



**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 29th day of July, 2024

O. S. No.168/2022

PLAINTIFF : Sri. Venkataramaiah.

:Vs:

DEFENDANTS : Smt.Indramma & another.,

I.A. No.I

APPLICANT/PLANTIFF :

: Sri. Venkataramaiah,
S/o. Late. Chowdaiah,
Aged about 58 years,
R/at: Near Annamma Temple,
Jyothinagara, Kalyagate,
Magadi Town,
Ramanagara District.

(By Sri.G.N., Advocate)

:Vs:

OPPONENTS/DEFENDANTS:

1. Smt.Indramma,
W/o.Puttaiah,
Aged about 73 years,



2. Sri.Puttaiah,
H/o Indramma,
Aged about 81 years,

Both are residing at
Cubbanpete, 3rd cross,
2nd main, Bangalore
and also residing at
Kere Beedi, Magadi Town,
Ramanagara District.

(Exparte)

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 residential vacant site No. 165, Khaneshumari No. 170/5017/165/5462 measuring to an extent to east to west 20 feet and north to south 30 feet situated at Jyothi Nagara, Magadi. (hereinafter referred to as 'the suit schedule property for short).

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2. The application is supported with an affidavit sworn to by the plaintiff stating that, the defendants are absolute owners of the suit schedule property and they acquired the suit schedule property through hakku patra issued by the Government of Karnataka. Since, from the date of allotment the defendants were in peaceful possession and enjoyment of the suit schedule property. The defendants offered to sell the suit schedule property for a total sale consideration amount of Rs. 1,20,000/- in favour of plaintiff and executed sale agreement dated 03.11.2006. At the time of execution of sale agreement, the defendants have received entire sale consideration amount of Rs. 1,20,000/- by the plaintiff and agreed to execute registered sale deed in favour of plaintiff and delivered the possession of suit schedule property. The plaintiff was demanded the defendants to execute the sale deed in favour of plaintiff but the defendants went on

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postponing the same on one or other reason. The plaintiff was ever ready and willing to perform his part of contract.

Further, contended that, the plaintiff issued legal notice dated 08.08.2020 to the defendants calling upon them to execute sale deed in his favour but, they have intentionally avoid the service of legal notice. The plaintiff intend to alienate the suit schedule property in favour of third person. Hence, prays to allow the application.

3. In pursuance to suit summons, defendants not appeared, hence they placed exparte.

4. Heard arguments by the plaintiff 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 ?

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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

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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 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

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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 defendants.

9. The plaintiff counsel contended that, the defendants have executed agreement for sale dated: 03.11.2006 in favour of plaintiff by receiving an amount of Rs.1,20,000/- from the

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plaintiff as entire consideration amount 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 his favour, hence prays to allow the application.

10. The plaintiff in support of his contention has produced the copy of sale agreement dated 03.11.2006, legal notice dated 08.08.2020 and postal receipts. On perusal of recital of agreement it is noticed that, the defendants by receiving an amount of Rs.1,20,000/- agreed to sell the suit schedule property in favour of plaintiff and the plaintiff caused notice to the defendants to execute registered sale deed in his favour.

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11. On perusal of documentary proof placed by plaintiff in proof of his contention, no doubt suit schedule property stands in the name of defendants 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 his favour. Accordingly, I answer point No.1 in the ***Affirmative.***

12. **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

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in terms of money. Therefore, it is incumbent upon the plaintiff to show that the balance of convenience lies in his favour.

13. 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 his 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 his favour. Accordingly, I answer points 2 and 3 in the ***Affirmative***.

14. **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

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that balance of convenience lies in his favour and irreparable injury would be caused to him, 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 or their agents 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 Stenographer directly in the computer, typed by her, then corrected and pronounced by me in the open Court on this the **29th July, 2024.**)

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