

**IN THE COURT OF THE XI ADDL.DISTRICT & SESSIONS
JUDGE, BELAGAVI, AT: BELAGAVI.**

Present: SRI. MARULASIDDARADHYA.H.J.
B.A.L.,LL.B.LLM
XI ADDL DIST. & SESSIONS JUDGE,
BELAGAVI.

MISCELLANEOUS APPEAL No.01/2018

Dated 18th day of July, 2018

Appellant/Plaintiff:

1. Shri.Ramchandra Punnappa Patil
Age: 63 Years, Occ: Agriculture and Pensioner,
R/o: Plot No. 345, Pitru chaya building,
Near SBI, 2nd Stage, Channamma Nagar, Belagavi

(By Sri.K.B.Hannurkar, Advocate)

// Vs //

Respondent/Original Defendants:

1. Smt. Asha W/o Ashok Bellad,
Age: 50 Years, Occ: Household
R/o. Plot No.880, 2nd Stage,
Rani Channamma Nagar, Belagavi.
2. Shri. Ashok Tavanappa Bellad,
Age: 55 Years,Occ: Private Work,
R/o. Plot No.880, 2nd Stage,
Rani Channamma Nagar, Belagavi.

(By Sri. A.G.Kulkarni, Advocate)

: JUDGMENT :

This appeal is preferred by the appellant against
Interim Order passed by III Addl. Senior Civil Judge and
CJM, Belagavi in O.S.No.191/2005 dated 15/12/2017.

2. Brief facts of the appellant case are that appellant is the plaintiff who instituted suit for specific performance of contract of agreement of sale dated 4/9/1996 against the defendants No.1 to 5. On 24/4/2010 the learned trial court passed judgment and decree by directing the respondents to execute registered sale deed in favour of plaintiff by receiving sale consideration amount and to hand over possession of suit schedule property.

3. The defendants preferred appeal vide R.A.No.289/2010 before the Hon'ble I Addl. District Judge, Belagavi and same was allowed by setting aside the judgment and decree of trial court and remanded the matter for fresh disposal. On remand, during pendency of original suit before trial court on 12/1/2016 the defendants filed memo stating that the suit property has been transferred to the name of defendant No.6 through registered sale deed dated 12/9/2005 and the same of defendants No.6 and 7 appearing in record of rights ad accordingly those defendants are impleaded by him and even L.Rs. of defendant No.8 are also impleaded.

4. The defendants No.6 and 7 contended suit property is in their possession and they developed suit property by spending huge amount and even they drilled bore well in suit property.

5. The learned trial court after considering the points as to existing prima facie case, balance of convenience and irreparable loss and injury, by negatively answering all the points, rejected I.A.No.11 filed by the plaintiff.

6. Being aggrieved by said order of learned trial court, the appellant preferred this appeal on the grounds that the learned trial court erroneously rejected I.A. without any sufficient grounds and even the defendants No.1 and 2 admitted agreement of sale along with signatures of their father and thereby he has proved prima facie case and even he has paid sale consideration amount and without his knowledge and information, the defendants No.8 and 9 during pendency of O.S.No.191/2005 without obtaining permission of the court, purchased suit schedule property on 12/5/2005 and during pendency of suit the defendants No.6 and 7 are started to put up construction and to dig bore well and thereby attempting to change the nature of suit property and accordingly he preferred this appeal to allow I.A.No.11 by setting aside the impugned order of learned trial court and to grant temporary injunction till disposal of the suit by restraining the defendants not to effect any alteration in the nature of suit schedule property.

7. After service of notice, both respondents No.1 and 2 appeared through their counsel and after hearing both sides and perusing documents and evidence on record along with grounds of the appeal memo, the following points arise for my consideration:

1. Whether the appellant made out prima facie case against defendants No.6 and 7?
 2. Whether balance of convenience lies in favour of appellant?
 3. Whether plaintiff suffered irreparable loss and injury if application is rejected?
 4. Whether the impugned order of learned trial court is arbitrary, perverse and illegal and calls for interference by this court?
 5. What order?
8. My findings to the above points are as under.

Points No.1 to 4: In the negative

Point No.5: As per final order for the following;

REASONS

9. **Points No.1 to 4:-** All these points taken together for discussions to avoid repetition of facts and evidence on record as these points are interlinked with each other.

10. The appellant made I.A.No.11 under Order 39 Rule 1 and 2 of CPC before learned trial court seeking its direction to prohibit defendants No.6 and 7 from changing nature of property, erecting bore well and to prevent changing nature of open space.

11. In this regard, the very facts of the case along with grounds of the appeal clearly reveal that on 25/6/2005 itself registered sale deed is effected in favour of defendants No.6 and 7 and their name only appearing in record of rights and same reveal both defendants No.6 and 7 are in possession and enjoyment of suit schedule property.

12. The appellant/plaintiff seeking relief of specific performance of contract and said relief being discretionary in nature shall be based on established judicial principles and by applying judicious mind to the facts and evidence on record and same should be in accordance with provisions under section 20 of Specific Relief Act and even no mini trial could be held for the purpose of examining existing prima facie case in favour of either of parties.

13. Prima facie the documents on record along with grounds of appeal reveal that registered sale deed executed in favour of defendants No.6 and 7 the respondents in this appeal with reference to suit schedule property in the year 2005 itself and there are

also pending I.A.No.1 and 2 with respect to the same relief of injunction sought against the defendants before learned trial court and the appellant seeking injunction of not to possess and enjoy against the defendants No.6 and 7 who have absolutely acquired suit schedule property under registered sale deed. Even it is to be noted that the appellant filed I.A.No.11 only in the year 2017 without pressing previous pending I.A.No.1 and 2 after about 10 years of date of execution of registered sale deed in favour of these respondents.

14. Undoubtedly, defendants No.6 and 7 being respondents before this court are in possession and enjoyment of suit schedule property and there are also similar I.As. already pending before learned trial court for consideration and even writ petition filed before the Hon'ble High Court of Karnataka bearing its W.P.No.103368/2017 is also pending for consideration and accordingly it is clear that the appellant utterly failed to show prima facie case and to prove balance of convenience in his favour and even fails to show that he will suffer irreparable loss and injury in case of I.A.No.11 not allowed.

15. The above discussion makes it clear that the learned trial court has not committed any illegality and has not exercised its power arbitrarily with perverse mind and accordingly I am of the opinion that the order of

learned trial court not calls for interference by this court.
Hence I answer all four points in negative.

16. Point No.5:- In view of my findings on Points No.1 to 4, I proceed to pass the following:

: ORDER :

The Miscellaneous Appeal preferred under Order 43 Rule 1(r) of C.P.C. is hereby dismissed with costs.

The impugned order passed by learned trial court in O.S.No.191/2005 dated 15/12/2017 is hereby confirmed.

The learned trial court is at liberty to proceed with disposal of the case in accordance with law at the earliest.

Send copy of this judgment to learned trial court.

(Dictated to stenographer, typed by him, corrected by me and then pronounced in open court on 18th day of July, 2018)

(Marulasiddaradhya.H.J)
XI Addl.Dist.& Sessions Judge,
Belagavi.

For judgment call on 18/7/2018

XI ADJ, Belagavi.

18/7/2018
For judgment

(Judgment pronounced in the open court vide separate)

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(Marulasiddaradhya.H.J)
XI Addl.Dist.& Sessions Judge,
Belagavi.