

**IN THE COURT OF THE CIVIL JUDGE & JMFC, INDI**

**:PRESENT:**

**Sri. Altaf Husensab Khanaganvi,**  
B.com,LL.B,  
Civil Judge & JMFC, Indi

**Original Suit No.437/2019**

**Dated this 17<sup>th</sup> day of December 2021**

**PLAINTIFF:**

1. Shri Shivaji  
S/o Jatteppa Banasode

**- Versus -**

**DEFENDANTS:**

1. Smt. Husanavva  
W/o Kallappa Banasode  
and others

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**I.A. NO.I**

Shri Shivaji  
S/o Jatteppa Banasode

**Applicant/Oril. Plaintiff**

**V/s**

Smt. Husanavva  
W/o Kallappa Banasode  
and others

**Opponents/Org. Def.No.1 & 2**

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Plaintiff by Sri. S.R.Mujagond Adv.  
Defendants by Sri.S.S.Patil Adv.

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**ORDER ON I.A.NO I**

The plaintiff has filed I.A No.I under Order 39 Rule 1 and 2 of CPC praying for granting exparte temporary injunction against the defendant No.1 to 14 restraining them from selling or executing regular sale deed in respect of land bearing Sy.No.171/4 measuring 7 acres 39 guntas to the defendant Nos.15 and 16 till disposal of the suit.

2. I.A is accompanied with the affidavit of the plaintiff wherein it is submitted that plaintiff is owner of land bearing Sy.No. 171/4 measuring 2 acres 00 guntas. The defendant No. 1 to 14 are owners of the land Sy.No. 171/4 measuring 7 acres 39 guntas situated at Chadachan taluka. Out of the said land 2 acres of land is standing in the name of the plaintiff. The plaintiff land shown with a letter 'EBCD'. The defendants land shown with letter 'ADEF'.

3. It is contended by the plaintiff that husband of the defendant No.1 and father of the defendant No. 2 to 14 was need money and he borrowed hand loan from the father of the plaintiff and he agreed to pay the land loan within 3 years. If he fails to repay the loan amount, he will sell the suit land to the father of the plaintiff. Therefore, the father of the defendant No. 2 to 14 did not pay the loan within 3 years and he is fails to repay the loan amount. The father of

the defendant Nos. 2 to 14 failed to pay loan amount even the defendants have not paid the said loan amount.

4. Further, it is contended that defendants have intended to sale the suit property to the defendant No. 15 and 16. Then the plaintiff approached to the defendants requested them not to sale the suit land and requested them to sale the suit property to him but defendants did not heed the request of plaintiff. Therefore, the plaintiff has got preferential the right to purchase the suit land. Hence, the plaintiff constrained to file the suit and praying for granting temporary injuction against defendants restraining them from alienating and executng regular sale deed infavour of the defendants No. 15 and 16 in respect of the suit land.

5. On the other hand, defendant No.9 has filed his written statement denying the aliegation of the plaintiff but admitted that plaintiff has purchased 2 acre of land eastern portion side bearing Sy.No. 171/4. Further, it is specifically denied that defendants are owners of the land bearing Sy.No. 171/4 measuring 7 acre 39 guntas they have submitted that they are owner of 5 acres 39 guntas in the land bearing Sy.No. 171/4. It is further contended that defendants enter into agreement for sale deed in respect of land bearing Sy.No. 171/4 measuring 5 acres 39 guntas of Chadachan taluka with the defendant No. 15 and 16 they are absolute owner of land bearing Sy.

No. 171/4 measuring 5 acres 39 guntas. Therefore, they have got right to deal with property. The plaintiff has no right interest to stop the said proceedings. Hence, prays to dismiss the application. The defendant No.1 to 8 and 10 to 14 have adopted the written statement of defendant No.9. The defendants have adopted the written statement as objection to the IA No.I.

6. Heard on both side and perused the records placed before the court.

7. The points that arise for my consideration are

- 1) Whether the plaintiff shows that he has got prima facie case?
- 2) Whether the plaintiff shows that the balance of convenience lie in his favour?
- 3) Whether the plaintiff shows that irreparable loss will be caused to him if TI is refused?
- 4) What Order?

8. My answers to the above points are

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**

9. **Point No.1:-** This is suit filed by the plaintiff against the defendants for the relief of declaration of preferential right to purchase the suit land.

10. It the case of the plaintiff that, original owner of the suit land Kallappa exeucted angreement of sale deed in favour of plaintiff father by receiving hand loan of Rs.3 lakh. Now the defendants intending to alienate the suit property in favour of defendant No.15 and 16. Therefore, plaintiff has filed the suit for declaration of preferential right to purchased the suit property. The defendants have denied the contention of the plaintiff and submitted that, they have got every right to deal with the property plaintiff has no any right to stop the sale proceedings.

11. On perusal of pleadings and docuement placed before the court plaintiff has produced record of right of land bearing Sy.No.171/4 which is standing in the name of plaintiff and defendants. In the said record of right it appears that, plaintiif is owner of 2 acres land and defendants are owners of 5 acres 39 guntas out of land measuring 7 acres 39 guntas. Further the plaintiff has produced agreement of sale deed executed by the defendants in favour of defendant No.15 also produced agreement of sale deed executed by the defendants in favour of defendant No.16. Further produced hand loan agreement executed by the Kallappa in favour of father of the plaintiff. Further plaintiff has produced sale deed executed by the Kallappa in favour of plaintiff in respect of land

bearing Sy.No.171/4 measuring 2 acres out of land measuring 7 acres 39 guntas.

12. On perusal of these records, it appears that father of the plaintiff got executed an agreement of hand loan. On the said agreement plaintiff has filed the suit claiming his preferential right over the suit property. The agreement entered by father of the plaintiff and father of the defendant No.2 to 14 and they are no more. The plaintiff has relying upon agreement of hand loan. Therefore, the plaintiff has got efficous remedy to get executed the agreemt of hand loan which was executed by the deceased Kallappa. Under these fact and circumstances, the plaintiff has got efficous remedy to get execute agreement of hand loan by filing suit for specific performance of contract as per Section 41 H of Specific Relief Act. The plaintiff has not produced original copy of the agreement of hand loan and said agreement was executed in the year 2017 which was executed by the father of the defendnat Nos.2 to 14. There is no explanation regarding lapse of time and non performance of the agreement during that time. Under these facts and circumstances, the plaintiff has not shown prima faice case to grant Temporary Injunction. Hence, I am inclined to answer the Point No.1 in the Negative.

13. **Point No.2:-** Mere showing the prima facie does not suffice to grant temporary injuction. It is well settled principle of law

that the plaintiff has to show balance of convenience as well as irreparable loss caused if TI is refused. Considering the pleadings of both parties the suit property is landed property which is subject matter of this suit. The plaintiff is claiming his right over the suit property on the basis of agreement of hand loan which was executed by the father of the defendant Nos.2 to 14 in favour of father of the plaintiff. Further it is pertinent to note that, out of the 7 acres 39 guntas father of the defendant Nos.2 to 14 executed sale deed in favour of plaintiff to the extent of 2 acres in the land bearing Sy.No.171/4. The plaintiff has not explained about purchase of the said 2 acres of land after execution of hand loan agreement. Therefore, the defendant Nos.1 to 14 acquired their title after the death of Kallappa. Therefore, on the comparative of case of both parties, the suit land is agriculture land and there is dispute in respect of preferential right which cannot be determined at this juncture, it requires full pledge trial. At the same time the plaintiff has not produced any prima facie document to show that, he has got preferential right. Under these facts and circumstances, it must be noted the object of Injunction :

The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if

the uncertainty were resolved in his favour at the trial. The said ratio is laid by Hon'ble Apex court in **Gujarat Bottling Co. Ltd. vs. Coca Cola Company 1995(5) SCC 545.**

14. It is well settled that for grant of temporary injuction three factors have to be satisfied which are prima facie case, balance of convenience and irreparable loss. In **Dalpat Kumar V/s Pralhad Singh, AIR 1993 SC 276**, Hon'ble Apex Court explained these three factors as follows:- There is a serious disputed question to be tried in the court and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant. The Court's interference is necessary to protect the party from the species of injury. In other words irreparable injury or danger would ensue before the legal right would be established at trial and that the comparative hardship on mischief or inconvenience which is likely to occur from with holding the injunction will be greater than that would be likely to acted from granting it.

15. On perusal of records placed by the both parties it appears that, the plaintiff is claiming preferential right on the basis of agreement of hand loan which was executed by father of defendant Nos.2 to 14 in favour of the father of plaintiff. The plaintiff has not explained about the purchase of the 2 acres land from the father of the defendant Nos.2 to 14. The defendants have denied the rights of



the plaintiff over the suit property. Considering the factual matrix of the case if the temporary injunction is granted in favour of the plaintiff more inconvenience will be caused to the defendants *inter alia* no loss will be caused to the plaintiff. Since the suit property is subject matter of the present suit which is attached to agricultural land. Therefore unless until rights of the parties are decided it is improper to grant temporary injunction.

16. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action, if the uncertainty are resolved in his favour at the trial. In the instant case the rights of the plaintiff can be ascertained after full pledged trial which would not cause any loss to the plaintiff. The defendants have denied the rights of the plaintiff over the suit property. Under these facts and circumstances if the TI is granted the right of the defendants will be frustrated as they are owner of land bearing Sy.No.171/4 measuring 5 acres 39 guntas. The plaintiff has not shown prima facia case and balance convenience does-not lie in favour of the plaintiff. Further plaintiff has not placed any material to show that in case the TI refused irreparable loss will be caused which cannot be compensated in terms of money. In the instant case, if the defendants are restrained their legitimate right to enjoy the their

landed property will be curtailed. As it is well settled principle of law that, comparing the case of both the parties balance of convenience is lies in favour of the defendants. Hence I answer the point No.2 in the Negative.

17. **Point No.3:** As I have come to the conclusion that balance of convenience is lies infavour of the defendants if the TI is granted in favour of the plaintiff more loss will be caused to the defendants rather than plaintiff. Therefore no injunction can be granted unless until balance of convenience and irreparable loss is shown by the party. Therefore, the plaintiff has not made out the sufficient ground to show irreparable loss will be caused if TI is refused. Accordingly, I am inclined to answer the Point No.3 in the Negative.

18. **Point No.4:-** For the above said discussion and reasons I am inclined to proceed to pass the following.

### **ORDER**

I.A No.I filed by the plaintiff under Order 39

Rule 1 and 2 of CPC is hereby dismissed.

No order as to costs.

(Direct dictated to the stenographer on computer, typed by her corrected by me then pronounced in the Open Court on 17<sup>th</sup> day of December 2021)

**(Altaf Husensab Khanaganvi)**  
Civil Judge & JMFC Indi