

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

**Present:- Smt. Dakshayini, B.Sc., LL.B.
Prl.Civil Judge & JMFC,
Kunigal.**

Dated:- This the 19th day of November 2014

O.S.No.317/2014

PLAINTIFF/S : Rangaswamaiah
V/s

DEFENDANT/S : Seegalaiah & Others

PARTIES TO I.A.NO.I

Applicant/s : Rangaswamaiah Plaintiff No.1)
V/s

Opponents/S Seegalaiah & Others (Defendants)
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**ORDER ON APPLICATION UNDER ORDER 39 RULE 1 & 2
OF CPC**

The applicant/Plaintiff has filed the above application prays to grant an Ad interim Injunction order restraining the defendants , their agents , servants attorneys l or anybody on behalf of them from alienating or creating any charge over the suit schedule property till disposal of the suit.

2. It is stated in the annexed affidavit that, the defendants are the husband, wife and Son . They have

entered into an agreement of sale in respect of suit schedule property and executed registered Sale agreement dated 16.9.2013 by agreeing to sell the suit schedule property for valuable consideration of Rs.1,80,000/- . On the date of sale agreement, the defendants have received an earnest amount of Rs. 1,00,000/- and agreed to receive remaining balance sale consideration at the time of execution of registered sale-deed within five months from the date of sale agreement. As per the contents of sale-agreement, the Plaintiff approached the defendants and demanded for execution of sale-deed by receiving balance sale-consideration amount. The defendants not executed registered sale-deed in terms of sale agreement. The khata and pahani in respect of suit property stands in the name of defendant no.1. The Plaintiff came to know that the defendants are canvassing in the locality and trying to alienate the suit property. Inspite of legal notice, the defendants not executed the sale-deed. The Plaintiff has made out a prima-facie case and balance of convenience lies in his favour. Hence, prays to allow the application.

3. The opponent/defendant no.2 has filed written statement with a memo to treat written statement as objections to the said application. In the written statement they have denied the sale transaction alleged to be taken place between plaintiff and defendants on 16.9.2013 and passing of part sale consideration. The plaintiff created

alleged sale agreement by colluding with attesting witness and scribe of document. The plaintiff is the family friend of defendants. They are in need of money for their necessities. As such, the defendants have approached and requested the plaintiff seeking financial assistance for their necessity. As such, the defendants have borrowed a handloan of Rs.1,00,000/- from the defendants in the month of September 2013. The Plaintiff requested the defendant to execute formal "Hanada kararu pathra" as a security before the Sub Registrar, Kunigal. Except the said transaction, there is no sale transaction as contended by the plaintiff. The plaintiff is not at all entitled for specific performance of contract. Only with an intention to harass the defendants, the plaintiff has come up with the above application. Hence, prays to dismiss the I.A.

5. The Learned Counsel for Plaintiff and defendants.

6. The points arisen for my consideration are as follows:-

- 1) Whether the applicant/Plaintiff has made out a prime facie case?
- 2) Whether balance of convenience lies in whose favour?
- 3) Who will be the sufferer if the injunction is granted or refused?
- 4) What order?

6. My answer to the above points as follows;

Point No.1 - In the Affirmative

Point No.2 - Lies in favour of Plaintiff

Point No.3 -Plaintiff

Point No.4 - As per final order

For the following:-

REASONS.

7. **Point No.1 to 3:-** Point no. 1 to 3 are taken together for my common discussion in order to avoid repetition of reasoning. In support of his case, the plaintiff has produced sale agreement dated 16.9.2013. The recitals of said document reveals that the defendants have executed the same by agreeing to sell the suit schedule property of valuable consideration of Rs.1,80,000/- Percontra, the defendants denied the execution of sale agreement. However, they have taken a specific defence that they have borrowed an handloan of Rs.1,00,000/- from the plaintiff and executed "Hanada Kararu pathra". The Alleged sale agreement is concocted and created by the plaintiff. The contention of the Plaintiff is that even though , the defendants have executed sale agreement, in his favour trying to alienate the suit schedule property in favour of third person with an intention to defraud the right of the plaintiff over the suit property. However, the materials on record reveals

that the plaintiff has made out a prima facie case. Whether the alleged sale agreement is concocted and created by the plaintiff, is a matter of trial. If the order of injunction is refused, definitely the plaintiff will be put to irreparable loss, if the plaintiff is succeeded in the suit. The balance of convenience lies in favour of the plaintiff. Hence, I answer the aforesaid points accordingly.

8. **Point No.4**: In the result, I pass the following:

ORDER

The application filed by the applicant/
Plaintiff under order 39 rule 1 & 2 of CPC is
allowed .

The defendants are restrained from alienating
or creating any charge over the suit schedule
property till next date of hearing.

Order as to no costs.

(Computerized to my dictation by the stenographer,
corrected by me and then pronounced in the open court on
this the 19th day of November 2014).

(Smt. Dakshayini G.K)
Prl. Civil Judge & JMFC, Kunigal.

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