

**:COMMON ORDERS ON I.A No.1 AND 2:**

The applicant/plaintiff has filed these applications under order 39 rule 1 and 2 of C.P.C. with a prayer to restrain the defendants and their henchmen from causing any kind of interference or obstruction to the plaintiff's peaceful possession and enjoyment of the schedule 'B' property and to restrain them from alienating the schedule 'A' property for the reasons assigned in the accompanying affidavit stating that, he is the owner of south eastern portion of property bearing No.3309, New No.3309/23, Corporation PID No.8-60-23 Old 4<sup>th</sup> Cross, presently 5<sup>th</sup> Cross, I Main Road, 'C' Block, Gayathri Nagar, Bengaluru with measurement and boundaries mentioned in the I.A.s schedule. Further it is arrayed that, there are three shops and house portion in the ground

floor and a house portion in the first floor and a small room with attached bathroom in the 2<sup>nd</sup> floor as described in the schedule 'A" property.

Further it is arrayed that, plaintiff has let out shop portion to tenants and ground floor house portion and 2<sup>nd</sup> floor room with attached room is in possession of the 1<sup>st</sup> defendant under an agreement of mortgage dated 14/07/2003. The house portion in the first floor is vacant and in possession of the plaintiff. Further it is arrayed that plaintiff has purchased the schedule property from 1<sup>st</sup> defendant under a registered sale deed dated 14/07/2003 and paying tax to the concerned authority, but he has not executed any power of attorney in favour of 1<sup>st</sup> defendant pertains to schedule 'A" property, as such 1<sup>st</sup> defendant has created GPA dated 19/08/2017 and on the basis of the said he has executed sale deed dated 01/01/2020 in favour of himself and thereafter executed registered Gift Deed in favour of his wife 2<sup>nd</sup> defendant and now she is trying to alienate the same.

Further it is arrayed that he has approached the jurisdictional police and after calling upon the defendants they produced copies of sale deed, Gift Deed and GPA, as such the power of attorney cannot execute a document in favour of himself, therefore the said documents are forged and

invalid. But taking advantage of said created documents the defendants are making hectic attempt to sell the suit schedule property and interfering with symbolic possession over the schedule shops. On these grounds prayed for allowing IA. No.1 and 2.

2. Records reveal that the defendants appeared and filed detailed written statement along with memo with a request to treat the contents of written statement as objections to I.A. No.1 and 2 by denying contents of accompanying affidavits contending that, they have not created or fabricated GPA dated 19/08/2017 as alleged by the plaintiff. Further contend that defendant No.2 is the absolute owner of the suit schedule properties as he has acquired legally. Further contend that, prior to acquisition of the schedule properties the defendants were lessee under the plaintiff and there was an agreement entered in to between the 1<sup>st</sup> defendant and plaintiff on 14/07/2003 in respect of ground floor and 2<sup>nd</sup> floor with attached bath room property bearing No.3309. Further, lease agreement was executed between the plaintiff and 1<sup>st</sup> defendant on 09/08/2017 in respect of the 1<sup>st</sup> floor of the property bearing No.3309 situated in the same address and during lease period suit schedule property was sold by the plaintiff in favour of 1<sup>st</sup> defendant legally as such

there is no forgery or fabrication of documents. The defendant No.2 has leased out one shop in the ground floor to N.B. Veena and another shop in favour of Thyagaraj and they are lessee under the defendant No.2 and another shop leased out to one Basavaraju by the 1<sup>st</sup> defendant previously. As such aforesaid GPA, sale deed and Gift Deed referred by the plaintiff are not the fabricated or created documents, on the other hand the GPA has been genuinely executed by the plaintiff in favour of the defendant No.1, but in order to harass and cause wrongful loss to the defendants the plaintiff has filed the suit along with interim applications. On these grounds prayed for dismissal of the applications.

3. Records reveal that none of the parties/counsels addressed oral arguments on I.A. No.1 and 2, accordingly this court taken as nil with liberty to file written submissions within 15 days. The learned counsel for plaintiff has filed common written submission on I.A.s, but other side did not turn up.

4. The points that arise for my consideration are:

1. Whether the plaintiff has made out a prima-facie case?
2. Whether balance of convenience lies in favour of plaintiff?
3. Whether plaintiff will be put to irreparable loss and injury if ex-parte injunction is vacated?

5. My answers to the point No.1 to 3 are in the affirmative for the following:-

**:REASONS:**

6. **Point No.1 to 3** : I take these points altogether for my discussion as the facts overlap and for the sake of convenience.

7. It is worth to note that plaintiff has filed above numbered suit for the relief of declaration, possession and injunction in respect of suit schedule properties stating that she is the owner of south eastern portion of property bearing No.3309, New No.3309/23, 5<sup>th</sup> Cross, I Main, 'C' Block, Gayathri Nagar, Bengaluru. Further in this connection the applicant plaintiff has these applications seeking temporary injunction to restrain the defendants and their henchmen from alienating schedule 'A" property which has been purchased by the plaintiff from the 1<sup>st</sup> defendant under registered sale deed dated 14/07/2003 and to restrain them from

interfering with schedule 'B" property. In this connection it is the apprehension of the plaintiff that, the defendant No.1 has executed a Gift Deed in favour of defendant No.2 wife and she is now trying to alienate the same to third parties based on alleged forged GPA and Gift Deed.

8. Per contra it is the contention of the defendants that, they have neither fabricated nor created the documents like GPA dated 19/08/2017, sale deed dated 01/01/2020 and Gift Deed dated 20/02/2020 as alleged by the plaintiff but the plaintiff has filed the false suit with an intention to knock of the schedule property.

9. On perusal of plaint averments, contents of the affidavits filed with I.A. No. 1 and 2 as well as the documents furnished by the plaintiff viz., original Will dated 29/11/1989, sale deed dated 14/07/2003, katha extract and certificate along with tax paid receipts/rent agreements go to show that there is a prima-facie case in favour of the plaintiff.

10. It is to be noticed that though the defendants relied on GPA dated 19/08/2017, sale deed dated 01/01/2020 and Gift Deed dated 20/02/2020, but it is specific case of the plaintiff that she is in owner in possession of the schedule properties by virtue of registered sale deed dated 14/07/2003, wherein there is mention about registered Will dated 29/11/1989 along with other documents viz, katha extract and tax paid receipts. On the other hand based on aforesaid alleged documents relied by the defendants, defendant No.2 is trying to alienate the schedule 'A' property to the third parties and also interfering with possession of the plaintiff over the schedule 'B' property, which indicates that balance of convenience also lies in favour of the plaintiff who has made out an arguable case.

11. In this connection our Hon'ble High Court has held in the case of Smt.Ratnama V/s Gupta reported in KLJ-1999 (1) Head Note Point C Page.578 that grant of primary purpose of temporary injunction which is only preventive relief, is to preserve property in dispute till legal rights of the parties are settled and further it is observed that prima-facie case

is not to be confused with prima-facie title. The material on record indicates that it requires regular trial. Wherefore having regard to facts and circumstances of the case I am of the opinion that if the ex parte order of temporary injunction granted on I.A. No.2 is vacated then the plaintiff will be put to irreparable loss and inconvenience. Further with regard to I.A. No.1 is concern if both the parties are directed to maintain status quo over the suit schedule properties as on date of suit it can meet the ends of justice. For these reasons written arguments filed by the counsel for the plaintiff holds good. Therefore, I.A. No.1 and 2 are deserve to be allowed without cost. Hence, I answer Point No.1 to 3 are in the affirmative and proceed to pass the following:

**:ORDER:**

I.A. No.1 and 2 filed under order 39 rule 1 and 2 of C.P.C are hereby allowed.

The ex-parte order of temporary injunction granted by this court on I.A. No.2 dated 20/06/2021 is made absolute until disposal of the suit.

Consequently, the defendants are hereby restrained from alienating the schedule 'A' property till disposal of the suit.

Further with regard to interim relief sought under I.A. No.1 is concern both the parties are hereby directed to maintain status quo over the suit schedule 'B' property as on date of suit, pending disposal of the suit.

There shall be no order as to costs.

(C.D. Karoshi)  
V ACC &SJ, Bengaluru.

