

KAUK020043772024



ORDERS ON I.A.NO.1

The plaintiff has filed this I.A.No.1 under Order 39 Rule 1 and 2 R/w section 151 of C.P.C. to restrain the defendant, his men, agents, servants or anybody acting on her behalf from alienating the suit schedule property till disposal of the suit.

2. The GPA holder of plaintiff has sworn to an affidavit stating that, the defendant is one of the owner of land bearing Sy.No.51 measuring 05-03-00 area along with her sisters. Out of 5 acres 3 guntas the defendant and sisters got 4 acres 39 guntas in the said survey number, remaining 3 guntas is in the name of Shantu Pandurang Naik. The plaintiff was interested to invest some money on the landed that time he came to know that the defendant is interested to sell her share in the said land. The defendant is having her share to the extent of 2 acres 20 guntas out of 4 acres 39 guntas in Sy.No.51. The plaintiff contacted the defendant and offered to purchase the suit schedule property. The defendant agreed to sell 2 acres of land to the plaintiff in the month of September 2014. The plaintiff has agreed to pay sum of Rs.32,00,000/-. The defendant assured that she will get her land divided by making hissa in revenue records and survey map, thereafter she will executive sale deed.

3. Further averred in the affidavit that, on 11-10-2014 an the agreement of sale came to be executed in the presence of witnesses. The plaintiff has paid Rs.10,00,000/- to the defendant through cheque on 11-10-2024. The plaintiff waited for few months to receive the intimation of defendant regarding the execution of sale deed. The defendant informed that partition of her share in Sy.No.51 is under process in the Revenue department. Though the 10 years elapsed and no information received from the defendant in executing the final sale deed, the plaintiff verified the revenue records of Sy.No.51 and came to know that an area of 02-14-08 by making separate hissa bearing Ghotegalli village Sy.No.51/4. The plaintiff came to know that the defendant is not having interest to sell the suit schedule property and she wants to grab the earnest money of Rs.10,00,000/- given by the plaintiff. Immediately the plaintiff approached the defendant and requested to execute the sale deed, but the defendant expressed her intention of not to sell this suit schedule property. The plaintiff got issued legal notice through his counsel on 28-05-2024 calling upon the defendant to perform her part of contract. However the defendant issued reply to the said notice. The defendant may alienate the suit schedule property behind the back of plaintiff to the other persons. The plaintiff got prima facie case and balance of convenience lies in his favour and if the IA is not allowed the plaintiff will be put to irreparable loss and prayed to allow the application.

4. Though sufficient time has been granted, but defendant has not filed objections to I.A No.1.

5. Heard on I.A No.1.

6. The following points arises for my consideration;

1. **Whether the plaintiff has made out prima-facie case?**
2. **Whether the plaintiff has made out balance of convenience lies in his favour?**
3. **Whether the irreparable injury will be caused to the plaintiff, if the I.A. is not allowed?**
4. **What order?**

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

Point No.1 – In the Affirmative

Point No.2 – In the Affirmative

Point No.3 – In the Affirmative

Point No.4 – Is as per the final order for the following;

REASONS

8. **Point No.1 to 3 :** These points are interrelated to each other to avoid repetition of facts, all points taken for common discussion.

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It is specific case of plaintiff is that there was agreement of sale between the plaintiff and defendant. The defendant agreed to sell to the extent of 02-00-00 out of 02-20-00 for Rs.32,00,000/- and received Rs.10,00,000/- as an advance consideration amount on 11-10-2014 and executed an agreement of sale in the presence of witnesses and defendant agreed to execute the sale deed after demarcating an area of 02-00-00 by 11-E Map from her share of land to the extent of 02-20-00. The plaintiff agreed to pay the remaining sale consideration amount of Rs.22,00,000/- to the defendant at the time of sale deed. The plaintiff waited for few months to receive the intimation from the defendant regarding the execution of sale deed. On enquiry the defendant informed that partition of her share in Sy.No.51 is under process in the revenue department and it will take some more time. The plaintiff waited for all these years hoping that defendant will get revenue work immediately and execute the sale deed, but she has not executed the sale deed. The plaintiff enquired with the defendant but she refused to execute the sale deed. The defendant may alienate the suit schedule property behind the back of plaintiff to other persons.

9. To substantiate his contention, the plaintiff has produced agreement of sale, RTC Extract, copy of legal notice and postal acknowledgement. Though the sufficient time has been granted, but defendant has not filed objections to the I.A No.1, therefore there is no resistance to the I.A

No.1. It is apprehension of the plaintiff is that if the defendant has alienated the suit schedule property, he will be put to great hardship. If the I.A.No.1 is allowed no hardship will caused to other side. Hence on perusal of pleadings and documents on record it is opinion of the court that at this stage plaintiff has made out prima-facie case and balance of convenience lies in his favour, if the I.A.No.1 is not allowed the plaintiff will be put to great hardship, accordingly point No.1 to 3 are answered in the **Affirmative.**

10. Point No.4:- In view of the above discussion, I proceed to pass the following;

ORDER

I.A.No.1 filed by the plaintiff under order 39 Rule 1 and 2 R/w 151 of C.P.C is hereby allowed.

The defendant, her agents, servants or anybody acting on her behalf are hereby restrained from alienating the suit schedule property till disposal of the suit.

**Prl. Senior Civil Judge & CJM,
Karwar.**

(Order pronounced in the open Court
vide separate)

ORDER

**I.A.No.I filed by the plaintiff
under Order 39 Rule 1 and 2
R/w 151 of CPC is hereby
allowed.**

**The defendant No.1 to 3 are
hereby restrained from
alienating or transferring the**

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**suit schedule properties till
disposal of the suit.**

**C/c PRL. Senior Civil Judge &
JMFC, Jamkhandi.**