

KAVP310041162021



Presented on : 03.07.2021

Registered on : 06.07.2021

Decided on : 25.09.2023

IN THE COURT OF THE ADDL. CIVIL JUDGE AND JMFC, INDI.

-PRESENT-

DEVARAJU H.R.

B.A., LL.B.

Additional Civil Judge & JMFC, Indi.

Dated this the 25th Day of September, 2023

Original Suit No.156/2021

PLAINTIFF/S:

- 1 Sri. Abdulsab S/o. Saifansab Mulla,**
Age: 58 Yrs., Occ: Agril.,
R/o. Gundavan, Tq: Indi, Dist: Vijayapur.

(By Sri. SSP Adv.)

-V/s-

DEFENDANT/S:

- 1. Moulali S/o. Dastgeersab Khanapur,**
Age : 50 Yrs., Occ : Agril.,
R/o. Gundavan Tq: Indi, Dist: Vijayapur.

(By Sri. GMB Adv.)

I.A.NO.I**Applicant/s/Plaintiff/s:**

- 1. Sri. Abdulsab S/o. Saifansab Mulla,**
Age: 58 Yrs., Occ: Agril.,
R/o. Gundavan, Tq: Indi, Dist: Vijayapur.

-V/s-

Opponent/s/Defendant/s :

- 1. Moulali S/o. Dastgeersab Khanapur,**
Age : 50 Yrs., Occ : Agril.,
R/o. Gundavan Tq: Indi, Dist: Vijayapur.

=====

ORDERS ON I.A.NO.I

This is an application filed by the plaintiff under order 39 Rule 1 and 2 of CPC for seeking ad-interim temporary injunction order against the defendant restraining him from alienating or encumbering suit property bearing Sy.No.276/*/2 measuring 01 acre 12 guntas situated at Gundavan village till pending disposal of the present suit.

2. The plaintiff in his affidavit annexed to this application has stated that, he is the absolute owner in possession of the suit property bearing Sy.No.276/*/2

measuring 1 acre 12 guntas situated at Gundavan village Indi Taluka, Vijayapura district. He is innocent and illiterate person, he was facing financial crises. Therefore, he approached the defendant for advance the loan to him to meet out his family and financial problems and defendant asked the plaintiff for security to the said amount. The plaintiff accepted the words of the defendant and the defendant has taken undue advantage of innocence of plaintiff, he made plan to hatch the property of the plaintiff, the defendant taken him by stating that, he has taken security for hand loan, he illegally executed the document styled as Power of Attorney dated 20.07.2018 as executed by the plaintiff.

3. The plaintiff further submits that, defendant had given false assurance that he would cancel the loan security document after repayment of the said loan, but the defendant on the basis of power of attorney had created a false and bogus document styled as sale deed of suit property dated: 21.01.2021. The plaintiff has not

been signed on the sale deed. Therefore, the alleged sale deed not at all belongs to the plaintiff. The defendant has made plan to gulp the property of the plaintiff and created the sale deed in favour of him as executed by plaintiff on 21.01.2021 on the basis of power of attorney. In sale deed vendor and vendee are both are the same therefore, itself clear that, said document is created to gulp the property of the plaintiff. Therefore, title of the suit property has not been conveyed in favour of defendant through alleged sale deed. The defendant has created the thumb impression of the plaintiff. Hence, the sale deed dated: 21.01.2021 is created by the defendant.

4. The plaintiff has made out prima-facie case, balance of convenience lies in his favour. Hence, he prays for allow the application.

5. Per contra, the defendant has field memo by adopting the contention of the written statement as objections to I.A.No.I filed by the plaintiff. It is the contention of the defendant that, plaintiff has filed the

false suit against him. Hence, suit of the plaintiff is not maintainable under law or facts. Further, he contended that, in the month of July 2018, the plaintiff offered to sell the suit property, the defendant has accepted the offer of the plaintiff to purchase the suits schedule property for Rs.2,60,000/-. The plaintiff also accepted offer of the defendant and agreed to sell the suit schedule property in favour of him. But, for the registration of the sale deed, 11-E sketch was required. This being the fact plaintiff was not able to prepare the necessary documents for the execution of the sale deed in favour of him. Thereby the plaintiff has agreed to execute the registered power of attorney to execute the registered sale deed in favour of defendant on 21.01.2021. The plaintiff estopped from the contents of the power of attorney and he does not have any right, title or interest over the suit schedule property. Further, he has contended that in the month of July 2021, this defendant was not comfortable for cultivation of the land, then he was intended to sell

the suit schedule property. Plaintiff and one Rameja W/o. Paigambar Mulla, who is the daughter-in-law of brother of the plaintiff approached the defendant and Rameja agreed to purchase the suit schedule property for consideration amount of Rs.2,90,000/- and defendant accepted the offer and received the entire amount in the presence of plaintiff. As per the talks between the plaintiff and defendant and Rameja, the defendant has executed the sale deed in favour of Rameja on 01.07.2021. Rameja was also signatory to the sale deed. Since from the date of execution the sale deed in the name of Rameja, he lost his title and interest over the suit property, the plaintiff is very well aware about the transaction between the defendant and Rameja. Such being the fact, on 03.07.2021 the plaintiff by suppressing the said transaction between defendant and Rameja has filed the present suit by claiming that he is the absolute of the suit schedule property. Hence, suit schedule property is not standing in he name of defendant. Hence,

application filed by the plaintiff is infructuous Hence,
prays for dismiss the application.

6. Heard both sides. Perused the available materials on records.

7. The following points that arise for consideration of this Court is as under:

1. Whether the plaintiff/applicant has made out *prima-facie* case?

2. Whether the balance of convenience lies in favour of the plaintiff?

3. Whether the plaintiff will be put to great hardship and irreparable loss if temporary injunction is not granted, as prayed?

4. What Order?

8. My answers to the above points are as follows;

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 to 3:- These points are interconnected to each other, hence they are taken up together for common discussion to avoid repetition of facts and evidence on record.

10. It is the case of the plaintiff that, he is the absolute owner in possession of the suit schedule property. He approached the defendant to avail hand loan. Hence, defendant asked security for hand loan and he taken him to the Sub-Registrar, Office Indi and created document as Power of Attorney as executed by the plaintiff herein.

11. On the basis of the power of attorney, defendant has created the document as sale deed to gulp the property of plaintiff on 21.01.2021. Hence, he has filed the present suit for declaration and cancellation of the sale deed dated: 21.01.2021.

12. On the other hand, the defendant has contended that, plaintiff has intended to sell the suit

schedule property. Hence, he accepted the offer of the plaintiff to purchase the suit schedule property for valid consideration amount of Rs.2,60,000/-. Thereafter, due to nonavailability of 11-E Sketch, sale deed has not been registered in favour of the defendant. Hence, plaintiff has executed the power of attorney in presence of attesting witnesses by receiving Rs.2,60,000/-. Thereafter defendant has executed the sale deed in favour of Rameja W/o. Paigambar Mulla on 30.06.2021. Hence, application filed by the plaintiff is attained infructuous and prays for dismissal of the application.

13. On the other hand, plaintiff has furnished the sale deed dated: 21.01.2021 wherein it appears that, defendant has executed the sale deed in favour of himself on the strength of power of attorney, dated: 20.07.2018. Thereafter, he has furnished the RTC Extract of the suit schedule property wherein it appears that, as on date on 22.02.2021 khata stood in the name of defendant herein.

14. Once again I repeat that it is the contention of the defendant that he has no right, title over the suit schedule property as he already executed the sale deed in favour of daughter in-law of the plaintiff's brother namely Rameja W/o. Paigambar Mulla on 01.07.2022. On perusal of the order sheet it appears that, plaintiff has filed the present suit on 03.07.2021 after execution of the sale deed by the defendant in favour of Rameja Mulla on 01.07.2011. Plaintiff has not furnished recent documents to establish prima-facie case. As already stated above, defendant has executed the sale deed in favour of Rameja W/o. Mulla on 01.07.2021 prior to filing of the suit. Hence, prima-facie defendant has lost his rights over the suit schedule property prior to filing of the suit. Admittedly Rameja W/o. Paigambar Mulla is not a party to the suit. Hence, I am of the opinion that, plaintiff has not made out prima-facie case to grant temporary injunction as prayed in application. Further, when he fails to made-out prima-facie case,

consideration of balance of convenience and irreparable injury does not arise at all. Hence, I hold point Nos. 1 to 3 in the **Negative.**

15. Point No.4:- On above made discussions on points No.1 to 3, this court proceeds to pass following:-

ORDER

***I.A.No.I filed by the plaintiff under
order 39 rule 1 and 2 of CPC is hereby
rejected with costs.***

(Dictated to Stenographer, transcribed and typed by her, corrected and then pronounced by me, in the open Court on this the 25th day of September, 2023.)

(DEVARAJU H.R.)
Addl Civil Judge and J.M.F.C.,
Indi