

KATK030140302022



**IN THE COURT OF THE V ADDL. CIVIL JUDGE AND
J.M.F.C AT TUMAKURU.**

Dated: this the 28th day of January-2025.

**SMT. LAXMI BHAVANI SHANKRAPPA.,BBA.LLB(Hon's), LLM.,
V ADDL. CIVIL JUDGE AND VI JMFC,
TUMAKURU.**

O.S.No.1131/2022

Plaintiffs : 1. SIDDARAJU H.R

S/o Rangashamaiah@Rangaswamaiah
Aged about 46 years,

2. VIRUPAKSHA H.R

S/o Rangashamaiah@Rangaswamaiah
Aged about 39 years,

Both are R/at Siddarthanagar at Post,
Gollahalli Janatha Colony,
Garden Road, Kasaba West Hobli,
Tumakuru Taluk.

(By Sri. T.G.D., Advocate)

-Vs-

Defendant:

BAYRAI @ RAJANNA

S/o Late Huchaiah

Aged About 55 years.

R/at Opp. Gramapanchayathi office,
Heggere Village at Post,
Kasaba West Hobli,
Tumakuru Taluk.

(By Sri. K.S.J., Advocate)

ORDERS ON I.A.II

This I.A. is filed by the learned Counsel for the Plaintiffs under Order 39 Rule 1 and 2 of CPC for seeking the relief of Temporary Injunction in favour of the Plaintiffs and thereby restraining the defendants, their agents, servants or anybody claiming on their behalf from any way interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property, till disposal of the suit.

2. It is submitted that, they are the lawful owner having right title and possession over the schedule property. All the documents are stands in the name of plaintiffs and they have paid Kandayam to Government. during the lifetime of father of plaintiffs Rangashamaiah@ Rangaswamiah was purchased the suit schedule property from his lawful vendor through registered sale deed dated 23.04.1973, the same is registered before sub-registrar Tumakuru, as per registered sale deed, the Tahsildar, Tumakuru Taluk, got

mutated Khatha and Pahani in the name of father of plaintiffs and he was in possession and enjoyment over the suit schedule property having right title. Hence the suit schedule property is purely self acquired property of the father of plaintiffs.

3. It is stated that, during the lifetime of father of plaintiffs gifted the suit schedule property in favour of plaintiffs on 17.02.2022, the same is also registered before the sub-registrar at Tumakuru. As per said registered gift deed, the Tahsildar, Tumakuru Taluk, got mutated Khatha and Pahani jointly in the name of plaintiffs in Khatha No.197 MR H52/2021-2022 dated 28.03.2022 pertaining to land bearing Sy.No.253, totally measuring 1-06.00 acres situated at Mallasandra Village, Kasaba West Hobli, Tumakuru Taluk, and all the documents are stands in the name of plaintiffs and they have paid Kandayam to Government. From the date of said registered gift deed, till date the plaintiffs are in lawful joint possession and

enjoyment over the suit schedule property. Hence the plaintiffs are the owners having right title and possession over the suit schedule property. Except the plaintiffs no other persons are having any right title or possession over the suit schedule property.

4. It is stated that, the defendant is utter stranger to suit schedule property and he is not having any right title or possession over the schedule property and there is no piece of documents stands in the name of defendant who is nothing to do with suit schedule property. But now the defendant is trying to interfere into plaintiffs lawful possession and enjoyment of suit schedule property. The defendant is the powerful person having political background and also support from goonda elements. But the plaintiffs are the innocent persons and they are not having any support in the village and they are unable to resisting the illegal act of defendant. Hence there is no any other alternative to plaintiffs except to file the suit against the defendant for permanent

injunction. **With these averments, Plaintiffs have sought for allowing the I.A.**

5. The Learned counsel for defendant has filed Memo stating that the written statement and counter claim averments may be considered as objections to this application. The defendant denied entire plaint averments and stated that, the plaint does not disclose the cause of action and the suit is not maintainable under law. As such the suit is liable to be dismissed. The defendant is the absolute owner in possession and enjoyment of the written statement property along with his sisters Smt.Gowramma W/o Kantharaju and this defendant and his sister are in peaceful and lawful physical possession and enjoyment of the written statement schedule property.

6. It is stated that, originally the land bearing Sy.No.64/5 measuring 0.31 guntas situated at Mallasandra village, Kasaba Hobli, Tumakuru Taluk was originally belongs to Bajanthri Narasappa and his sons Seebirangaiah and

K.Lakshminarasaiiah and those persons have sold the above said property in favour of L.R.Gundappa S/o Jodidhar Rangamma and M.Erannaiah S/o Shanbog Erappaiah under the registered sale deed dated 29.06.1957 and they were in possession and enjoyment of the said land as absolute owners in exclusive possession. The said L.R.Gundappa and M.Eranaiah had sold the land bearing Sy.No.64/10 (after phoded) measuring 1-00 acre and the land bearing Sy.No.64/5 measuring 0.31 guntas of Mallasandra village, Kasaba Hobli, Tumakuru Taluk in favour of Byla S/o Hanumanthaiah of Kengal Kempohalli village, Sompura Hobli, Nelamangala Taluk, under registered sale deed dated 23.03.1961 and delivered possession and thereafter he was in possession and enjoyment of the said property as absolute owner without anybody disturbance and khatha and pahani was made out in the name of Byla S/o Hanumanthaiah and he was paying taxes to the Government regularly.

7. It is stated that, thereafter the said Bylappa S/o Hanumanthaiah in turn out of his love and affection and for the purpose of Harishina Kunkuma has gifted the above said land bearing Sy.No.64/5 measuring 0.31 guntas and land bearing Sy.No.64/10 measuring 1-00 acre situated at Mallasandra village, Kasaba Hobli, Tumakuru Taluk in favour of his daughter Smt.Lakshmakka W/o Huchchaiah of Heggere village, Kasaba Hobli, Tumakuru Taluk and delivered the possession in favour her and gift is accepted by Lakshmakka and thereafter the revenue entries were transferred in the name of Lakshmakka and she was paying taxes to the Government regularly and as such the said Lakshmakka W/o Huchaiah became the absolute owner and she was in possession and enjoyment of the same as absolute owners for the total extent measuring 1-13 guntas comprising in both the Survey numbers.

8. It is stated that, the said Lakshmakka had a children by name Byraju, Gowramma and

Gangamma. Among the said legal heirs of Lakshmakka, Gangamma died about 20 years back, Gowramma is residing at Nelamangala working as a teacher and entrusted the matter to the defendant to prosecute the case as the case is filed against her brother.

9. It is stated that, during the life time of Lakshmakka, the said Lakshmakka being illiterate taking her helplessness though she was in possession and enjoyment during her life time in Sy.No.64/10 and 64/5 the adjacent land owner of Lakshmakka who was in possession of his land towards Western side of the above said lands by name Rangaiah S/o Gaviyamma without having any right, title, interest, muchless possession over the land of Lakshmakka, he has sold the land of Lashmakka including his land in favour of Thigalara Rangashamaiah S/o Nanjaiah, the land bearing Sy.No.64/10 measuring 1-00 acre under the registered sale deed dated 20.03.1973 and on the same day i.e., 26.03.1973 Seebirangaiah S/o

Narasaiah has sold the land bearing Sy.No.64/9 of Mallasandra village, Kasaba Hobli, Tumakuru Taluk measuring 1-06 guntas in favour of Rangaswamaiah S/o Nanjaiah under the registered sale deed dated 26.03.1973. Gaverangaiah S/o Muddarangaiah has sold the land bearing Sy.No.64/11 measuring 1-00 acre of Mallasandra village, Kasaba Hobli, Tumakuru Taluk in favour of Rangashamaiah S/o Nanjaiah under the registered sale deed dated 26.03.1973. Gaverangaiah S/o Muddarangaiah has sold the land bearing Sy.No.64/11 measuring 1-00 acre of Mallasandra village, Kasaba Hobli, Tumakuru Taluk in favour of Rangashamaiah S/o Nanjaiah under the registered sale deed dated 26.03.1973 in register No.5835/1972-1973. The said Rangaiah S/o Gaviyamma has no right, title, interest and lawful possession to sell the land of Lakshmakka bearing Sy.No.64/10 in favour of Rangashamaiah S/o Nanjaiah and the said sale deed is not binding on the right, title, interest and possession of

Lakshmakka W/o Huchaiah and after her demise is not binding on the legal heirs of Lakshmakka i.e., the defendant Byraju and his sisters Gowramma and Gangamma (Now dead on her legal heirs). Hence the suit filed by the plaintiff in respect of Sy.No.64/10 is not sustainable under law and the plaintiff is not in lawful possession and enjoyment of the suit schedule property and the revenue records are all fabricated, concocted and created on the wrong title deeds in collusion with the revenue authorities and merely because the revenue entries standing in the name of plaintiff on the wrong title over Sy.No.64/10 will not give him any legal right to claim the relief defendant and the vendor of the plaintiff by name Rangaiah S/o Gaviyamma is not the owner of the land bearing Sy.No.64/10 and as such already the land was gifted to Lakshmakka by her father Bylappa pertains to Sy.No.64/10 and Sy.No.64/5.

10. It is stated that, after the death of Lakshmakka on 22.02.1999, this defendant and

other legal heirs of Lakshmakka have performed the funeral ceremony and buried her dead body in Sy.No.64/10 and every year the legal heirs of Lakshmakka performed the pooja during the month of Navarathri Festival and this defendant is in lawful possession and enjoyment of the suit schedule property and the land surrounding this land are improved and adjacent lands converted for non agricultural purpose and this defendant also not applied for any conversion but during his tenure in the service of K.S.R.T.C. is doing cultivation to grow vegetables. As such the suit of the plaintiff is not maintainable and without valid title the possession is also illegal and unlawful as such on the basis of the defective title and illegal entries in the revenue records the possession cannot be determined as such the suit of the plaintiff is to be dismissed with heavy cost. **With these averments, defendant has sought for rejecting the I.A.**

11. Heard the arguments of the Learned

Counsels appearing for the parties and perused the materials available on record.

12. The following points would arise for consideration of this court:-

- 1. Whether the Plaintiffs have made out prima-facie case for grant of temporary injunction as sought for?**
- 2. Whether the balance of convenience lies in favour of the Plaintiff ?**
- 3. Whether the Plaintiffs will be put to irreparable loss and hardship, if I.A. is not allowed?**
- 4. What order ?**

13. The findings of this Court on the above said points are as hereunder:-

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 :

14. Point No.1: In the light of arguments

canvassed by the learned Counsels for the parties, this Court has carefully perused the list of documents produced by the parties to the suit. The Plaintiff's list of documents consists of xerox copy of gift deed, RTC in Sy. No.253, MR.H52/2021-2022 and Tax paid receipts. The defendant list of documents consists of xerox copy of registered sale deed dated 29.07.1957, xerox copy of registered sale deed dated 23.03.1961, xerox copy of registered gift deed dated 08.01.1965, Tippani copy of Sy.No.253, Tippani copy of Sy.No.252, and EC from 1955-2004.

15. At this stage, without going to the merits of the case and holding mini trial, this Court has considered the aspect of Prima facie case. At this stage, this Court makes it very clear that this Court is looking towards prima facie case and not prima facie title. It is well-settled principles of law that at the time of disposing the Temporary Injunction application, the Court cannot go into

the prima facie title and only to consider whether the plaintiff has made out a prima facie case for granting interim relief.

16. The primary purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claim of the parties before the Court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and prejudice, likely to be caused to the plaintiff if the relief is refused; and injury and prejudice likely to be caused to the Defendants if the relief is granted, The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of constitution of the proceedings and to prevent any change in it until the final determination of the

suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.

17. The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.

18. The first rule is that the applicant must make out a prima facie case in support of the right claimed by him. The Court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of Temporary Injunction.

19. In order to ascertain the prima-facie case, this Court has carefully perused the materials on record. It is the specific case of plaintiffs that, the father of plaintiffs purchased the suit schedule property from his lawful vendor through registered sale deed dated 23.04.1973 and during the lifetime of father of plaintiffs he was in peaceful possession enjoyment of the suit schedule property and all revenue documents standing in his name. The father of plaintiffs gifted the suit schedule property in favour of plaintiffs under registered gift deed dated 21.02.2022 and accordingly plaintiffs are the absolute owners in possession of the suit schedule property and all the documents standing in the name of plaintiffs. The defendant is utter stranger to the suit schedule property and try to interfere with the peaceful possession of suit schedule property of the plaintiffs. It is specific case of the defendant that, the written statement schedule property was originally belongs to Bajantri

Narasappa and his sons and he has sold the same in favour of L.R.Gundappa and Erannaiah under registered sale deed dated 29.06.1957. The said L.R.Gundappa and Erannaiah have sold land bearing Sy.No.64/10 measuring 1-00 and Sy.No.64/5 measuring 0.31 guntas in favour of Bylappa S/o Hanumantaiah under registered sale deed dated 23.03.1961. The said Bylappa has gifted the said property in favour of Lakshmakka for her Arishina Kunkuma and accordingly she was possession of the said property and revenue entry was also mutated in her name. The defendant is son of Lakshmakka. Rangaiah is adjacent land owner of the properties of the Lakshmakka. The said Rangaiah without having any title have sold the land of Lakshmakka including his property in Sy.No.64/10 in favour of Thigalara Rangashamaiah under registered sale deed dated 26.03.1973. Hence the suit of the plaintiffs is not maintainable since revenue records are all fabricated.

20. This court has clearly perused the documents produced by parties to the suit. The plaintiffs have stated that, the father of plaintiffs has purchased suit schedule property under registered sale deed dated 23.04.1973. This court has perused the xerox copy of said sale deed, on perusal it reveals that father of plaintiffs has purchased property in Sy.No.64/10 measuring 1 acre east by property of Huchaiah, west by property of Gangadaraiah, North by property of Narasamma and South by property of Beerangaiah. The measurement and boundaries in suit schedule property are totally different. The plaintiffs have also stated that his father has gifted the suit schedule property under registered gift deed dated 21.02.2022, this court has perused xerox copy of said gift deed on perusal it reveals that the father of plaintiffs have gifted the suit schedule property in favour of plaintiffs but the measurement and boundaries in 1973 sale deed are totally different. The plaintiffs have also produced hand written

RTCs of vendors of his father Rangashamaiah that on perusal it reveals that measurement of the property mentioned only 1 acre in the name of Rangashamaiah but the plaintiffs have mentioned 1.06 guntas in the gift deed and boundaries also differs for which plaintiffs have not explained anything in the plaint. Eventhough there is only 1 acre property purchased by the father of plaintiffs but gift deed has been executed in favour of plaintiffs with extra 6 guntas of property. Therefore on perusal of documents itself shows that plaintiffs are not in possession of the plaint schedule property.

21. The defendant has also produced sale deeds and revenue documents with respect to his claim over written statement schedule property. On perusal of all the documents it appears to this court that the plaintiffs have mentioned extra extent in gift deed without any base even though the sale deed of their father is only pertaining to

one acre property. Hence the plaintiffs are not entitle to the relief as sought in the application. This Court is of the opinion that Plaintiffs have not made out a prima facie case for grant of temporary injunction in their favour. **With these observations, this Court has answered Point No.1 in the Negative.**

22. Point No.2 and 3: The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the Court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

23. The existence of the prima facie case alone does not entitle the applicant for a temporary injunction. The applicant must further satisfy the

court about the third condition by showing that he will suffer irreparable injury if the injunction as prayed is not granted and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury.

24. By considering the case of the Plaintiffs, it appears to this court that, if I.A. is allowed, more mischief and hardship will be cause to the defendant than the mischief and hardship will cause to the plaintiffs. After considering the materials on record, this Court is of the opinion that if I.A. is rejected, then the Plaintiffs will not be put to irreparable loss and hardship and on the contrary, if the present application is allowed, then the defendant will be put to any such hardship.

With these observations, this court has consider Points No.2 and 3 in the Negative.

25. Point No.4: For the aforesaid discussions on Point No.1 to 3, this Court proceeds to pass the

following:

ORDER

**I.A.II filed by the Learned
Counsel for the plaintiff under
Order 39 Rule 1 and 2 of CPC is
hereby rejected.**

No order as to cost.

(Dictated to Stenographer directly on computer,
computerized by her, corrected by me and then
pronounced in the open Court on this the 28th day of
January - 2025)

**(LAXMI BHAVANI SHANKRAPPA.)
V ADDL. CIVIL JUDGE AND JMFC,
TUMAKURU.**