

IN THE COURT OF THE PRL.CIVIL JUDGE, KARWAR.

DATED THIS THE 3rd DAY OF SEPTEMBER-2019

OS NO. 23/2015

PRESENT : **Sri. N.M. Ramesha**
B.Com., LL.M.,
Prl. Senior Civil Judge,
Karwar.

Plaintiff : Shri. Sunil Anandu Kurdekar,
Age: 32 years, Occ: Goldsmith,
R/o. New K.H.B. Colony,
H.I.G. 1, H.No. 9,
Habuwada, Taluk: Karwar, U.K.

(by Shri. G.T.N., Adv.,)

Vs.

RESPONDENT: Shri. Mahesh Janeshawar Gajinkar,
Major in age, Occ: Business,
R/o. Agarakatta, (Chincewada),
Mavinhole, Near Amrat Vidyalaya,
Sadashivgad, Taluk: Karwar U.K.

(by Shri. G.F.N., Adv.,)

ORDER ON I.A.NO.VI

This is an application filed by the plaintiff under the provisions of Order 39 rule 1 & 2 r/w sec. 151 of CPC, seeking temporary injunction, restraining the defendant from alienating the suit property, till the disposal of the suit.

2. The plaintiff has sworn to affidavit and stated that the defendant is intending to sell the suit schedule property in favour of third parties. He has already paid major portion of the sale consideration of the suit property in favour of the defendant and developed the suit property by spending heavy amount. But,

now the defendant is trying to sell the suit property in favour of third person. If the defendant alienate the suit schedule property, then, the plaintiff will suffer heavy loss and great injustice will be caused to the plaintiff. Therefore, it is necessary to restrain the defendant from alienating the suit property, till disposal of the suit. Hence, this application.

3. The defendant has resisted the application by filing detailed objection contending that the application is not maintainable either in law or on facts. The stage of the suit for further evidence of plaintiff's side and the plaintiff has already deposed evidence before the court and also subjected for cross examination of defendant's side. The plaintiff had filed an application for leading evidence of public notary about the agreement to sell said to have been executed between plaintiff and defendant. The defendant has not at all entered in to an agreement to sell the suit schedule property in favour of plaintiff. The agreement to sell is created, fake and bogus document. If at all the plaintiff had fear about the alienation of the suit property by the defendant, he could have pressed for hearing of the interim application at the time of filing the suit. But, he has not done so. Under these circumstances, the plaintiff is not entitled for any relief as sought for in the application and it is liable to be dismissed.

4. I have heard the arguments on both the sides and perused the entire record.

5. Now the points that would arise for my consideration are as under:

1. Whether the plaintiff has made out prima facie case for grant of temporary injunction?
2. Whether the balance of convenience lies in favour of plaintiff?
3. Whether the irreparable loss and injury would be caused to the plaintiff if an order of temporary injunction is refused?
4. What order?

6. On considering and assessing the pleadings and documents placed on record, now, my answer to the above points are as under:

Point No.1: In the Affirmative

Point No.2: In the Negative.

Point No.3: In the Negative

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

R E A S O N S

7. **Point No.1** : It is averred in the plaint that the defendant being the owner in possession of suit schedule property had agreed to sell the property in favour of plaintiff and accordingly, has executed an agreement of sale dated 11.4.2012 in favour of plaintiff, agreeing to sell the suit property for a sum

of Rs. 5,50,000/- by receiving earnest money of Rs. 3,00,000/-. It is further averred in the plaint that the defendant also received an amount of Rs. 1,00,000/- to remove the technical difficulties to execute the sale deed and therefore, the plaintiff has issued cheque for Rs. 1,00,000/- and in all the plaintiff has paid an amount of Rs. 4,00,000/- towards the part performance of agreement of sale.

8. It is further averred in the plaint that after execution of agreement of sale and after receiving earnest money of Rs. 4,00,000/- from the plaintiff, the defendant is not showing any interest to execute the sale deed. The plaintiff has requested the defendant to execute the sale deed by receiving balance sale consideration of Rs. 1,50,000/-. But, the defendant instead of executing sale deed in favour of plaintiff, he is trying to alienate the suit schedule property to third person. This is stated to be the cause of action for the plaintiff to file this suit for specific performance of agreement of sale. The plaintiff has sought for temporary injunction under this application restraining the defendant from alienating the suit property till the disposal of the suit.

9. The defendant has resisted the suit by filing written statement contending that the suit of the plaintiff for specific performance is not maintainable. The defendant not only denied

the execution of sale deed, but also receipt of earnest money of Rs. 4,00,000/- and the defendant also denied that he has agreed to sell the suit schedule property in favour of plaintiff for a sum of Rs. 5,50,000/-. According to defendant, the plaintiff has created the document. The suit is also barred by limitation. The document is not admissible in the evidence as it is unregistered.

10. In order to substantiate his contention, the plaintiff has produced RTC extract and mutation register extract of suit schedule property, cheque dated 26.5.2012, legal notice dated 5.9.2013, reply notice, police endorsement, agreement of sale dated 11.4.2012 and copy of the complaint in PC No. 23/2013.

11. On careful perusal of these documents placed on record, at this stage of litigation, it would indicate that the property in question is standing in the name of defendant and he has purchased the said property from one Suryakant Govind Anvekar under the registered sale deed and based on the said sale deed the name of the defendant came to be mutated in the revenue records. The plaintiff has issued legal notice dated 5.9.2013, calling upon the defendant to execute the sale deed in pursuance of agreement of sale dated 11.12.2014. But, the defendant has replied the notice denying the execution of agreement of sale. In this regard the plaintiff also lodged complaint before the Karwar Town police station, who has issued

endorsement and thereafter, the plaintiff also filed private complaint bearing PC No. 23/2013 before the learned J.M.F.C. Karwar against the defendant for the offences punishable U/sec. 420,461, 463, 465, 471 of IPC.

12. Further, on careful perusal of agreement of sale dated 11.4.2012, it would indicate that the defendant stated to have executed the agreement of sale in favour of plaintiff agreeing to sell the suit schedule property of Rs. 5,50,000/- and stated to have received cash amount of Rs. 3,00,000/- on the date of agreement. According to plaintiff, after execution of sale deed, the defendant also received an amount of Rs. 1,00,000/- by way of cheque.

13. But, the defendant in his written statement and also in his objection has specifically denied the execution of agreement of sale. According to defendant, the plaintiff has concocted the suit documents. Under these circumstances, whether the defendant has executed an agreement of sale dated 11.4.2012 in favour of the plaintiff agreeing to sell the suit schedule property for Rs. 5,50,000/- by receiving earnest money or not is a matter which requires evaluation of evidence to be recorded of the trial. Further, whether the plaintiff has concocted and created the suit document or not is also a matter which requires evaluation of the evidence to be recorded of the trial. But, at this stage, the

plaintiff has produced RTC, mutation register extract, notice, reply and agreement of sale. Under these circumstances, when there is material worth investigating into the matter, then, there is a prima facie case. It is in this scene, I hold that the plaintiff has made out prima facie case for trial. Therefore, without much discussion, I answer **point No.1 in the affirmative.**

14. **Point No.2 & 3:** These two points are taken up together for common discussion, as they are interlinked and inter connected to each other. It is well settled position of law that merely because the plaintiff has made out prima facie case, temporary injunction cannot be granted unless the balance of convenience also lies in favour of the plaintiff and irreparable loss and injury would be caused to him, if an order of temporary injunction is refused. Now, let us consider as to whether the balance of convenience is also lies in favour of plaintiff and irreparable loss and injury would be caused to plaintiff if an order of temporary injunction is refused.

15. The plaintiff all the while in his plaint averments and in his affidavit annexed to I.A.No.VI has stated that after execution of agreement of sale and after receiving the amount, the defendant is not showing any interest to execute the sale deed, but trying to alienate the suit schedule properties to some third person. The defendant has specifically denied the same. The

plaint averments and affidavit annexed to I.A.No.VI is vague in nature and not specific about the exact date on which the defendant is trying to alienate the suit schedule property and to whom the defendant is trying to sell the suit schedule property in question. The plaint averments and affidavit annexed to I.A.No.VI do not indicate as to whom the defendant is trying to or intending to sell the suit schedule property.

16. If really, the defendant is trying to alienate the suit property to some other persons, then the plaintiff could have produced some cogent documents in this regard. But, except the pleadings, the plaintiff has not produced any cogent materials to substantiate his contentions that the defendant is trying to alienate the suit schedule property. Even if the defendant alienate the suit property to some other persons during the pendency of the suit, then, the concept of principles of lis-pendente applicable to the case on hand. It is well settled position of law that the temporary injunction cannot be granted only on the basis of mere apprehension of the plaintiff that the defendant is trying to alienate the suit schedule property.

17. In para 8 of the plaint, it is averred that the suit schedule property is situated at Majali village of Karwar Taluk. The plaintiff has described the suit schedule property as land bearing Sy.No. 517/1 measuring 1 guntas 8 annas situated at

Majali village of Karwar Taluk bounded by East by survey boundary of same land, West by survey boundary of same land, North by survey boundary of same land and South by survey boundary of same land. But, as could be seen from the agreement of sale, the plaintiff has described the schedule of the property as land bearing Sy.No. 517, Hissa 1 measuring 1 gunta 8 annas out of 1 acre 12 gunta situated at Shantawada, Hobli of Chittakula village of Karwar taluk. In the notice dated 5.2.2013, the plaintiff has stated that the suit schedule property is situated at Shatwada Hobli of Chittakula village of Karwar Taluk.

18. So, from these materials placed on record, it is clear that there is an inconsistency and also glaring discrepancies between the pleadings and documents with respect to measurement and identity of the suit schedule properties. Be that as it may, the plaintiff has not described the suit schedule properties in I.A.No.VI, in which he has sought for temporary injunction restraining the defendant from alienating the suit property till disposal of the suit. So, the pleadings and affidavit annexed to I.A.No.VI is not consistent and also not in conformity with documents placed on record in respect of subject matter of the suit. Under these circumstances, it cannot be said that balance of convenience lies in favour of the plaintiff and irreparable loss and injury will be caused by the plaintiff if an temporary injunction is refused.

19. It is important to note here that the plaintiff has filed the suit before the court on 11.6.2015. The defendant made his appearance before the court through his learned counsel and filed written statement on 9.10.2015. This court has framed the issues on 17.2.2016. The plaintiff has already filed his affidavit in chief examination on 30.3.2016 and got the documents marked as Ex.P.1 to 9 and the plaintiff is already subjected for cross examination by defendant's side. When, the case is set down for further evidence of plaintiff's side, the plaintiff has filed this application again seeking temporary injunction restraining the defendant from alienating the suit property till the disposal of the suit and got the earlier application filed for the same relief dismissed. If really, the defendant intends to alienate the suit property, he would not have kept quiet for all these years commencing from 2012 i.e., from the date of agreement or from the year 2015 till today. Under these circumstances, the very apprehension of the plaintiff that the defendant is trying to alienate the suit property is highly doubtful and also with any base.

20. It appears that the plaintiff without adducing further evidence and get the suit disposed of at the earlier point of time has filed present application only on the basis of mere apprehension. This necessarily indicates the very conduct of the plaintiff in protracting the litigation by filing this kind of

application. The very conduct of the plaintiff is dis-entitle to the relief of temporary injunction. Therefore, for the reasons discussed above, this court is of the considered view that the plaintiff has failed to establish that the balance of convenience is lies in favour of the plaintiff and irreparable loss and injury would be caused to him, if an temporary injunction is refused. Therefore, I answer **point Nos.2 & 3 in the negative.**

21. Point No.4: In view of above findings on point No.1 to 3, I proceed to pass the following:

O R D E R

I.A.No. VI filed by the plaintiff under the provisions of Order 39 rule 1 & 2 r/w sec. 151 of CPC is hereby dismissed.

The cost of this application shall follow the result of the suit.

(Dictated to the Stenographer, transcribed by her, the transcript corrected by me and then pronounced in the open Court on this the **3rd day of September, 2019**)

(N.M.RAMESHA)
Prl. Senior Civil Judge,
Karwar

Order pronounced in open court
(vide separate order)

O R D E R

I.A.No. VI filed by the plaintiff under
the provisions of Order 39 rule 1 & 2 r/w
sec. 151 of CPC is hereby dismissed.

The cost of this application shall
follow the result of the suit.

(N.M.RAMESHA)
Prl. Senior Civil Judge,
Karwar