



**IN THE COURT OF THE SENIOR CIVIL JUDGE &  
J.M.F.C., AT CHANNAPATNA.**

**: PRESENT :**

**SMT.SHUBHA, B.A.L., L.L.B.,**  
Senior Civil Judge & JMFC.,  
Channapatna.

**DATED THIS THE 29<sup>th</sup> DAY OF JANUARY 2024**

**O.S.No.65/2023**

**PLAINTIFF:**

Sri.Arun B.S.

**(By Sri.S.R., Advocate)**

**V/S**

**DEFENDANTS:**

Sri.R.Mahalingu and Others.

**(Defendant Nos.1 to 3 are  
represented by Sri.K.T.T.,  
Advocate and Defendant  
Nos.4 to 7 are represented  
by Sri.N.G., Advocate)**

**IN I.A.NO.I**

**APPLICANT/PLAINTIFF :**

Sri.Arun B.S.



**V/S**

**OPPONENTS/DEFENDANTS:**

Sri.R.Mahalingu and Others.

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**ORDERS ON I.A.NO.I**

The above application i.e., I.A.No.I is filed on behalf of the applicant/plaintiff under Order XXXIX Rule 1 and 2 read with Section 151 of Civil Procedure Code praying this court to pass an order of temporary injunction against the defendants, their agents/representatives or any person claiming through or under them from alienating and/or creating any kind of encumbrances over the Schedule 'B' Properties or otherwise deal with the Schedule 'B' Properties in any manner, pending disposal of this suit, in the interest of justice and equity.

2. The above application is supported with the affidavit of the plaintiff wherein he has submitted that Defendant Nos.1 and 2 have executed two registered sale agreements without possession in respect of the suit schedule property in favour of Plaintiff on 29.03.2014 and Defendant No.1



received Rs.1,87,00,000/- (Rupees One Crore Eighty Seven Lakh) and Defendant No.2 received Rs.13,00,000/-(Rupees Thirteen Lakh) as advance and agreed to execute the Registered Sale Deed in respect of the suit schedule property by getting the land converted from agricultural to non-agricultural residential use and also obtained necessary plan sanctioned for formation of residential layout from concerned authority.

3. He has further submitted that the 1<sup>st</sup> and 2<sup>nd</sup> defendants got conversion of schedule 'A' property from BMICAPA. However there was delay on the part of the 1<sup>st</sup> and 2<sup>nd</sup> defendants in getting the same completed in time. After due negotiations held among themselves the 1<sup>st</sup> and 2<sup>nd</sup> defendants demanded additional sum of Rs.1 Crore for formation of layout, of which he has agreed with a condition that the said additional sum would be paid by him to them after sanction of the final plan and release of the entire sites and at the time of sale of the sites in his favour or his nominees to which conditions the 1<sup>st</sup> and 2<sup>nd</sup> defendants agreed.



4. He has further submitted that the defendants in the meanwhile requested the plaintiff to lend a sum of Rs.20,00,000/- (Rupees Twenty Lakhs) as they are short of funds to do the works. Considering the request the plaintiff lend a sum of Rs.20 Laksh to the defendants by way of RTGS on 21.10.2015. That as per the altered terms defendants formed residential sites, the defendants requested to retain 21 sites for themselves out of 135 sites. Considering the said request the plaintiff agreed for the same, in that regard sale agreement was also executed on 04.09.2017 agreeing to sell 114 sites out of 135 sites described as 'B' schedule properties. The defendants agreed to sell 114 sites as detailed in 'B' schedule for a total consideration of Rs.2,15,00,000/-(Rupees Two Crore fifteen Lakh), out of which 2 crore was already paid to the defendants. The plaintiff has submitted that he was liable to pay balance of Rs.1,15,00,000/-(One Crore Fifteen Lakh) being the charges towards formation of layout, that defendant Nos.1 and 2 and plaintiff further agreed that as and when plaintiff request, the defendants would execute and register sale deeds in respect of 135 sites



mentioned above in his favour or to his nominees after giving deductions amounts already received under the aforesaid sale agreements and he would be participating as a confirming party to the sale deeds which would be registered in the names of his nominees.

5. He has further submitted that in view of the above altered agreement, the 1<sup>st</sup> and 2<sup>nd</sup> defendants and plaintiff agreed to cancel the original two sale agreements dated 29.3.2014 and accordingly executed two separate cancellations deeds both dated 06.09.2017. That thereafter the 1<sup>st</sup> and 2<sup>nd</sup> defendants started to market their sites for sale to general public. Since the intending buyers showed interest to purchase the sites agreed to be sold in favour of the plaintiff, the defendants approached the plaintiff and indicated that there are intending purchasers for some of the sites of 114 sites which are agreed to be purchased by plaintiff, hence the 1<sup>st</sup> and 2<sup>nd</sup> defendants requested the plaintiff to execute cancellation deeds only in respect of the said sites already received by 1<sup>st</sup> and 2<sup>nd</sup> defendant would be refunded with additional compensation, so that the



1<sup>st</sup> and 2<sup>nd</sup> defendants cancelled the said sites independently to independent purchasers and other portion of the sale agreement dated 04.09.2017 would be continued undisturbed in respect of other sites. The list of the sites formed out of the schedule 'A' property agreed to be sold in favour of plaintiff and which were cancelled are furnished by the plaintiff. Therefore from the above averments it is clear that the plaintiff continued to hold 86 sites under the sale agreement dated 04.09.2017 which is described as 'B' schedule property.

6. He has further submitted that the plaintiff recently learnt that 4 sites out of the 'B' schedule property were sold by one M/s Surya Properties through its sole proprietor 1<sup>st</sup> defendant for self and 1<sup>st</sup> defendant as GPA holder of the 2<sup>nd</sup> defendant in favour of Defendant Nos.4 to 7 under different sale deeds. The said acts was done by the defendants in connivance with the 3<sup>rd</sup> defendant in utter violation of the terms of the sale agreement. That if the Defendants are not restrained by an order of temporary injunction from creating any third party interest over the schedule properties,



they would create third party rights that would result in multiplicity of the proceedings and he would be exposed to unnecessary hardship and misery. That he had made out a prima-facie case and the balance of convenience in his favour. Hence, prays to allow the above application.

7. On the other hand the defendants 1 and 2 have filed their objections and contended that the application is not maintainable either in law or on facts and same is liable to be dismissed. They have further submitted that there is no sale transactions between Plaintiff and Defendants, question of honor the agreement never arise after receipt of amount. That if any sale transaction are happened for that there is sale talks, and sale negotiation are not held earlier to documents. That the document relied by Plaintiff are not the agreement of sale i.e., only a security document to amount advanced by Plaintiff. That terms and condition mentioned in documents are not come through; question of honour the document does not arise. That the document relied by the Plaintiff are barred by limitations and no terms were concluded as per document. That since earlier documents were



cancelled after barred by time, further document will not create any right of execution if it not comes through proper way. That they paid entire amount as agreed between them up to 22.11.2022, no amount due to him. That the Plaintiff wants to make money from the property of Defendants without any effort. That remaining 83 sites belongs to owner's i.e., Defendants in that Plaintiff have no right at all. That the document relied by the Plaintiff in the suit is not a executable documents. That the Plaintiff has no right to seek interim order on defected document. That the Plaintiff not filed any application for dispensation of notice. That the Plaintiff has not paid court fee as per his calculation. Hence, prays dismiss the above application.

8. The Defendant Nos.4 to 7 have filed their objections to the above application and contended that the application as filed is not maintainable either in law or on facts and is liable to be dismissed in limine. That the Plaintiff is not entitled to any relief much less temporary injunction. That the Plaintiff has not come to court with clean hands





or in good faith and has suppressed true and material facts.

9. They have further submitted that the Defendant No.4 has purchased the Site No.20 from M/s Surya Properties, represented by its Proprietor, R.Mahalingu and Smt.K.Manjula through Registered Sale Deed dated 21.04.2021 and she is in possession of the said property and katha is transferred to her name.

10. They have further submitted that the Defendant No.5 has purchased the Site No.21 from M/s Surya Properties, represented by its Proprietor, R.Mahalingu and Smt.K.Manjula through Registered Sale Deed dated 30.06.2021 and he is in possession of the said property and katha is transferred to his name.

11. They have further submitted that the Defendant No.6 has purchased the Site No.26 from M/s Surya Properties, represented by its Proprietor, R.Mahalingu and Smt.K.Manjula through Registered Sale Deed dated 20.12.2021 and he is in possession of the said property and katha is transferred to his name.



12. They have further submitted that the Defendant No.7 has purchased the Site No.43 from M/s Surya Properties, represented by its Proprietor, R.Mahalingu and Smt.K.Manjula through Registered Sale Deed dated 06.04.2021 and she is in possession of the said property and katha is transferred to her name.

13. They have further submitted that they are the bonafide purchasers of the above properties without notice for valid consideration and are absolutely entitled to protect their right, title and possession over their respective property in their own right. Hence, prays to dismiss the above application.

14. I have heard the arguments of both the counsels. Now the points that arise for my consideration are;

### **POINTS**

- 1) Whether the plaintiff has made out a prima-facie case for grant of Temporary Injunction ?
- 2) Whether the balance of convenience lies in favour of the plaintiff ?



- 3) Whether the plaintiff will be put to irreparable loss and injury if temporary injunction is not granted?
- 4) What order ?

15. My findings to the above points are as follows:-

Point Nos.1 to 3 : In the Affirmative.

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

### **REASONS**

16. **POINT NOS.1 TO 3** :- These points are interrelated to each other, in order to avoid repetition of the facts they are taken up together.

17. The above application i.e., I.A.No.I is filed on behalf of the applicant/plaintiff under Order XXXIX Rule 1 and 2 read with Section 151 of Civil Procedure Code praying this court to pass an order of temporary injunction against the defendants, their agents/ representatives or any person claiming through or under them from alienating and or creating any kind of encumbrances over the Schedule 'B' Properties or otherwise deal with the Schedule 'B' Properties in any manner, pending



disposal of this suit, in the interest of justice and equity.

18. The suit 'A' schedule property is totally measuring 9 acre 37 ½ guntas consisting of 7 items. The Plaintiff has contended that the 1<sup>st</sup> Defendant had initially mortgaged Item No.1 of 'A' Schedule Property by way of Registered document with State Bank of Mysuru, Item Nos.2 to 6 of 'A' Schedule Property were mortgaged by deposit of title deeds with State Bank of India and they had obtained a loan from the Bank. That the 1<sup>st</sup> Defendant wanted to repay the loan as such he intended to sell the schedule Item Nos.1 to 6 of 'A' Schedule Property and the 2<sup>nd</sup> Defendant being the wife of 1<sup>st</sup> Defendant was intended to sell Item No.7 of the 'A' Schedule Property. That they have approached him and offer to sell 'A' Schedule Property, accordingly he paid advance amount to the Defendant Nos.1 and 2 to enable them to repay the balance loan to the above mentioned banks and to get the mortgage discharged. That accordingly, the Defendant Nos.1 and 2 repaid the loan to the aforesaid Banks and got the mortgage



discharged and also got back their original Title Deeds.

19. That thereafter the Defendant No.1 has executed Sale Agreement without possession dated 29.03.2014 in respect of Item Nos.1 to 6 of 'A' Schedule Property for a total sale consideration of Rs.2 Crores. Out of the said amount in all, a sum of Rs.1,87,00,000/- was paid to the 1<sup>st</sup> Defendant. That the remaining 13 Lakhs was supposed to be paid to the 1<sup>st</sup> Defendant on the date of Registration of Sale Deed and the said document was registered on 19.04.2014.

20. The Plaintiff has further contended that the 2<sup>nd</sup> Defendant also agreed to sell Item No.7 of 'A' Schedule Property for a total sale consideration of Rs.15,00,000/-. Out of the said amount in all, a sum of Rs.13,00,000/- was paid and the remaining Rs.2 Lakhs was supposed to be paid to the 2<sup>nd</sup> Defendant on the date of the registration of Sale Deed and the said agreement also registered on 19.04.2014.



21. That as per the Sale Agreement, the Defendants have agreed to sell the 'A' Schedule Property by getting the same converted from agricultural property to non-agricultural residential use and also obtaining necessary plan sanctioned for formation of residential layout. That as per the terms of the Sale Agreement, the Defendant Nos.1 and 2 have got a Conversion Order in respect of 'A' Schedule Property and also obtained provisional approval to the plan from Bengaluru-Mysuru Infrastructure Corridor Authority dated 02.12.2015 bearing BMICAPA/TP/ವಸತಿ ವಿನ್ಯಾಸ/10/2015-16. That in the meanwhile the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have requested him to lend a sum of Rs.20 Lakhs as they are short of funds to do the works. Considering the said request, he agreed to lend the said sum to the Defendant Nos.1 and 2. That thereafter, the Defendant Nos.1 and 2 formed residential sites as per the provisional plan. That thereafter the Defendant Nos.1 and 2 obtained final sanction plan.

22. That after formation of the layout in the 'A' Schedule Property, the Defendant Nos.1 and 2 requested to retain for themselves 21 sites out of



135 sites. Considering the said requests he has agreed for the same and he thought it fit to reduce the altered conditions in writing and get the same registered. Accordingly, another Sale Agreement dated 04.09.2017 was executed by Defendant Nos.1 and 2 in favour of the Plaintiff agreeing to sell 114 sites out of 135 sites. The said 114 sites were described as 'B' Schedule Property in the said Sale Agreement dated 04.09.2017.

23. That the Defendant Nos.1 and 2 have agreed to sell 114 sites as detailed in the 'B' Schedule Property as per the Sale Agreement for a total sale consideration of Rs.2,15,00,000/-. Out of which a sum of Rs.2 Crores was already paid to the Defendant Nos.1 and 2 as per the Registered Sale Agreement dated 29.03.2014. Therefore, the Plaintiff was liable to pay the balance consideration amount of Rs.1,15,00,000/- being charges towards formation of layout. That in view of the altered agreement, the original two Sale Agreements dated 29.03.2014 were cancelled by way of Cancellation Deeds dated 06.09.2017. That the 2<sup>nd</sup> Defendant later executed a GPA dated 09.08.2017 in favour of the 1<sup>st</sup> Defendant. Likewise, the



Plaintiff has also executed a SPA in favour of one B.K.Jayaprakash on 04.09.2017. That thereafter the Defendant Nos.1 and 2 started to market their sites retained as agreed above for sale to general public. At that point of time, intending buyers also showed interest to purchase the sites agreed to be sold in favour of the Plaintiff. Hence, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants approached him and indicated that there are intending purchasers for some of the sites out of 114 sites which are agreed to be purchased by him. Hence, the Defendant Nos.1 and 2 have requested him to execute Cancellation Deeds only in respect of said sites on a condition that the proportionate sale consideration of the said sites received by Defendant Nos.1 and 2 would be refunded with additional compensation. So that, the Defendant Nos.1 and 2 can sell the said sites independently to said intending purchasers and other portion of the Sale Agreement dated 04.09.2017 would be continued undisturbed in respect of other sites.

24. That considering the said proposal of Defendant Nos.1 and 2, he has agreed for such different terms than mentioning Sale Agreement





dated 04.09.2017. That accordingly several sites formed out of the 'A' Schedule Property agreed to be sold in his favour, out of 114 sites were cancelled all furnished by the Plaintiff in the plaint.

25. The Plaintiff has stated that in respect of 28 sites cancellation deed was executed by Plaintiff. However, he continued to hold 86 sites under the Sale Agreement dated 04.09.2017. That the Plaintiff has appropriated the amount of Rs.36,80,000/- payable by him to the Defendant Nos.1 and 2 towards balance sale consideration of Rs.1,15,00,000/- which amount is in fact is a interest payable by Defendant Nos.1 and 2. That the Plaintiff is liable to pay balance sale consideration amount of Rs.78,20,000/- to the Defendant Nos.1 and 2 and he has expressed his willingness to pay the above said amount to the Defendant Nos.1 and 2 and also requested the Defendant Nos.1 and 2 to execute a Sale Deed in respect of the 'B' Schedule Property.

26. When such being the case, the Defendant Nos.1 and 2 have sold Item Nos.1 to 4 sites to Defendant Nos.4 to 7 under different Registered Sale Deeds in the name of M/s Surya Properties



i.e., Defendant No.3. That immediately he has approached the Defendant Nos.1 and 2 and questioned their illegal acts in not obtaining Cancellation Deeds and without his consent selling the Item Nos.1 to 4 of 'B' Schedule Properties to the Defendant Nos.4 to 7. That the Defendant Nos.1 and 2 did not answer anything about the said sale transaction. But they have declared that they are free to deal with every sites detailed 'B' Schedule Property without any further reference to him. Therefore, left with no other alternative, he has filed this suit seeking Specific Performance of Contract dated 04.09.2017.

27. In this case, the Defendant Nos.1 and 2 have contended in their written statement that they had no intention at all to sell the Item Nos.1 to 6 of the suit schedule property. That the said Sale Agreements refer to by the Plaintiff were not at all intended to be a Sale Agreements, but he has been intended to be a security document for due repayment of loan amount of Rs.5,00,000/-.

28. They have further contended that the two Registered Sale Agreement dated 29.03.2014 are not valid and enforceable contracts. They have



further contended in para No.20 of their written statement that in furtherance of the intention and understanding between the Plaintiff and Defendant Nos.1 and 2, they have sold in all 49 sites from time to time between 2017 to 2022 and paid to the Plaintiff in all a sum of Rs.5,47,99,749/-.

29. The Defendant Nos.1 and 2 have also contended that the suit of the Plaintiff is barred by limitation and accordingly prayed to dismiss the above application.

30. The Defendant Nos.4 to 7 have also filed their written statement and contended that they are the bonafide purchasers of Item Nos.1 to 4. Hence, they have prayed to dismiss the above application.

31. In this case, at one stretch the Defendant Nos.1 and 2 have contended in their written statement page No.3 that the above Sale Agreements were executed as a security for repayment of loan amount of Rs.5,00,000/-. But at another stretch at page No.5, they have contended that they have paid a sum of Rs.5,47,99,749/- being the amount due to the Plaintiff for sale of 49 sites. Therefore, in view of the said contentions



taken in the page No.5 of their written statement, the above stated contentions in page No.3 falls to the ground.

32. In this case, the documents produced by the Plaintiff clearly shows that the Defendant Nos.1 and 2 have keep on recognizing all the documents executed between themselves and Plaintiffs in subsequent documents. In the Sale Agreement dated 04.09.2017, there is a clear reference with regard to the earlier Sale Deed dated 29.03.2014 and in all the Cancellation Deeds, there is clear mention with regard to agreement dated 29.03.2014. The Defendant Nos.1 and 2 have sold 28 sites by getting Cancellation Deed from the Plaintiff. But even after sale of the above-mentioned sites, the Plaintiff continuous to hold 86 sites as per the Sale Agreement dated 04.09.2017. The certified copy of the Sale Deeds furnished by the Plaintiff shows that without the knowledge of the Plaintiff, the Defendant Nos.1 and 2 have sold Item Nos.1 to 4 in favour of Defendant Nos.4 to 7.

33. The documents produced by the Plaintiff is a Registered Documents. Therefore, considering the documents produced by the Plaintiff, I am of the



opinion that the Plaintiff has made out a prima-facie case for issuance of temporary injunction. The Plaintiff has produced prima-facie materials for issuance of temporary injunction.

34. In this case, already the above Defendant Nos.1 and 2 have sold Item Nos.1 to 4 in favour of Defendant Nos.4 to 7 and the Plaintiff counsel has filed another application as per I.A.No.XV on 10.01.2024 to implead Defendant Nos.8 to 11 as additional Defendants. They have stated in the above application that after perusal of encumbrance certificate, they came to know that site No.62 and 81 of Plaint 'B' Schedule Property was also sold by the Defendant Nos.1 and 2 in favour of proposed Defendant Nos.8 to 10 and Defendant No.8 and 9 have mortgaged the site No.81 to the proposed Defendant No.11. The Plaintiff has produced the certified copy of the EC, Sale Deed and Mortgage Deed. Therefore, perusal of the above documents clearly shows that there are chances of alienation and creation of encumbrance over the Suit 'B' Schedule Properties. If the Defendants alienates or creates any encumbrance over the 'B' Schedule Property, it will



create multiplicity of proceedings and unnecessary complication in the matter.

35. The contentions taken by the Defendant Nos.1 and 2 that the Plaintiff is only a money lender is only a defense which leads to be enquired in the evidence. But at this stage, the balance of convenience lies in favour of the plaintiff. It is the plaintiff who will be put to irreparable loss and hardship if the defendants alienates or create any charge over the suit schedule property. Hence the above I.A.No.I is deserves to be allowed. Accordingly, I have answered the **Point Nos.1 to 3 in the Affirmative.**

36. **POINT NO.4 :-** In view of my findings given on Point Nos.1 to 3 for the reasons discussed herein above paragraphs, I proceed to pass the following:

### **ORDER**

The I.A.No.I filed on behalf of the applicant/plaintiff under Order XXXIX Rule 1 and 2 read with Section 151 of Civil Procedure Code is hereby allowed.



The defendants, their agents/representatives or any person claiming through or under them are hereby temporarily restrained from alienating and/or creating any kind of encumbrances over the Suit Schedule 'B' Properties or otherwise deal with the Schedule 'B' Properties in any manner, till the disposal of this suit on merits.

(Dictated to the Typist Copyist on computer, then corrected, initialed and pronounced by me in the open court on this the **29<sup>th</sup> day of January 2024**)

(SHUBHA)  
**Senior Civil Judge & JMFC.,  
Channapatna.**