

IN THE COURT OF ADDL.SENIOR CIVIL JUDGE AT UDUPI.

Present: **Sri. Santosh Srivastava** B.A., LL.B.,
Addl. Senior Civil Judge, Udupi.

Dated this the 15th day of March, 2025

O.S.No.147/2024***Between:***

Mr. Iqbal Mohammed ... Plaintiff

AND

Smt. Prema and others ... Defendants

In I.A.No.I***Between:***

Mr. Iqbal Mohammed ... Plaintiff

AND

Smt. Prema and others ... Defendants

(P - Rep. by Sri. S.C.M., Adv.)
(D1 to 3, 5 to 9 - Rep. by Sri. D.S., Adv.)
(D4 - Exparte)

ORDERS

This application is filed under Order XXXIX Rule 1 and 2 of C.P.C., praying this court to restrain the defendant, their agents, henchman or anybody claiming through them from alienating the suit shield property in the interest of justice and equity in respect of property bearing. Survey number 57, SD number 41, situated at Puttur village within the limits of Kodankur ward of Udupi Taluk, Udupi District, bearing PID number 7-3-606-2-B, measuring 5 cents, 202.40. square meters along with residential house bearing door number 7-41 measuring 181.63 square meters bounded by East Sy.No. 57 /150, West Sy.No.57/13, North Sy.No. block 1 and South Sy.No.55.

2. In the supportive affidavit, he submits that he entered into an agreement of sale with the husband of the defendant No.1 and father of other defendants to purchase The schedule property for a valuable consideration of Rs.75,00,000/- out of which a sum of Rs.23,50,000/- is paid by cash and cheque to Srinivas Poojari who is the husband of defendant No.1 and father of other defendants. It is further submitted that after the said consideration paid to him, he did not come forward to execute the sale deed. Though the plaintiff was ready and willing to perform his part of contract

and he was ready to get the schedule property registered in his name. However, the husband of the defendant No.1 and father of other defendants only postponed the execution of the sale deed in the favour of plaintiff for one pretext or the other.

3. Further it is submitted that when a demand was made by plaintiff to Srinivas Poojari who is the husband of defendant No.1, he could only casually convince the plaintiff by stating some reasons and to utter shock and surprise, the husband of defendant No.1 and father of other defendants expired in this year in the month of February. Further, the plaintiff requested defendants herein who are the legal heirs of deceased Srinivas Poojari and they did not agree to come forward to execute the sale deed. Thereafter, he got issued the legal notice to the defendants requesting them to execute the sale deed in his favour by fixing a date for registration of the sale deed.

4. However, the defendants did not turn up before the sub-register office but on contrary the defendants have given an evasive reply to the legal notice issued by plaintiff and the defendant did not come forward to execute the sale date in favour of plaintiff. Further the plaintiff submit that after the legal notice stood issued and the reply given by the

defendants, the defendants are negotiating to convey the schedule property in favour of third party which came to his knowledge and if the acts of the defendants are just let come in reality, then the very purpose of filing the above suit becomes infructuous and the hardened money is struck in the hands of defendant on the assurance made by the husband of the defendant number no-1 and father of other defendants and after the legal notice is issued, the plaintiff also approached the bank for completion of loan formalities and in that regard the bank was eager to lend loan to the plaintiff. Though the plaintiff was ready and willing to perform his part of contract, the defendant did not cooperate to perform their part of contract as agreed by the husband of the defendant number one and father of other defendants. The plaintiff further submits that the right over the property is a valuable right and if the said right is not protected by the interference of this court then it would lead to great injustice, misery and hardship to the plaintiff. He further submits that he has got a prima facie case and balance of convenience lies in his favour and if an order of injunction is not granted in his favour then he would be put to great injustice, misery and hardship. And on the other hand if no order is passed then there are every chances of the plaintiff, alienating the suit shall property prejudicial to the interest of the plaintiff. Therefore, prays to allow the application.

5. Further avers that, in the broad category of prima facie case, it is imperative for the Court to carefully analyse the pleadings and the documents on record and only on that basis the Court must be governed by the prima facie case. In grant and refusal of injunction, pleadings and documents play vital role.

6. That the defendant No.1 to 3 and defendant No.5 to 9 adopt the written statement filed by defendant No.3 as their objections to I.A.No.I in the above suit and in this regard memo is being filed.

7. The defendant submits that the plaintiff did not enter into the agreement for sale referred in the plaint para number 3 and thereunder the former did not agree to sell the scheduled property to the latter for any consideration and he also denies the execution, truth, validity and binding nature of the said alleged agreement of sale. The defendant submits that his father has not taken any sum much less the sum of rupees 23,50,000 as advance amount as narrated in paragraph 4 or in any other manner. The defendant further submits that his father has not acknowledged the above payments in any manner and the defendant also denies the truth, execution, binding nature and validity of the receipts produced along with the plaint. And this defendant denies that his father has

signed or affects some impression to the said receipts. The defendant further submits that his father never kept assuring the plaintiff that he would execute sale deed in favour of the plaintiff. The question of this defendant's father coming forward to execute the sale date or postponing the execution of sale date on frivolous reasons simply does not arise. It is further denied that the plaintiff being polite accepted the alleged reasons and waited for execution of sale date from this defendant's father. It is further denied by this defendant that plaintiff did not make any arrangements to keep himself ready and in that regard He did not approach any bank and applied for loan. Bank did not sanction any loan to him. It is also denied that though the bank sanctioned the loan as per the alleged eligibility of the plaintiff, the bank reserved the same to verify the original documents before release of loan. Further the defendant denies that the plaintiff was waiting near the sub-register office on the date fixed in the legal notice and as the defendants did not appear the plaintiff went back with no result. And this defendant submits that this is a tailor made story which is unbelievable and to be dismissed at the threshold. It is further denied that plaintiff is capable of paying balance consideration even to this date and get the sale date executed in his name. It is denied that the defendants are not coming forward to

execute the same. It is further denied that plaintiff requested for execution of sale date with respect of schedule property or that this defendant's father postponed after receiving the money from the plaintiff and after his death the defendant being his legal heirs are not coming forward to execute the sale date as aforesaid And it is very much pertinent to mention here that the defendant's father was not acquainted with English language. He also had the habit of borrowing money from strangers. He was suffering from neurological problems and other serious health ailments for a long time. prior to his death. It appears that the plaintiff has exploited the weakness and obtained the signature of this defendant's father on certain papers, the contents of which were not intelligible to this defendant's father under the guise of obtaining acknowledgment for sum and loan might have been put by this defendant's father. The agreement and receipts produced along with the plaint appear to have been concocted by misusing the signature thumb marks obtained by the plaintiff from this defendant's father and forging his signatures. There is no cause of action to file this suit the one alleged is false. Plaintiff is not entitled to claim the relief sought in the plaint. Therefore, press to dismiss the application.

8. Heard the arguments on both sides. The following points which arise for my consideration are as follows:

1. Whether the plaintiff has got prima facie case to go for the trial ?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether there would be a irreparable injury to the plaintiff in absence of the said order?
4. What order?

9. Above points are answered as under:

Point No.1 : In the affirmative;

Point No.2 : In the affirmative;

Point No.3 : In the affirmative;

Point No.4 : As per the final order

for the following:

REASONS

Point No.1 to 3:

10. These points are interlinked with each other, therefore taken together for common discussion.

The plaintiff has produced original agreement for sale which is entered between Mr. Iqbal Mohammed and Srinivas Poojary. Perused the agreement of sale wherein it was executed on 26.10.2023 upon certain terms and conditions and all together the advance amount was paid and remaining balance

amount for sum of Rs.51,50,000/- was agreed to paid within 6 months from the date of this agreement and it was agreed that the due execution of Sale Deed would be on or before 25.04.2024 and as per clause in agreement of sale it was agreed that in the event of breach of contract agreed part shall be at liberty to enforce specific performance against the defaulting party. This agreement has the photographs to 1st and 2nd party and this agreement for sale also discloses that it was executed in the presence of Prashanth and one Firoz Khan and same being notarized dated 26.08.2023.

11. Further produced receipts dated 20.01.2023 wherein Srinivas Poojary receives a sum of Rs.2,00,000/- from present plaintiff, again in the presence of witness Prashanth and Firoz Khan. Likewise a sum of Rs.2,50,000/- is being received on 05.02.2023, further produced the receipts dated 25.02.2023 wherein it goes to show that a sum of Rs. 2,00,000/- is being received. Further produced the receipt dated 06.04.2023 displaying that Rs.3,00,000/- is being received by Srinivas Poojary from the present plaintiff, likewise Rs.2,00,000/- is being received by Srinivas Poojary on 10.05.2023. Further produced receipts on 12.08.2023 shown that a sum of Rs.3,50,000/- is being received by Srinivasa Poojary from the plaintiff. Likewise further produced receipts dated 15.09.2023 and 26.10.2023 shown that all together Rs.3,50,000/- is being received. Further to show the competency of Srinivas Poojary

executing agreement for sale in favour of plaintiff produced the Sale Deed.

12. Perused the contents of Sale Deed wherein it goes to show that the deceased Srinivas Poojary was the owner and possessor of suit schedule property dated 27.02.2020. Further produced the order of Land Tribunal i.e. LRY 68-197-347-TRI-9209-9202-7980. Further produced the copy of legal notice issued to the legal heirs of deceased Srinivas Poojary and on perusal of the contents of this notice, it is nothing but almost the replica of averments of affidavit duly sworn to the application filed under Order XXXIX Rule 1 and 2 of C.P.C. hence not discussed to avoid repetition of facts.

13. Further produced postal receipt and on 08.05.2024 wherein the entire contents of the notice is being denied which is being sent by the plaintiff. Which is again the almost replica of contention taken in the written statement. Further produced one document dated 12.04.2024 where it is the loan sanctioned by the Bank to the plaintiff. After going through the documents placed by the plaintiff on record, at this stage it goes to show that there is due execution of agreement of sale in respect of the schedule premises and advance amount appears to be paid on perusal of the receipt. Notice is being sent to the defendants who are the legal heirs of deceased Srinivas Poojary and this defendant have categorically denied the due execution of

agreement of sale and further contends that, there is no such execution of agreement of sale during lifetime of Srinivas Poojary.

14. Now at this stage if one go through the entire materials placed on record by the plaintiff it prima facie goes to show that the Srinivas Poojary during his lifetime agreed to get executed the sale deed in respect of schedule property and total extent of the property on perusal of the sale deed is Sy.No.57 hissa 14 total extent is 15 cents out of which it was agreed to sale to the extent of 5 cents during the lifetime of Srinivas Poojary.

15. Now why there was no due execution of registered sale deed in the lifetime of Srinivas Poojary is a matter for trial that cannot decided at this stage. As it is a settled position of law that while adjudicating the application filed under Order XXXIX Rule 1 and 2 C.P.C., 3 facts has to be taken into consideration i.e. prima facie case, balance of convince and irreparable injury in the absence of the order. Further more to be seen at this stage that whether the plaintiff has filed this application narrating all the material facts before the court.

16. Now after going through the contents of the written statement, there is no such contention taken as any suppression of material facts before the court. What all alleged is that the bare denial of execution of agreement of sale

during the life time of Srinivas Poojary which is again the matter of trial which cannot be decided at this stage. So therefore, at this stage by producing the copy of agreement for sale, receipts shown that advance amount is being paid, legal notice and answer to the legal notice. At this stage plaintiff deserves order in his favour since he is able to show that he has got prima facie case which deserves to proceed for the Trial. Therefore, I answer **point No.1 to 3 in the affirmative.**

Point No.4 :

17. In view of the above discussion, proceed to pass the following:

ORDER

Application filed under Order XXXIX Rule 1 and 2 r/w Sec.151 of C.P.C. is hereby allowed.

The defendants or anybody claiming through them are temporarily restrained from alienating the suit schedule property till disposal of the suit.

(Dictated to Stenographer, transcribed by her, corrected and then pronounced by me in open court on this the 15th day of March, 2025)

(Santhosh Srivastava)

Addl. Senior Civil Judge and A.C.J.M.,
Udupi.

