

KAUK510003662023



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

DATED THIS THE 31st DAY OF AUGUST, 2024

**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.III

**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.III

The instant application is filed by the plaintiff under Order 39 Rule 1 and 2 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 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, she has filed present suit against the defendants No.1 to 3 for cancellation of sale deed and further prays to consider plaint averments as part of the affidavit. It is further stated in the affidavit that, the defendants No.1 to 3 are highhandedly and illegally attempting to alienate the suit schedule property and if they succeed in the same, the plaintiff will be put to great hardship and loss. The plaintiff has prima-facie case and balance of convenience. If the instant application is not allowed, the plaintiff will be put to great hardship and loss. On the other hand, no loss will be caused to the defendants No.1 to 3 if the instant application is allowed and prayed to allow the application.

3. On the other hand, the defendants have filed objections to the instant application wherein, they have contended that, the plaintiff has filed the present suit for the relief of declaration but, initially, she had

filed very same interim application under Order 39 Rule 1 and 2 before this Court and sought same relief against the defendants. The said earlier application was rejected by this Court after consideration of pleadings and documents on both side. Now the plaintiff has come up with the similar application seeking the same relief against the same defendants. There is no provision under law to file the application by seeking same relief in the same proceedings. It is further contended that, the plaintiff is neither owner of the suit property nor in possession of the same and she is not having any right, title, interest or possession over the same and as such, the present application is liable to be rejected.

4. 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.

5. Apart from the above, the plaintiff has also relied upon another document i.e., copy of registered sale deed dated 06.07.2024 executed by the defendant No.3 in favour of one Sri. Abdulhameed Abdulmajid Maniyar and Sri. Altaf Abdulmajid Maniyar.

6. 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.

7. 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?

8. 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:

9. **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.

10. 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 the suit schedule property till final disposal of the suit.

11. 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 suit.

12. 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.

13. Under the above circumstances, the plaintiff had filed I.A No.II under Order 39 Rule 1 and 2 of C.P.C against the defendants No.1 to 3 to restrain them from alienating the suit schedule property till final disposal of the suit. After hearing, said application was rejected by this Court as per Order dated 23.08.2023. The plaintiff has filed one more application i.e., present application under same provisions of law against the defendants No.1 to 3 to restrain them temporarily from alienating the suit schedule property till final disposal of the suit. However, it is

pertinent to note that, the plaintiff herself has produced copy of sale deed to the Court on 29.07.2024 which shows that, the defendant No.3 has already alienated suit property to Sri. Abdulhameed Abdulmajid Maniyar and Sri. Altaf Abdulmajid Maniyar on 06.07.2024. When such being the case, the present application becomes infructuous. As such, no further discussion is required. Hence, the present application is deserves to be rejected as not maintainable by imposing cost on the plaintiff as she has filed the present application inspite of having knowledge that, the defendant No.3 has already sold suit property. Accordingly, Points No.1 to 3 are answered in the **NEGATIVE**.

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

ORDER

I.A. No.III filed by the plaintiff under
Order 39 Rule 1 and 2 of C.P.C is hereby rejected
with cost of Rs.500/-.

(Computerized to my dictation by the stenographer, printout then revised, corrected, signed and then pronounced in the Open Court on this the **31st Day of August, 2024**)

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

