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**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE AND JMFC,
KARWAR, UTTARA KANNADA**

Dated this the 29th Day of August, 2024.

PRESENT : SRI. GANESHA PADIYAR U.,
B.Com. LL.B.
Addl. Senior Civil Judge & JMFC.,
Karwar.

O.S.No.24/2024

Plaintiff : Sri. Sadanand Shamba Manjrekar,
Aged about 55 years,
Occ: Builder cum Developer,
R/o #D/15, Behind Swami Vivekanand,
High School, Alvevada,
Kodibag, Karwar.

(By Sri. V. A. Todurkar Advocate)

- Vs -

Defendants :

1. Smt. Riya Leanora Dias,
Aged about 40 years,
R/o Opp Canara Bank,
Nandangadda, Karwar.
2. Sri. Franco Paul Dias,
Aged about 38 years,
R/o Opp Canara Bank,
Nandangadda, Karwar.
3. Sri. Malesia Paul Dias,
Aged about 36 years,
R/o 3rd ward, Colva,
South Goa.

4. Sri. Aaron Domic Gudio, Aged about 21 years, R/o 3rd ward, Colva, South Goa.

(By Sri. G. P. Tarikar Advocate)

ORDER ON IA NO.I

Applicant:
Plaintiff

Sri. Sadanand Shamba Manjrekar,

- Vs -

Opponents:
Defendants

Riya Leanora Dias and others,

ORDER ON IA NO.I

Plaintiff has filed this interlocutory application under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 praying the Court to grant ad-interim order of temporary injunction restraining the defendants from alienating the suit schedule properties till disposal of the suit.

2. In support of the application, the plaintiff has filed affidavit reiterating the plaint averments. He has also stated that the defendants are trying to alienate the suit schedule properties.

3. After due service of summons, the defendants have appeared through their counsel. Defendants No.3 has filed written statement cum objection resisting the suit as well as the application which is adopted by defendants No.1, 2 and 4 as per memo dated 01-08-2024.

4. I have heard the arguments of both sides.
5. I have perused the I.A. and entire records of the case
6. The points that arise for Court's consideration and decision are as under :

POINTS

1. ***Whether the plaintiff has made out prima-facie case to grant temporary injunction?***
 2. ***Whether balance of convenience lies in his favour?***
 3. ***Whether he will be put to irreparable loss and injury if injunction is refused?***
 4. ***What Order?***
7. My findings are as follows :

Point No.1 : Negative

Point No.2 : Negative

Point No.3 : Negative

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

REASONS

8. **POINTS No.1 TO 3:** These three points can conveniently be considered together to avoid repetition.
9. The short and precise facts necessary for consideration are as follows:

As per the plaint averments, it is the case of the plaintiff that the plaintiff and defendants have entered into an Agreement to Sell dated 12-06-2023 for a total sale consideration of Rs.15,00,000/-. Plaintiff has paid a sum of Rs.2,00,000/- as advance sale consideration on that day itself by cheque bearing No.346510 dated 12-06-2023 drawn on State Bank of India, Karwar Branch. Through the said agreement of sale, the defendants gave right, title and possession of the suit schedule properties to the plaintiff. Further as per the terms of the said agreement, the defendants have agreed to execute sale deed in favour of the plaintiff after conversion of the suit schedule properties for non-agricultural purposes and layout plan or to execute development agreement subject to 35% building area to be constructed in the suit schedule properties. It is also agreed that the balance sale consideration of Rs.13,00,000/- shall be paid to the defendants at the time of execution of sale deed. After the Agreement to Sell, the plaintiff has undertaken many development works in the suit schedule properties and has spent huge money for the same. The plaintiff has approached many times during the life time of Smt. Maria Pavlu Dias @ Natividade Fernandes, who is the mother of defendants No.1 to 3 and grand mother of defendant No.4. However the defendants who are greedy and to get higher price from third party, have issued baseless legal notice on 03-05-2024 to the plaintiff. The plaintiff has got issued reply to the said legal notice on 16-05-2024. Thereafter the defendants have issued legal notice on 29-05-2024 to the plaintiff. The defendants and their mother did not disclose the real facts before entering into the Agreement to Sell. Now it is learnt that a civil case is pending in item No.2 and 3 of suit schedule

properties. The defendants have also borrowed loan in respect to item No.2 of the suit schedule property and there is an encumbrance to that effect which was cleared by the plaintiff by making payment. Therefore the defendants have no right to cancel the Agreement to Sell. Due to the inaction on the part of the defendants, the plaintiff is not able to have the sale deed from the defendants. This constrained the plaintiff to bring the suit for specific performance of the Agreement to Sell.

10. In their written statement, the defendants have denied each and every plaint averments. They have denied the execution of the Agreement to Sell dated 12-06-2023 and the receipt of advance amount of Rs.2,00,000/-. They have specifically contended that in the first week the plaintiff was introduced to the defendants and the plaintiff expressed his willingness and interest to develop the land. As the defendants were in need of Rs.2,00,000/- for general expenses, the plaintiff has agreed to give it and accordingly the plaintiff has paid it through cheque and on the same day the plaintiff called the defendants to sign the agreement for receipt of Rs.2,00,000/- before Notary, Karwar. Due to the urgency shown by the plaintiff they could not read the whole documents and signed the same on being trusted the plaintiff. After signing the said documents, the defendants came to know that mischief has been played by the plaintiff and has obtained their signatures by misleading the facts and by causing breach of trust. The defendants have never agreed to contents of the Agreement to Sell dated 12-06-2023. When questioned by the defendants as to why such fraud is played, the defendants instead of explaining, quarreled with the defendants and gave life threat to the defendants and

their mother. Due to the life threat given by the plaintiff, their mother got cardiac arrest and expired on 27-04-2024. After six days of her death, the plaintiff has again threatened the defendants. Therefore the defendants got issued legal notice dated 03-05-2024 and intimated him that the Agreement to Sell dated 23-06-2023 is cancelled and payment of Rs.2,00,000/- received is repaid to the plaintiff vide cheque No.026331 dated 16-05-2024 drawn on Union Bank of India, Colva Branch. Further a separate cheque bearing No.026330 dated 27-05-2024 for Rs.1,30,000/- was also given to the plaintiff. When the plaintiff failed to take the cheque, the defendants have paid a sum of Rs.2,00,000/- to the plaintiff to his account No.106381315559 of State Bank of India, Karwar Branch vide RTGS UTR No.UBINJH24149361542 of Union Bank of India, Karwar Branch dated 28-05-2024 and further the defendants have also paid a sum of Rs.1,30,000/- to the account No.10638131559 of State Bank of India, Karwar Branch vide RTGS UTR No.UBINJ24149600711 towards NA expenses incurred by the plaintiff including the expenses for removal of Boja. Therefore the question of declaring the plaintiff as owner by virtue of the Agreement to Sell does not arise at all. The Agreement to Sell vide ab-initio and the question of executing sale deed on that basis also does not arise at all. With these the defendants have sought for dismissal of the suit as well as the application for temporary injunction.

11. Reiterating the averments made in the plaint, the learned counsel for the plaintiff argues that the plaintiff has made out prima-facie case to grant temporary injunction, balance of convenience lies in his favour and if injunction is refused, he will be put to great hardship and

injury. He further argues that the plaintiff had got the suit lands converted and undertaken the process for layout plan and other documentation works, the plaintiff was put in possession of the suit schedule lands. As the defendants have breached the terms of the contract, they are not entitled to cancel the Agreement to Sell. The defendants are attempting to alienate the suit schedule properties with the sole intention of frustrating the rights of the plaintiff and to cause hardship. With these the learned counsel has sought to allow the application for temporary injunction.

12. Per contra, the learned counsel for the defendants argue that the Agreement to Sell came into existence not with an intention to the sell the suit schedule lands but as a result of misrepresentation caused by the plaintiff. It is the defendants who have issued legal notice to the plaintiff at the first instants notifying the cancellation of the Agreement to Sell in question and thereafter the plaintiff giving reply to the defendants' notice and approached this Court by instituting this suit for specific performance. He further argues that no prima-facie case is made out by the plaintiff, balance of convenience also does not lie in favour of the plaintiff. It is the defendants who would be put to irreparable loss and injury if injunction is granted in favour of the plaintiff. He also submits that no rights have been conferred in favour of the plaintiff under the Agreement to Sell in question he claims to be possession of the suit lands without there being any recitals in the said agreement to that effect. The plaintiff is not at all entitle to the discretionary relief of temporary injunction to restrain the defendants from alienating the suit schedule properties. Making the above

submissions, the learned counsel has sought for dismissal of the application for temporary injunction.

13. Before proceeding to examine the merits of the interlocutory application, I may now advert to the principles required to be followed while dealing with these kind of applications.

14. Well established principle in connection with grant of temporary injunction is that the defendants should be able to satisfy that the following conditions exists:

a) that the plaintiff has a prima-facie case ;

b) that the Court's interference is necessary to protect the party applying for temporary injunction from that species of injury which the Court calls irreparable, before his legal right is established before the Court ; and

c) that the comparative mischief for inconvenience which is likely to occur from withholding the injunction will be greater than that which is likely to arise from granting it or in other words, the balance of convenience.

15. Thus, all the above three factors must exist to grant a temporary injunction. If any one of them is missing, then temporary injunction shall not be granted. Moreover, to grant an order of injunction, the injury must be actual and eminent. Apart from this, conduct of the party is also a relevant consideration while dealing with this kind of application. Prima-facie case does not mean that a party should have a

cent percent case which in all probabilities succeed in trial. It means that the contentions which the party is stating require consideration in merit and are not liable to be rejected summarily.

16. Further it is relevant to note that the cardinal principles for grant of temporary injunction were considered by the Hon'ble Apex Court in the case of *Dalpat Kumar Vs. Prahlad Singh* reported in (1992) 1 SCC 719. It was observed as follows:

"5...Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or

probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

17. Following the above principles, now let me examine whether the plaintiff has made out prima facie case to grant the discretionary relief of temporary injunction.

18. At the outset, what is to be noticed is that the plaintiff has sued the defendants for the reliefs of declaration of ownership as well as specific performance of contract based on an Agreement to Sell dated 12-06-2023. The reliefs claimed in the plaint are reproduced here below for ready reference.

"a) To declare that plaintiff is the owner and having right, title over the suit property by virtue of Agreement of Sale dated 12-06-2023 in respect of suit schedule properties.

b) Kindly pass decree in favour of the plaintiff as against these defendants thereby directing these defendants to execute Sale deed in respect of suit schedule properties by performing their contract as per Agreement of Sale dated 12-06-2023 in favour of the plaintiff in respect of suit scheduled properties.

c) To grant any other relief in favour of the plaintiff that this Honourable Court deems fit along with cost of this suit in the interest of justice and equity."

19. As I have already narrated the case and contentions of the parties herein above, they do not call for reiteration here.

20. Though the plaintiff has averred in the plaint that he has possessed right over the suit schedule properties by virtue of the Agreement to Sell dated 12-06-2023, at this juncture, on perusal of the materials on record, it is not possible to countenance such a plea of the plaintiff for the simple reason that the Agreement to Sell in question does not recognize any such ownership rights of the plaintiff over the suit schedule properties.

21. Section 54 of the Transfer of Property Act, 1882 specifically provides that a contract for the sale of immovable property does not, of itself, create any interest in or charge on such property.

22. It is no doubt true that the plaintiff has sought to declare that he is the owner having right, title over the suit schedule properties by virtue of the suit Agreement to Sell, however, it does not reflect any such ownership rights in favour of the plaintiff as could be seen from the contents of the said agreement.

23. A perusal of the relevant clauses stipulated in the Agreement to Sell in question disclose that the vendor has agreed to execute sale deed in favour of the vendee after conversion and layout plan or to execute development agreement subject to 35% building area to be constructed in the suit schedule properties, as could be seen from clause-5 of the said agreement.

24. As the very execution of the suit Agreement to Sell has been seriously disputed by the defendants, it is incumbent upon the plaintiff to prove its due execution, however, it is a matter of trial.

25. It is a trite law that while dealing with an application for grant of temporary injunction the Court is not expected to hold a mini trial. Therefore this Court would not enter into the realm of evidence at this stage of the matter. Needless to state that a prima-facie case is germane for consideration at this juncture.

26. As can be seen from the stipulations contained in the Agreement to Sell in question, no time is fixed for performance of the essential terms of the agreement. It is relevant to note that the Agreement to Sell is dated 12-06-2023.

27. Plaintiff in the case at hand is conspicuously silent as to why the plaintiff has waited till issuance of legal notice by the defendants on 03-05-2024. It appears that no explanation is forthcoming in the plaint as to why the plaintiff was in slumber for a period of 11 months and then approached this Court after giving reply to the legal notice of the defendants. Therefore the case projected by the plaintiff prima-facie indicates that it is an after thought, because, normally, an agreement holder who claims to have spent money for all such conversion of the land and preparation of layout plan etc., at his cost would not keep quiet for a period of 11 months without there being any notice to the defendants calling upon them to perform their part of obligations and to receive balance sale consideration. Moreover, the stipulations in the Agreement to

Sell do not reflect anything which would prompt the plaintiff to proceed with all such works which are required for completion of the sale transaction.

28. Pertinently, reading of the plaint averments as a whole does not manifest any averments to the effect that the plaintiff has been ever ready and willing to perform his part of the contract. Thus what prima-facie transpires is that the plaintiff has become little active only on receipt of legal notice got issued by the plaintiff. Rather it is to be noted that it appears that right from the date of Agreement to Sell there is not even a knee jerk by the plaintiff in the matter of getting the sale deed executed from the defendants by paying balance sale consideration.

29. As regards the readiness and willingness of the plaintiff is concerned, no materials are placed on record in that connection. According to the plaintiff the balance sale consideration required to be paid by him is Rs.13,00,000/- out of the total sale consideration of Rs.15,00,000/-. However, no prima-facie materials are tabled by the plaintiff to show that he could arrange such a huge amount of Rs.13,00,000/- for payment of balance sale consideration. All these would create a doubt with respect to his readiness and willingness to have the sale deed from the defendants, at this stage.

30. The plaintiff though has averred in the plaint that the defendants have handed over possession of the suit schedule properties through the Agreement to Sell, absolutely no such recitals or stipulations

can be seen in the said Agreement to Sell. Moreover no materials are produced by the plaintiff to prima-facie fortify his possession over the suit land.

31. It is also significant to note that the plaint averments itself appear to be not in teeth with the suit Agreement to Sell. It is because, the plaintiff has pleaded that he and the defendants have entered into the said Agreement to Sell. However, the Agreement to Sell produced by the plaintiff clearly shows that it was entered into by and between the plaintiff and one Smt. Mariya Pavlu Dias @ Natividade Fernandes. Thus it is clear that what is pleaded in the plaint appear to be contrary to what is there on record.

32. In addition to the above, it is also pertinent to the note that as per the plaintiff, the defendants have agreed to execute sale deed after converting the suit lands for non-agricultural purposes. He further pleads that he alone has completed such a process at his cost. There are no materials placed before the Court to show that he has undertaken all such process and other documentation works and has informed the defendants to execute sale deed.

33. The defendants have specifically contended that the Agreement to Sell is not an out and out agreement of sale but it is an outcome of misrepresentation and misleading acts of the plaintiff as they were in need of money and in such a situation the plaintiff lent money to the tune of Rs.2,00,000/- and that they had agreed for developmental works over the suit land. It is all a matter of proof. However such a

contention of the defendants that the Agreement to Sell is a sham document, can be proved by admissible evidence and Sections 91 and 92 of the Evidence Act, 1872 or Sections 94 and 95 of Bharatiya Sakshya Adhinyam, 2023, do not prevent them from adducing evidence on the issue whether they have agreed to contract on the terms set forth in the document. At the cost of repetition it may be stated that of course it is a matter of trial.

34. Another important aspect to be noticed here is, if the Agreement to Sell has been entered into by the parties with an intention to sell the suit schedule properties, the plaintiff would have called upon the defendants by issuing legal notice or otherwise to execute regular sale deed in view of the so called completion of certain process undertaken by him in the matter. The plaintiff pleads that he has spent money for clearance of encumbrance over item No.2 of the suit schedule lands. It transpires that no such notice has been issued by the plaintiff. What emerges is that the plaintiff became alert only after the issuance of legal notice from the defendants' side stating that the Agreement to Sell is cancelled and the amount purported to have been received by the defendants were retransferred to the bank account of the plaintiff through RTGS. The defendants have pleaded as such in their written statement with sufficient particulars.

35. The plaintiffs have produced certain documents along with plaint which includes the RTC extracts, the Agreement to Sell, legal notice

and reply notice. Except these, no other materials are produced by the plaintiff to demonstrate prima-facie case in his favour.

36. All these would clearly indicate that there exists no prima-facie case in favour of the plaintiff. In other words it may be stated that the plaintiff has failed to make out prima-facie case in this matter.

37. Next comes the question, whether balance of convenience lies in favour of the plaintiffs and whether they would be put to irreparable loss and injury if temporary injunction is refused.

38. The Hon'ble Apex Court in the case of *Kashi Math Samsthan and Another Vs. Srimad Sudhindra Thirtha Swamy and Another* reported in *AIR 2010 SC 296*, has held that **"If a party fails to prove prima-facie case to go for trial, it is not open to the Court to grant injunction in his favour even if he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted"**.

39. However, since I have formulated the points on balance of convenience and irreparable injury, I am inclined to consider these two aspects of the matter also.

40. Among the trios as a guiding factor 'balance of convenience' plays a pivotal role.

41. Coming to the case at hand, it is apposite to note that the plaintiff has sought temporary injunction to restrain the defendants from

alienating the suit schedule properties till disposal of the suit. As already stated, the plaintiff has failed to make out a prima-facie. Thus it is clear that the only apprehension of the plaintiff is that the defendants would alienate the suit schedule properties to cause injury or hardship to the plaintiff. Even if the defendants succeed in alienating the suit schedule properties also, no irreparable injury or hardship would be caused to the plaintiff. In that case, such a transferee could be impleaded in the suit and such an alienation would be subservient to the rights of the parties as may be eventually determined in the suit. In other words, the transfer remains valid subject, of course, to the result of the suit. It may be true that Section 52 of the Transfer of Property Act does not operate as a bar for grant of temporary injunction under Order 39 Rules 1 and 2 CPC, in the discretion of the Court, on fulfillment of pre-conditions for grant of temporary injunction, which are settled in law. However it is to be noted that in the case on hand, even if no injunction is granted, the plaintiff will not be put any injury or injustice. It is also not forthcoming as to what injury or injustice would be caused to the plaintiff if injunction is refused. Unless it is shown to the Court that there is an imminent threat of alienation of the suit lands and in the absence of specific statements made by the plaintiff to that effect, it is not possible to say that it will cause any king of injury to the plaintiff if injunction is refused.

42. The Hon'ble Apex Court in the case of ***Ambalal Sarabhai Enterprise Limited Vs. K.S. Infraspace LLP Limited and Another*** [Civil Appeal No.9346 of 2019 (DD:06-01-2020)] has held as under:

“15. Chapter VII, Section 36 of the Specific Relief Act, 1963 (hereinafter referred to as ‘the Act’) provides for grant of preventive relief. Section 37 provides that temporary injunction in a suit shall be regulated by the Code of Civil Procedure. The grant of relief in a suit for specific performance is itself a discretionary remedy. A plaintiff seeking temporary injunction in a suit for specific performance will therefore have to establish a strong prima-facie case on basis of undisputed facts. The conduct of the plaintiff will also be a relevant consideration for purposes of injunction. The discretion at this stage has to be exercised judiciously and not arbitrarily.”

43. Considering all the above, it is needless to state that the balance of convenience is not in favour of the plaintiff rather it is in favour of the defendants who are the joint owners of the suit schedule properties, and are arrayed as defendants in the suit for the alleged transactions between their mother and the plaintiff. Moreover, the plaintiff having waited for a period of 11 months and instituted the suit only after the receipt of legal notice sent by the defendants. Suffice it to state that the plaintiff will not be put to any hardship or injury if temporary injunction is refused.

44. In view of all these, I conclude that the balance of convenience does not lie in favour of the plaintiff and that he would be put to irreparable loss and injury if temporary injunction is refused. Hence I answer Points No.1 to 3 in the ‘**Negative**’.

45. **POINT NO.4** : The aforesaid discussion takes me to conclude that the plaintiff having failed to make out prima-facie case and also having failed to demonstrate that balance of convenience lies in his favour and he would be put to irreparable loss and injury if injunction is refused, there is no justification to grant temporary injunction in favour of the plaintiff. Hence no discretion can be exercised in favour of the plaintiff to grant equitable relief of injunction. Hence the application for temporary injunction is devoid of merits and thus liable to be rejected. In that view of the matter, I make the following :

ORDER

- i) I.A.No.I filed by the plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 CPC is *rejected*.
- ii) Ad-interim order of injunction subsisting stands vacated.
- iii) There is no order as to costs.
- iv) It is however made clear that any observation made herein is only for deciding the present application and shall have no effect on the adjudication on merits of the suit.

(Dictated to the Stenographer directly on computer, typed by him, corrected and then initialed by me and pronounced in the Open Court on the 29th day of August, 2024)