

IN THE COURT OF CIVIL JUDGE & JMFC, HARAPANAHALLI

Present: SMT. SHOBHA B.G., M.A., LL.B.,  
Civil Judge & JMFC,  
Harapanahalli.

Dated : This the day of 3<sup>rd</sup> September, 2018

O.S. NO.244/2016

Plaintiff/s : G.B. Siddamma and another  
(Rept., by Sri R.G.P., Advocate)

-V/s-

Defendant/s : Shavamma and others  
(Rept., by Sri K.S.K., Advocate for D1,  
by Sri. A.C., Advocate for D2  
by Sri B.H., Advocate for D3  
by Sri T.R.S., Advocate for D4)

I.A. No. III

Applicant/s : G.B. Siddamma and another  
V/s.

Respondent/s : Shavamma and others

ORDERS ON I.A.NO.III U/O. 39 RULE 1 AND 2 OF CPC

This is an application filed by the plaintiffs U/o 39 Rule 1 and 2 of CPC with a prayer to grant an ad-interim order of temporary injunction restraining the defendants No.3 and 4 from

alienating or creating charge, encumbrance with respect to the suit schedule propertis till pending disposal of the suit.

2. The said application is accompanied with an affidavit sworn by the plaintiff No.1 wherein she stated that suit schedule properties are standing in the name of defendant No.3. The alleged sale deed is standing in the name of defendant No.4 both are taking undue advantage of alleged created documents trying to sell said properties and create encumbrance over the suit schedule properties. If they have alienated the said properties it will leads to multiplicity of proceedings. Hence it is just and necessary to restrain them from executing any sale deed or mortgage deed. The prima facie case is in favor of the plaintiffs. If the application is not allowed the plaintiffs will be put to hardship and injury and balance of convenience lies in their favour. Hence prayed to allow the application.

3. The said application has been resisted by the defendant No.4 by filing memo adopting written statement as objection to said application wherein he denied all the allegation made by the plaintiffs in their plaint. Further he contended that the suit is not maintainable either in law or on facts and it is barred by limitation. The defendant No.1 had one son and one

daughter. The defendant No.2 who is the daughter of defendant No.1. The husband of plaintiff No.1 is son of defendant No.1. The defendant No.4 is his son in law and the husband of defendant No.2. The husband of plaintiff No.1 and defendant No.1 have offered to sell item No.2 of suit schedule property for their family necessities. The defendant No.4 agreed to purchase said property. On 24-01-2011 they have sold said property to the defendant No.4 by executing sale agreement. It has been registered on 25-01-2011. They have agreed to execute sale deed with in 3 years and delivered the possession of said property. On 24-01-2013 the defendant No.4 has paid balance sale consideration of Rs.1,00,000/- the husband of plaintiff No.1 and defendant No.1 have endorsed the same in said agreement of sale. The defendant No.4 was and is ever ready and willing to perform his part of contract but husband of plaintiff No.1 and the defendant No.1 have failed to execute sale deed. They are postponing the same on one protect or another. Now they are making efforts to alienate sale property to 3<sup>rd</sup> person with a molafide intention. Immediately the defendant No.4 approached them and requested for execution of sale deed but they are responded evasively. As such he has issued notice to them on

16-01-2014 but they have failed to execute registered sale deed. Again the defendant No.4 approached them but they have demanded extra amount on agreement of sale. Finally they have executed sale deed on 23-03-2016. The defendant No.4 is a bonafide purchaser of said property. They have delivered the possession of the said property to defendant No.4. Now he is enjoying said property. The plaintiffs have filed this false suit by concocting some facts as per their imagination. The sale transaction is well within their knowledge with an intention to harass the defendant No.4 they have filed this false suit by suppressing facts. Hence prayed to dismiss the application.

4. The said application has been resisted by the defendant No.3 by filing memo adopting written statement as objection to said application wherein he denied all the allegation made by the plaintiff. Further he contended that one deceased Subhashchandra was the manager of his family he was suffering from diabetes and lever problem for his treatment he was get loan from one Karibasamma W/o Challi Shivakumar for purpose of loan security. He has executed registered agreement of sale on 19-01-2012 in her favour for purpose of loan he has sold item No.1 of suit schedule property in her favour through registered

sale deed dated 11-04-2014. After discharging of loan said Karibasamma has executed cancellation of agreement of sale on 11-04-2014. After purchase katha of said property was mutated in her name. The said sale transaction is binding on the plaintiffs and defendant No.1 and 2 as the defendant No.3 is a bonafide purchaser. They have colluded with each other and filed this false suit. The suit is barred by limitation they have suppressed the material facts. Hence prayed to dismiss the application.

5. Heard argument and perused the records.
6. On perusal of the pleadings, documents and application, the points that arise for my determination are:
  1. Whether the plaintiffs have made out prima facie case for grant of temporary injunction?
  2. Whether the plaintiffs prove balance of convenience lies more in their favour?
  3. Whether the plaintiffs prove irreparable loss will be caused more to there, if temporary injunction is not granted?
  4. What order?
7. My answer on above points is as follows:  
Point Nos.1 to 3 : In the affirmative;

Point No.4 : As per the final order,  
for the following;

REASONS

8. Point Nos.1 to 3:- These points are taken up together for discussion as they require same set of pleadings and documents.

On perusal of contention urged by both parties it appears that the plaintiffs have filed this suit for the relief of partition and separate possession with respect to the suit schedule properties. According to them suit schedule properties are their ancestral and joint family properties. The husband of plaintiff No.1 was a man of consuming alcohol. The defendant who is the mother-in-law of plaintiff No.1 has also indirectly supported to her son to his illegal activities. They have created two sale deed dated 11-04-2014 and 23-06-2016 with respect to the item No.1 and 2 of the suit schedule properties. The sale deed and katha of said properties are standing in the name of plaintiff No.3 and 4 by virtue of creating documents. Now they are trying to alienate the said property to third person. In order to prove the allegation of the plaintiffs they have produced documents such as RTC extract, Zerox copy of sale deed dated 11-04-2014 and 23-06-2016. The sale deed dated 11-04-2014 reveals that one

Avina Subhashchandra S/o Kotrappa has executed sale deed with respect to the property bearing Sy.No.359/C measuring 1 acre 51 cents in favour of Karibasavaraj S/o Siddalingappa. The sale deed dated 23-06-2016 reveals that said sale deed has been executed by Avina Subhashchandra S/o Kotrappa and Shavamma W/o Kotrappa infavour of Rajappa S/o Channabasappa with respect to the property bearing Sy.No.12/C measuring 3 acre 43 cents i.e., item No.2 of the suit schedule property. The RTC extract reveals that 1 acre 51 cents in Sy.No.359/C i.e., item No.1 of the suit schedule property is standing in the name of Karibasavaraj S/o Siddalingappa i.e., defendant No.3 another one RTC extract reveals that the land measuring 3 acre 43 cents bearing Sy.No.12/C i.e., item No.2 of suit schedule property is standing in the name of Avina Subhashchandra i.e., husband of plaintiff No.1 and son of defendant No.1.

9. On the other hand in order to substantiate the contention of defendant No.3 and 4 they have not produced any document. However the documents produced by the plaintiffs make clear that the husband of plaintiff No.1 and defendant

No.1 have executed sale deed in favour of defendant No.3 and 4. But according to the plaintiffs said sale deeds are not binding on their share. According to the defendant No.3 and 4 they are bonafide purchasers. However at this stage said fact can not be decided it requires ful-fledged trial. The prima facie disclose that sale deed dated 11-04-2014 and 23-06-2016 have been executed in favour of defendant No.3 and 4 and katha of item No.1 and 2 of suit schedule property is standing in the name of defendant No.3. Under such circumstances there may be chances for alienating said properties. When the plaintiff have approached this court seeking relief with respect to the suit schedule properties it is necessary to protect the subject matter of the suit to adjudicate the matter effectively. If the defendant No.3 and 4 have alienated said properties it will to leads multiplicity of proceedings to avoid the same it is necessary to restrain them.

10. It is settled principle of law that a party who approaches the Court has to establish prima facie case. Grant of interlocutory injunction is discretionary remedy and in exercise of judicial discretion granting or refusing to grant injunction, the Court will have to take following principles.

- 1) Whether a person seeking temporary injunction has made out prima facie case?
- 2) Whether balance of convenience lies in his favour i.e. whether it could cause greater inconvenience to him if injunction was not granted?
- 3) Whether a person seeking temporary injunction would suffer irreparable injury if injunction was not granted.

Among aforesaid conditions atleast two conditions should be satisfied by the party. Mere proof of one of the three conditions does not entitle for the party to obtain temporary injunction. In the instant suit the plaintiffs have made out prima facie case. If the defendant Nos. 3 and 4 have alienated suit schedule properties to 3<sup>rd</sup> person certainly the plaintiffs would be put to irreparable loss and injury. The balance of convenience also lies more in their favour. Therefore in view of above discussion this court is of the opinion that the application filed by the plaintiffs deserve to be allowed. Accordingly, point Nos.1 to 3 are answered in *affirmative*.

11. Point No.4:- In view of above discussion, I proceed to pass the following;

O R D E R

IA No.III filed by the plaintiff U/O.39 Rule 1 and 2 of CPC is hereby allowed.

The defendant No.3 and 4 are temporarily restrained from alienating or creating any charge or encumbrance with respect to the suit schedule properties till pending disposal of suit.

*(Dictated to stenographer directly on computer, revised, corrected and then pronounced by me in the open Court on 3<sup>rd</sup> day of September, 2018)*

(B.G.SHOBHA)  
Civil Judge & JMFC,  
Harapanahalli.

