

MHKO170014612018



Regular Civil Suit No.132/2018  
Sukumar Jeevandhar Takalakki  
Vs.  
Anna Babu Patil + Ors

**ORDER BELOW EXH. 5**  
**(Passed on 19-03-2022)**

- 1)** Plaintiff has filed the Suit for specific relief of Perpetual Injunction under section 38 of Specific Relief Act. He has presented this application under Order 39, Rule 1 & 2 of the Civil Procedure Code for seeking a relief of temporary injunction against the defendants restraining them from creating third party interest over the property i.e gat no.270 area 48.83R land, more specifically described in para 1 of the plaint (hereinafter referred to as "Suit Property") till disposal of the suit.
- 2)** The plaintiff avers that the Suit Property is purchased land belonging to defendant no.1. He further avered that defendant no.1 has sold the said land to him.He further avered that the same land is again transferred to defendant no.2 by defendant no.1 by making forged sale deed in the office of registrar panhala. Hence plaintiff was forced to file the present application.
- 3)** The defendant nos 1 and 2 did not file their say to the present application inspite of ample opportunities given. Defendant no.3 has strongly contested to the suit claim as well as prayer of injunction by filing his written statement-cum-reply.Defendant has prayed for rejection of application for temporary injunction.
- 4)** Heard Ld. Advocate for the plaintiff.Called for the defendant but nobody appeared and argued the application.Perused the application and say thoroughly so also all the documents on record.

**5)** On the strength of rival pleadings and contentions of both the parties, following points emerge for my consideration. I have noted my findings on all points for reasons mentioned there below:-

<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
i) Whether the plaintiffs have made out a prima facie case for seeking relief of temporary injunction?	Affirmative
ii) Whether the plaintiffs would suffer an irreparable loss, if temporary injunction is not granted against defendant nos.1 and 3?	Negative
iii) Whether the balance of convenience lies in favour of plaintiffs?	Negative
iv) What order?	Application is rejected

### **REASONS**

**6) AS TO POINT NOS. 1 to 3 :- (Prima facie case, Balance of Convenience and Irreparable loss)** As the points are interlinked I, took the point collectively for consideration.

At the outset it is necessary to mention that when the applicant prays for injunction, he must make out a prima facie case in support of the rights claimed by him and that the court must be satisfied that there is a bonafide dispute raised by the applicant, there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is probability of the applicant being entitled to the relief claimed by him. Thus existence of prima facie right and infraction of such right is a condition precedent for grant of temporary injunction and obviously the burden lies upon the applicant to satisfy by leading evidence or otherwise that he has a prima facie case in his favour. Admittedly, the present suit is filed by plaintiff against

defendants for perpetual injunction. To show his prima facie case he has placed on record the sale deed. Even considering that plaintiff has not shown what defendant is doing to transfer and create third party interest. Injunction is to be granted if court observes or finds that there is imminent danger to the suit property, and in present case at this stage plaintiff is saying that defendant is trying to create third party interest but exactly how it is not brought on record. Hence considering the fact at this stage even if the plaintiff is having right or interest, he surely is not seen to suffer any irreparable loss and balance of convenience is not seen in the favor of plaintiff at this stage. Mere stating that defendant is trying to create third party interest will not suffice, hence I answer point no.1 in affirmative and point nos. 2 and 3 in the negative.

**7) AS TO POINT NO. 4 :-** Having observed as above and after recording my findings, I am of the considered view that, plaintiff has failed to show what irreparable damage he is going to suffer and how balance of inconvenience is in his favor under Order 39 Rule 1 and 2 of the Civil Procedure Code for grant of relief of interim injunction. Therefore, this application deserves to be rejected. Hence Order ,

### **ORDER**

- 1] Application Exh. 5 stands rejected.
- 2] No order as to costs.
- 3] Parties to proceed further.

Date :19/03/2022

( K. J. Khomane )  
I/c. Jt. Civil Judge Jr. Dn., Panhala.