

KASM610000322021



**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE AND
J.M.F.C., SAGAR.**

Present: NATARAJ YADAV .S, M.B.A., LL.B.,
Prl. Senior Civil Judge & J.M.F.C.,
Sagar.

Dated, this the 12th day of September, 2023.

O.S.No. 07/2021.

Plaintiff/s :

Vinaykumar Patil s/o
S.S.Patil, a/a 49 years,
Agriculturist,
Resident of Shivaji road,
Sagar town,
Shivamogga district.

(By Sh. Nagarajaiah S.H., Advocate)

-V/s-

Defendant/s :

1. Tosham Acharya, s/o
R.P.Prasanna kumar, a/a 39 years,
Artist,
Resident of Honnesara,
Sagar taluk,
Shivamogga district.
2. Chandrashekhar T.N. s/o
T.Nagappa, a/a 56 years,
Near Ashrama school,
1st cross, S.N.Nagara,
Sagar town,

Shivamogga district.

(By **Sh. Santhosh Kumar S.**, Advocate)

PARTIES TO I.A. XI

Applicant/ Plaintiff : Vijaykumar Patil.

-V/s-

Opponents/Defendant : Chandrashekhhar T.N.

By this order, I shall decide an application under Order 39 Rule 1 & 2 CPC filed by the plaintiff praying that the defendants be restrained from creating third party interest or selling the 'suit properties during the pendency of the suit.

2. The facts of the case as set out in the plaint are that, the defendant entered into an agreement to sell in respect of the suit property with the plaintiff on 23.04.2018 for a total consideration of Rs.70,01,000/-. As per the agreement, the plaintiff paid sale consideration of Rs.55,000/- to the defendant. It was agreed that the defendant would hand over all the original title documents of the suit properties to the plaintiff at the time of execution of the sale deed but, the defendant avoided to hand over title documents and execute the sale deed in favor of the plaintiff. The plaintiff sent a legal notice dated 29.12.2022 to the defendant but to no avail. The plaintiff was thus constrained to file the present suit for specific performance.

3. The defendant filed written statement admitting the execution of

agreement to sell dated 23.04.2018 and receiving the advance amount of Rs.55,000/- as alleged but denied readiness and willingness on the part of the plaintiff in getting the sale deed. The plaintiff ought to have obtained the sale deed by paying the balance sale consideration of Rs. 69,46,000/- on or before 23.06.2018 but the plaintiff has failed to do so the agreement was terminated and the advance amount was forfeited. The suit is barred by time. Therefore, they urged that the plaintiff was not entitled to a decree sought for.

The other defendants have neither filed written statement nor contested the application

4. In support of his case, the plaintiff has placed on record agreement to sell and the copy of legal notice dated 29.12.2022 along with postal receipts & AD card.

5. I have heard Ld. Counsel for the plaintiff and have gone through the record of the case carefully.

6. For consideration of grant of relief of temporary injunction under Order 39 rule 1 & 2 CPC, the civil courts basically considers the three well known principles. Firstly, the plaintiff has to show a prima facie case in his favour, secondly balance of convenience is also in his favour and lastly he would suffer irreparable loss if interim injunction as prayed is not granted.

7. In the present application, the plaintiff has claimed ad interim injunction in her favour and against the defendants thereby

restraining them from alienating, transferring, selling, parting with the possession, disposing off or creating any third party interest in the suit property till the disposal of the suit.

8. The prima-facie case only means that there is a legal right vested in the plaintiff and the defendants have infringed the same or intends to infringe the same so the matter requires investigation by way of evidence of parties to evaluate the pleadings of the parties to know which of the parties have legal right, title or interest in the suit property. The controversy is whether the defendants have agreed to sell the property in favor of plaintiff for a sum of Rs.70,01,000/- and executed an agreement of sale dated 23.04.2018 by receiving advance sale consideration of Rs.55,000/- and whether the suit is barred by time and whether the plaintiff was/is ever ready and willing to perform his part of contract which are triable issues and matter requires investigation by way of evidence of the parties and the plaintiff can be said to have the prima-facie case in his favor more particularly when the Agreement to sell not denied by the defendant.

9. As regards the creation of third party interest, the principle of balance of convenience and irreparable loss is tilted in favour of the plaintiff. Plaintiff shall suffer an "Irreparable loss which cannot be compensated in terms of money as rights in immovable properties are involved" if relief so prayed by her is not granted to him which shall result into multiplicity of litigation. On the other hand, it will not affect the interest of the defendant.

10. In the light of these findings, I am of the opinion that as the plaintiff has establish all the three essential ingredients in his favour, application U/o 39 1 & 2 CPC is liable to be allowed.

11. It is however, clarified that the observations made above are only for the purpose of disposal of the present application and shall not tantamount to be expression of opinion on the merits of suit.

12. In view of the above, I proceed to pass the following;

ORDER

IA.No.XI filed by the applicant/plaintiff under Order 39 Rule 1 and 2 read with section 151 of Civil Procedure Code is hereby allowed.

Consequently, defendant No.2 is hereby restrained from alienating or creating any encumbrance over the suit schedule properties till the disposal of the suit.

No order as to costs.

Put up for Amended W/s on 27.09.2023

(Dictated to the Stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the 12th day of September 2023.)

(NATARAJ YADAV .S)
Prl. Senior Civil Judge & J.M.F.C
Sagar.