

**IN THE COURT OF THE CIVIL JUDGE AND JMFC,  
KUDLIGI**

**Present:- Smt. Shantamma Mallikarjunagouda. P.**  
B.A. LL.B

**Civil Judge and JMFC., Kudligi.**

DATED THIS THE 21<sup>ST</sup> DAY OF MARCH, 2019.

**O.S. No. 55/2018**

**Between:**

Suresha. S

..Plaintiff

// VS //

Smt. Kamma and another

..Defendants

**I.A.No.I**

Suresha.S

...Petitioner/plaintiff

-Vs-

Smt. Kamma and another

...Respondents/defendants

**ORDERS ON I.A. NO.I FILED U/O XXXIX**  
**RULE 1 & 2 R/w Sec. 151 of CPC**

The plaintiff has filed I.A. No. I U/o 39 Rule 1 and 2 R/w Sec. 151 of CPC with a prayer to grant ad-interim temporary injunction in favour of the petitioner/plaintiff and against the respondent/defendant No.2 from alienating and executing any kind of documents in favour of others with

respect to suit schedule property till disposal of the suit in the interest of justice.

02. In the affidavit accompanying to I.A. No.I, the plaintiff stated that he has filed the above suit against the defendants for specific performance of contract. Further contended that defendant No.1 executed registered sale agreement in favour of plaintiff with condition of within 3 years executing the regular sale deed in favour of the plaintiff, but the defendant No.1 within the stipulated time of sale agreement dated 02-02-2015 executed the registered sale deed in favour of defendant No.2 by showing the sale consideration of Rs. 50,000/-. The defendant No.1 and 2 are playing fraud on the plaintiff. The revenue records in respect of suit schedule property is standing in the name of defendant No.2, on the basis of revenue entries the defendant No.2 may be possible to alienate to other persons. The defendant No.2 made further alienation the proceedings of the suit came to multiplicity. Hence it is absolute necessity to restrain the defendant No.2 not to alienate by way of sale, gift, mortgage, lease and etc. The plaintiff is having a prima-facie case and balance of convenience is also lies in his favour and defendant No.2 has no prima-facie case and balance of convenience also not in favour of the defendant No.2. Hence, for all these grounds, he prays to allow the I.A. No. I.

03. Per contra defendant No.2 has filed a memo stating that the written statement filed by him may be treated as objections to IA No.1. The defendant No.2 in his written statement has contended that the suit of the plaintiff is barred by law of limitation and further contended that he defendant No.1 was the owner of the suit land bearing Sy. No. 123 measuring 0.24 cents, situated at Jolada – Kudligi revenue village, Kottur Taluk. The defendant N.1 was in need of amount for her family expenses, as such the defendant No.1 sold the suit land to the defendant No.2 through the registered sale deed dated 25.1.2017 for a valuable consideration of Rs. 50,000/-. Since the date of purchase, the defendant No.2 is in peaceful possession and enjoyment of the suit land and mutation is also passed in favour of defendant No.2 and the pahani is standing in his name accordingly. Th defendant No.2 has not knowledge about the alleged agreement of sale dated 02-02-2015. The defendant No.2 is a bonafide purchaser of the suit land. The plaintiff has no right over the suit land. Hence, for all these grounds and others, he prays to reject the I.A.No.I with costs.

04. Heard the arguments on I.A. No. I on both sides and perused the I.A. No.I and the documents produced along with the I.A. No. I.

05. The points that arise for my consideration are as under:

01. Whether the plaintiff proves prima-facie case in his favour?
02. Whether the plaintiff proves the balance of convenience lies in his favour?
03. Whether the plaintiff would suffer irreparable loss and injury if the prayer of interim injunction is disallowed?
04. What order?

06. My answers to the above points are 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 my final order for the  
Following:

**:: R E A S O N S ::**

07. **Point No. 1** :- It is the specific case of the plaintiff that he has filed the above suit against the defendants for specific performance of contract. Further contended that defendant No.1 executed registered sale agreement in favour of plaintiff with condition of within 3 years executing the regular sale deed in favour of the plaintiff, but the defendant No.1 within the stipulated time of sale agreement dated 02-02-2015 executed the registered sale deed in favour of defendant No.2 by showing the sale consideration of Rs.

50,000/-. The defendant No.1 and 2 are playing fraud on the plaintiff. The revenue records in respect of suit schedule property is standing in the name of defendant No.2, on the basis of revenue entries the defendant No.2 may be possible to alienate to other persons. The defendant No.2 made further alienation the proceedings of the suit came to multiplicity. Hence it is absolute necessity to restrain the defendant No.2 not to alienate by way of sale, gift, mortgage, lease and etc.

08. On perusal of the application along with affidavit and documents and objections by the defendant it clearly shows that defendant No.1 has been executed the registered agreement of sale in favour of the plaintiff in respect of suit schedule property without delivering the possession and RTC are standing in the name of defendant No.2 and column No.10 in the RTC it reflected that defendant No.2 purchased the suit schedule property through sale deed dated 10.03.2017 and transferred in the name of defendant No.2 as per MR No. MRH55/2016-17 and plaintiff produced mutation register it is shown that the name was changed in the name of defendant No.2 through defendant No.1. Defendant produced the said sale deed dated 25.01.2017, it is clear that defendant No.1 sold the suit schedule property in favour of defendant No.2. The documents are clear that the suit schedule property is standing in the name of defendant No.2

through registered sale deed dated 25.01.2017. The defendant No.1 executed the agreement of sale deed in favour of plaintiff in the year 02.02.2015 in respect of suit schedule property receiving the amount of Rs. 1,00,000/-. The plaintiff issued the legal notice to defendant No.1 that he is ready and willing on his favour and approached the defendant No.1 for execute the registered sale deed with receiving the due amount of Rs. 10,000/-.

09. The defendant No.1 executed the agreement of sale in favour of the plaintiff and thereafter she sold the suit schedule property infavour of defendant No.2. All the records are standing in the name of defendant No.2. On prima-facie it clear that it is possible to alienation to the other persons in respect of suit schedule property by the defendant No.2 and if further alienation is proceed the suit came to multiplicity of proceedings. Hence the plaintiff has made out prima-facie allow the grounds to point No.1. Hence point No.1 in the Affirmative.

10. **Point No. 2 & 3 :-** The plaintiff has made out prima-facie case in his favour, accordingly he is entitle to claim temporary injunction unless he satisfy the court that the balance of convenience lies in his favour, and the refusal of temporary injection order as prayed by him would not cause great injustice and irreparable loss. In the instant

case as already discussed by me above at length the documents produced by the plaintiff. He has made out sufficient grounds to allow the present IA otherwise he will be put loss and injury more than the plaintiff and he has produced document to show that balance and convenience would be in his favour. In view of reasons and findings given on the aforesaid points, I proceed to answer point No.2 and 3 in the Affirmative.

11. **Point No. 4:-** In view of reasons and findings given on the aforesaid points, I proceed to pass the following:-

**:: O R D E R ::**

I.A.No. I filed by the plaintiff under Order XXXIX Rule 1 and 2 and Sec. 151 of the Code of Civil Procedure is hereby allowed in following terms,

Defendant No.2 is hereby restrained from alienating and executing any kind of documents in favour of others with respect to suit schedule property till disposal of the suit.

No order as to costs.

(Dictated to the stenographer, directly on the computer, typed by him, corrected by me signed and then pronounced by me in the Open Court on this the 21<sup>st</sup> day of March 2019)

(Smt. Shantamma Mallikarjunagouda.P)  
Civil Judge and JMFC., Kudligi

(Order pronounced in the open court Vide  
Separate Order)

**:: ORDER ::**

I.A.No. I filed by the plaintiff under Order XXXIX Rule 1 and 2 and Sec. 151 of the Code of Civil Procedure is hereby allowed in following terms,

Defendant No.2 is hereby restrained from alienating and executing any kind of documents in favour of others with respect to suit schedule property till disposal of the suit.

No order as to costs.

Civil Judge and JMFC,  
Kudligi.