



**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 15th DAY OF APRIL, 2024
O.S.No.612/2023

Plaintiffs : Sri. N. Chandrappa

(By **Sri. M.S.N.** Advocate)

---V/s---

Defendants : Smt. Muniyamma & Ors.,

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

**ORDER ON IA NO.1 & 3 U/O.39 R.1 & 2 r/w. S.151 of C.P.C., & U/O.39
R.4 of C.P.C.,**

The I.A.No.1 is filed by the plaintiff U/O. 39 R.1 & 2 praying for an order of temporary injunction restraining the defendant, his agents, servants, supporters or anybody claiming through him from alienating or transferring or creating charge over suit schedule property pending disposal of the suit.

2. The I.A.No.3 is filed by the defendant No.1 to 4 praying for dismissing I.A.No.1 and vacating the exparte order of injunction till disposal of the suit.



3. The aforesaid suit is filed by the plaintiff praying for the relief of specific performance of contract and other consequential reliefs.

4. The plaintiff has stated in the accompanying affidavit to I.A.No.1 that, the suit schedule property originally belongs to one Sri. Muniraju who is the husband of defendant No.1 and father of defendant No.2 and 3. That, defendant No.4 is the son-in-law of Sri. Muniraju. That, the said Sri. Muniraju has acquired the schedule property through saguvalichit and he was in possession of the schedule property till his death. That, defendant No.1 to 3 continued in possession and enjoyment of the schedule property. That, the property was divided between the sister of Muniraju and Muniraju's L.Rs., through registered partition deed dated: 30.03.2013. That, the defendants had approached the plaintiffs and had intended to sell the schedule property and accordingly the plaintiffs and defendants entered into an agreement of sale dated: 18.04.2013 for valuable sale consideration of Rs.9,50,000/-. That, the advance amount of Rs.4 lakhs of the total sale consideration amount was paid to the defendants. That, the agreement was registered in the Office of Sub-Registrar, Kengeri. That, the defendants had received additional amount of Rs.50,000/- on 25.03.2014, Rs.50,000/- on



04.03.2015 and they had totally received Rs.8 lakhs from the defendants. That, as per the terms and conditions of the sale agreement, defendants did not change the khata with respect to suit schedule property and failed to get the sale deed registered. That, the khata was changed in the name of 1st defendant on 03.09.2022 and that, the defendants failed to get the sale deed registered. Hence, the legal notice was issued on 25.07.2023. Accordingly, the defendants failed to get the sale deed registered. Hence, the plaintiff has filed the aforesaid suit. The plaintiff further apprehends that the suit schedule property might be sold to third party and has filed the aforesaid application as prayed above.

5. The defendant No.1 to 4 have on the other hand filed I.A.No.3.

6. In the accompanying to I.A.No.3 the defendant No.1 to 4 states that, the plaintiff seeking injunction not to interfere is not sustainable as plaintiff is not in possession of the suit schedule property. The defendant No.1 to 4 further state that, the question of defendants forcibly dispossessing the plaintiffs does not arise and hence prays for vacating the interim order and further states that, the suit O.S.No.24/2019 with respect to suit schedule property is



pending before Hon'ble II Addl. (Jr. Dvn.), Magadi and hence prays for vacating of the stay.

7. The plaintiff has filed objections to I.A.No.3 by stating that, the aforesaid I.A., is not for interference and it is for the sake of not alienating the schedule property pending disposal of the suit. The other contentions raised by the plaintiff is very similar to the contention mentioned in the accompanying affidavit.

8. Heard learned counsel for plaintiff and defendant No.1 to 4.

9. 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?
2. Whether balance of convenience is in favour of the plaintiffs?
3. Whether plaintiffs will suffer irreparable injury if temporary injunction is not granted?
4. Whether the defendant No.1 to 4 have made out the grounds for vacating the interim order passed by this Court?



5. What order?

10. 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 negative,
 - Point No.4: In the negative,
 - Point No.5: As per final order.
- For the following,

REASONS

11. **POINT NO.1:-** The aforesaid suit is for specific performance of contract. It is the case of the plaintiff that, a registered agreement of sale was entered between the plaintiff and defendants on 18.04.2013 for sale of schedule property. That, the sale consideration of Rs.9,50,000/- was fixed. That, the plaintiff had initially given the advance amount of Rs.4 lakhs and subsequently he had given money to the defendants on different occasions. The plaintiff has further stated that, the defendants did not get the khata changed in their name and hence the sale deed could not be registered. That, the defendant through M.R.T1/2022-23 dated: 03.09.2022 got changed the



khata in their name and hence they are now liable to sell the schedule property.

12. The defendant on the other hand has not filed objection to I.A.No.1, but instead the defendant No.1 to 4 have filed I.A.No.3 U/O.39 R.4 of C.P.C. In the accompanying affidavit to O.39 R.4 of C.P.C., the defendants No.1 to 4 have submitted the irrelevant facts not applicable to the present case. The defendant No.1 to 4 takes contention that the plaintiff has filed the application U/O.39 R.1 & 2 of C.P.C., seeking for the TI of not to interfere, which is not correct. Hence, the accompanying affidavit does not help the case of defendants.

13. However, during the arguments the learned advocate for defendant has relied upon the written statements. The defendant has taken the contention that, the limitation for filing the suit for specific performance as per Article 54 of the schedule to Limitation Act is three years and hence the relief of specific performance cannot be enforced.



14. The question of limitation is a pure question of Law and fact. The plaintiff has taken the contention that the defendant has not performed his part of the contract and hence has prayed for enforcement of contract. It is clear that, the question relating to the aforesaid limitation needs to be addressed only by making enquiry. At this stage the question of limitation cannot be looked into by this Court.

15. The learned Advocate of the plaintiff has relied upon the judgement of Hon'ble Supreme Court in Urvashi Ben V/s. Krishnakanth (2018) 2 SCCJ 1989, wherein Hon'ble Supreme Court of India has stated that, the period of limitation with respect to the suit for specific performance falling in the second limb of Article 54 is three years and it needs to be counted from the date when it came to the notice of plaintiff, that performance is refused by the defendants.

16. I have gone through the Judgement of Hon'ble Supreme Court of India and the said Judgement is very clear regarding the establishment of facts by the plaintiff through the enquiry and the need for the opportunity to be given to the plaintiff.



17. The contention raised by the defendants regarding limitation does not help the defendant at this stage of the case.

18. At this stage of the case the defendants have not denied receiving of advance sale consideration amount either in the written statement nor in the affidavit. The defendants have neither given the reasons for delay in not executing the agreement on time. The defendants have not denied nor have given the reasons for getting khata in their name so belatedly.

19. The plaintiff on the other hand has clearly made out a prima-facie case. The plaintiff has produced the registered agreement of sale, the advance sale consideration is also prima-facie shown. The belated change of khata by defendant No.1 in his name is also apparently on record. This coupled with the fact that, defendants have filed I.A.No.3 in a callous and lethargic manner. Hence, the plaintiff has made out prima-facie case. Hence, I answer Point No.1 in the affirmative.

20. **POINT No.2:-** The aforesaid suit is for specific performance of contract. The sale agreement in question is a registered agreement dated: 18.04.2013.



The defendants have not denied the execution of the sale agreement. They have also not denied the receipt of advance sale consideration. This being the case, if property is sold to third parties, then the plaintiffs would suffer more hardship, leading to multiplicity of proceedings.

21. 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.”

22. Thus, it can be seen from the aforesaid facts Judgement and the facts of the present case that, the balance of convenience lies in favour of plaintiff more than the defendant. Hence, I answer Point No.2 in the Affirmative.

23. **Point No.3:-** The plaintiff has made out prima-facie case. The plaintiff has made out balance of convenience. The plaintiff has already paid the



advance sale consideration. He has paid he majority of the sale consideration amount. If the alienations are made by the defendant, there is nothing to loose for the defendant and on the other hand the plaintiff would suffer great hardship and it may lead to multiplicity of proceedings.

24. 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 thereof;

(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.

25. It can be deduced from the aforesaid judgement that, the circumstances which ought to be weighed. After weighing the aforesaid circumstances, I am of the view that, plaintiff has made out prima-facie case for suffering more hardship than defendant. Hence, I answer Point No.3 in the Negative.

26. **Point No.4:-** For the reasons stated while answering point No.1 to 3, I answer point No.4 in the negative.



27. **POINT NO.5:** In view of reasons on point No.1 to 4, I proceed to pass the following,

ORDER

IA No.I U/O.39 Rule 1 and 2 of C.P.C., filed by the plaintiff praying for an order of temporary injunction restraining the defendant, his agents, servants, supporters or anybody claiming through him from alienating or transferring or creating charge over suit schedule property pending disposal of the suit is hereby allowed.

The I.A.No.3 filed by the defendant No.1 to 4 U/o.39 R.4 of C.P.C., praying for vacating the interim order is hereby dismissed.

Call on for issues by 27.05.2024.

(Dictated to the Typist, transcribed & typed by her, corrected by me and then pronounced in the open court on this the **15th day of April, 2024.**)

(Sandeep S. Reddy)

**Addl. Sr. Civil Judge & JMFC.,
Magadi.**