

KAUK510003662023



**IN THE COURT OF CIVIL JUDGE & JMFC, HALIYAL
AT: HALIYAL, UTTARA KANNADA**

DATED THIS THE 23rd DAY OF AUGUST, 2023

**PRESENT:- DESHABHUSHAN KOUJALAGI,
Civil Judge and J.M.F.C., Haliyal**

OS. No.33/2023

**BETWEEN : 01. SMT. BASAVENNEVVA W/O. KRISHNA
DANDI**

...PLAINTIFF

**AND : 01. SRI. PARASHURAM S/O. ANANT
KAKTIKAR AND OTHERS.**

...DEFENDANTS

PARTIES TO I.A NO.II

**BETWEEN : 01. SMT. BASAVENNEVVA W/O. KRISHNA
DANDI**

...APPLICANT/ PLAINTIFF

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

**AND : 01. SRI. PARASHURAM S/O. ANANT
KAKTIKAR AND OTHERS.**

...OPPONENTS/ DEFENDANTS

**(D1 to D3 By Sri. S.I.G., Advocate &
D4 By Sri. Learned A.G.P)**

ORDERS ON I.A. NO.II

The instant application is filed by the plaintiff under Order 39 Rule 1 and 2 R/w. Section 151 of C.P.C. for the grant of temporary injunction to restrain the defendants No.1 to 3 or anybody acting on their behalf temporarily from alienating or creating encumbrance over the suit schedule property till final disposal of the suit.

2. In the affidavit filed by the plaintiff in support of the instant application, it is stated that, to meet out her financial emergencies, the plaintiff offered to sell the suit schedule properties to the intending purchasers and defendants No.1 and 2 came forward to purchase the same. Accordingly, the plaintiff has sold the suit schedule property to the defendants No.1 and 2 for Rs.3,00,000/- by executing a registered sale deed dated 26-07-2022 and she has received the consideration amount through cheques and based on that sale deed, the defendants No.1 and 2 have got mutated their names to the RTC of the suit schedule property.

3. It is further stated by the plaintiff in her affidavit that, on 07-10-2022, the defendants No.1 and 2 approached the plaintiff and informed that, they would cancel the sale deed dated 26-07-2022 by stating that, the suit schedule property herein is involved in litigation. Though the plaintiff

tried to convince the defendants No.1 and 2 but they were not in a position to hear the same and finally, the plaintiff and the defendants No.1 and 2 have entered into an agreement of Cancellation of Sale Deed dated 26-07-2022 and on the very same day, the plaintiff has refunded the consideration amount to the defendants No.1 and 2. Thereafter, the plaintiff approached the defendant No.4 and filed an application to not to enter the name of defendants No.1 and 2 in the RTC of the suit schedule property in view of cancellation of sale deed dated 26-07-2022 but the same was not considered by the defendant No.4 and mutated the name of defendant No.1 and 2. Based on the said entry, the defendants No.1 and 2 have illegally executed gift deed in respect of suit schedule property in favour of defendant No.3 which is not binding on the plaintiff.

4. It is further stated in the affidavit that, the defendants No.1 and 2 have received entire consideration amount from the plaintiff but by taking undue advantage of standing of their names in the RTC of suit schedule property, they are trying to carry out developmental works in the suit schedule property. When the plaintiff attempted to advice the defendants No.1 and 2 through the elders to give the suit schedule property, the defendants No.1 and 2 have not considered the same. It is

further stated in the affidavit that, the defendants No.1 and 2 have fraudulently induced the plaintiff to execute the registered sale deed on false promise and as such, the plaintiff is constrained to file the present suit. It is also stated that, the plaintiff has prima facie case and balance of convenience lies on her favour and prayed to allow the application.

5. On the other hand, the defendants No.1 to 3 have filed written statement and prayed to treat the contents of written statement as objections to instant application by filing a memo and as such, it is necessary to go through the averments of written statement. In the written statement, it is admitted that, the defendant No.1 and 2 have purchased the suit schedule property from the plaintiff for valuable consideration and also admitted that, they have subsequently executed a registered gift deed in favour of the defendant No.3 in respect of the suit schedule property.

6. It is contended in the written statement that, the defendants No.1 and 2 are the bonafide purchasers of the suit schedule property for valuable consideration and they have been put in possession of the suit schedule property on the basis of registered sale deed dated 26-07-2022 executed by the plaintiff and they were having absolute ownership over

the same and as such, they have executed a registered gift deed in favour of the defendant No.3 and as on the date of filing of the present suit, the plaintiff was neither the owner of the suit schedule property nor in possession of the same.

7. It is further contended in the written statement that, the plaintiff is not having any manner of rights in the suit schedule property and falsely contending that, she has returned consideration amount of the suit schedule property to the defendants No.1 and 2 as per agreement dated 07-10-2022. It is further contended that, no such agreement dated 07-10-2022 has taken place between them and the plaintiff and plaintiff at no point of time has returned the consideration amount. The defendants No.1 and 2 have purchased the suit schedule property after full verification of the documents and as such, there is no question of cancellation of registered sale deed. As per Section 54 of the Transfer of Property Act, the sale deed is executed for valuable consideration and defendants No.1 and 2 have been put in possession of the same and as such, the present suit itself is not maintainable. With this, the defendants No.1 to 3 pray to reject the instant application.

8. Heard on both sides. Perused the entire materials. The plaintiff in support of her case has relied upon documents such as, original Sale Deed dated 25.07.2022, copy of Aadhaar Card of plaintiff, RTC extract of suit land bearing Survey No.29A/3 of Bablikoppa Village of Haliyal Taluk in the name of plaintiff, RTC extract of suit land bearing Survey No.29A/3 of Bablikoppa Village of Haliyal Taluk in the name of (purchaser) defendant, RTC extract of suit land bearing Survey No.29A/3 of Bablikoppa Village of Haliyal Taluk in the name of defendants' relative and copy of Mutation Register bearing No.6/2022-23, copy of Mutation Register, RTC extract of suit land bearing Survey No.29A/3 of Bablikoppa Village of Haliyal Taluk in the name of plaintiff, copy of Mutation Register bearing MR No.T3/2017-18, RTC extract of suit land bearing Survey No.29A/3 of Bablikoppa Village of Haliyal Taluk, copy of Mutation Register bearing MR No.H5/2022-23 and copy of agreement dated 07-10-2022.

9. On the other hand, the defendants No.1 to 3 in support of their case have relied upon documents such as xerox copy of Gift Deed dated 28.12.2022 and Mutation Register bearing MR No.T1/2022-23 and Mutation Register bearing MR No.H5/2002-23 and two original RTC

extracts i.e. RTC extract of suit land bearing Survey No.29A/3 of Bablikoppa Village of Haliyal Taluk and RTC extract of suit land bearing Survey No.29A/3 of Bablikoppa Village of Haliyal Taluk. This apart, the learned counsel for the defendants No.1 to 3 have relied upon a decision of Hon'ble Kerala High Court reported in AIR 1986 Kerala 176.

10. Under the above circumstances, the following points arise for the consideration of the Court:

- POINT NO.1: Whether the plaintiff has made out a prima-facie case?
- POINT NO.2: Whether balance of convenience lies in favour of the plaintiff?
- POINT NO.3: Whether if TI is not granted, the plaintiff would be put to untold hardship and irreparable loss?
- POINT NO.4: What Order?

11. Findings of the Court on the above points are as under:

- POINT NO.1: In the Negative.
- POINT NO.2: In the Negative
- POINT NO.3: In the Negative
- POINT NO.4: As per final order for the following:

:REASONS:

12. POINTS NO.1 TO 3 : Since these points are interlinked with each other, they are taken together for common discussion to avoid repetition of facts.

13. In the instant application, the plaintiff has sought the relief of temporary injunction to restrain the defendants No.1 to 3 or anybody acting on their behalf from alienating or creating encumbrance over the suit schedule property till final disposal of the suit. It is the case of the plaintiff that, initially, she has sold the suit schedule property to the defendants No.1 and 2 through a registered sale deed dated 26-07-2022 for consideration but subsequently on 07-10-2022, the defendants No.1 and 2 have approached her and informed that, the suit schedule property herein is involved in litigation and intended to cancel the registered sale deed dated 26-07-2022. It is further case of the plaintiff that, though the plaintiff convinced the defendants but they did not hear the same and as such, an agreement of cancellation of sale deed was entered on 07-10-2022 and plaintiff returned the consideration amount to defendants No.1 and 2 and in turn, the defendants No.1 and 2 had assured that, they will give back the suit schedule property to her. It is alleged that, instead of

giving back the suit schedule property, the defendants No.1 and 2 have executed a gift deed in favour of defendant No.3 and as such, she is constrained to file the present application for temporary injunction.

14. On the other hand, the defendants No.1 and 2 have contended that, after full verification of the documents, they have purchased the suit schedule property from the plaintiff for valuable consideration and on the basis of said registered sale deed, they were put in possession of the suit schedule property as absolute owner of the same and as such, they have executed a gift deed in favour of the defendant no.3. It is also contended that, since the defendants No.1 and 2 have purchased the suit schedule property from the plaintiff for valuable consideration, there is no occasion to cancel the sale deed on 07-10-2022 and at no point of time, they have received consideration amount from the plaintiff.

15. The learned counsel for the plaintiff and the defendants No.1 to 3 have argued in terms of the pleadings of their respective parties. Court has gone through the entire materials. The present application is filed by the plaintiff to restrain the defendants No.1 to 3 temporarily from alienating or creating encumbrance over the suit schedule property till

disposal of the suit. However, at this stage itself, Court inclines to state that, nowhere in the affidavit filed in support of instant application, the plaintiff has stated anything about her apprehension of alienation of the suit schedule property or creation of charge over the suit schedule property by the defendants No.1 to 3. The prayer made in the instant application is not at all supported with any pleadings as to on what cause of action, the plaintiff is constrained to file the present application. Since the defendants No.1 and 2 have already parted with the suit schedule property in favour of the defendant No.3 by way of gift deed, there is no pleadings as to who is attempting to alienate the suit schedule property. The plaintiff in the present application has simply reiterated the main prayer of permanent injunction to restrain the defendants No.1 to 3 from alienating the suit schedule property. However, she has not specifically pleaded any facts which lead her to file the present application for temporary injunction.

16. Coming to the next aspect, the plaintiff has already sold the suit schedule property to the defendants No.1 and 2 through a registered sale deed and based on that sale deed, the names of defendants No.1 and 2 were entered. However, it is alleged by the plaintiff that, subsequently,

the said sale deed dated 26-07-2022 was canceled by way of an agreement dated 07-10-2022. The alleged agreement dated 07-10-2022 was not admitted by the defendants No.1 to 3. Copy of the said agreement dated 07-10-2022 is produced by the plaintiff. Court has gone through the same. The said document is just an agreement to cancel the registered sale deed dated 26-07-2022 and the said document itself is not the instrument of cancellation of sale deed dated 26-07-2022. Hence, merely on the said agreement, it cannot be considered that, the registered sale deed dated 26-07-2022 has been canceled. Moreover, the said agreement is not a registered document and the same cannot be looked into at this stage.

17. When the defendants No.1 and 2 have purchased the suit schedule property for valuable consideration through a registered sale deed, they have every right to dispose of the same as per their wish. Accordingly, they have gifted the suit schedule property in favour of defendant No.3 through a registered gift deed and on the strength of said gift deed, the defendant No.3 has become the owner of the same. Acquisition of a property by a person in the mode known to law is always attached with certain rights which also includes right of alienation and the said right cannot be curtailed by the Court without any strong

justification. In the present case, the plaintiff has not shown any cogent grounds to restrain the defendants No.1 to 3 from dealing with the suit schedule property. Hence, Court does not find either prima facie case or balance of convenience on the side of the plaintiff and the plaintiff has failed to show as to what would be the greater loss to her if instant application is rejected. Having regard to all these aspects, Court opines that, the plaintiff is not entitled for the relief which sought in the instant application. As such, Points No.1 to 3 are answered in the **NEGATIVE**.

18. POINT NO.4: In view of the findings on Points No.1 to 3, Court proceeds to pass the following:

ORDER

I.A. No.II filed by the plaintiff under Order
39 Rule 1 and 2 R/w. Section 151 of C.P.C is
hereby rejected.

No order as to costs.

(Computerized to my dictation by the stenographer, printout then revised, corrected, signed and then pronounced in the Open Court on this the **23rd Day of August, 2023**)

(DESHABHUSHAN KOUJALAGI)
Civil Judge and J.M.F.C., Haliyal