



**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC,  
AT MAGADI.**

**:-Present:-**

Sri.Shrinivasa.K.R B.A.L.,LL.M.,  
Prl. Civil Judge & JMFC.,  
Magadi.

**Dated this the 28<sup>th</sup> day of August, 2023**

**O. S. No.48/2021**

**PLAINTIFF** : Smt. Gowramma

**:Vs:**

**DEFENDANTS** :

Smt. Nagarathnamma & Ors.,

**I.A. No.I**

**APPLICANT/PLAINTIFF :**

: Smt. Gowramma,  
W/o. Srinivasa,  
Aged about 34 years,  
R/at: Vasavi School Road,  
Kalyagate, Magadi Town,  
Ramanagara District.

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

**:Vs:**

**OPPONENTS/DEFENDANTS:**

1. Smt. Nagarathnamma,  
W/o. Boregowda,



Aged about 52 years,

2. Sri. Boregowda S.,  
S/o. Late. Shivanna,  
Aged about 62 years,
3. Sri. Nandeesh,  
S/o. Boregowda S.,  
Aged about 32 years,
4. Sri. Yatheesh,  
S/o. Boregowda S.,  
Aged about 30 years,

All are R/at: Sripathihalli,  
Kasaba Hobli, Magadi Taluk,  
Ramanagara Taluk.

**(Sri. B.T.I. Advocate)**

**ORDER ON IA.NO.I FILED U/O. 39 RULE 1 AND 2 OF CPC**

The plaintiff has filed application U/O.39 Rule 1 & 2 CPC, with a prayer to restrain the defendants from not to alienate the suit schedule property in favor of any person. The suit is filed in respect of house property bearing khata No.152900301600900296 and kaneshumari No. 284/383, measuring east to west 9.144 meters north to south 12.8016



meter, situated at Shripathihalli Village, Magadi Taluk, Ramanagara District (hereinafter referred to as 'the suit schedule property for short).

2. The application is supported with an affidavit sworn to by the plaintiff stating that, the defendant No.1 is the wife of defendant No.2 and the defendant No.3 and 4 are the sons of defendant No.1 & 2. The defendants are in possession and enjoyment over the suit schedule property. The defendant No.1 decided to sold the property for her legal necessities of their family and to discharge the hand loan. The defendant approached the plaintiff and demanded to the plaintiff to purchase the suit schedule property on 25.05.2018. The plaintiff agreed to purchase the suit schedule property as per the request of defendants and entered the negotiation and fixed the value of suit property of Rs.4,10,000/-. The defendants received Rs.2 lakhs from the plaintiff as advance



and executed sale agreement in favour of plaintiff. The plaintiff continuously requested and demanded the defendants to execute the registered sale deed in respect of suit schedule property, but the defendants postponed the same for one or other reasons. The plaintiff issued legal notice to the defendants on 18.01.2021 and demanded the defendants to execute the registered sale deed, but they did not come forward to execute the registered sale deed. Hence, instant suit for the relief with the application.

3. In pursuance to suit summons, defendants have appeared through their counsel and filed objections to the above application stating that, the defendants are borrowed loan amount of Rs.2 lakhs from the plaintiff, hence the defendants agreed to execute the simple mortgage deed in favour of the plaintiff. The plaintiff get the documents of house property from the defendants and created the sale



agreement instead of simple mortgage by mentioning the more amount. The defendant not received amount as stated in the sale agreement from the plaintiff. With an intention to knock the valuable house of the defendants, the plaintiff created the documents with respect to suit schedule property and filed false suit. There is no contract affected between the plaintiff and defendants. Hence, prays to reject the application.

4. Heard arguments by the plaintiff counsel and defendant counsel.

5. Upon hearing arguments and materials placed on record, following points that arise for my consideration:

**P O I N T S**

1. Whether the plaintiff has made out a prima-facie case ?



2. Whether balance of convenience lies in favour of plaintiff ?
3. Whether irreparable injury and hardship would cause to the plaintiff, if temporary injunction is not granted ?
4. What order ?

6. My answer to the above points are as under.

Point No. 1 to 3 : In the Affirmative.

Point No. 4 : As per order for the following

### **REASONS**

7. **POINT No.1:-** Law relating to grant or refusal to grant temporary injunction has been culled out by the Hon'ble Supreme Court of India in AIR 1999 SUPREME COURT 3105 (Colgate Palmolive (India) Ltd., v. Hindustan Lever Ltd.,) it is held as under:

*"Civil P.C. (5 of 1908), O. 39,R.1:*



*Certain specific considerations to be noted 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 others; (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 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 general public which can or cannot be compensated otherwise.”*

8. Keeping in mind the well settled legal principles regarding granting or refusal for granting Temporary Injunction enunciated in the above cited decision, let me advert to consider the case of the parties. The plaintiff has filed suit for the relief of specific performance of contract against the defendant.



9. The plaintiff counsel contended that, the defendant has executed agreement for sale dated: 25.05.2018 in favour of plaintiff by receiving an amount of Rs.4 lakhs from the plaintiff as advance and agreed to execute registered sale deed in favour of plaintiff. The plaintiff requested severally, even though defendants not come forward to execute registered sale deed in favour of plaintiff, hence plaintiff issued legal notice to the defendants. Even though defendants not come forward to execute registered sale deed. The plaintiff established prima-facie and balance of convenience in her favour, hence prays to allow the application.

10. On the other hand, the counsel for defendants contended that, the defendants have not executed any agreement for sale in favour plaintiff, but the defendants have borrowed an amount of Rs.2 lakhs from the plaintiff. The plaintiff created



the sale agreement and filed present suit with an intention to grab the property. Hence, prays to reject the application.

11. The plaintiff in support of her contention has produced the registered agreement of sale dated: 25.05.2018, legal notice dated: 18.01.2021 and postal receipts and acknowledgement. On perusal of recital of agreement it is noticed that, the defendants by receiving an amount of Rs.4 lakhs agreed to sell the suit schedule property in favour of plaintiff.

12. On perusal of documentary proof placed by plaintiff in proof of her contention, no doubt suit schedule property stands in the name of defendant No.1 and the Plaintiff has established prima-facie case by placing prima-facie materials. The prima-facie case is totally different from prima-facie title. Defendants have not challenged the prima-facie material placed by plaintiff by placing documents in support of their



contention. Under the circumstances, I am of the opinion that plaintiff has made out prima-facie case in her favour. Accordingly, I answer point No.1 in the **Affirmative.**

13. **POINT No.2 and 3:-** These points are taken up together for discussion for the sake of convenience. The person who approaches the court for equitable remedy of temporary injunction, besides making out strong prima-facie and must necessarily show that balance of convenience lies in favour and shall also satisfy that, irreparable loss and hardship would be caused to him/her, which can not be compensated in terms of money. Therefore, it is incumbent upon the plaintiff to show that the balance of convenience lies in her favour.

14. In considering the question of balance of convenience the court has to consider to whom more hardship or



inconvenience would be caused. In the present case the documents available on record shows that, the plaintiff established prima-facie in her favour. If temporary injunction is not granted, the defendants may alienate the suit schedule property to the third person. If suit schedule property is alienated, it may lead multiple proceedings. Hence, as discussed supra plaintiff has established prima-facie and balance of convenience lies in her favour. Accordingly, I answer points 2 and 3 in the **Affirmative**.

15. **POINT No.4:** In view of my findings to points No.1 to 3, I am of the considered opinion that, plaintiff has made out prima-facie case. Besides this the plaintiff has established that balance of convenience lies in her favour and irreparable injury would be caused to her, if an order of temporary injunction is denied. Therefore, the plaintiff is certainly



entitled for the relief of temporary injunction. Accordingly, I proceed to pass the following;

**ORDER**

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

**Consequently hereby restrained the defendants from alienate and create charge over the suit schedule property in any manner till disposal of the suit.**

**No order as to cost.**

(Directly dictated to Typist directly in the computer, typed by her, then corrected and pronounced by me in the open Court on this the **28<sup>th</sup> day of August, 2023.**)

**Prl. Civil Judge & JMFC,  
Magadi.**