



(D - Rep. by Sri. A.S.B., Adv.)

**Order on I.A.No.II filed under Order XXXIX Rule 1 and 2
r/w Sec.151 of C.P.C.**

The instant application is filed by the plaintiff seeking an order of temporary injunction against the defendant restraining him, his agents, servants and all those persons claiming under him from alienating or selling, mortgaging the plaint 'A' schedule property pending disposal of the suit in the interest of justice and equity.

2. According to him, the plaint 'A' schedule property is a shop room with common area and basic necessity facilities thereto, together with electric fittings and electric meter.

3. It is supported by affidavit of the plaintiff and according to him the defendant is the owner of the plaint 'A' schedule property and he approached and offered to sell it for total consideration of Rs.16,00,000/-, accordingly it is agreed and resulted in sale agreement dated 19.10.2016 entered into between them under which advance amount of Rs.11,00,000/- has been paid to the defendant and agreed to pay the balance sale consideration at the time of registering the sale deed. In spite of having ready and willing to perform his part of contract by the defendant, without any reason did not come to execute the sale deed, but postponing on one or other reason, therefore, he failed to perform his part of contract. On the other hand, he is trying to sell the property to some third party by suppressing the sale

agreement in his favour. Therefore, noticing it he filed suit for relief of specific performance of contract under sale agreement dated 19.10.2016. Therefore, if the defendant, his agents or anybody claiming under him are not restrained from alienating, mortgaging or creating charge over the same, they will be put to great hardship and injury rather the defendant. As such, he made out prima facie case, balance of convenience lies in his favour, therefore, if the application is not allowed, he will be put to great hardship and injury and prays to allow the application. It is opposed by the defendant by filing objection therein he contended that he has filed memo stating that the court has not having jurisdiction since the subject matter of the dispute involved is commercial in nature. When the suit filed by the plaintiff is for specific performance of the contract in respect of commercial shop room and the value is Rs.16,00,000/-, therefore, same will come within the jurisdiction of commercial court and hence suit is barred under Sec.9 of C.P.C. Accordingly, when the court is not having jurisdiction, there is no question of granting injunction and also does not arise there is no prima facie case in order to put parties to trial and there is no balance of convenience, accordingly, there is no irreparable loss or injury to the plaintiff. Accordingly, prays to dismiss the application with exemplary costs.

4. Having heard, the following points that would arise for consideration;

1. *Whether the plaintiff has made out prima facie case?*
2. *Whether the balance of convenience lies in his favour?*
3. *Whether if the I.A.No.II is not allowed the plaintiff will be put to great hardship or injury?*
4. *What order?*

5. By looking into facts and circumstances of the case and taking into consideration of I.A.No.II, its objection, my findings on the above points are as follows:

Point No.1: In the Affirmative;
Point No.2: In the Affirmative;
Point No.3: In the Affirmative;
Point No.4: As per final order
for the following:

REASONS

Point No.1 to 3:

6. It is the case of the plaintiff that the defendant is the absolute owner of the plaint 'A' schedule property and agreed to sell it for sale consideration of Rs.16,00,000/- and offer made by him for the sale consideration of Rs.16,00,000/-, resulted in sale agreement dated 19.10.2016, in which he paid Rs.11,00,000/- as advance amount to the defendant and agreed to pay balance sale consideration of Rs.4,00,000/- at the time of executing the sale deed, inspite of it the defendant did not come forward to execute the sale deed relating to the plaint 'A' schedule property and on the other hand, he is trying to sell the same in favour of the third

party, noticing it he filed the suit for relief of specific performance of contract for execution of the sale deed. Meanwhile, if the defendant alienated the suit schedule property in favour of the third party, he will be put to great hardship and injury and it cannot be compensated in terms of money. Therefore, according to him he made out prima facie, balance of convenience lies in his favour. Accordingly, sought for allow the application.

7. It is resisted by the defendant on the ground that it is a commercial transaction and the court has no jurisdiction to put parties to trial. Therefore, sought for dismissal of the application with costs.

8. On going through the objection of the defendant, it cannot be make out that whether he is making effort to dispose off the suit schedule property in favour of the third party since the plaintiff come up with the suit on the ground that the defendant is not come forward to execute the sale deed. Therefore, at this stage, before considering the question raised by the defendant that it is a commercial transaction, therefore, the court is not having jurisdiction and it can be taken up even after disposal of the I.A.No.II. In mean time, if the defendant alienated suit schedule property definitely it will harm and injury to the plaintiff. However, the suit has been filed by the plaintiff in the year 2021, therefore, at this juncture, before considering

the question raised by the defendant if the prayer is not allowed as sought by the plaintiff definitely, he will be put to great hardship or injury. Accordingly, I am of the opinion that the plaintiff has made out prima facie case, balance of convenience lies in his favour. Accordingly, if application is not allowed, he will be put to great hardship and injury and it cannot be compensated in terms of money. Hence, made out ground to allow his application. Accordingly, I answer ***point No.1 to 3 in the affirmative.***

Point No.4 :

9. For the foregoing reasons, I proceed to pass the following :

ORDER

The defendant, his agents, his men and all those persons claiming on his behalf or claiming under him are hereby restrained from alienating, selling or mortgaging the plaint 'A' schedule property pending disposal of the suit and it is subject to question raised by the defendant that the suit is not maintainable under the Commercial Courts Act, 2015.

Accordingly, I.A.No.II is hereby disposed off. The costs will follow the result of the suit.

(Dictated to Stenographer, typed by her, corrected by me and then pronounced in open court on this the 16th day of June, 2022)

(Natesha R.)

Addl. Senior Civil Judge, Udupi.