



**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., Baiduru.**

Dated: This the 13th day of September, 2023.

O.S.No.16/2023 (Old O.S.No.482/2022)

Plaintiffs:	<p>1. Smt. Kamala, Aged about 82 years, W/o.Late K. Annappa,</p> <p>2. Sri. Nagesh B., Aged about 62 years, S/o.Late K. Annappa, Both are R/at: Sri. Mookambika Nilaya, Kaluvadi, Baiduru Village and Post, Baiduru Taluk.</p> <p>3. Sri. Gopal, Aged about 54 years, S/o.Late K. Annappa, R/at: Kenchayyanamane, Bada, Baiduru Village and Post, Baiduru Taluk.</p> <p>4. Smt. Janaki, Aged about 48 years, W/o.Late Mahabaleshwara,</p> <p>5. Smt. Sushmitha, Aged about 23 years,</p> <p>6. Kum. Sukitha, Aged about 19 years,</p> <p>7. Minor. Ajith, Aged about 16 years,</p> <p>Plaintiff No.5 to 7 are children of Late Mahabaleshwara,</p> <p>Plaintiff No.4 to 7 are R/at: Kenchayyanamane, Paduvari Village and Post, Baiduru Taluk.</p>
Defendant:	<p>D.K. Nagesh, Aged about 85 years, S/o. D.K. Rama, R/at: B.H. Road, Opp: Police Station,</p>

	Talagppa Village and Post, Sagara Taluk, Shimogga District. Presently R/at: 'Swami Anugraha Nilaya', Paduvaru Village and Post, Bainduru Taluk.
	<u>Rank of the Parties On I.A.II</u>
Applicants/Plaintiffs:	Smt. Kamala and others
	(Rep.by Sri. N.S.R.B.-Advocate)
Opponent/Defendant	D.K. Nagesh
	(Rep.by Sri. M.S.S.-Advocate)
Provision	U/o.XXXIX Rules 1 and 2 R/w. Sec.151 of CPC.,
Relief sought for	To restrain the defendant from alienating or parting with the suit property or in any way disposing off the suit property.
Application dated	28-10-2022
Application No.	II
Objection filed on	05-01-2023
Order passed on	13-09-2023

ORDERS ON I.A. NO.II

The plaintiffs along with suit has filed IA No.II under Order XXXIX Rules 1 and 2 R/w. Sec. 151 of CPC., seeking the relief of temporary injunction in favour of the plaintiffs and thereby temporarily restraining the defendant, his agents and all persons claiming through or under him are temporarily restrained from alienating or parting with the suit property or

in any way disposing off the suit property to any other persons or from creating charge over the same in any manner and thereby from interfering with the peaceful possession, user and enjoyment of the suit property by the plaintiffs by causing any waste or damage to the suit 'A' schedule properties or from causing obstructions to the conducting of agricultural operations over the same by the plaintiffs in any manner till the final disposal of the suit.

2. In the accompanying affidavit, applicant has stated that, they filing suit against defendant for specific performance of contract, is now making hectic efforts to somehow sell and alienate the suit property to some other persons for a higher price with an intention to make secret profits for himself and thereby to defraud and cheat them in an illegal bid. It is also learnt that, in case the defendant is unable to get such purchasers, is planning to create heavy charge over the said property to teach a lesson to them and thereby to defeat their claim over the suit property. Further he is also causing obstructions to them in carrying out agricultural operations over the same in an illegal bid. So, these acts of the defendant are imminent. He is about to do his intended threatened acts. He is determined to carryout his

intended threatened acts as stated in the plaint high-handedly, illegally, unauthorizedly and forcibly. The defendant is now making preparations to do the same hurriedly and is proceeding with his intended acts to prevent us from getting the fruits of the Decree that would be passed in this suit. He has no manner of right of whatsoever to do so and he has no regard for law and order. So, the acts of the opponent are all illegal and against law and he is upto do anything. Therefore he is to be restrained by means of temporary injunction as prayed for in the application. They have a strong prima-facie case and a fair chance of success in the suit and also the balance of convenience tilts in their favour. If the opponent is not prevented from carrying out the said illegal acts, they shall be put to irreparable loss, hardship injury and inconvenience which cannot be compensated by way of money. With these averments the plaintiffs have sought for allowing the application.

3. The defendant has stated that defendant adopts his written statement as counter 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 applicants have made out prima facie case?

Point No.2:Whether the plaintiffs 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 to 3:** Point No.1 to 3 are inter-connected; hence in order to avoid the repetition of discussion, the above said points are taken up together for common discussion.

8. This Court has already narrated the facts stated in the affidavit annexed to the application. On perusal of case file, it is seen that the plaintiffs have sued the defendant for seeking the relief of specific performance of contract.

9. It is the specific case of the plaintiff that, the defendant, being the absolute owner of the suit schedule property, has offered to sell the same in order to meet his valid and binding necessities and by coming to know of the same, late Kenchayyana Annappa Sheregar had offered to purchase the same for a total sale consideration amount of Rs.13,000/-, for which the defendant has agreed and accordingly an Agreement of Sale was entered into between the defendant and the said Kenchayyana Annappa Sheregar on 28-05-1983 and accordingly on the date of that Agreement of Sale, the said Annappa Sheregar had paid Rs.9,000/- to the defendant by undertaking that he would pay the balance sale consideration amount of Rs.4,000/- to the defendant on or before 31-03-1984, which was agreed by him and even the receipt of this Rs. 9,000/- on the date of Agreement of Sale was also acknowledged by the defendant in that Agreement itself. Even it was stipulated in the said Agreement that in case the said Annappa Sheregar fails to pay the balance sale consideration of Rs.4,000/- to the defendant on or before 31-03-1984, then he was liable to pay interest upon the same at 6.25% p.a. along with penalty amount of Rs.500/- to the defendant from that date. Accordingly on the date of this agreement of sale i.e., on 28-05-1983 itself the defendant has handed over the possession of the suit schedule property in

favour of the said Annappa Sheregar, as per which he took possession on the same.

10. Further pleaded that, Annappa Sheregar had paid balance sale consideration amount of Rs.4,000/- to the defendant on 11-03-1984 itself and out of caution even the defendant has also executed a GPA in favour of Annappa Sheregar on 11-03-1984 by entrusting all the powers over the suit schedule property including the power to sell the same in favour of anybody on behalf of the defendant. That thus the said Annappa Sheregar had paid the entire sale consideration amount of Rs.13,000/- to the defendant as per the stipulations contained in the said agreement of sale and started enjoying the suit schedule property since the date of agreement of sale. Annappa Sheregar died on 13-03-2019 and upon his death, the plaintiffs, being his legal heirs, have inherited to this property and plaintiff No.2 with the assistance of his son viz., Ganesh Sheregar has been conducting agricultural operations over the suit schedule property by raising paddy crop over the same every year.

11. Further pleaded that, the plaintiffs have sent a Regd. legal notice to the defendant dated: 13-10-2022 calling upon him to execute a Regd. Sale deed in favour of plaintiff No.2 as desired by all the plaintiffs. That though the said notice was

received by the defendant on 15-10-2022, the defendant has not taken any initiatives to comply with the demand made by the plaintiffs, but instead he has sent a reply notice dated: 17-10-2022 by claiming that he has not executed any Agreement of Sale or GPA.

12. It is the specific defence case of the defendant that, the suit property was not the individual leasehold property of the defendant as alleged by the plaintiffs. That the defendant has no right to alienate any portion of the suit property and also he has no right to obtain any loan on the security of the suit property.

13. Further contended that, as per the provisions of KLR Act, 1961 there was clear bar for alienation of suit property for a period of 15 years from the date of grant of occupancy right. That as per section 61 of the KLR Act, 1961 except effecting division of the occupancy right granted lands among family members all other transactions are prohibited. That the alleged agreement dated 28-05-1983 relied upon by the plaintiffs is not a genuine document. That the defendant had not entered into the alleged agreement with Annappa Sheregar. That the defendant had not signed the alleged agreement dated 28-05-1983 relied upon by the plaintiffs. That the alleged signatures of the defendant contained in the said agreement are forged ones. That

the defendant never offered to sell the suit property to Annappa Sheregar or to anybody else and that the defendant had no intention to alienate the suit property to anybody at any point of time. That the defendant did not receive any sum of money much less Rs.9,000/- or Rs.4,000/- from the said Annappa Sheregar or from anybody else as alleged in the plaint. That the suit property was not given to the possession of Annappa Sheregar as alleged in the plaint. That Annappa Sheregar or the plaintiffs never possessed or enjoyed any portion of the suit property in any capacity.

14. This Court has carefully perused the materials on record in order to ascertain whether the plaintiffs have made out prima facie case for grant of temporary injunction as sought for. The list of documents of the plaintiffs consists of RTC, Land tribunal order dt:22-07-1977, Form No.10, Original agreement of sale dt:28-05-1983, Office copy of Legal notice, postal acknowledgment cards, Reply notice dt:17-10-2022.

15. The list of documents of the defendant consists of land revenue assessment paid receipt for the year 2014 to 2016, land revenue assessment paid receipt dt:21-03-2018, 21-11-2020, 13-01-2023.

16. The learned counsel appearing on behalf of the plaintiffs, submitted that, the defendant had received the entire consideration and had also handed over the possession as per the agreement to sell.

17. The learned counsel appearing on behalf of the defendant, submitted that, in view of the provisions of Section 61 of the Reforms Act, the defendant could not have transferred the said land, as such, the agreement to sell was void in law and, therefore, not enforceable.

18. Now, for ready reference Section 61 of the Reforms Act, is extracted here below:

61. Restriction on transfer of land of which tenant has become occupant.—

(1) Notwithstanding anything contained in any law, no land of which the occupancy has been granted to any person under this Chapter shall, within fifteen years from the date of the final order passed by the Tribunal under sub-section (4) or sub-section(5) or sub-section (5A) of section 48A be transferred by sale, gift, exchange, mortgage, lease or assignment; but the land may be partitioned among members of the holder's joint family,

(2) Notwithstanding anything contained in sub-section (1), it shall be lawful for the occupant registered as such or his

successor-in-title to take a loan and mortgage or create a charge on his interest in the land in favour of the State Government, a financial institution, a co-operative land development bank, a co-operative society or a company as defined in Section 3 of the Companies Act, 1956 in which not less than fifty one per cent of the paid-up share capital is held by the State Government or a Corporation owned or controlled by the Central Government or the State Government or both for development of land or improvement of agricultural practices; or for raising educational loan to prosecute the higher studies of the children of such person and without prejudice to any other remedy provided by any law, in the event of his making default in payment of such loan in accordance with the terms and conditions on which such loan was granted, it shall be lawful to cause his interest in the land to be attached and sold and the proceeds to be utilised in the payment of such loan.

(3) Any transfer or partition of land in contravention of Sub-section (1) shall be invalid and such land shall vest in the State Government free from all encumbrances and shall be disposed in accordance with the provisions of Section 77."

19. A perusal of the said provision would clearly show that, notwithstanding anything contained in any law, no land of which the occupancy has been granted to any person under the said Chapter shall, within 15 years from the date of the final order passed by the Tribunal under sub-section

(4) or sub-section (5) or sub-section (5-A) of Section 48-A of the Reforms Act be transferred by sale, gift, exchange, mortgage, lease or assignment. However, the land may be partitioned among members of the holders of the joint family.

20. It could thus be seen, that the transaction was nothing short of a transfer of property. Under Section 61 of the Reforms Act, there is a complete prohibition on such transfer for a period of 15 years from the date of grant. Sub-section (1) of Section 61 of the Reforms Act begins with a non-obstante clause. It is thus clear that, the unambiguous legislative intent is that no such mortgage, transfer, sale etc. would be permitted for a period of 15 years from the date of grant. Sub-section (3) of Section 61 of the Reforms Act makes the legislative intent very clear. It provides, that any transfer in violation of sub-section (1) shall be invalid and it also provides for the consequence for such invalid transaction. The suit schedule property was granted by the land tribunal in the name of defendant as per order dt:22-07-1977 and the Spl. Tashildar, Kundapura has issued Form No.10 in his name on 25-05-1979. Undisputedly, in the present case, the claim of the plaintiffs are entirely based upon the agreement to sell dated 28.05.1983, which is clearly hit by Section 61 of the Reforms Act. There is no other

foundation for the claim of the plaintiffs except the one based on the agreement to sell, which is hit by Section 61 of the Act.

21. This Court by considering the materials on record is of the opinion that the plaintiffs have not made out prima facie case and they are not entitled for the equitable relief of temporary injunction. Since the plaintiffs have not made out prima facie case in their favour, the question of balance of convenience lying in their favour and irreparable injury may be caused to him requires no discussion at this stage. Therefore, the balance of convenience does not lie in favour of the plaintiffs. With these observations, this Court answer point No.1 to 3 in the Negative.

22. 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 applicants
under order XXXIX Rule 1 and 2 R/w. 151
of CPC is hereby rejected.**

For compliance of Sec.89 of CPC.

Call on: 16-11-2023.

(Dictated to the stenographer, transcribed and typed by her, corrected by me and then pronounced in the open Court on this **13th** day of **September, 2023**)

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