

KAUP400024372023



**IN THE COURT OF CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS AT BAINDURU.**

PRESENT:

**Smt. Vidya, A.S. B.A., LL.B.
Civil Judge & J.M.F.C.,
Bainduru.**

Dated this the 27th day of March, 2023

New Original Suit No.06/2023

Old Original Suit No. 172/2022

Plaintiffs	Parvathi, aged about 36 years, S/o. Rama, R/at: No.5/119, Ramakrishna Nilaya, Shirooru Karavali, Shirooru Village, Bainduru Taluk, Udupi District.
Defendant	M. Dastagir Saheb, Aged about 63 years, S/o. Late Hasan Saheb, R/at: Muslim Keri, Shirooru Village, Bainduru Taluk, Udupi District.
	<u>Rank of the Parties On I.A.II</u>
Applicant/Plaintiff:	Parvathi, (Rep. by Sri. T.G.R.- Advocate)
Opponents/Defendants:	M. Dastagir Saheb (Rep. by Sri. M.P.C.-Advocate)

ORDERS ON I.A. NO.II

The plaintiff along with suit has filed IA No.II and under Order XXXIX Rule 1 and 2, for seeking the relief of temporary injunction infavour of the plaintiff and thereby temporarily restraining the opponent, his assignee and LR's from alienating, mortgaging, changing khatha and constructing building over the suit schedule property till the disposal of the suit.

2. In the accompanying affidavit, applicant has stated that, the alleged GPA holder of Mahabala Shetty/Sri.Moulana Hassain Saheb executed the alleged sale deed dt:24-06-2009 in favour of defendant/his son Sri.Moulana Hassain Saheb/father of defendant, died on 15-10-2004 at Muslim Keri, Shirooru Village. The plaintiff without reading contents of the said sale deed, she put her signature to the said document. The said document was fraudulently created by the defendant in his name. When she learnt that above said document was fraudulently got created by the defendant, she had issued the Registered Lawyer notice to the defendant on 22-11-2021. The said notice duly served upon him. But he has not given any reply. With these averments the applicant has sought for allowing the application.

3. The defendant have stated that the written statement may be treated as objection to the I.A.No.II.

4. Heard both sides and perused the materials on record.

5. Now, the following points arise for consideration of this Court are:

Point No.1: Whether the applicant's has made out prima facie case?

Point No.2:Whether the plaintiff's establishes that balance of convenience lies in their favour ?

Point No.3:Whether the plaintiff's establishes that if temporary injunction is not granted, they will be put to great loss or hardship?

Point No.4:What order?

6. The findings of this Court on the above said 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

7. **Point No.1:** On perusal of case file, it is seen that the plaintiff has sued the defendant for seeking the relief of cancellation of registered sale deed dt:24-06-2009 and permanent injunction.

8. In support of plaintiff's case, she has produced the register sale deed dt:24-06-2009, GPA dt:03-06-2009, death certificate of defendant's father dt:15-10-2004, registered lawyer notice 22-11-2021, plaintiff's aadhaar card, postal receipt and acknowledgement card. It is the grievance of the plaintiff that, the alleged registered sale deed dt:24-06-2009 is fraudulent document. The counsel for defendant has submitted that, the plaintiff has no right and title over the suit schedule property and she has no locus standi to file above said suit.

9. This Court has carefully perused the materials on record in order to ascertain whether the plaintiff has made out prima facie case for grant of temporary injunction as sought for. The sec. 31 of Specific Relief Act does not give a right to sue to all person for cancellation. But only to the person against whom a written instrument if void or voidable, is made and if such person has reasonable apprehension that such instrument if left outstanding it may cause him serious injury. On perusal of registered sale deed dt:24-06-2009, it is noticed that, the plaintiff is one of the attesting witness to the aforesaid document. Prima facie it appears that, she has no right, title and interest over the suit schedule property. In this

case maintainability of suit is involved. A stranger to the suit cannot seek cancellation. If the final relief cannot be granted in terms as prayed for, granting of temporary injunction does not arise at all. Hence, At this stage, this Court by considering the materials on record is of the opinion that the plaintiff has not made out prima facie case and she is not entitled for the equitable relief of temporary injunction. With these observations, this Court has answered point No.1 in the Negative.

10. Point No.2 and 3: In order to avoid repetition, I would like to discuss these points together, since they are interconnected to each other. In Gowrishankar Swamigalu Vs. Siddhaganga Mutt and others reported in ILR 1989 KAR 1701, the Hon'ble High Court of Karnataka has held that:

"The existence of a prima facie case in the matter of granting injunction is really the harbinger or all the clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put forward was so weak and tainted having very little purpose of being accepted by the Court, further question of balance of convenience and irreparable loss need not be

considered since the plaintiff would fall at the very first stile itself".

11. Since the plaintiff has not made out prima facie case in her favour, the question of balance of convenience lying in her favour and irreparable injury may be caused to her requires no discussion at this stage. Therefore, the balance of convenience does not lie in favour of the plaintiff. With these observations, this court answer point No.2 and 3 in the Negative.

12. Point No.4: For the aforesaid discussion on point No.1 to 3 this Court proceeds to pass the following:

ORDER

**I.A. No.II filed by the applicant
under Order XXXIX Rule 1 and 2
R/w. 151 of CPC is hereby rejected.**

For Issues.

Call on:05-06-2023

(Dictated to the stenographer, transcribed and typed by her, corrected by me and then pronounced in the open Court on this **27th day of March, 2023**)

**(Smt.Vidya A.S)
Civil Judge & J.M.F.C.,
Baindurun.**