderabad-570 073.
Represented by its SPA holder-
Sri B. Prabhakar,
S/o D. Venkatanarayana Reddy,
Aged about 50 years,
Residing at No.1-3-183/40/198-199,
Celestial Abode, SBI Staff Colony,
Gandhinagar, Secunderabad,
Hyderabad, TELENGANA -570 080.
Now in Bengaluru Camp.

(By **Sri. J.C.K.** Advocate)

---V/s---

Defendants : 1. Sri. Gowtham Chand,
S/o late Motilal,
Aged about 61 years,
R/at No.41, Shivaji Road,
1st Cross, Shivajinagar,
Bengaluru - 560 051.
2. Sri. V. Ravikumar,
S/o. H. S. Venkat Rao,



Aged about 52 years,
R/at: No.96/97, 7th Cross,
K. R. Layout, J. P. Nagar, 6th Phase,
Bangalore - 560 078.

3. Sri. R. K. Budhwar @ R. S. Budhwar,
S/o. Richiran,
4. Sri. Hitalal Wahi,
S/o. Shamshad Singh,
5. Sri. A. C. Dhambadakere,
S/o. Cheturam,

D3 to 5 are represented by their
GPA holder,
D2 Sri. V. Ravikumar,
S/o. H. S. Venkat Rao,

(D1 by **Sri. P.N. Advocate**)

ORDER ON IA NO.I, II & III

The plaintiff has filed the aforesaid suit praying for the relief of declaration, permanent injunction and consequential reliefs against the defendants. The plaintiff has sought to declare itself as the absolute owner in lawful possession and enjoyment of the suit schedule property by virtue of registered sale deed dated: 11.11.2021 and consequently to hold the sale deed dated: 31.03.2016 as document created by defendant No.1 to 5 as void document.



2. The I.A.No.I is filed by the plaintiff U/O.XXXIX R.1 & 2 of C.P.C., praying for the relief of temporary injunction restraining defendant No.1 and their agents or anybody claiming through them from alienating or encumbering the suit schedule property pending disposal of the aforesaid suit.

3. The I.A.No.II is filed by the plaintiff U/O.XXXIX R.1 & 2 of C.P.C., praying for the relief of temporary injunction restraining defendant No.1 and their agents or anybody claiming through them from interfering with plaintiff's peaceful possession and enjoyment of suit schedule property pending disposal of the aforesaid suit.

4. The I.A.No.III is filed by defendant No.1 U/O.XXXIX R.4 of C.P.C., praying for vacating the interim order granted by this Court on 19.04.2023.

5. In the accompanying affidavit to I.A.No.1 the plaintiff states that, it is the sole & absolute owner in lawful possession and enjoyment of suit schedule property. That, the plaintiff had acquired the suit schedule property through a registered sale deed dated: 11.11.2021 for valuable consideration. That, the plaintiff is in possession and enjoyment of the suit schedule property as the absolute owner. That, the defendant No.1 to 5



have got created the alleged sale deed dated: 31.03.2016 with respect to suit schedule property behind the back of plaintiff. That, the defendant No.1 on the basis of said sale deed did not derive any right, title or interest in the suit schedule property. That, on the basis of the alleged sale deed defendant No.1 is disputing the title of the plaintiff with respect to suit schedule property and they had tried to interfere with the possession of the plaintiff with respect to suit schedule property. That, defendant No.1 is trying to alienate the suit schedule property and create third party encumbrance leading to multiplicity of proceedings. Hence, plaintiff has sought for the relief as prayed for.

6. The defendant No.1 has filed I.A.No.3 praying for vacating the interim order dated: 19.04.2023. In the accompanying affidavit to the I.A.No.3 the defendant No.1 states that, the defendant No.1 is the absolute owner of the suit schedule property. That, the plaintiff is claiming the rights over the suit schedule property through their vendors DLF Universal Electric Ltd. That, the plaintiffs have stated that, sale deeds dated: 01.06.1982 was executed by one Sri. R. S. Budvar GPA holder to DLF Ltd., and another Gpa holder V. G. Vambakthare executing sale deeds dated: 01.06.1982 and 12.03.1981 in favour of DLF Electrical Ltd. That, the plaintiffs have claimed to have purchase the schedule land from DLF Ltd., on 11.11.2021.



The defendants herein have contended that, execution of registered sale deed at the office of Sub-Registrar, New Delhi is opposed to public policy. That, the execution of sale deeds had not been disclosed either by defendant no.1 nor the same is reflected in the encumbrance certificate in the Office of Sub-Registrar, Tavarekere, Magadi. Hence, without having the knowledge about the sale deeds, the defendant no.1 had purchased the schedule property on 31.03.2016. That, a layout was formed and sites were sold to innocent third party buyers in the lands adjoining the suit schedule property. That, there was a negotiation with DLF Ltd., with respect to the land and Rs.90 lakhs D.Ds., were drawn with respect to the said property. That, the sale deed dated: 31.03.2016 cannot be questioned in the present court of Law and the revenue records are mutated in the name of defendant No.1. That, more than 45 sites have been sold to the third party buyers. That, there is an ambiguity with respect to maintainability of the suit and hence the aforesaid applications filed by the plaintiff is not maintainable.

7. Heard learned counsel for plaintiff and defendants on I.A.No.1 to 3.
8. Considering the contentions of the counsel, following points arise for my consideration.



1. Whether plaintiff has made out prima-facie case for grant of temporary injunction restraining the defendants from alienating or encumbering the suit schedule property?
2. Whether plaintiff has made out prima-facie case for grant of temporary injunction restraining the defendants from interfering with the plaintiff's peaceful possession over the suit schedule property?
3. Whether balance of convenience is in favour of the plaintiff with respect to the grant of TI from not alienating the suit schedule property?
4. Whether balance of convenience is in favour of the plaintiff with respect to the grant of TI from not interfering with the plaintiff's possession in the suit schedule property?
5. Whether plaintiffs will suffer irreparable injury if temporary injunction is not granted with respect to TI from not alienating the suit schedule property?
6. Whether plaintiffs will suffer irreparable injury if temporary injunction is not granted with respect to TI from not interfering with the plaintiff's peaceful possession over the suit schedule property?
7. What order?

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

- Point No.1: In the Affirmative,
- Point No.2: In the Negative,
- Point No.3: In the Affirmative,



Point No.4: In the Negative,
Point No.5: In the Affirmative,
Point No.6: In the Negative,
Point No.7: As per final order.
For the following,

REASONS

10. **POINT NO.1 & 2:-** As these points are interconnected with each other, taken up together for common discussion to avoid repetition of facts.

11. The plaintiff has filed the aforesaid suit praying for the relief of declaration, permanent injunction and consequential reliefs.

12. The plaintiff has stated that, the defendants have tried to interfere with their possession by taking undue advantage of the sale deed that was created on 31.03.2016. The defendants No.1 was trying to interfere with the possession of the plaintiff and they were also trying to interfere with the suit schedule property.

13. The defendant No.1 on the other hand, has filed the written statement stating that, they have already formed a layout by name and style 'Vardhini Residential Layout' in the suit schedule property and that the defendants



have already sold some sites to the purchasers under different sale deeds before filing of the aforesaid suit.

14. The defendant No.1 has taken the contention that, there was a negotiation with respect to the property with DLF representative. That, defendant No.1 and his wife had agreed to pay a sum of Rs.90 lakhs initially, but later the said DLF had demanded for an amount of Rs.1 crore. The defendant no.1 had drawn the D.D., in the name of DLF. Hence, the said D.Ds., were not encashed, but still the said D.Ds., would go to show that, DLF had knowledge about the sale deed dated: 31.03.2016.

15. The defendant during the arguments have further taken the contention that, Article 58 of the Limitation Act is not applicable to the case on hand, but Article 60 is applicable. That, the Article 65 of the Limitation is applicable to the case on hand and that the defendant has been possession of the property. Hence, defendant is having the right to claim adverse possession. Further, the facts pleaded by the plaintiff is only limited and Order 7 Rule 3 is not complied. That, the details regarding the fraud and impersonation has not been pleaded. That, Sec.3 of Transfer of Property Act do not attract to the property/sale deed registered in Delhi.



The suit is bad for non-joinder of necessary parties as more than 400 purchasers have not been made parties to the suit.

16. Before proceeding further, it is necessary to address the crux of the matter. No doubt the plaintiff is claiming his right through a sale deed registered at Delhi. The defendant has taken the contention that, a document registered at Delhi cannot be enforced in Karnataka and Sec.3 of Transfer of Property Act is not attracted in Karnataka. The plaintiff has relied upon Sec.30 of Registrations Act, 1908. In the Sec.30 there was an earlier clause-2 which was omitted by Act 48/2001 which said as under;

“(2) The Registrar of a district in which a Presidency-town is included and the Registrar of Delhi district may receive and register any document referred to in Sec.28 without regard to the situation in any part of India of the property to which the document relates.”

17. It can be seen from the aforesaid provision that, such a registration of properties is permissible under the Law.

18. It is the case of the plaintiff that, the plaintiff is the absolute owner in lawful possession and enjoyment of the suit schedule property by virtue of registered sale deed dated: 11.11.2021 registered on 08.06.2022. It also



the case of the plaintiff that, the sale deed dated: 17.07.2014 registered as Doc.No.5316/2014-15 is created by defendant No.1 to 5 in collusion with each other.

19. The defendant has taken the contention that, the DLF Ltd., the vendor of the plaintiff was aware of the sale deed dated: 17.07.2014. That, in the year 2018 only after the perusal of the said sale deed the compromise was arrived by the plaintiff and DLF. This being the case, there is a lapse of almost 5 years in filing of the aforesaid suit. Accordingly, defendant has taken the contention that, the suit is filed after the lapse of limitation and hence it is not maintainable.

20. The question of limitation is a mixed question of law and fact. The plaintiff and its vendor are the corporate entities. The question relating to knowledge of existence of the sale deed dated: 17.07.2014 to DLF Pvt. Ltd., the earlier vendor would become more challenging in terms of the factual appreciation. Hence, the question whether Article 58 is applicable or Article 60 is applicable to the case on hand can be decided only after addressing the issue relating to the limitation. Hence, the aforesaid contention of the defendant cannot be accepted at this stage of the case.



21. The plaintiff further states that, the revenue entries had been transferred in the name of the vendor of plaintiff and that, the Form No.9 & 11A were issued by Cholanayakanahalli Gram Panchayath. This being the case, the plaintiff states that, his vendor was always in possession of the suit schedule property and subsequently when the plaintiff purchased the said schedule property, the plaintiff has been in possession of the said property.

22. The contention of the plaintiff is assailed by the defendants by taking the contention that, the plaintiffs were never in possession of the suit schedule property and that plaintiff's vendor could not execute the sale deed in Delhi by delivering the possession as the execution of sale deed in Delhi is against Sec.3 of Transfer of Property Act.

23. As discussed supra, the Sec.30 of Registration Act permitted the registration of properties at Delhi before amendment until 2001. The amendment and applicability of Sec.30 of Registration Act is again the question of fact and law. The same should be decided while deciding the merits of the case. Though prima-facie it appears that, Sec.30 of Registration Act (unamended) is applicable to the case on hand.



24. The defendant has taken the contention that, after the registration of sale deed the encumbrance certificate was not reflected. That, the khatas and mutations in favour of the vendor of plaintiff was denied by the defendants. The defendants cannot take the contention that, just because the encumbrance certificate did not contain the entries regarding the sale transaction, it would not mean that, the ownership of a person would cease.

25. The plaintiff has taken the contention that, the sale deed was created by defendants and fraudulently. The defendants on the other hand, has taken the contention that, the fraud should be pleaded in detail as per O.7 R.3 of C.P.C. The defendants have further pleaded that, there was a negotiation with the vendor of plaintiff and defendants in the year 2018 and that, during the negotiation a D.D. was drawn in the name of vendor of plaintiff. The contention of the defendants that, there was a negotiation with the plaintiff vendor is a question of fact that needs to be looked into at the time of evidence. At this stage, the said issue is not relevant for the discussion.

26. The defendant has taken another contention that, the alienees of the property sold by defendants are not made parties to the suit. The said



transactions involving the purchaser of various sites is a serious question involving the third party rights. However, the defendants have taken the dual contentions that, the adjoining property was sold to the third parties. The defendants have not produced any documents to show that, the schedule property was alienated to third parties.

27. During the course of arguments the learned advocate for defendants had taken the contention that, Article 65 of Limitation Act is applicable to the case on hand and defendants can claim adverse possession. The defendants' pleading does not contain any such contention.

28. The question regarding the grant of injunction involves around the plaintiffs making prima-facie case. The plaintiff in this case has sought for injunction against the defendants from encumbering or alienating the suit schedule property in I.A.No.1 and they have further sought for the injunction restraining defendant No.1 to 4 from interfering with plaintiff's possession and enjoyment of the suit schedule property.

29. The Hon'ble Supreme Court of India in *Gujarat Bottling Co. Ltd. v. Coca Cola Co.*, (1995) 5 SCC 545 at page 574 has stated as under;



"43. The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests — (i) whether the plaintiff has a prima-facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the “balance of convenience” lies. [See: Wander Ltd. v. Antox India (P) Ltd. [1990 Supp SCC 727] , (SCC at pp. 731-32.) In



order to protect the defendant while granting an interlocutory injunction in his favour the court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial."

30. The plaintiff has produced the documents to show how his vendors have got the title over the schedule property. The change of khata in Cholanayakanahalli Panchayath is also reflected through the records and subsequent sale of schedule property to defendants clearly makes out a prima-facie with respect to the land being purchased by the plaintiff from DLF Universal Pvt. Ltd. The plaintiff on this aspect has made out a prima-facie case with respect to the property being purchased by them. The plaintiff has made out a case for grant of injunction against the alienation of property by defendants.

31. The plaintiff has made out a prima-facie case that, defendants are are trying to alienate the schedule property. On the other hand, the defendants have not produced any documents to show as to how their vendors traced their title beyond the sale deed dated: 31.03.2016. This being the case, the plaintiff has prima-facie made out that, the plaintiffs



have valid title and ownership over the schedule property. Hence, I answer point No.1 in the affirmative.

32. Further, the production of D.D., is a name of the vendor of plaintiff and the vendor of plaintiff not preferring to challenge the sale deeds, but instead going for the settlement in the year 2018 by asking D.D. clearly shows that, the defendants might be in possession of the schedule property. Except for the sale deeds standing in the name of defendants, there is no documents to show that, defendant no.1 has been in possession of the schedule property. The defendant No.1 has not produced any documents to show the semblance of possession.

33. The plaintiff on the other hand, has produced the copy of registered sale deeds dated: 14.11.1970, 09.05.1972, 10.07.1972, conversion order dated: 05.04.1982 and other sale deeds dated: 01.06.1982, 27.09.1972, 05.04.1982, 12.03.1982, 27.09.1972, 02.03.1981 and conversion dated: 25.06.1979 along with original copies of Form No.9 & 11-A standing in the name of his vendors. The plaintiff has also produced the certified copy of the registered sale deed dated: 11.11.2021 to show that, he is in possession of the schedule property.



34. The defendants on the other hand, has produced the encumbrance certificate of property having been sold to different third party purchasers right from the year 2016-17 onwards.

35. On perusal of the documents on record, it is clear that, the contention of the defendant to the effect that, some of the property was alienated by the defendant to the third party purchasers in the form of sites. It is also apparently clear that, the plaintiffs have not made the third party purchasers party to the aforesaid proceedings. Any orders relating to interference would obviously effect to the third party purchasers, who are not party to the proceedings.

36. The plaintiff has relied upon the following Judgements in support of his case;

- i. *Dorab Cawasji Warden v. Coomi Sorab Warden*, (1990) 2 SCC 117 at page 126**
- ii. *TO v. M.K. Mohd. Kunhi*, (1969) 71 ITR 815.**
- iii. *Ajay Mohan v. H.N. Rai*, (2008) 2 SCC 507**
- iv. *Ramji Rai v. Jagdish Mallah*, (2007) 14 SCC 200**
- v. *Ramji Rai v. Jagdish Mallah*, (2007) 14 SCC 200**
- vi. *Premji Ratansey Shah v. Union of India*, (1994) 5 SCC 547**



vii. *Nawab Mir Barkat Ali Khan v. Nawab Zulfiqar Jah Bahadur*, 1974 SCC OnLine AP 160

viii. *Shridevi v. Muralidhar*, (2007) 14 SCC 721

37. The Hon'ble Supreme Court of India in **Dorab Cawasji Warden v. Coomi Sorab Warden**, (1990) 2 SCC 117 at page 126 has stated as under;

“.....16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.



(3) The balance of convenience is in favour of the one seeking such relief.”

38. The Hon'ble Supreme Court of India in **ITO v. M.K. Mohd. Kunhi**, (1969) 71 ITR 815 : 1968 SCC OnLine SC 71 has stated as under;

"9. It is well-known that an Income Tax Appellate Tribunal is not a court but it exercises judicial powers. The Tribunal's powers in dealing with appeals are of the widest amplitude and have in some cases been held similar to and identical with the powers of an appellate court under the Civil Procedure Code. See CIT v. Hazarimal Nagji [46 ITR 1168] and New India Assurance Co. Ltd. v. CIT, Excess Profits, Bombay City [(1879) 12 Ch D 438] . In Polini v. Hazarimal Nagi and Co. [31 ITR 844] and New India Assurance Co. Ltd. [(1879) 12 Ch D 438] appeal to grant stay at p. 443:

It appears to me on principle that the court ought to possess that jurisdiction, because the principle which underlies all orders for the preservation of property pending litigation is this, that the successful party, is to reap the fruits of that litigation, and not obtain merely a barren success. That principle, as it appears to me, applies as much to the court of first instance before the first trial, and to the court of appeal before the second trial, as to the



court of last instance before the hearing of the final appeal.”

39. The Hon’ble Supreme Court of India in **Ajay Mohan v. H.N. Rai**, (2008) 2 SCC 507 : 2007 SCC OnLine SC 1518 at page 515 has stated as under;

“.....The plaintiffs had not brought out any new circumstances warranting grant of any injunction in their favour. Only because a further prayer had been made in the suit upon amending the plaint, the same by itself did not bring about a situational change warranting application of mind afresh by the learned Judge, City Civil Court. The only argument which is available to the appellants was that the suit, by reason of amendment made in the prayer, has become maintainable. Maintainability of the suit itself does not give rise to a triable issue.

.....27. We are, therefore, of the opinion that although the learned Judge, City Civil Court, while passing his order dated 13-10-2006 could have considered the merit of the application filed by the appellant in regard to the relief for injunction, the same by itself, in our opinion, did not warrant a direction to consider the matter afresh by the learned Judge, City Civil Court.”



40. The Hon'ble Supreme Court of India in **Ramji Rai v. Jagdish Mallah**, (2007) 14 SCC 200 : 2006 SCC OnLine SC 1327 at page 203 has stated as under;

“.....10. On the finding of facts, we do not wish to interfere. There is no reason to reverse the concurring findings. However, suffice it to state that the lower appellate court should have dismissed the suit filed by the appellants only on the ground that the appellants had failed to prove that they were in possession of the disputed lands. Under Section 38 of the Specific Relief Act, 1963 an injunction restraining disturbance of possession will not be granted in favour of the plaintiff who is not found to be in possession. In the case of a permanent injunction based on protection of possessory title in which the plaintiff alleges that he is in possession, and that his possession is being threatened by the defendant, the plaintiff is entitled to sue for mere injunction without adding a prayer for declaration of his rights. (See Mulla's Indian Contract and Specific Relief Acts, 12th Edn., p. 2815).

11. In A.L.V.R. Ct. Veerappa Chettiar v. Arunachalam Chetti [AIR 1936 Mad 200 : 1936 MWN 113] , it has been held that mere fact that the question of title may have to be gone into in deciding whether an injunction can be given or not is not any justification for holding that the suit is for a declaration of title and for injunction. There can be a suit only for an injunction. The present suit is only for



permanent injunction and, therefore, the lower appellate court should have, on the facts and circumstances of this case, confined itself to its dismissal only on the ground that the appellants have failed to show that they were in possession. This has been done but the declaration that the appellants are not the owners, was not necessary.”

41. The Hon’ble Supreme Court of India in **Premji Ratansey Shah v. Union of India**, (1994) 5 SCC 547 at page 549 has stated as under;

“.....The question, therefore, is whether an injunction can be issued against the true owner. Issuance of an order of injunction is absolutely a discretionary and equitable relief. In a given set of facts, injunction may be given to protect the possession of the owner or person in lawful possession. It is not mandatory that for mere asking such relief should be given. Injunction is a personal right under Section 41(j) of the Specific Relief Act, 1963; the plaintiff must have personal interest in the matter. The interest of right not shown to be in existence, cannot be protected by injunction.

5. It is equally settled law that injunction would not be issued against the true owner. Therefore, the courts below have rightly rejected the relief of declaration and injunction in favour of the petitioners who have no interest in the property. Even assuming that they had any possession, their possession is wholly unlawful possession



of a trespasser and an injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession, as against the owner. Pretext of dispute of identity of the land should not be an excuse to claim injunction against true owner.”

42. The Hon'ble Supreme Court of India in **Nawab Mir Barkat Ali Khan v. Nawab Zulfiquar Jah Bahadur**, 1974 SCC OnLine AP 160 : AIR 1975 AP 187 at page 192 has stated as under;

"Injunction is an equitable relief and delay defeats equities. Having acquiesced in the possession and enjoyment and even alienations of the B schedule properties by the 1st defendant for more than five years, it does not now lie in the mouths of the defendants 5, 6 and 9 that they would suffer irreparable loss if the 1st defendant is just now not restrained by an order of injunction to deal with the properties."

43. The Hon'ble Supreme Court of India **Shridevi v. Muralidhar**, (2007) 14 SCC 721 : 2007 SCC OnLine SC 1274 at page 727 has stated as under;

“.....29. Ordinarily this Court having regard to the fact that the appellant has raised substantial constructions would have allowed her to complete the same but the fact remains that she did not question the said order before



this Court for a long time. The application for grant of special leave was barred by limitation. In a situation of this nature, ordinarily, the aggrieved party is expected to approach this Court without any loss of time. We have noticed hereinbefore that in the meanwhile Respondent 1-plaintiff had sought for production of certain original documents from the Authority which has been allowed.

30. The conduct of the appellant must be deprecated. Upon obtaining an interim order from this Court, she with a view to complete the construction so as to make the situation irretrievable, not only did not file processes; even without any rhyme or reason a set of complete paper books had not been served on the advocate for the respondent-plaintiff. Although ad interim order passed by this Court had nothing to do with the hearing of the suit, which in terms of the direction issued by the High Court deserved expeditious disposal; an application was filed through Respondent 2 herein for deferring the hearing of the suit on the premise that the matter is pending before this Court. Evidently, such an application was filed at the behest of the appellant.”

44. The aforesaid Judgements of Hon’ble Supreme Court of India relied upon by the plaintiff is aptly applicable to the case on hand. The question relating to the amendment, the prima-facie case and the injunction being



the equitable relief, has to be granted only when equities are found in favour of plaintiff. The aforesaid judgements as relevant portion of the Judgement being reproduced clearly applies to the present facts of the case. Hence, plaintiff has not made out a case with respect to possession of the schedule property. Hence, I answer point No.1 in the affirmative and point No.2 in the negative.

45. **POINT No.3:** The plaintiff has filed the aforesaid suit seeking for the relief of declaration. The defendant has already stated that, he has formed a layout and had already sold some of the sites in favour of third parties. The formation of sites and sale to third parties clearly indicates that, there is every chance of alienation by the defendants in favour of third parties by virtue of the sale deeds standing in their name.

46. The plaintiff on the other hand, has prima-facie made out a case of having prima-facie ownership over the schedule property. The defendants on the other hand, has not produced any documents or title to show his ownership beyond the year 2014.

47. The plaintiff in support of the case relating to balance of convenience has produced the following Judgements;



I. *Zenit Mataplast (P) Ltd. v. State of Maharashtra, (2009) 10 SCC 388.*

48. The Hon'ble Supreme Court of India in ***Zenit Mataplast (P) Ltd. v. State of Maharashtra, (2009) 10 SCC 388*** : 2009 SCC OnLine SC 1629 at page 399.

"36. In Bombay Dyeing & Mfg. Co. Ltd. v. Bombay Environmental Action Group [(2005) 5 SCC 61] this Court observed as under : (SCC p. 72, para 24).

"24. The courts, however, have to strike a balance between two extreme positions viz. whether the writ petition would itself become infructuous if interim order is refused, on the one hand, and the enormity of losses and hardships which may be suffered by others if an interim order is granted, particularly having regard to the fact that in such an event, the losses sustained by the affected parties thereby may not be possible to be redeemed."

42. Undoubtedly, there has been a delay on the part of the appellant in approaching the Court but we cannot be oblivious of the fact that the appellant had been approaching the authorities time and again for allotment of the land. Admittedly, the entire land had not been developed by Respondent 4 till this Court entertained the special leave petition and directed the parties to maintain status quo with regard to the land measuring 2 acres



adjacent to the appellant's Plot No. F-15 vide order dated 21-7-2008. Therefore, it is not only the appellant who is to be blamed for the delay. The land had been allotted to Respondent 4 in undue haste and no development could take place therein for more than two years of taking the possession of the land. In such a fact situation the submission made on behalf of the respondents that interim stay cannot be granted at a belated stage is preposterous."

49. The Hon'ble Supreme Court of India in **Maharwal Khewaji Trust (Regd.) v. Baldev Dass**, (2004) 8 SCC 488 : 2004 SCC OnLine SC 1331 at page 490

".....10. Be that as it may, Mr Sachar is right in contending that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate court and the High Court were justified in permitting the



respondent to change the nature of the property by putting up construction as also by permitting the alienation of the property, whatever may be the conditions on which the same is done. In the event of the appellant's claim being found baseless ultimately, it is always open to the respondent to claim damages or, in an appropriate case, the court may itself award damages for the loss suffered, if any, in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think both the courts below, namely, the lower appellate court and the High Court erred in making the impugned orders. The said orders are set aside and the order of the trial court is restored.”

50. The aforesaid judgement of Hon'ble Supreme Court of India is aptly applicable to the present case. The question of construction does not arise in the present suit. The question relating to the plaintiff approaching this Court after considerable delay cannot hamper the case of the plaintiff. Hence, this being the case, if any further alienations are allowed to be made, then there would only be multiplicity of proceedings causing great hardship to plaintiff. The balance of convenience lies in favour of plaintiff. The defendant has not made out balance of convenience. Hence, I answer Point No.3 in the affirmative.



51. **Point No.4:-** The defendant has claimed that, he is in possession of the schedule property. The defendant has given the details of hundred third party purchasers in possession of the sites formed in the suit schedule property. The third party buyers are not made out party to the aforesaid suit. They are not heard. If any orders regarding the interference is passed, then the third party buyers, who are not party to the aforesaid proceedings would be adversely affected.

52. The encumbrance certificate produced by the plaintiff shows that, the said sale transactions had taken place in the year 2017 much prior to the plaintiff purchasing the aforesaid property.

53. The plaintiff on the other hand, has to show that, he is in possession of the suit schedule property. The plaintiff has not produced the documents to show that, he is in continuous possession of the suit schedule property. There are also no documents to show that, the plaintiffs were in possession of the schedule property until the execution of sale by DLF to the plaintiffs. The plaintiffs have not prima-facie proved their possession nor they have explained the execution of sale deeds nor they have made the third party buyers as the parties to the suit. Hence, they have not made out the balance of convenience. Hence, I answer point No.4 in the Negative.



54. **Point No.5:-** The plaintiff has made the prima-facie case and balance of convenience. If further alienations are made, then the plaintiff would suffer irreparable loss and hardship leading to multiplicity of proceedings.

55. The Hon'ble Supreme Court of India in **Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd.**, (1999) 7 SCC 1 : 1999 SCC OnLine SC 774 at page 13:

"24. We, however, think it fit to note herein below certain specific considerations in the matter of grant of interlocutory injunction, the basic being non-expression of opinion as to the merits of the matter by the court, since the issue of grant of injunction, usually, is at the earliest possible stage so far as the time-frame is concerned. The other considerations which ought to weigh with the court hearing the application or petition for the grant of injunctions are as below:

(i) extent of damages being an adequate remedy;

(ii) protect the plaintiff's interest for violation of his rights though, however, having regard to the injury that may be suffered by the defendants by reason therefor;

(iii) the court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the other's;



(iv) no fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case — the relief being kept flexible;

(v) the issue is to be looked at from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;

(vi) balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;

(vii) whether the grant or refusal of injunction will adversely affect the interest of the general public which can or cannot be compensated otherwise."

56. The loss caused to the plaintiff cannot be compensated if any alienations are made. On the other hand, defendants would not suffer much and they can be compensated. Hence, I answer Point No.5 in the affirmative.

57. **Point No.6:-** The plaintiff has not made out a prima-facie case with respect to possession of the property. He has not made out a prima-facie case as to how the third party buyers and their agreements came into existence. If the plaintiff misuses the order and third party buyers are thrown out of the property, then the grave hardship would be caused to the



third party buyers who are not party to the aforesaid suit. Hence, plaintiff has not made out the hardship. Hence, I answer point No.6 in the Negative.

58. **Point No.7:-** In view of reasons on point No.1 to 6, I proceed to pass the following,

ORDER

IA No.I U/O.39 Rule 1 and 2 of C.P.C., filed by plaintiff praying for the relief of temporary injunction restraining the defendant No.1 to 4, their agents, representatives or anybody claiming through them from alienating or encumbering the suit schedule property is hereby allowed.

The I.A.No.II U/O.39 Rule 1 and 2 of C.P.C., filed by plaintiff praying for the relief of temporary injunction restraining the defendant No.1 to 4, their agents, representatives or anybody claiming through them from interfering with plaintiff's possession and enjoyment of the suit schedule property pending disposal of the suit is hereby rejected.

The I.A.No.III U/O.39 Rule 4 of C.P.C., filed by defendant No.1 praying for vacating the interim order dated: 19.04.2023 is consequently rejected.

Call on for issues by 19.04.2023.

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O.S.252/2023(Or.)

(Dictated to the Typist, transcribed & typed by her, corrected by me and then pronounced in the open court on this the **22nd day of March, 2024.**)

(Sandeep S. Reddy)
Addl. Sr. Civil Judge & JMFC.,
Magadi.