

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

**PRESENT**

**Smt.Nalina S.C** B.A, LL.B.,

II Addl.Civil Judge & JMFC,  
Magadi

Dated this 7<sup>th</sup> day of April 2021

**O.S. NO.188/2019**

**PLAINTIFF** : Sri. Lakshmikantha S.

**-Vs-**

**DEFENDANTS** : Sri. H.M. Vasudevaiah and others

**I.A.No.I**

**APPLICANT** : Sri. Lakshmikantha S.  
**PLAINTIFF** : S/o late S. Siddaiah,  
aged about 40 years,  
R/o Hombalammanapete,  
Magadi Town, Ramanagara  
District

**-V/s-**

**OPPONENTS /**  
**DEFENDANTS:**

1. Sri. H.M. Vasudevaiah  
S/o late Mastigowda,  
aged about 60 years

2. Smt. Kenchamma @  
Parvathamma,  
W/o H.M. Vasudevaiah,

aged about 54 years  
3. Sri. H.V. Ningegowda  
S/o H.M. Vasudevaiah,  
aged about 31 years

All are R/o Hluvenahalli  
Village, Madabal Hobli,  
Magadi Taluk,  
Ramanagara District

**ORDER ON I.A No.I FILED U/O XXXIX RULE 1 AND  
2 R/w Sec.151 OF CPC BY THE PLAINTIFF**

The instant application has been filed by the plaintiff under Order 39 Rules 1 and 2 r/w Sec.151 of C.P.C., seeking to restrain the defendants, their agents, servants etc., from alienating the suit schedule property.

2. The sum and substance of the case of the plaintiff is that the defendants are the owners of the land bearing Sy.No.99, measuring 1.00 acre, Heligehalli Village, Madabal Hobli, Magadi Taluk. The defendant No.1 to 3 are offered to the plaintiff to purchase the suit schedule property for their family legal necessity, the plaintiff also agreed to purchase the suit schedule property and according the sale

consideration was fixed at Rs.2,10,000/-. On 30.10.2010, the defendant No.1 to 3 are jointly executed an registered agreement of sale in favour of the plaintiff and the defendants are jointly received entire sale consideration amount of Rs.1,00,000/- through cash in the presence of witnesses from the plaintiff and the defendants also agreed that they should be registration of the sale deed when after collecting the revenue documents and the 1<sup>st</sup> defendant again received sum of Rs.10,000/- from the plaintiff on 11.05.2016. The plaintiff always ready and willing to perform his part of contract and he is ready to bear the cost of registration and completing the sale deed. The plaintiff several time approach the defendants to execute a sale deed with respect to suit schedule property but the defendants are postponing the registration of the sale deed by giving one or the other reasons. Without alternative the plaintiff got issued the legal notice dated:20.05.2019 through his counsel. The said legal notice was duly served on the defendants. But in spite of the said notice, the defendants are not come forward to execute the registered sale deed in favour of the plaintiff nor

reply the contents of the notice. This being the state affairs, the defendant No.1 to 3 colluded each other and trying to alienate the suit schedule property to the third persons Hence, in order to protect the rights of the plaintiff over the suit schedule property, the plaintiff is constrained to file this suit along with instant application.

3. Per contra, in the written statement, the learned Counsel for the defendants has denied the plaint along with application averments in material aspects and contended that the defendants have never executed any sale agreement in favour of the plaintiff or any person with respect to suit schedule property and there is no legal necessities to the defendants to sell the suit schedule property. The plaintiff has created the sale agreement only with an intention to grab the valuable suit schedule property belongs to the defendants by colluding with the scribe and attestors of the alleged sale agreement. It is further contended that in the year 2010, the defendants have need of money, approached the plaintiff to give loan amount of Rs.1,00,000/- at that time the plaintiff

demanded to the defendants to execute the simple mortgage deed for security of loan amount. At that time the plaintiff colluding with the scribe and other, he has created the sale agreement instead of simple mortgage deed for the purpose of knock off valuable property of this defendants and accordingly among other grounds prayed to dismiss the suit along with application with exemplary cost.

4. Heard both Counsels. After perusal of the records of the case, the following points would arise for my consideration:

1. Whether the plaintiff has made out a prima-facie case in his favour ?
  2. Whether the balance of convenience lies in favour of the plaintiff?
  3. Whether the plaintiff would be put to irreparable loss, if the interim order is not granted?
  4. What order?
5. My finding to 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**

**6. Points No.1 to 3:** I have taken these three points together for my common discussion as they are inter-linked with each other.

7. The suit schedule property belongs to the defendants is not in dispute. The plaintiff main contention is that on 30.10.2010, the defendant No.1 to 3 are jointly executed an registered agreement of sale in favour of the plaintiff and the defendants are jointly received entire sale consideration amount of Rs.1,00,000/- in respect of suit schedule property and they failed to execute the regular sale deed by receiving balance sale consideration amount and trying to alienate the same in favour third persons. On the other hand the defendants denied the same and stated that the defendants have need of money, approached the plaintiff to give loan amount of Rs.1,00,000/- at that time the plaintiff demanded

to the defendants to execute the simple mortgage deed for security of loan amount. At that time the plaintiff colluding with the scribe and other he has created the sale agreement instead of simple mortgage deed for the purpose of knock off valuable property of this defendants.

10. In light of the arguments canvassed by the learned counsel for the plaintiff, produce the documents of Original Sale agreement dated:30.10.2010, RTC extrac, Legal Notices. On the other hand the defendants have not filed any objection to this application.

11. At this stage, without going into the merits of the case and holding mini trial, this court has considered the aspect of prima-facie case. At this stage, this court makes it very clear that this court is looking towards prima-facie case and not prima-facie title. It is well-settled principle of law that at the time of disposing the Temporary Injunction application, the court cannot go into the prima-facie title and

only to consider whether the plaintiff has made out a prima-facie case for granting interim relief.

12. In order to assert the prima-facie case this court as carefully perused the materials on record the case that originally the suit schedule property is the joint family property of plaintiff and defendants.

13. Therefore I hold that the applicant/plaintiff has made out a prima facie case at this stage and if the order of temporary injunction is refused hardship will cause to the applicant/plaintiff because the very object of granting temporary injunction is to protect and to preserve the plaint schedule property till disposal of the suit, so that if ultimately, the applicant/plaintiff who is the initiator of the suit, succeeds in the suit, would not be put to irreparable and un-compensatable loss and further the provisions under Order 39 Rule 1 and 2 is very specific that it says temporary injunction will be granted only where in any suit it is proved by affidavit or other wise:

***a) That any property in dispute to the suit, or wrongfully sold in execution of a decree, or***

***b) That the defendant threaten or intends to remove or dispose of his property with a view to his creditors,***

***c) That the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by order grant a temporary injunction to restrain such act.***

14. Absolutely such grievance is made out by applicant/plaintiff. If defendants No.1 to 4 alienate the suit schedule property, the multiplicity of proceeding will be raised and hardship irreparable loss to the plaintiff and it can not be compensated by the money. Hence with these observations, **I answer point No.1 to 3 in the affirmative.**

15. **Point No.4:** For the above discussion on point No.1 to 3 this court proceeds to pass the following :-

### **ORDER**

I.A.No.I filed by the plaintiff Under Order-XXXIX Rule-1 and 2 R/w 151 of CPC., is hereby allowed.

The defendant No.1 to 4 are hereby restrain from in any way alienate the suit schedule property till the disposal of the suit.

(Dictated to the stenographer directly on the computer, computerized by her, corrected, signed and then pronounced by me in the Open Court on this the 7<sup>th</sup> day of April 2021)

**(Nalina S.C.)**  
**II Addl. Civil Judge & JMFC,**  
**Magadi**