

KAUP320002032017



**IN THE COURT OF II ND ADDITIONAL CIVIL JUDGE AND
JUDICIAL MAGISTRATE FIRST CLASS AT KUNDAPURA**

Present: Smt. Shwethakshi., B.A. Law, LL.B.,
II Addl. Civil Judge & J.M.F.C.,
Kundapura.

Dated this 08th day of April, 2024
Original Suit No. 39/2017

Parties in Original Suit No. 39/2017:

Between,

**Jayavantha Balegara, 60 years,
since deceased,
Rep. By LR's
S/o. Late Nandyappa Balegara,
R/o. Jansale, Sidappura village
Kundapura Taluk.**

- 1(i). J Pramila, 61 years,
W/o. Late Jayavanth Balegar,**
- 1(ii). Prashanth Jogi, 34 years,**
- 1(iii). Shrikanth Jogi, 32 years,**
- i(iv). Pooja Jogi, 25 years,**

**1(ii) and 1(iv) are children of
Late Jayanth Balegar (Plaintiff),
All are resident of Siddapura Village,
Jansale Post, Kundapura Taluk**

-Plaintiff

AND

**Yashavantha Balegara, 64 years,
S/o. Late Nandyappa Balegara,
R/o. Jansale, Siddapura Village,
Kundapura Taluk.**

- Defendant

INTERLOCUTORY APPLICATION NUMBER -IV

BETWEEN

1. SRI. JAYAVANTH BALEGAR

**-APPLICANT
(Plaintiff)**

AND

2. YASHAVANTH BALEGAR

**-OPPONENT
(Defendant)**

ORDERS ON I.A. NO. IV

IA.No.IV filed by the learned counsel for the plaintiff
U/o 39 rule 1 and 2 R/w 151 of C.P.C for seeking to
restraining the defendant from alienating and creating charge
over the suit schedule property.

2. The plaintiff sworn to an affidavit in support of the application wherein she has stated that, in the suit the plaintiff praying for the specific performance of contract i.e; to convey the plaint suit 'A' Schedule property by executing an instrument of sale by preparing a necessary revenue records prepared for the registration of the sale deed within the time fixed by the Court after complying all the procedure fixed by the government in that regard. The schedule property is purchased property of the plaintiff's family and they have already paid the entire sale consideration. The opponent/defendant is intentionally avoiding to execute deed of sale in favour of the plaintiff and the opponent/defendant is trying to pledge or alienate the suit schedule property. If the opponents are allowed to do so the plaintiff and her family will be put to irreparable loss and injustice which cannot be compensated in terms of money. She has a prima facie case and balance of conveniences in her favour. Hence she has prayed to allow the application.

3. The defendant has contended that, the suit filed by the plaintiff is not maintainable. The defendant had planted and reared about 900 mangala variety areca nut trees over major portion of the suit property and they are all good yielding trees. That the defendant has also planted and reared other tree growth over the remaining portion of the land granted to him on dharkasth. That the defendant has

no intention to alienate any portion of the suit property. That from last about fifteen years the defendant has been regularly obtaining agricultural loan from Siddapura Agricultural Co-operative Society for doing agricultural operations over the suit property and has been regularly paying the dues to the said Co-operative Society annually and regularly obtaining loan for the agricultural purpose. That the defendant is not a defaulter in the repayment of loan amount. That the defendant is in need of money for doing agricultural operations over the suit property.

4. The defendant further submits that, the defendant has been investing huge sum of money for effecting agricultural improvements over the suit property and the areca nut garden of the defendant is a very valuable property fetching good income. That the defendant has no intention to alienate the suit schedule property from which is getting livelihood. That there is no reason for filing the above injunction application. That only to blackmail the defendant such an application has been filed by the plaintiffs. There is no bonafide intention, but with malafide intention and ulterior motive the application has been filed by the plaintiffs. The plaintiffs have no prima facie case. If any interim injunction is issued in favour of the plaintiffs certainly they will interfere with the peaceful possession and enjoyment of the suit property by the defendant. The

defendant is now aged 74 years and has been suffering from age related ailments and the aforesaid areca nut garden is the only source of income for the livelihood, clothing and medicine etc., of the defendant. That the balance of convenience is in favour of the defendant for dismissing the injunction application and the same is not in favour of the plaintiffs for issuing any injunction order. Accordingly, prays to reject the application.

5. Heard the learned counsel appearing for the respective parties on the IA No. IV and perused the materials available on record.

6. The following points that arise for Court consideration and decision are as under :

I. Whether the plaintiff has made out prima facie case to grant temporary injunction ?

II. Whether the balance of conveniences lies in favour of plaintiff?

III. whether she will be put to irreparable loss and injury, if injunction is refused?

IV. What order?

7. My findings 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

8. **Point No. 1** : Before proceeding to examine the merits of the interlocutory application, I may now advert to the principles required to be followed while dealing with this kind of application.

9. Well established principle in connection with temporary injunction is that the plaintiff should be able to satisfy that the following conditions exists :

a) that the plaintiff has a prima facie case ;

b) that the Court's interference is necessary to protect the party applying for temporary injunction from that species of injury which the Court calls irreparable, before his legal right is established before the Court;

c) that the comparative mischief for inconvenience which is likely to occur from withholding the injunction will be greater than that which is likely to arise from granting it or in other words, the balance of convenience.

10. Thus, all the above three factors must exist to grant a temporary injunction. If any one of them is missing then temporary injunction shall not be granted. Moreover, to grant an order of injunction, the injury must be actual and eminent. Apart from this, conduct of the party is also a relevant consideration while dealing with this kind of application. Prima facie case does not mean that the plaintiff should have a cent percent case which in all probabilities succeed in trial. It means that the contentions which the plaintiff is stating require consideration in merit and are not liable to be rejected summarily.

11. The plaintiff has filed this suit for the specific performance of the sale agreement dated:17/07/1997 against the defendant in executing the sale deed pursuant to the sale agreement dated 17/07/1997 coupled with the direction to the defendant to executing an instrument of sale by preparing a necessary revenue records prepared for the registration of the sale deed, if failing which the court may be pleased to cause execution of registered sale deed on behalf of the defendant in favour of the plaintiff. In this suit the defendant entered appearance by engaging the counsel and resisted the claim of the plaintiff by filing his written statement. In this suit the issues were framed. The plaintiff was examined as PW1 and documents Ex.P1 to Ex.P6 are marked on the side of the plaintiff. When the case posted for cross examination of PW1 at this stage the learned counsel for the plaintiff moved IA No.IV under Order XXXIX Rule 1 and 2 of CPC praying to restraining the defendants from alienating and creating charge over the suit schedule property.

12. Having heard the arguments canvased by the learned Counsel for both parties, I have gone through the entire materials on record including the copies of documents made available on record.

13. At this stage, without going into the merits of the case and holding for trial, this court has considered the aspect of prima-facie case. At this stage, this court makes it very clear that this court is looking towards prima-facie case and not prima-facie title. It is well-settled principle of law that at the time of disposing the Temporary Injunction application, the court cannot go into the prima-facie title and only to consider whether the plaintiff has made out a prima-facie case for granting interim relief.

14. On going through the documents, it appears to the court that there are no clear and cogent materials that are placed on record by the plaintiffs to prima facie establish their right over the suit B Schedule property in question. It is evident from the unregistered sale agreement dated:17/07/1997, Plaintiff has not being a owner of the suit B schedule property. Plaintiff herself admitted in her plaint, agreement is allegedly executed during the lock in period of the property meaning to say agreement is made during the period when the property was under the non-alienation condition there is ambiguity in the agreement hence no prima facie case. Also the suit prima facie seems to be barred by time. Though the limitation is a matter of trial herein the prima facie date of execution and date of suit has a huge difference which don't make out a prima facie case in favour of plaintiff. Considering all the above, this Court is of

the opinion that there is no prima-facie case made out by the plaintiff to grant temporary injunction restraining the defendants from alienating and creating charge over the suit schedule property. Hence, this court answers point No. 1 in the **Negative**.

15. Point No. 2 and 3 : Balance of convenience and Irreparable loss and injury: The plaintiff fails to prove prima-facie case for trial thus, consideration of the balance of convenience and irreparable loss and injury does not arise for consideration. Hence, this court answers point Nos. 2 and 3 are in the **Negative**.

16. Point No.4: In view of the discussions, this court proceeds to pass the following:

ORDER

The I.A No. IV filed by the plaintiff
Order XXXIX Rule 1 and 2 R/w Section
151 of CPC is hereby **rejected**.

No order as to costs.

For cross of PW1 by 28-05-2024.

(Dictated to the stenographer, directly on computer, corrected by me and then pronounced in the open Court on this 08th day of April, 2024)

**II Addl Civil Judge & JMFC
Kundapura.**