



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

Dated this the 21st day of November 2022

PRESENT :

SRI RAGHUNATHA GOWDA K.T.

B. Com., L.L.B.

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

O.S.No.206/2021

PLAINTIFF : Sri. Nagabhushana
S/o late Veeranagappa
aged about 47 years
R/o Sibinayyanapalya,
Dodderi hobli,
Madhugiri Taluk,
Tumkuru District.

(By Sri. M.S.K., Advocate)

Vs/-

DEFENDANTS : 1) Smt. Lakshmamma
W/o late Nagarajappa
aged about 66 years
2) Smt. Nalinakshi S.N.
D/o late Nagarajappa
W/o Prakash
aged about 36 years
3) Smt. Puttarangamma
W/o late Katte Nagarajappa
aged about 77 years
R/o Kondavadi,
Puravara hobli,



Madhugiri Taluk,
Tumkuru District.

- 4) Smt. Kamalamma
W/o late Siddaraju
D/o late Veerachowdappa,
aged about 77 years

The above defendants No.1, 2 & 4
are R/o Sibinayyanapalya,
Dodderi hobli, Madhugiri Taluk,
Tumkuru District.

(D-1 & 2 By Sri. V.R.R., Advocate)
(D-3 & 4 by exparte)

I.A.No.I

Applicant : Nagabhushana Plaintiff

Vs/-

Opponents : Lakshamma & others Defendants

* * *

**ORDER ON I.A.No.I FILED BY PLAINTIFF UNDER
ORDER XXXIX RULE 1 AND 2 OF C.P.C**

The present application is filed by the plaintiff seeking order of temporary injunction restraining defendants, their agents, servants or anybody claiming under them from alienating the suit schedule property, till disposal of the suit.

2. In the affidavit annexed to the application, plaintiff averred that he has filed this suit against



defendants for the relief of specific performance of contract dated 14/10/2019. The suit schedule property belongs to defendants and the suit property stand in the name of deceased Nagarajappa who is husband of 1st defendant and father of defendant No-2 by virtue of M.R.No.1/1989-1990. Further he contended that they have approached him to sell the suit property for their legal necessity and family benefit for valuable sale consideration amount of Rs.2,00,000/-. On 14/10/2019 the defendants have executed agreement of sale by receiving the advance sale consideration amount of Rs.1,50,000/- in the presence of witnesses and they have agreed to executed the sale deed by receiving balance sale consideration amount.

3. The plaintiff requested the defendants to perform their part of contract but they did not execute the Registered Sale Deed by postponing the same for one or other pretext reasons. Now the defendants are trying to alienate the suit schedule property to third parties in order to defeat his right which accrued under agreement of sale. If the defendants are alienate the suit schedule property it leads multiplicity of proceedings. Further he contended that he has got prima-facie case and balance



of convenience lies in his favour. Hence he prays to allow the application.

4. On the other hand, the defendants counsel filed the memo stated that written statement treated as objection to said application. In the written statement they have denied the entire plaint averments. Further they have specifically contented that the suit property standing in the name of deceased Nagarajappa and themselves have not executed any agreement of sale in favour of plaintiff. Further he contended that during life time of Nagarajappa, he had appeared before various courts through his counsel and he also educated and he never put his LTM to any paper and the agreement of sale is created and concocted. Further he contended that after receipt of legal notice defendants have replied the same. Further he contended that during life time of Nagarajappa is sound financial position so that reason the execution of agreement of sale in favour of plaintiff does not arise and amongst these grounds prayed for reject the application.

5. Heard both counsel. Perused the I.A., affidavit, and records placed before the court.



6. The points that arise for my consideration are as under :

- 1) Whether plaintiff has made out prima-facie case?
- 2) If injunction is granted or refused, to whom inconvenience will be caused ?
- 3) Whether irreparable loss and injury would be caused to plaintiff in case of not granting temporary injunction ?
- 4) What Order ?

7. My findings to the above points is as under :

Point No.1 and 3 : In the Affirmative,

Point No.2 : To the Plaintiff if not granted.

Point No.4 : As per final order for the following :

REASONS

8. **POINT No.1 to 3** : For the sake of convenience and to avoid repetition of facts, these points are taken together for common discussion.

9. I have already narrated the pleadings of plaintiff and defendants in para No.2 to 4 respectively. As noted above, the plaintiff has filed the present suit against the



defendants seeking for relief of Specific Performance of Contract dated 14-10-2019 in respect of the suit schedule property.

10. On coming to the documents produce by the plaintiff, i.e., Copy of Sale Agreement dated 14/10/2019, record of rights, legal Notice, postal acknowledgement. The defendants counsel produce the certified copy of written statement in O.S.No.86/2008, vakalath. Execution petition and vakalath.

11. On careful perusal of the documents produced by plaintiff, it is evident from Sale Agreement dated 14/10/2019 that defendants and deceased Nagarajappa have executed sale agreement in respect of the suit schedule property in favour of plaintiff agreeing to sell the same and they have also receive advance sale consideration amount of Rs.1,50,000/- from the plaintiff on the same day. Further, the legal notice and postal acknowledgement show that plaintiff through his counsel issued legal notice to the defendants calling them for execution of the Registered Sale Deed in his favour which was duly served on them which is evident from Postal Acknowledgment. On the other hand, defendants



contended that Nagarajappa has not put is LTM and he has put his signature on the documents. Admittedly the certified copy of the written statement in O.S.No.86/2008 the deceased Nagarajappa put his signature. Further the sale agreement dated 14/10/2019 is fabricated and concocted it will be adjudicated at the time of full pledge of trail and moreover the defendants have not disputed the signature appears in the sale agreement.

12. In-order to grant order of temporary injunction, 3 essential ingredients have to be fulfilled, Prima-facie case, balance of convenience and irreparable loss or injury. Prima-facie case includes maintainability of the suit and probability of plaintiff succeeding in the case, i.e. entitlement for the reliefs sought. These documents at this stage show that the plaintiff has made out prima-facie case in his favour. If defendants are alienates the suit schedule property, the rule of lis pendency will apply and it leads to multiplicity of proceedings. If they are restrained from alienating the suit schedule property till disposal of suit, no injustice would be caused to them. On the other hand, it causes irreparable loss and injury to the plaintiff. Merits of the case cannot be decided at this stage. Considering the



nature of suit and materials available on record, this court is of the opinion that plaintiff has made out prima-facie case and balance of convenience lies in his favour. Therefore, if order of injunction is not granted, irreparable loss and injury would be caused to the plaintiff rather than the defendants. For these reasons, I answer point No.1 and 3 in 'Affirmative' and point No.2 as "to the Plaintiff if not granted".

13. **POINT No.4** : For the above said reasons, I proceed to pass the following :

ORDER

I.A. No.I filed by plaintiff against defendants under Order 39 Rule 1 and 2 of C.P.C. is hereby allowed.

Defendants, their agents, servants are hereby restrained from alienating the suit schedule property in favour of anybody in any mode or manner till disposal of the suit.

Parties to bear their own costs.

(Dictated to the stenographer directly on computer, corrected by me and then pronounced in open court on this **21st day of November 2022**)

(Raghunatha Gowda K.T.)
Prl. Civil Judge & JMFC,
Madhugiri.